

# Office of Liquor and Gaming Regulation



## Information Notice

**Application Type:** Commercial other artisan producer (spirits) licence

**Trading Name:** The Matilda Distilling Company Pty Ltd

**Address of the Premises:** 10 Tradewind Close, River Heads

**Date of the Decision:** 24 September 2024

**Applicable Legislations:** Part 4, Division 4 & Section 107 (*Liquor Act 1992*)

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### 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 a commercial other artisan producer licence lodged by the applicant on 13 March 2024. In deciding the application, I took into account the following findings of fact:

1. The applicant is eligible to apply for a commercial other artisan producer licence under the *Liquor Act 1992* (Liquor Act).
2. No objections were lodged by the local authority or Queensland Police Service (QPS).
3. 35 public objections were received from the community.
4. The Liquor Act provides avenues to complain and empowers OLGR to address issues in the event undue adverse impact is substantiated.
5. A decision to grant the application is justifiable and reasonable under the *Human Rights Act 2019*.

### Objector's Concerns

There was some misunderstanding around whether patrons would be allowed to attend and consume liquor on the premises. At no stage has it been proposed that on-premises consumption occurs and the applicant has accepted a condition restricting the public from attending the premises. Accordingly, any concerns that arose only from that context have not been included in the following summary.

Other than the above, I took into account the objections received which outlined the following main concerns:

- One of the nearby residences is a 'sensitive facility' (within the meaning of OLGR Guideline 38), in that it is emergency youth housing for vulnerable, at risk, young people.
- This sensitive facility and its occupants, who often come from traumatic backgrounds, may be subject to adverse social and environmental impacts from the distilling activity.
- The Department of Child Safety Queensland might remove the approval for the purpose-built premises to house 'at risk' children due to proximity to the proposed site.
- The granting of the application could cause - undue disturbance or inconvenience to persons in the locality; an adverse effect on the health or safety of members of the public; and an adverse effect on the amenity of the community.

- It is the view of some objectors that, despite their conversations with the Fraser Coast Regional Council where council has suggested the use may comply with the relevant code, the proposal could not comply with the Home Based Business Code/should not be able to proceed in a residentially zoned area.
- Some objectors have looked for, and been unable to identify, details regarding this matter amongst council records. This has caused some objectors to assert that the applicant is lying about having council approval.
- The gases, odours and noise that may be released by the premises could affect the health and quality of life of objectors. There is also a risk of gas leaks which can lead to explosions.
- Following on from the above point, it was noted that there are multiple neurodiverse people in the area that are hypersensitive to smells and sounds.
- The proposed distillery affects health by causing stress, lack of sleep and a feeling of general anxiety for objectors.
- This sort of activity could decrease property value and increase insurance premiums.
- Houses in the area are high calibre and the price of blocks are high. The proposed licensed premises will cheapen the area.
- The proposal has '*the potential to encourage undesirables to the area looking to exploit the security measures at the distillery*'. Similarly, it causes an '*increased risk of associated violence from the entry of undesirables coming into our quiet residential area*'. It is asserted QPS statistics showing relatively high numbers of offences in the area, which could be exacerbated by having an area storing liquor as a target.
- Some objections imply that the proposed licensed premises could exacerbate gender-based and domestic violence.
- Should the licence be granted, even without on-premises consumption, it would then be an easier process for the applicant to apply to allow for the consumption of liquor on the premises.
- Objectors have been affected by the premises already with soil and water coming through the fence onto their property which requires expense to clean up the mess.
- There are already tanks on the premises which are an eyesore.
- The area does not have the infrastructure to deal with the by-products of distillation.
- There has already been disruption from noise and damage to property from construction associated with the proposed licensed premises.
- Even if patrons will not attend the premises, there may be disruption from vehicles used for delivery to/from the premises. The streets in the area are not made for large commercial vehicles.
- There is an ageing population in the area which comes with associated health issues that could be exacerbated by the issuing of this licence.
- Although the applicant submits that this is small-scale 'hobby' production, given the size of the shed and tanks, it is felt they are accommodating a larger development in the future.
- A number of objections state that the area is a quiet residential community and the objectors want it to stay that way.

