



Ms Joanna McClellan
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29 January 2018

Dear Ms McClellan

Application No.	1-4981903330
Application for	Extended trading authorisation
Current trading hours	<u>Consumption on premises</u> Monday to Saturday 5:00 am – 12:00 midnight Sunday 10:00 am – 10:00 pm <u>Consumption away from premises (take away)</u> Monday to Saturday 5:00 am – 11:00 pm Sunday 10:00 am – 10:00 pm
Proposed trading hours	<u>Consumption on premises (ground floor: public bar, outdoor gaming area and lounge/dining room)</u> Monday to Saturday 10:00 am – 3:00 am Sunday 10:00 am – 10:00 pm <u>Consumption on other parts of premises</u> Monday to Saturday 10:00 am – 12:00 midnight Sunday 10:00 am – 10:00 pm <u>Consumption away from premises (take away)</u> Monday to Saturday 10:00 am – 10:00 pm Sunday 10:00 am – 10:00 pm
Applicant	Mr Tim Lisle
Licence name	Bath Arms Hotel
Premises	Parramatta & Burwood Roads BURWOOD NSW 2134
Issue	Whether to grant an extended trading authorisation
Legislation	Sections 3, 11A, 48, 49, 51 and 53 of <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for an extended trading authorisation – Bath Arms Hotel**

The Independent Liquor and Gaming Authority has considered the Applicant's application for an extended trading authorisation in relation to the Applicant's hotel licence, and has decided to **grant** the authorisation under section 49 of the *Liquor Act 2007*, subject to the following conditions:

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 4:00am and 10:00am 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. 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 be reasonably

expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this extended trading authorisation.

3. The premises are to be operated at all times in accordance with the Plan of Management dated June 2017 as may be varied from time to time after consultation with the Local Area Commander.
4. Live entertainment is not to be provided on the premises.
5. CCTV surveillance cameras are to be installed outside the entries/exits of the premises along Parramatta Road, Burwood Road, the rear car park and side driveway. Internal monitoring cameras are also to be installed in the public bar, outdoor gaming, lounge, dining areas, to record and prevent anti-social behaviour, crime, malicious damage and the like. Digital recordings from those cameras must be kept for 30 days. The recordings are to be made available, on request from NSW Police, Liquor & Gaming NSW or any other regulatory officer upon request.
6. The licensee shall engage a minimum of one (1) licensed, uniformed security officer from 9:00pm, until thirty (30) minutes after the premises has ceased to trade (or the last patron has left the vicinity of the premises/carpark). The officer is to conduct regular patrols of the premises and the immediate vicinity of the hotel – Burwood Road and Parramatta Road footpath area, car park, and driveways – and ensure that patrons leave the area quickly and quietly, and do not loiter or congregate.
7. Noise levels:
 - a. The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 7:00am and 12:00 midnight at the boundary of any affected residence.
 - b. The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz- 8kHz inclusive) between 12:00 midnight and 7:00 am at the boundary of any affected residence.
 - c. Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am.
 - d. Interior noise levels, which still exceed safe hearing levels, are in no way supported or condoned by Liquor and Gaming NSW.
* For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises.
8. The rear vehicle and pedestrian access/egress of Emanuel Lane, is to be permanently closed off. The vehicle access and egress from Parramatta Road is to be closed or not used after 10:00pm, and signage installed to advise patrons accordingly.
9. The licensee or its representative must join and be an active participant in the local liquor accord.
10. The licence is authorised for the trading hours fixed by the Authority or such lesser hours as may be approved by the consent authority from time to time.

Please note that pursuant to section 12 of the Liquor Act 2007, the standard trading period during which liquor can be sold for consumption away from the licensed premises must end at 10 pm on all trading days. Nevertheless, the exemption provision under section 70AB of the Liquor Regulation 2008 permits takeaway liquor sales between 10 pm and 11 pm on days other than Sundays and restricted trading days.

If you have any questions, please contact the case manager at mike.freeman@liquorandgaming.nsw.gov.au.

