

**NSW Department of Justice
Liquor & Gaming NSW**

DOC16/16208

APPLICATION NO:	1-4628851633
APPLICATION FOR:	On-premises liquor licence for a record store with Primary Service Authorisation
PRIMARY SERVICE AUTHORISATION:	Refused
PROPOSED TRADING HOURS:	Indoor Monday to Thursday: 4:00 PM to 10:00 PM Friday: 4:00 PM to 12:00 AM Saturday: 12:00 PM to 12:00 AM Sunday: 12:00 PM to 10:00 PM Outdoor Monday to Friday: 4:00 PM to 10:00 PM Saturday to Sunday: 12:00 PM to 10:00 PM
APPLICANT:	Imogen Mae Ramsay
PROPOSED LICENSED PREMISES NAME:	Franks Wild Years
PREMISES ADDRESS:	3/2A Raymond Rd, Thirroul NSW 2515
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for Liquor – on-premises liquor licence with Primary Service Authorisation.
LEGISLATION:	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LIQUOR
LICENCE WITH PRIMARY SERVICE AUTHORISATION –
FRANKS WILD YEARS**

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 Justice, has decided to grant with conditions the application for an on-premises liquor licence of a restaurant class, application number: 1-4628851633.

The Primary Service Authorisation application is refused.

On 23 January 2017, 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 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. Consumption on premises
 - Good Friday 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
 - 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 at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.

3. The licence cannot be exercised unless and until the applicant has filed with L&GNSW a letter signed by the applicant along with photographs of the premises confirming that the food preparation and storage facilities have been installed, and the premises is open and ready to trade.
4. The premises are to be operated at all times in accordance with the Plan of Management Version 3 – December 2016, as may be varied from time to time after consultation with the Local Area Commander.
5. The licensee or its representative must join and be an active member in the local liquor accord.
6. The premises can only trade to 10:00 PM on public holidays.
7. Entertainment must cease at 10:00 PM.
8. Patron capacity of the premise is restricted to 20 persons, including the outdoor dining area.
9. The external dining area must be clearly defined by plants and line markings and no person is to consume alcohol outside this defined area.
10. Tables and chairs must be brought inside by 10:00 PM.
11. Alcohol may only be served by staff to patrons seated at a table.
12. The licensee must ensure that containers of alcohol are opened prior to serving.

13. The licensee must ensure that no drinks commonly referred to as shots, shooters or slammers, and/or bombs are sold or supplied at the premises. This includes any drinks that are prepared to be consumed rapidly.
14. The licensee or his or her representative must take all reasonable steps necessary to encourage patrons to move on from the premises by the conclusion of trading hours.
15. Signage to be displayed
Signage (in lettering not less than 15 mm in height on contrasting background) is to be erected in a prominent position near the main principle entry to the premises. The signage shall state:
Approved patron capacity is limited to: 20
Signage (in lettering not less than 15 mm in height on contrasting background) is to be erected in a prominent position near the main principle entry to the premises. The signage shall state:
Upon leaving, please respect local residents by minimising noise.
16. Signage shall be prominently displayed on site that open containers are not to be removed from the premises.
17. 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 07:00 am and 12:00 midnight at the boundary of any affected residence.
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 07:00 am at the boundary of any affected residence.
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 07:00 am. Interior noise levels which, although restricted in accordance with the above condition, still exceed safe hearing levels, are in no way supported or condoned by the Authority.
18. No person wearing any form of clothing, jewellery or other accessory, displaying or indicating by form or wording, colours ,logo, symbol or otherwise that they are members of or are in any way associated with (Bandidos, Black Uhlans, Coffin Cheaters, Comancheros, Finks ,Fourth Reich, Gladiators, Gypsy Jokers, Highway 61 ,Life and Death, Lone Wolf, Mobshitters, Nomads, Odins Warriors ,Outcasts, Outlaws, Phoenix, Rebels, Hells Angels ,Scorpions, Notorious, or any gangs associated with Outlaw Motorcycle Gangs shall be allowed entry into, or be permitted to remain on the licensed premise.
19. The licensee shall install and maintain surveillance cameras and recorders (CCTV) and record the main entrance, bar area and entertainment areas of the venue. All recordings must be retained for a period of 30 days and made available to police upon request.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the Application, the accompanying community impact statement (CIS Category A) and other relevant material:

- (1) Application form for on-premises liquor licence for a record store, lodged 27 June 2016 (DOC16/073127)
- (2) Application form for Primary Service Authorisation, lodged 27 June 2016 (DOC16/073181/073182)
- (3) Application Notices (DOC16/073130)
- (4) Identification documents, RSA, and National Police Certificate for the applicant. (DOC16/073134, DOC16/078261)
- (5) Category A Community Impact Statement (CIS) lodged 27 June 2016 (DOC16/073181), additional information (DOC16/073182) and a copy of a signed page dated 20 July 2016 (DOC16/078263)
- (6) Development Application No. DA-2016/152 granted by Wollongong City Council on 28 April 2016, approving the use of the premises as a food and drink premises with 20 patron capacity, and operating hours of 10:00 AM to midnight Monday to Saturday, and 10:00 AM to 10:00 PM Sundays and public holidays (DOC16/073135)
- (7) Approval for Outdoor Restaurant, TE1479, issued by Wollongong City Council on 1 September 2016 (DOC16/098815)
- (8) Revised plan of the premises, as submitted by the applicant on 20 January 2017 (DOC17/015243)
- (9) Certificate of Advertising Application, signed and dated on 20 July 2016 (DOC16/078260)
- (10) Submission from Wollongong City Council dated 18 May 2016 raising no objection to the lodging of an application for a liquor licence or a licence authorisation and advising that development consent is in place (DOC16/073194)
- (11) Further submission from Wollongong City Council dated 17 August 2016 advising that the application proposes the sale of alcohol to café patrons and that the application appears generally consistent with the development consent subject to footpath leasing agreement with Council (DOC16/126038)
- (12) Email from Wollongong City Council dated 22 November 2016 advising that the development consent for the premises permits the premises to be operated as a food and drink premises and retail premises (record store) (DOC16/157903)

