

**NSW Department of Industry
Liquor & Gaming NSW**

APPLICATION NO:	1-6479081133
APPLICATION FOR:	On premises restaurant, catering service with primary service authorisation
TRADING HOURS:	Monday-Saturday: 10:00 PM to 12:00 AM Sunday: 10:00 PM to 10:00 PM
APPLICANT:	Kim Starkey
LICENCE NAME:	Jimmy Joans
PREMISES ADDRESS:	Wilderness Cottages 84 Wilderness Rd, ROTHBURY, NSW 2320
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
LEGISLATION	Section 45(1) of the <i>Liquor Act</i> 2007

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

Jimmy Joans

Under delegation issued by the Independent Liquor and Gaming Authority under section 13 of the *Gaming and Liquor Administration Act* 2007, a designated Public Service employee or other Public Service employee of Liquor & Gaming NSW in the Department of Industry, has decided to grant the application for an on premises, restaurant and catering service with a primary service authorisation, application number 1-6479081133.

On 7 February 2018 and after careful consideration of the application and other material, the delegate decided to approve the application, subject to the following conditions:

Conditions imposed:

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 04:00 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.

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2. Consumption on premises - restaurant

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 31st 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. Consumption on premises-catering service

Good Friday Normal trading

Christmas Day Normal trading

December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later.

4. The licensee must ensure that the paved area to the south east of the building is not to be used as a seating area for the consumption of meals.

5. The licensee must maintain a closed-circuit television (CCTV) 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 (or, in the case of a premises that is not required to cease trading, continuously at all times),

(b) Recordings must be in digital format and at a minimum of six (6) 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, and

(iii) all publicly accessible areas (other than toilets) within the premises.

The licensee must also:

i Keep all recordings made by the CCTV system for at least 30 days, and

ii. 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

iii. Provide any recording 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.

STATEMENT OF REASONS

1. Material before the ILGA delegate (CM9 reference DF17/019859)

- (1) Application form, catering class and primary service authorisation
- (2) Community Impact Statement category A forwarded with the application.
- (3) Certification of Advertising document, signed and dated by the applicant.
- (4) Responsible Services of Alcohol certification and National Police Certificate for the applicant forwarded in support of the application.
- (5) An Alcohol Management Plan has been forwarded in support of the application
- (6) Plan of the proposed licensed premises.
- (7) DA 8/2007/468/1 issued by Cessnock City Council 27 November 2007 for an extension to the existing restaurant.
- (8) A verbal submission from Central Hunter Police with no objections, providing condition 3 of the DA is adhered to by the applicant.
- (9) Photos of the outdoor area have been provided.
- (10) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application.
- (11) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information.

2. Legislative framework, statutory objects and considerations

In determining the application, the delegate has considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which state:

3 Objects of Act

- (1) The objects of this Act are as follows:
 - a. to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
 - b. to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,

- c. to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
 - a. the need to minimise harm associated with misuse and abuse of liquor (including the harm arising from violence and other anti-social behaviour),
 - b. the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
 - c. the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

3. Statutory tests

- (1) In determining an application for a licence, under section 45(3) of the *Liquor Act 2007*, the delegate must also be satisfied that:
 - a. the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates,
 - b. practices will be in place as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises and that those practices will remain in place, and
 - c. if development consent is required under the *Environmental Planning and Assessment Act 1979* (or approval under part 3A or part 5.1 of that Act is required), to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force.

4. Community impact test

- (1) Under section 48(5) of the *Liquor Act 2007*, the delegate must not grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regards to the Community Impact Statement, where required, and any other matter the delegate is made aware of during the application process, that the overall impact of the licence, authorisation or approval in question being granted, will not be detrimental to the local or broader community.
- (2) The test applying under section 48(5) relates to delegated decisions in relation to the granting or removal of:
 - a. a small bar licence,
 - b. a packaged liquor licence (limited to telephone/internet sales),

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- c. an on-premises licence relating to a restaurant that, in the case of a new licence, includes an application for a primary service authorisation,
 - d. an on-premises licence relating to a karaoke bar, a catering service or a vessel,
 - e. an application for a producer/wholesaler licence that, in the case of a new licence, includes an application for a drink on-premises authorisation
 - f. an application for ongoing extended trading hours to permit the sale of liquor after midnight in relation to any of the above licence types.
- (3) The Community Impact Statement provides the Authority with information about the views of relevant stakeholders and other aspects of the local community in which the proposed licensed premises is to be located. This includes, for example, the proximity of the licensed premises to hospitals or health facilities, nursing homes, schools and places of worship.
- (4) Local and Broader Community - for the purposes of this decision, the delegate is satisfied that the relevant "local community" is the community within the suburb of Rothbury, and the "broader community" of Cessnock City Council.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on premises restaurant, catering class with a primary service authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) Central Hunter police did not raise any objection to the application.
- (3) I am satisfied that appropriate council consent which permits the proposed activity is in place.
- (4) The licence will be exercised in accordance with a alcohol plan of management and licence conditions that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (5) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The applicant intends re-open a former restaurant in a rural location near Rothbury NSW and hopes to cater for functions, such as weddings at the venue. A primary service authorisation will complement the service provided to patrons.

Negative impacts

The alcohol plan of management provided by the applicant and conditions imposed on the licence provide a level of certainty that there are unlikely to be any major impacts on the local community.

7. Conclusion

- (1) I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether or not to grant the application, as all of those required to be notified of the application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision.
- (2) In accordance with section 45(3)(a) of the Act I am satisfied that the proposed licensee is a fit and proper person to carry on the business or activity to which the proposed licence relates.
- (3) Having considered the venue management plan and related material, under section 45(3)(b) of the Act, I am satisfied that practices will be in place at the premises as soon as the licence is granted that ensure, as far as reasonably practicable, that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.
- (4) Consistent with section 45(3)(c) of the Act requiring development consent from the local council, I am satisfied that the required development consent or approval is in force.
- (5) In making this decision under delegation of the Authority, all statutory objects and considerations prescribed by section 3 of the Act were considered and accordingly, I have determined to grant with conditions the licence application.

Decision Date: 7 February 2018



Joanne Zammit
Coordinator, Licensing (Business Licensing)
Liquor & Gaming NSW

Delegate of the Independent Liquor & Gaming Authority



Important Information:

In accordance with Clause 5 of the Gaming and Liquor Administration Regulation 2008, this decision is reviewable by ILGA.

The licence applicant and persons who were required to be notified of the application and who made a submission can apply for an application for review. An application for a review must be lodged with ILGA within 28 days of the date of the publication of this decision. An application fee applies. For original applicants, the review application fee is the same as the initial application fee. For non-original applicants, the application fee is \$100.

For ILGA reviews of delegated decisions, make an application for review via the Liquor and Gaming Application Noticeboard

at: <https://www.liquorandgaming.justice.nsw.gov.au/pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed on line via the Application Number hyperlink.

Further information can be obtained from the Reviews page on the Liquor & Gaming website

at: <https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>