



Jade Hall  
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21 May 2020

Dear Ms Hall,

<b>Application No.</b>	APP-0006879341
<b>Applicant</b>	The Rogue Scholar Pty Ltd
<b>Application for</b>	Hotel (general bar) licence Minors area authorisation
<b>Licence name</b>	The Rogue Scholar
<b>Premises</b>	4-6 Union Street Newcastle West NSW 2302
<b>Trading hours</b>	Monday to Saturday 10:00 AM – 10:00 PM Sunday 10:00 AM – 8:00 PM
<b>Legislation</b>	Sections 3, 11A, 12, 14-17, 40, 45 48, 51 and 121 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority  
Application for a hotel (general bar) licence with minors area authorisation – The Rogue  
Scholar, Newcastle West**

At its meeting of 13 May 2020 the Independent Liquor and Gaming Authority (“Authority”) decided to **grant** the hotel (general bar) licence (“Licence Application”) and minors area authorisation (“MAA”) under sections 45 and 121 of the *Liquor Act 2007* (NSW) (“Act”) respectively. The licence has been granted subject to the conditions set out in Schedule 1 below.

**Licence cannot be exercised until premises is ready to trade**

The Authority requires that the licence cannot be exercised unless and until the Authority or Liquor and Gaming New South Wales (“L&GNSW”) has been provided with evidence that the premises is complete and ready to trade.

**Concise statement of reasons**

Section 36C of the *Gaming and Liquor Administration Act 2007* (NSW) does not require the production of reasons in respect of decisions to grant a MAA. While reasons are not provided, the Authority is satisfied that it is in the public interest, having regard to the statutory objects and considerations in section 3 of the Act, to grant the MAA. This letter provides a short record only of the decision to grant the MAA in respect of the whole of the licensed premises.

The enclosed concise statement of reasons has been prepared *only* in respect of the Authority’s decision to grant the Licence Application. In the interest of efficient finalisation of matters in a high-volume liquor and gaming jurisdiction, the Authority will only produce a detailed statement of reasons for applications that are refused, partially approved or the subject of stakeholder objections.

A concise statement is produced for non-contested applications that have been approved by the Authority, in cases where a statement of reasons is required to be published for the application under section 36C of the *Gaming and Liquor Administration Act 2007* (NSW). The document briefly sets out the material considered by the Authority, the legislative requirements, and the Authority’s key findings in respect of the Licence Application.

If you have any questions, please contact [glenn.barry@liquorandgaming.nsw.gov.au](mailto:glenn.barry@liquorandgaming.nsw.gov.au).

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', enclosed in a thin black rectangular border.

Philip Crawford

**Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**

# Concise Statement of Reasons

## Key facts

<b>Application No.</b>	APP-0006879341
<b>Applicant</b>	The Rogue Scholar Pty Ltd
<b>Application for</b>	Hotel (general bar) licence
<b>Licence Name</b>	The Rogue Scholar
<b>Premises</b>	4-6 Union Street Newcastle West NSW 2302
<b>Trading Hours</b>	Monday to Saturday 10:00 AM – 10:00 PM
<b>Application Date</b>	Sunday 10:00 AM – 8:00 PM
<b>Decision</b>	Approval of licence under section 45 of the <i>Liquor Act 2007</i>
<b>Decision Date</b>	13 May 2020

## Material considered by the Authority

The Independent Liquor and Gaming Authority (“Authority”) has considered the following material:

- Application material for the new hotel (general bar) licence and minors area authorisation lodged on 6 February 2020 (“Application”) accompanied by: relevant stakeholder notices; Liquor and Gaming New South Wales (“L&GNSW”) form TDEC6 titled *Declaration: Consent to lodge on behalf of applicant* signed by Mr Adam Hardy dated 5 December 2019; L&GNSW form APDEC1 titled *Online appointment of manager notice: declaration by incoming manager* signed by Mr Adam Hardy dated 5 February 2020; L&GNSW form APDEC2 titled *Online appointment of manager notice: declaration by organisation* signed by Craig Bellamy (company director) dated 8 December 2019 and by Joseph Hamilton (company director) dated 5 February 2020; Australian Securities and Investments Commission (“ASIC”) current organisation extract for the corporate applicant, The Rogue Scholar Pty Ltd (“Applicant”), as at 5 December 2019; Development consent DA2017/01387 (“DA”) issued by the City of Newcastle Council (“Council”) dated 13 February 2018 for “Change of use from retail to food and drink premises”; plan/diagram of the licensed premises highlighting the licensed area in red, the minors area authorisation in green and the proposed brewery (to be subject to a separate licence) in blue.
- Category B Community Impact Statement (“CIS”) signed (by what appears to be Mr Hardy’s signature) and dated 5 February 2020 accompanied by a map depicting the area notified of the Application.
- Stakeholder submissions on the Application from A/Sergeant Licensing Unit Craig Staniland of Newcastle City Police District of NSW Police (“Police”) dated 25 February 2020 (including a list of conditions consented to and signed by Mr Hardy on 19 February 2020); Council dated 10 February 2020 and 14 February 2020 (including a letter dated 31 January 2020 from KDC Pty Ltd regarding the development application for change of use to Artisan Food and Drink Industry); and L&GNSW Compliance dated 31 March 2020. The Applicant’s response to these submissions was also before the Authority.
- Correspondence between licensing staff and the Applicant between 19 February 2020 and 17 March 2020 including the following key documents: ASIC Record of Registration for Business Name The Rogue Scholar dated 17 March 2020, provided on 17 March 2020; Certificate of Advertising signed by Mr Hardy dated 19 February 2020; Nationally Coordinated Criminal History Check Certificate for Mr Hardy as at 21 November 2019, provided on 19 February 2020; and Identification documents for Mr Hardy in the form of an Australian passport, NSW Driver Licence, Medicare card and L&GNSW Competency Card, provided on 19 February 2020.
- Alcohol Management Plan dated 30 April 2020.
- Statistics sourced by licensing staff from L&GNSW, Bureau of Crime Statistics and Research (“BOCSAR”), NSW Health and Australian Bureau of Statistics (“ABS”) in respect of the socio-economic status, liquor licence density, alcohol-related crime rates, and health issues in the relevant local and broader communities.

- Google geographical maps depicting the location of the Premises.

### **Legislative requirements**

The Authority has considered the Application in the context of the following sections of the *Liquor Act 2007* (NSW) (“Act”) and the associated clauses of the *Liquor Regulation 2018* (NSW) (“Regulation”):

- Section 3: Statutory objects of the Act and relevant considerations.
- Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6 hour period during which liquor cannot be sold.
- Sections 14-17: Specific provisions in respect of a hotel liquor licence.
- Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
- Section 45: Criteria for granting a liquor licence
- Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community.

The Authority has had regard to its *Guideline 6* and information noted therein when considering the overall social impact of granting the Application for the purposes of section 48(5) of the Act.

### **Key findings**

In accordance with Guideline 6, the Authority finds that the relevant local community for the purposes of this decision is the suburb of Newcastle West, and the broader community is the Local Government Area of Newcastle City Council (“Newcastle LGA”). Having regard to the material before it and the relevant legislative requirements, the Authority makes the following findings.

### Key legislative requirements

The Authority finds that:

- The Application meets procedural and information requirements under sections 40 and 48(4) of the Act and clauses 20 through 29 of the Regulation on the basis of the Application and CIS material and the Certificate of Advertising dated 19 February 2020.
- The trading hours and daily six-hour liquor cessation period proposed by the Applicant in the Application Form fall within the scope of potential licenced trading hours provided by sections 11A, 12 and 14 of the Act for premises with this licence type.
- The corporate Applicant is a fit and proper person, for the purposes of section 45(3)(a) of the Act, noting the absence of any probity concerns raised in submissions from Police and L&GNSW.
- Practices will be in place from the commencement of licensed trading on the Premises to ensure the responsible serving of alcohol and prevent intoxication for the purpose of sections 45(3)(b) of the Act, on the basis of the Alcohol Management Plan dated 30 April 2020.
- The requisite development consent permitting the conduct of the relevant business or activity permitted by this licence type on the premises is in force for the purpose of section 45(3)(c) of the Act. This finding is made on the basis of the DA issued by Council on 13 February 2018.