- (13) Submission from Wollongong Licensing Unit, NSW Police Force, received on 12 September 2016, objecting to the application, and proposing a number of conditions to be imposed on the licence should the application be approved (DOC16/101832)
- (14) Twenty-two public submissions received in respect of the application, including a petition in support of the application with 76 signatures (DOC16/164936, INW16/50374, INW16/50375, DOC16/083220, INW16/50451, INW16/50547, INW16/50548, INW16/50549, INW16/50550, INW16/50565, DOC16/113418, DOC16/152313, INW16/50251, INW16/50287, DOC16/12668)
- (15) The Secretary's EVAT Report from L&GNSW Compliance, noting that the kitchen facilities will not be completed until after the licence has been granted, and proposing a relevant condition be imposed on the licence. (DOC16/169592)
- (16) Email correspondence from the Authority to the applicant requesting further information (DOC16/073268, DOC16/152636, DOC16/153595, DOC16/174578, DOC16/174579, DOC16/175027, DOC17/008155, DOC17/014710, DOC17/016331)
- (17) Email correspondence from the applicant to the Authority responding to requisitions, including applicant's consent to the imposition of the licence conditions (DOC16/078259, DOC16/164794, DOC16/164817, DOC16/164819, DOC16/174584, DOC16/174585, DOC16/175192, DOC16/175010, DOC17/014476, DOC17/014791, DOC17/015226, DOC17/016503)
- (18) Plan of Management, Version 3 - dated December 2016 (DOC17/016328)
- (19) A copy of the proposed food menu (DOC16/078262)

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:
 - 4.2.1. the grant or removal of a small bar licence (where required),
 - 4.2.2. a packaged liquor licence (limited to telephone/internet sales),
 - 4.2.3. an application for extended trading hours to permit the sale of liquor after midnight in relation to a small bar (where required), an on premises relating to a restaurant that includes an application for a primary service authorisation, an on premises licence relating to a karaoke bar, a catering service or a vessel, and an application for a producer/wholesaler licence that includes an application for a drink on premises authorisation.
- (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 Thirroul and the “broader community” comprises the Wollongong LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises licence for a restaurant/café business class is the appropriate business class for the proposed operation, and that appropriate development consent is in place. The development consent prescribes numerous conditions that the applicant will have to comply with before the liquor licence can be exercised.
- (2) The local consent authority has made submissions on the application and raises no objections to the lodging of an application for a liquor licence for the premises. Wollongong City Council noted that the appropriate development consent was in place to allow the application to proceed.
- (3) Police have made a submission on the application and raised numerous objections. The Wollongong Local Area Command has mostly articulated concerns surrounding the proposed purposes of the premises. Police submit that the premises will fail to operate as a retail record store and instead primarily function as an entertainment venue.
- (4) Police are also concerned that the premises has yet to undergo any renovations or other structural changes to allow compliance with the licence application. This is addressed by the licence conditions, including that the licence cannot be exercised until the Authority has been provided evidence of the installation of the kitchen on the premises.
- (5) Although Police strongly object to the application, they have proposed several conditions that should be imposed on the liquor licence if granted by the Authority. The applicant has consented to all of the proposed conditions.
- (6) On the strength of the Police objections, I have decided to refuse the Primary Service Authorisation.
- (7) Public submissions were received in respect of this application. The submissions yielded a mixed response to the application.
- (8) Public objectors mainly comprised of people residing in the nearby vicinity of the premises. Objections were raised regarding the premises' close proximity to a local school and local church, the likelihood of noise during late hours of the evening and general detrimental impacts to the community including littering, traffic congestion, parking problems and loitering. These concerns have been addressed with a number of conditions accompanying the granting of the licence.
- (9) Public supporters mainly comprised of local business owners and patrons (both prior and current). Supporters raised the cultural value that the potential success of the premises may bring, the goodwill of the applicant in her business to date and the constructive efforts made by the applicant in the community consultation process.

- (10) The applicant was provided an opportunity to respond to the public submissions and the responses were duly considered.
- (11) The licence will be exercised in accordance with a Plan of Management 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.
- (12) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The premises will contribute to the growing cultural hub in Thirroul. The area surrounding the premises is undergoing a degree of urban renewal, and the successful operation of a record store and restaurant has the potential to positively impact the community.

(2) Negative impacts

Police and some members of the public have indicated concerns with the proximity of the premises to community buildings and potential adverse impacts stemming from the premises such as littering, traffic congestion, parking problems and loitering. A Plan of Management provided by the applicant and a number of conditions imposed on the licence are intended to minimise any adverse impacts on the local community. Further, the Authority has refused the Primary Service Authorisation application in an attempt to further minimise any adverse 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 and the premises are ready to trade, 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) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (6) In making this decision under delegation from of the Authority, all statutory objects and considerations prescribed by section 3 of the Act were considered and accordingly, I have determined to grant the liquor licence application with conditions.

Decision Date: 23 January 2017



Olgica Lenger
Manager 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>