Yours faithfully



David Armati
Deputy Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 21 September 2016, the Independent Liquor and Gaming Authority (“the Authority”) received from Mr Tim Lisle (“the Applicant”), through Liquor and Gaming NSW (“L&GNSW”), an application for an extended trading authorisation (“ETA”) in relation to the Applicant’s hotel licence (“the Application”).
2. The licensed premises to which the Application relates is Bath Arms Hotel, located at Parramatta and Burwood Roads, Burwood (“the Premises”).
3. The Applicant sought authorisation to:
 - a. extend the closing time for the sale of liquor for consumption on part of the Premises, being the public bar, outdoor gaming area and lounge/dining room on the ground floor, from 12 midnight to 3 am between Monday and Saturday, and
 - b. change the start time for the sale of liquor, both for consumption on and away from the Premises, from 5 am to 10 am between Monday and Saturday.
4. Pursuant to section 49 of the *Liquor Act 2007* (“the Act”), the Authority has decided to grant the ETA.
5. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 48, 49, 51 and 53 of the Act, and relevant provisions of the *Liquor Act Regulation 2008*.

Material considered by the Authority

6. The Authority has considered the Application, the accompanying Community Impact Statement (“CIS”), and all submissions received in relation to the Application.
7. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
8. In accordance with its *Guideline 6*, the Authority has also had regard to relevant L&GNSW records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, obtained by L&GNSW staff from publicly available sources.
9. A list of the material considered by the Authority is set out in the Schedule.

Legislative framework

10. The Authority has considered the Application in accordance with the following legislative provisions.

Objects of the Act

11. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations and needs of the community, and to facilitate the balanced and responsible development of the liquor industry and related industries.
12. In the pursuit of these objectives, section 3 requires the Authority to, in exercising its powers, have due regard to the need to minimise alcohol-related harm, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

6-hour closure period and the Authority’s discretion to impose and vary condition

13. Section 11A of the Act imposes a condition on all liquor licences, prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

14. Section 53 of the Act provides that the Authority may, on its own initiative, impose or vary conditions such as conditions restricting the hours during which liquor can be sold or supplied on licensed premises.

Fit and proper person, responsible service of alcohol, and development consent

15. Section 51 of the Act provides that, in determining an application for an authorisation, the Authority has the same powers as it does in relation to an application for a liquor licence. Such powers include the Authority's obligation under subsection 45(3) of the Act to only grant a licence if it is satisfied that:
- a. the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - b. practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - c. the applicable development consent required for use of the premises for the purposes of the business to which the proposed licence relates is in force.

Community Impact Statement

16. Section 48 of the Act requires certain applications, including applications for an ETA in relation to a hotel licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
17. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter before it.

Provisions specific to extended trading authorisations

18. Section 49 of the Act allows the Authority to authorise licensees of certain types of licences, including hotel licences, to sell or supply liquor for consumption on the licensed premises during specified periods, including after midnight, Monday to Saturday, on application by the licensee.
19. Subsection 49(8) provides that the Authority may only grant the authorisation if it is satisfied that:
- a. practices are and will remain in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - b. the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the premises.
20. Section 51 of the Act prescribes the minimum procedural requirements for a licensee to make a valid application for an extended trading authorisation.
21. Section 10A of the Regulation requires the CIS for an extended trading authorisation in relation to a hotel to address matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

Key findings

22. Having regard to the information before it and the relevant legislative requirements, the Authority makes the following findings in relation to the Application.

Validity and procedural requirements

23. The Authority is satisfied that the Application has been validly made and meets the procedural requirements under section 51 of the Act.
24. The Authority is also satisfied that the proposed additional hours of trade fall within the specified periods for which the Authority can grant an authorisation under section 49 of the Act.

6-hour closure period and the Authority's discretion to impose and vary condition

25. At the Applicant's request, and in accordance with its powers under section 53 of the Act, the Authority has determined to vary the opening hours of the Premises from 5 am to 10 am Monday to Saturday.
26. The Authority is satisfied that the approved hours meet the 6-hour closure requirement under section 11A of the Act, and align with the trading hours approved by the local consent authority.

