

NSW Independent Liquor & Gaming Authority

Our ref: DF24/017230

Mr Dru Anthony Gillan
Service Industry Legal Services

30 August 2024

Dear Mr Gillan

Application No.	APP-0012984615
Applicant	YOHEI PTY LTD
Application for	New small bar licence
Application date	13 April 2024
Decision date	17 July 2024
Proposed licence name	Vipen's Bar
Proposed trading hours	Monday to Sunday 12:00 PM – 12:00 midnight
Proposed premises	Unit 6, 175-181 King Street Newcastle NSW 2300
Legislation	Sections 3, 11A, 12, 20A, 20B, 20C, 40, 44, 45, 48 and 123 of the <i>Liquor Act 2007</i>

Decision of the Independent Liquor & Gaming Authority Application for a new small bar licence – Vipen's Bar

We **refuse** the application above under section 45 of the *Liquor Act 2007* (the Act).

Statement of reasons

We are concerned that the overall impact of approving the application may be detrimental to the well-being of the local or broader community.

Our main findings

Procedural and trading hour requirements

We are satisfied that:

- the application is valid and meets the Act's requirements for procedural fairness and the proposed trading hours for the premises meet the requirements under sections 11A, 12, 20A, 20B and 20C of the Act in respect of trading and 6-hour closure periods.
- the Community Impact Statement (CIS) meets the relevant requirements.

'Fit and proper person'

The applicant is a 'fit and proper person' to operate the business to which the proposed licence relates, as law enforcement agencies raised no concerns about their integrity.

Responsible service of alcohol

The proposed liquor plan of management outlined procedures for the responsible service of alcohol at the proposed premises.

Development consent requirements

The necessary development consent is in force. Newcastle City Council approved the development application DA2023/01055 for the premises on 28 March 2024.

Community impact

Local and broader communities

The local community for the purposes of this decision is Newcastle. The broader community is the Local Government Area (LGA) of Newcastle.

Diversity and density of licensed outlets

L&GNSW Liquor & Gaming Harm Minimisation and Community Impact Data Report for the suburb of Newcastle shows:

- there are 36 authorised liquor licenses. This includes 8 small bar licences, 18 hotel licences, 2 club licences, 2 producer wholesaler licences, and 6 packaged liquor licences
- saturation of small bar licences in Newcastle is higher than in both the Newcastle LGA and NSW generally.

Crime data (annual rate per 100,000 residents)

BOCSAR data shows that:

- between January 2023 and December 2023, the proposed premises was located in hotspots for alcohol-related assault, domestic and non-domestic assault, or malicious damage to property
- in the year to March 2024, alcohol-related domestic and non-domestic assault, malicious damage to property, and alcohol related disorderly conduct in Newcastle was higher than in both the Newcastle LGA and NSW generally.

Alcohol attributed health data (per 100,000 residents)

HealthStats NSW data showed that:

- alcohol attributed deaths in the Newcastle LGA were higher than the NSW average
- alcohol attributed hospitalisations in Newcastle LGA were higher than the NSW average.

ABS Socio-Economic Index for Areas (SEIFA)

The suburb of Newcastle and the Newcastle LGA were ranked as relatively advantaged in terms of household income and residents in skilled occupations compared to other suburbs and LGAs in NSW.

Business model

We note that the proposed business model involves the operation of a small bar licence within a commercial precinct and entertainment area in the Newcastle CBD which forms part of the “Civic/CBD night-life precinct” as defined in the After Dark Strategy released by the Newcastle City Council.

The proposed premises would operate under reduced trading hours from midday to midnight every day, with a maximum patron capacity of 25 patrons.

Benefits proposed by applicant

The applicant proposes that there would be these benefits:

- The new small bar will benefit the local and broader communities by providing increased convenience and choice, along with a modest degree of local employment.
- The venue is in one of the night-time economy precincts of the Newcastle LGA, meaning it would contribute to local vibrancy and safe nighttime activity in the area.
- Reduced trading hours with no trading past midnight means that the potential of a new small bar to contribute to an increase in alcohol-harm in the local and broader community would be minimal.

Stakeholder submissions

We considered the submissions from:

- four members of the public (including co-residents) objecting to the application, raising concerns about the impact of their amenity including the access to and adequacy of sanitary facilities, security arrangements, loss of use of the courtyard as a recreational space, noise disturbance, and licence saturation.
- NSW Police Force, dated 26 April 2024, which expressed concerns about the high saturation of licensed premises in the near vicinity of the proposed premises, the high rates of alcohol related crime in the Newcastle area, amenity of residents living in the apartments above the proposed premises, and requested amendments to the liquor plan of management.
- L&GNSW Compliance, dated 1 May 2024, which notes that there are no current adverse compliance holdings in relation to the proposed premises and individuals associated with the business.
- Newcastle City Council, dated 23 April 2024, which notes the appropriate development consent was in place.
- one member of the public supporting the application, noting that the proposed premises would expand Newcastle’s hospitality scene.