### Positive social impacts

The Authority accepts, as contended in the CIS, that this licensed business will activate a dis-used building within the Newcastle CBD to house a “boutique brewery” that will cater to a “niche market” and “have an established market presence in the craft beer industry”. The plan/diagram of the premises indicates that this hotel (general bar) licence will be located next to an area that has been allocated for a proposed brewery (with a separate licence application to follow in respect of that area).

Noting that the L&GNSW list of licensed premises as at April 2020 indicates that there are no hotel (general bar) licensed premises in this suburb and 3 in the LGA, the Authority considers that granting this licence will diversify the range of licensed businesses available to these communities whilst also providing some additional convenience and choice to people who wish to patronise this style of venue. In this context the licence will facilitate the balanced development of the liquor industry serving the local community per the statutory object in section 3(1)(b) of the Act. Benefits are very limited in respect of the broader community by reason of the number and variety of licensed premises in Newcastle LGA.

Noting that no objections were received in response to this Application, the Authority is satisfied that granting the licence will advance, to a modest extent, the statutory object of regulating liquor in a manner consistent with the “expectations, needs and aspirations” of the local community for the purposes of section 3(1)(a) of the Act. Benefits are very limited in respect of the broader community by reason of the number and variety of licensed premises in Newcastle LGA.

On the information in the Application form that the venue will on occasion provide live music, disc jockeys or acoustic music and noting that the Applicant has not sought to trade during extended trading hours, the Authority finds that granting the licence may contribute to the responsible development of the related live music and entertainment industries, advancing the statutory object in section 3(1)(c) of the Act.

#### Negative social impacts

The Authority accepts that the operation of a new hotel (general bar) licence may, over time, contribute to alcohol-related adverse social impacts affecting the local and broader communities. Having regard to the risk factors identified in Authority Guideline 6, the following factors are adverse to an assessment of the overall social impact of granting the Application:

- The premises is located within a local community experiencing widespread concentrations of crime and a broader community experiencing elevated crime rates.
- The BOCSAR hotspot maps from January 2019 to December 2019 indicate that the premises is located in high-density hotspots for incidents of alcohol-related assault, domestic assault, non-domestic assault and malicious damage to property.
- The LGA is exposed to elevated BOCSAR crime rates per 100,000 persons for the year to December 2019 for incidents of alcohol related domestic assault (124.9 for the LGA compared to 116.2 for NSW), alcohol related non-domestic assault (235.2 for the LGA compared to 115.3 for NSW), malicious damage to property (1204.7 for the LGA compared to 713.9 for NSW) and alcohol-related disorderly conduct (offensive conduct) (38.4 for the LGA compared to 34.2 for NSW).
- Alcohol attributable deaths in the LGA are elevated, with the NSW Healthstats data recording a higher spatially adjusted rate per 100,000 population (24.6) compared to NSW (17.4) for the period between 2016 and 2017.
- Alcohol attributable hospitalisations in the LGA are elevated, with the NSW Healthstats data recording a higher spatially adjusted rate per 100,000 population (588.3) compared to NSW (555.6) for the period between 2016 and 2018.

The Authority is nevertheless satisfied that these risk factors are mitigated by the following factors pertaining to this proposal:

- Pursuant to section 16 of the Act, a premises operating pursuant to a hotel (general bar) licence (as distinct from a full hotel licence) is not permitted to keep gaming machines or to sell or supply liquor for consumption away from the licensed premises.
- Pursuant to clause 40 of the Regulation, it is a condition of this licence subtype that the licensed premises cannot be used to conduct a totalizator, or to conduct any betting activity, under the authority of a licence granted under the *Totalizator Act 1997*, or to conduct a public lottery (within the meaning

of the *Public Lotteries Act 1996*) authorised under that Act. Keno and wagering is therefore not permitted at this premises.

