

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

APPLICATION NO:	APP-0002717808
APPLICATION FOR:	On-premises Karaoke liquor licence
TRADING HOURS:	Monday to Saturday: 10:00 AM to 12:00 AM Sunday: 10:00 AM to 10:00 PM
APPLICANT:	INVINCIBLE MAN PTY LTD
LICENCE NAME:	Diamond KTV
APPROVED MANAGER:	Ms Yachen Zhao
PREMISES ADDRESS:	283-285 Liverpool Rd Ashfield NSW 2131
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 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE
DIAMOND KTV**

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 refuse the application for an on-premises liquor licence for a restaurant, application APP-0002717808.

On 2 August 2017, and after careful consideration of the application and other material, the delegate decided to refuse the application.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 24 February 2017 (DOC17/040115)
- (2) Certification of Advertising Certificate dated 07 May 2017 (DOC17/102032)
- (3) Identification for the applicant (DOC17/040120)
- (4) Plan of the proposed licensed premises (DOC17/040118)
- (5) Plan of Management dated 7 February 2017 (DOC17/101871)

- (6) S.96 amendment to Development Application No. 10.2009.031.3, granted by Ashfield Council on 12 May 2009 (DOC17/040121)
- (7) Submission from Ashfield LAC, dated 29 May 2017 outlining strong opposition to this application. Venue has previously been under investigation by Police and Council. (DOC17/118409)
- (8) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application, dated 2, 10, 29 May 2017 (DOC17/094984, DOC17/101889, DOC17/102054, DOC17/122760)
- (9) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information, dated 9, 10, 15 May and 19 June 2017 (DOC17/101886, DOC17/102053, DOC17/106122, DOC17/133923)

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),
 - 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.

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- (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 Ashfield, and the “broader community” of the Ashfield Council LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am concerned that this application for an on-premises liquor licence for a karaoke venue is likely to result in a significant increase in alcohol-related harms in the local community.
- (2) Police made a submission raising objections to the on-premises liquor licence, requesting that the authority do not grant the Licence.
- (3) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

The premises previously operated as a karaoke venue. Due to serious licensing issues the liquor licence was cancelled. The former licensee and business manager were subject to disciplinary complaints. Based on provided information there are strong concerns this type of behaviour could continue if the licence was granted, leading to a negative social impact.

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 **not** 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) 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 refuse** the licence application.

Decision Date: 2 August 2017



Matt Weber
A/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>