

Information Notice

Application Type: Variation of Conditions

Trading Name: Hidden @ Yorkeys

Address of the Premises: Cairns Golden Sands Boutique Resort, Lot 8, 12-14 Deauville Close, Yorkeys Knob

Date of the Decision: 14 December 2021

Applicable Legislation: Section 111 - *Liquor Act 1992*

Brief Summary of the Reasons for the Decision

As delegate of the Commissioner for Liquor and Gaming, I conducted a review of the application for variation of conditions lodged by the applicant on 26 August 2021. In deciding the application, I took into account the following findings of fact:

1. The applicant is eligible to apply for a variation of conditions under the *Liquor Act 1992* (Liquor Act).
2. No objections were lodged by the local council, Queensland Police Service (QPS) or OLGR Compliance.
3. 14 objections were received from the public.
4. Noise conditions are to be endorsed on the licence based on an acoustic report prepared in accordance with the requirements of the *Liquor Act 1992* and *Liquor Regulation 2002*.
5. The *Liquor Act 1992* provides avenues to complain about the conduct of a licensee and empowers OLGR to address issues in the event non-compliance is substantiated.
6. Human rights are not unreasonably or unjustifiably limited by my decision to approve the application.

I have considered the relevant matters outlined in section 111 of the Liquor Act.

I took into account the objections received which outlined the following relevant concerns:

- Disruption to guests staying at the resort.
- Previous noise nuisance associated with the venue.
- Entertainment is in contravention of body corporate by-laws.

- Café is largely open air and unable to contain noise to appropriate levels.
- Weddings will book out the restaurant and resort guests won't be able to dine but will have to tolerate noise.
- Concerns the business model is transitioning from a restaurant/café to function facility.
- Current owners are responsible but will invariably sell the business and new owners may not be compliant.
- Peace and tranquillity of the area will be compromised.

In response to the objections received, I am satisfied that the granting of the variation of licence would not necessarily have an adverse effect on the amenity of the locality as:

- OLGR Compliance, the local council and the QPS raised no objection in respect of the application.
- While the concerns expressed by the objectors are valid, provided the recommended noise limits are complied with, the conduct of amplified entertainment at the premises is not expected to adversely impact on the amenity of the locality.
- The applicant has a responsibility to ensure its activities do not impact neighbouring residents. If issues arise and cannot be resolved directly with the applicant, there is a complaint process available for the community and for OLGR to take appropriate action if required.
- The premises is an existing licensed restaurant and will be required to comply with the principal activity of providing meals regardless of whether amplified entertainment is permitted. Accordingly, it is not considered there will be any discernible adverse impact on the surrounding community as entertainment will only be a subsidiary aspect of the overall business.

After considering all of the relevant factors and information, both positive and negative, and the aforementioned findings on material questions of fact, I decided to grant the variation of licence application to affect the following changes to the licence:

Removal of the following conditions:

- LL250 - Noise emanating from the premises including amplified and/or non-amplified noise and/or patron noise must not exceed 75dB(C), fast response, when measured approximately 3 metres from the primary source of the noise.
- LL253 – Non-amplified entertainers or speakers used to amplify noise must not be located in any outdoor, verandah, patio or footpath area of the premises.

Endorsement of the following conditions:

- For the purpose of external noise monitoring:
 - Location A: is situated external to the premises, at entry gate to the premises.
 - Location B: is situated external to the premises, 3m from the noise screen.
 - Location C: is situated external to the premises, next to small stairs adjacent to kitchen.
- Noise emanating from the premises including amplified and/or non-amplified noise and/or patron noise must not exceed the following limits, fast response, when measured at external monitoring location A:
 - Live music set-up levels
 - (a) 63dB(A) prior to 6:00pm
 - (b) 54dB(A) between 6:00pm and 10:00pm
 - In house music set-up levels
 - (a) 67dB(A) prior to 6:00pm
 - (b) 58dB(A) between 6:00pm and 10:00pm
- Noise emanating from the premises including amplified and/or non-amplified noise and/or patron noise must not exceed the following limits, fast response, when measured at external monitoring location B:
 - Live music set-up levels
 - (a) 62dB(A) prior to 6:00pm
 - (b) 53dB(A) between 6:00pm and 10:00pm
 - In house music set-up levels
 - (a) 60dB(A) prior to 6:00pm
 - (b) 52dB(A) between 6:00pm and 10:00pm
- Noise emanating from the premises including amplified and/or non-amplified noise and/or patron noise must not exceed the following limits, fast response, when measured at external monitoring location C:
 - Live music set-up levels
 - (a) 71dB(A) prior to 6:00pm
 - (b) 62dB(A) between 6:00pm and 10:00pm
 - In house music set-up levels
 - (a) 69dB(A) prior to 6:00pm
 - (b) 60dB(A) between 6:00pm and 10:00pm
- After 10:00pm live music is not permitted.

- After 10:00pm outdoor speakers are not to be used.
- After 10:00pm indoor speakers are permitted to be used however noise emanating from these speakers must not exceed 75db(C) when measured 3 metres from the source.
- Live music can only be performed when the speaker surrounds (U-shaped towers appx 2.4m high) is located around the loud speakers, and the mass loaded vinyl screen is in place at the rear of the speaker surrounds.

Patricia Leotta

Delegate for the Commissioner of Liquor and Gaming

14 / 12 / 2021