- Although the licensed hours are extensive, the licence will be subject to a 6-hour liquor cessation period between 4:00 am and 10:00 am and will not trade late in the evenings during higher risk times.
- The scale of the premises (138 sqm) and patron capacity (120 patrons) means the venue is of smaller scale for a hotel and will be amenable to monitoring and management of patron behaviour.
- Licence density, although slightly elevated in the LGA (1.93), the suburb (0.00) is below the NSW rate per 100,000 persons (1.34) for hotel (general bar) licences. The Authority also notes that the LGA is a regional centre that serves a substantial population of workers and residents and that the suburb of Newcastle West has a very small population of only 618.
- Socio-economic disadvantage is not a compounding risk factor. The suburb is ranked in the highest decile (10<sup>th</sup> decile) and the LGA is ranked in the 8<sup>th</sup> decile on the Index of Relative Socio-Economic Advantage and Disadvantage.
- No objections or concerns about amenity were received from relevant stakeholders or community members.
- The licence will be subject to conditions requiring the business to maintain an incident register, maintain a CCTV system and adhere to crime scene preservation measures. The Authority has imposed the CCTV condition as requested by police, as the location of the premises warrants the increased frames per second compared to the Authority's standard condition. Instead of imposing the condition requested by Police restricting the types of drinks at the premises, the Authority has preferred its own wording which states *Any drinks commonly referred to as a "shot" that contains more than 30ml of spirits or liqueur, and that is designed to be consumed rapidly, must not be sold or supplied at any time.*
- The licence will also be subject to harm minimisation provisions set out in the *Alcohol Management Plan* dated 30 April 2020, with the Plan enforceable by way of a licence condition.

## Conclusion

Having considered the positive and negative social impacts that are likely to flow from the Applicant's proposal, the Authority is satisfied that the overall social impact of granting the licence will not be detrimental to the well-being of the local or broader community for the purposes of section 48(5) of the Act.

Accordingly, the Authority grants the Application pursuant to section 45 of the Act.



Philip Crawford  
Chairperson

### **Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* (NSW) a relevant person (the applicant or a person who was required to be notified of the prescribed application and who made a submission to the Authority or the Secretary in respect of the prescribed application) who is aggrieved by this decision may apply to the New South Wales Civil and Administrative Tribunal ("NCAT") for an administrative review under the *Administrative Decisions Review Act 1997* (NSW).

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

## Schedule 1 – Licence conditions to be imposed The Rogue Scholar

1. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between **4:00 AM and 10:00 AM** during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Restricted trading and NYE (std)  
Consumption on premises  
Good Friday      12:00 noon – 10:00 PM  
Christmas Day    12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)  
December 31<sup>st</sup>    Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.

3. The business authorised by this licence must not operate with a greater overall level of social impact on the well being of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. The premises is to be operated at all times in accordance with the Plan of Management dated **30/04/2020** as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. Incident Register
  - 1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
    - (a) any incident involving violence or anti-social behaviour occurring on the premises,
    - (b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
    - (c) any incident that results in a person being turned out of the premises under section 77 of the Act,
    - (d) any incident that results in a patron of the premises requiring medical assistance.
  - 2) The licensee must, if requested to do so by a police officer or inspector:
    - (a) make any such incident register immediately available for inspection by a police officer or inspector, and
    - (b) allow a police officer or inspector to take copies of the register or to remove the register from the premises.
  - 3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.
7. Closed-circuit television system
  - 1) The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements:
    - (a) the system must record continuously from opening time until one hour after the premises is required to close,

- (b) recordings must be in digital format and at a minimum of 15 frames per second,
  - (c) any recorded image must specify the time and date of the recorded image,
  - (d) the system's cameras must cover the following areas:
    - (i) all entry and exit points on the premises,
    - (ii) the footpath immediately adjacent to the premises,
    - (iii) all publicly accessible areas (other than toilets) on the premises.
- 2) The licensee must also:
- (a) keep all recordings made by the CCTV system for at least 30 days, and
  - (b) ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage and
  - (c) provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings.
8. Any drink commonly referred to as a "shot" that contains more than 30ml of spirits or liqueur, and that is designed to be consumed rapidly, must not be sold or supplied at any time.
9. Minors Area Authorisation: Whole of the licensed premises.
10. Crime Scene Preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
- 3) make direct and personal contact with NSW Police to advise it of the incident, and
- 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.

In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (e.g. crowd controller or bouncer) on or about the premises.