We also considered the applicant’s submission in response to these submissions, which notes:

- the version of the liquor plan of management provided with the application has been developed in consultation with the NSW Police Force
- the applicant’s consent to the imposition of proposed conditions (except for the condition that no live musical entertainment be provided at the venue, noting this is

already contained within condition 17 of the DA and cannot be changed without Council approval)

- the liquor plan of management lists measures to further mitigate the impact of these issues
- Newcastle City Council approval of the development consent (which included an assessment of community impacts) that found the premises suitable for use as a small bar
- approval being contingent upon strict compliance with the conditions of the consent, which have also been incorporated into the plan of management
- the business limit of 25 patrons, no trade after midnight, no live musical or DJ-style entertainment to minimise potential disturbance
- the manager and staff being required to monitor and actively manage patrons using the facilities to prevent patrons from loitering in the courtyard, smoking or causing noise disturbance
- doors and windows being kept closed during operating hours (except as required for ingress and egress) and signage displayed on the rear door advising that patrons are not permitted to be in the courtyard except to use the toilets and that no smoking is permitted in the area
- it not being necessary to engage security personnel due to the small patron capacity of the premises and due to the limited trading hours for the premises, which will cease to trade after midnight

Findings of concern

We note the objections raised by the community. We believe that the proposed premises would have a negative impact on local residents, particularly those living in the same house, in regard to noise and the use of the outdoor courtyard and toilets, which would likely impact on amenity and the quiet and good order of neighbourhood.

We were also concerned by the lack of evidence that the applicant has met with those most likely to be affected if the application is approved, with a view to alleviating their concerns. We were not convinced that the amenity of the residents was adequately addressed by the proposal.

We also note Newcastle's high licence saturation, high crime rates, and concerning alcohol attributed health data, as detailed above. If the licence is granted, there is a risk that liquor sold at the premises would lead to an increase in alcohol-related crime, health, and other social and amenity issues, worsening these problems.

Negative social impacts

The proposal could contribute to an increase in alcohol-related harm in the local and broader communities because of the:

- impact on the amenity of local residents
- venue's proposed location being within a high-density crime hotspot for incidents of assault (Non-domestic assault), incidents of malicious damage to property, incidents of alcohol related assault and being located in a medium-density crime hotspot for Incidents of assault (domestic assault).
- crime rates in the suburb of Newcastle being higher than in both the Newcastle LGA and in NSW for all offence categories usually considered by ILGA

- saturation of small bar licences (and of licensed premises generally) in the suburb of Newcastle and the Newcastle LGA being higher than in NSW
- higher rate of alcohol attributed deaths and hospitalisations in the LGA than in NSW.

These risks may be reduced by the:

- proposal to operate the premises under a lower-risk small bar business model, trading under reduced hours until midnight each day, with a maximum patron capacity of 25 patrons
- harm-minimisation measures outlined in the plan of management
- five-year crime trend data indicating that crime rates in the suburb of Newcastle for the offences of malicious damage to property and alcohol-related non-domestic assault have stabilised
- five-year crime trend data indicating that crime rates are trending downward in the Newcastle LGA for the offences of malicious damage to property and alcohol-related disorderly conduct (offensive conduct), while the rates of alcohol-related assaults (both domestic and non-domestic) have remained stable
- premises being located within the Newcastle CBD which is also a major late-night entertainment precinct. The area attracts a large population of workers and visitors relative to the local residential population. This may have the effect of distorting crime rate and licence saturation figures, which are calculated based on residential figures alone
- SEIFA data indicating that the communities in the suburb of Newcastle and the Newcastle LGA may be considered advantaged compared to the rest of NSW.

However, on balance, we are concerned that the likelihood of adverse social impact from approving the application outweighs any benefit to the local or broader community and accordingly, approval of the application is not in the public interest.

The material we considered

We considered the following material when making our decision:

- stakeholder submissions and the applicant's response to them
- Newcastle After Dark Strategy.
- the application material – including evidence that stakeholders and the community were notified about the application
- the CIS
- the plan of the licensed premises and any authorisations
- a plan of management for the licensed business
- a development consent for the premises
- statistics from Liquor & Gaming NSW, Bureau of Crime Statistics and Research, NSW Health and Australian Bureau of Statistics on the socio-economic status, liquor licence density, alcohol-related crimes rates and health issues in the local and broader communities

We also considered Guideline 6 to assess the likely social impact on the local and broader community.

This decision will be published in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

If you disagree with this decision

If you are dissatisfied with this decision, you may apply to [NCAT](#) for a review of the decision.

An application for review must be made no later than 28 days after the decision is published on the website. There is a fee to lodge the application.

For more information, please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney or visit the NCAT website.

If you have any questions

Please contact the case manager, Andrew Whitehead, at Liquor & Gaming NSW if you have any questions.

Yours sincerely



Caroline Lamb

Chairperson

Independent Liquor & Gaming Authority