Fit and proper person, responsible service of alcohol, and development consent

27. Pursuant to subsections 45(3)(b) and 49(8) of the Act, and having regard to the Applicant's Plan of Management ("POM") and the conditions to which the Applicant consented, the Authority is satisfied that practices are and will remain in place to:
 - a. ensure the responsible service of alcohol on the premises,
 - b. prevent intoxication on the premises, and
 - c. minimise undue disturbance in the neighbourhood.
28. The Authority is also satisfied, pursuant to the same powers and duties it has under subsections 45(3)(a) and 45(3)(c) of the Act in respect of liquor licence applications, that:
 - a. the Applicant is a fit and proper person to carry on the business to which the Application relates, given the absence of any information indicating otherwise following consultation with relevant law enforcement agencies, and
 - b. the requisite development consent is in force, based on the notice of determination issued by Burwood Council on 6 December 2013, which provides, inter alia, conditional approval for extended trading hours for a 12 month trial period from the issue date of an Occupation Certificate.

Community impact statement

29. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Premises on the local and broader communities.
30. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Burwood, and the relevant "broader community" comprises Burwood Local Government Area ("the LGA").
31. Pursuant to section 10A of the Regulation, the Authority is satisfied that the CIS adequately addresses gambling activities on the licensed premises during the proposed hours of the ETA.

Positive social impacts

32. The Authority accepts, on the information available, the Applicant's contention that:
 - a. the primary focus of the premises is to provide a social and entertainment venue for patrons in the Inner West region, and
 - b. the Applicant is a responsible and experienced business manager, given that there have been no breaches or compliance issues since the Applicant took over management of the Premises in 2012.
33. The Authority accepts that if the Application is granted, some additional customer convenience and entertainment choice will be available to those who wish to patronise the venue during the later hours of the evening during the week.
34. The Authority further accepts that there may be a modest contribution to the activation of the streetscape and diversification of the night time economy in the local area.

35. While there are already several other licensed premises with extended trading in the LGA, the Authority notes that the Applicant proposes to provide a full dining menu during the proposed extended hours, which differentiates the Premises from other late trading venues in the area.
36. On the basis of the above, the Authority is satisfied that granting the authorisation will provide an additional entertainment option for the community, and if properly managed, can contribute to the balanced development of the liquor industry and the related hospitality industry.

Negative social impacts

37. The BOCSAR data indicates that, for the year to September 2016:
 - a. the Premises was not located within any hotspots for alcohol related assault or non-domestic assault, and was in a medium density hotspot for domestic assault and malicious damage to property,
 - b. the suburb of Burwood recorded lower rates of alcohol related assault, domestic assault and malicious damage to property, but a higher rate of non-domestic assault, in comparison with the corresponding NSW figures, and
 - c. the LGA recorded lower rates of alcohol related assault (domestic and non-domestic) and malicious damage to property than the NSW average.
38. The HealthStats NSW data indicates that for the period 2012-13, alcohol attributable deaths in the LGA were more than 15 percent lower than the NSW state average, while alcohol attributable hospitalisations were more than 10 percent lower than the NSW figure.
39. On the basis of these statistics, the Authority considers that the prevailing levels of alcohol related crime and health issues in Burwood and the LGA do not raise immediate concerns, or indicate that granting the authorisation would exacerbate existing social problems attributable to alcohol.
40. The Authority notes that two submissions were received from members of the public expressing concerns in respect of the potential negative community impacts of the proposed extended hours, given the close proximity of the Premises to residential and communal areas, and past incidents of alcohol related anti-social behaviour and disturbances to the amenity of the neighbourhood.
41. The Authority also notes that the Applicant's previous application for an ETA was refused by the Authority in 2015 on the basis of its inability to satisfy section 3 of the Act, and specifically the lack of sufficient measures in place to minimise alcohol-related harm and preserve the amenity of community life.
42. Having regard to the above, the Authority accepts that the submissions received raise some legitimate concerns about the risk that late night trading at the Premises will contribute to alcohol-related disturbances in the local and broader communities.
43. The Authority nevertheless also accepts the Applicant's contention that the proposed use of the Premises for the purpose of the Application is consistent with Burwood Council's Local Environmental Plan 2012 and the relevant development consent. The Authority notes that Burwood Council did not make any submission in respect of the Application after being notified of it.
44. The Authority also considers that the concerns and potential risks identified are adequately mitigated by the following:
 - a. Apart from the two submissions from the public, no objection was received from NSW Police, NSW Health, or any other relevant stakeholders in respect of the Application.
 - b. The Applicant has taken active steps to address issues identified, and has set out in the POM detailed practices and procedures to ensure the responsible service of