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

- No objections were received from council, QPS or OLGR's compliance unit.
- The proposed premises complies with the requirements of the Act in regard to the licence type applied for.
- Reference has been made to a nearby premises operated by a registered charity providing child protection services in the form of emergency youth housing and residential care to vulnerable, at risk, young people. Concerns about the proximity of a liquor production site to such a facility are understandable. However, as asserted by the applicant and supported by the application documents, the operations of the premises should not be glaringly obvious to outside observers. It is a relatively small operation to be contained within a secured shed. The shed can be locked and security cameras are in place. Patrons cannot attend the premises so there is no potential for inebriated customers to affect the locality after departing the premises.

The applicant has also advised that they exchanged details and conversed with the operators of this facility at the objections conference and will work together to ensure the safety of patrons of the emergency housing. Ultimately, evidence has not been provided that demonstrates the approval of this application will have an adverse impact on the emergency housing or its occupants.

- Outside of concerns around the impact of patrons, which are fully mitigated by the fact the premises won't be open to the public, the community objections lodged are predominantly centred around matters for which council is responsible. Whether the proposed use, and impacts associated with that use (odour, production noise, safety of by-products, traffic, etc), are acceptable in the relevant zone, are considerations that fall squarely within the jurisdiction of council. The specifics of the application were put to council who have confirmed that they do not object on either town planning or amenity grounds.
- Whilst OLGR does consider amenity impact, particularly in light of council's comments, insufficient evidence has been received to demonstrate that the proposed operations will inevitably have an undue adverse impact on the amenity of the area.
- Following on from above, the Act does not contemplate there will be no impact from a licensed premises, simply that impact will be minimised. In this instance, if there is the potential for adverse impact, compliance with the Act, the proposed conditions and the requirements of other regulators (e.g. council) should minimise or completely mitigate that risk.
- When considering amenity and community impact as a result of the grant of a licence, the presumption is in favour of, rather than against, a licence unless the community impacts cannot be minimised. The Act does not contemplate that the grant of a licence will have no adverse impact on amenity; it is a question of balance.

In this instance, little, if any, evidence (as opposed to speculation) has been provided of inevitable adverse impact from the operations of the premises. Additionally, the applicant has engaged with OLGR and the submissions of objectors and taken action to address these concerns. One example of this is that the proposed location of the licensed area within the shed has been amended to be situated as far away as possible from noise/smell sensitive properties. This is despite the applicant maintaining that the operations of the premises will have no perceptible noise or odour related impact on the surrounding premises. Given the willingness of the applicant to seek ways to mitigate the potential for negative outcomes, it is likely that adverse effects of the

licensed premises on the surrounding area can be minimised.

- Should the eventual operations of the premises be causing disruption in the locality, the Act provides avenues to complain and empowers OLGR to address issues in the event unduly adverse impact is substantiated.
- In particular, section 142ZZB of the Act imposes obligations on licensees to provide a safe environment and preserve the amenity of the locality surrounding licensed premises. If this was not occurring, OLGR is empowered to take action to address the issues.
- A number of objections raise concerns about the potential for future changes to the operations the proposed licence. OLGR can only consider the proposal that is before it. Contrary to what is asserted by some objections, the approval of this application would not make it easier for the applicant to obtain authority, for example, to have patrons on premises in the future. Any significant changes to the licence would need to be applied for through OLGR and would be considered on their merits at that time. Additionally, the applicant has accepted a condition on their licence stating that any changes to hours, licensed area or openness to the public, must be advertised for public comment and be accompanied by approval from council.

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 licence subject to the imposition of the following conditions:

- *Liquor may be sold or supplied only whilst the premises adheres to its principal activity of the production and sale on the licensed premises of artisan spirits made on the licensed premises in an amount of greater than 400 litres but less than 450,000 litres in each financial year.*
- *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.*
- *The licensee may sell craft beer and/or artisan spirits, produced by the licensee on the licensed premises, to persons at a promotional event, for consumption at the event for the purpose of sampling or for consumption away from the event.*
- *Patrons are not permitted to attend the premises.*
- *Any application for change to hours of operation, increase of licensed area or to permit onsite consumption of liquor by patrons, must be advertised and must be accompanied by a relevant approval from the Fraser Coast Regional Council.*
- *The hours of operation of the premises are limited to 08:00am to 06:00pm - Monday to Sunday.*