alcohol and minimise negative impacts to the community. These include the permanent closure of the southern exit of the Premises and measures to control noise levels and patron behaviour.

- c. The Applicant has consented to all of the conditions proposed by NSW Police, L&GNSW and those set out in the relevant development consent.
- d. The Applicant has managed the Premises for five years without any compliance issues or breaches.

45. The Authority has also had regard to the ABS Socio-Economic Indexes For Areas ("SEIFA") data indicating that the LGA is relatively advantaged in comparison with other areas in NSW on the Index of Relative Socio-economic Advantage and Disadvantage.

Overall social impact

46. Having considered the positive and negative impacts that are likely to flow from granting the ETA, the Authority is satisfied that the overall social impact of granting the ETA would not be detrimental to the well-being of the local and broader communities.

47. The Authority is also satisfied that a decision to grant the ETA would be consistent with the objects of the Act to regulate the supply of liquor and facilitate the responsible development of the liquor industry in line with community expectations and needs.

48. Accordingly, the Authority has decided to grant the ETA.



David Armati
Deputy Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* 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 NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

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/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> 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

Material before the Authority

1. ABS SEIFA data based on the 2011 Census, ranking the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol attributable deaths and hospitalisations in the LGA for the period 2012-13.
3. Notice of Determination issued by Burwood Council on 6 December 2013 for development application no. 2012/137.
4. Statement of reasons dated 1 September 2015 in respect of the Authority's refusal of an application for an ETA in 2014.
5. Submission from a member of the public, dated 25 June 2016, in relation to the Application, attaching a petition signed by 11 other local residents.
6. BOCSAR crime maps for the year to September 2016, indicating the location of the Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
7. NSW crime statistics for the two years to September 2016, published by BOCSAR, showing the counts and rates of alcohol related assault, domestic assault, non-domestic assault and malicious damage to property in Burwood.
8. NSW crime statistics for the year to September 2016, published by BOCSAR, showing the rates of alcohol related assault (domestic and non-domestic) and malicious damage to property in the LGA.
9. CIS documents prepared by BBC Consulting Planners, dated September 2016, in support of the Application.
10. Completed application signed by the Applicant and dated 9 September 2016.
11. Submission from MLC school, dated 22 September 2016, in relation to the Application.
12. Submission from NSW Police, dated 17 November 2016, in relation to the Application.
13. Email from the Compliance Unit of L&GNSW on 6 February 2017 in relation to the Application, attaching a copy of the Environment and Venue Assessment Tool Report for the Premises.
14. Submission from BBC Consulting Planners on behalf of the Applicant, dated 22 February 2017, providing additional information in respect of the Application and responding to the submissions received.
15. L&GNSW liquor licensing records as at 23 February 2017, setting out the density of late trading venues in Burwood and the LGA, and listing all licensed venues in the LGA.
16. Google maps showing the location of the Premises, extracted from the Google website on 3 March 2017.
17. Completed Category B CIS form, signed by the Applicant and dated 19 April 2017.
18. L&GNSW liquor licensing records as at 19 May 2017, setting out the key liquor licence details for the Premises.
19. Plan of Management for the Premises dated June 2017.
20. Certificate of Advertising Application signed by the Applicant and dated 23 June 2017.
21. Correspondence between the Applicant's representative and L&GNSW between 25 January 2017 and 23 June 2017 in relation to the Application.
22. Floor plan indicating the licensed area within the Premises to which the ETA sought will apply.