

## Information Notice

**Application Type:** Variation of Conditions

**Trading Name:** Mudjimba RSL Sub Branch Inc

**Address of the Premises:** 43 Cottonwood Street, Mudjimba

**Date of the Decision:** 1 June 2023

**Applicable Legislations:** Part 4, Division 6 and Part 5, Division 1 (*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 variation of conditions lodged by the applicant on 8 December 2022. 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 authority or Queensland Police Service (QPS).
3. The officers of the Office of Liquor and Gaming Regulation's (OLGR) Compliance Division, who are responsible for assessing compliance of the licensee under the provisions of the Liquor Act, offered no objection to the application (subject to certain conditions to be endorsed on the licence).
4. Appropriate noise mitigation conditions supported by an acoustic report from a qualified sound engineer will be imposed in support of the application.
5. The licensee Returned & Services League of Australia (Queensland Branch) Mudjimba Sub branch Incorporated, objected to the proposed noise conditions.
6. The Liquor Act provides avenues to complain and empowers OLGR to address issues in the event non-compliance is substantiated.
7. A decision to grant the application is justifiable and reasonable under the *Human Rights Act 2019*.

I took into account the submissions received from a representative of the licensee which outlined the following main concerns:

- Proposed noise conditions are not reflecting those recommended in the supplied acoustic report, namely, the noise levels should change depending on whether the premises is 'operating'.
- The premises has held numerous functions using approved temporary variations and community liquor permits without any complaints from residents.

In response to the licensee's submissions, I am of the view that the licensee's proposed wording of the conditions is not authorised by the *Liquor Act* as:

- The *Liquor Act* contemplates that any condition imposed on a licence must be enforceable. This is evidenced by various provisions under the Act which empowers OLGR to take disciplinary actions for breach of licence conditions.

- Varying noise levels by reference to when the premises is 'operating' is likely to cause a high degree of uncertainty. As the term 'operating' is not defined under the Act, there is no objective standard to assess whether the licensee complies with the noise condition. Accordingly, the proposed condition by the licensee is not enforceable and not authorised by the *Liquor Act*.

In conclusion, I am satisfied the granting of the variation of licence would not necessarily have an adverse effect on the amenity of the locality as:

1. No objections were received from the local authority or QPS.
2. Appropriate noise mitigation conditions, as supported by an acoustic report from a qualified sound engineer, are to be imposed on the licence.
3. The conditions recommended by the OLGR Compliance Division are reasonable to address any concerns raised by the residents and businesses in the locality.
4. The Liquor Act provides avenues to complain and empowers OLGR to address issues in the event non-compliance should be substantiated.

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 approve the application subject to the imposition of the following conditions:

- Unless otherwise conditioned on this licence, noise emanating from inside 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
- Unless otherwise conditioned on this licence, non-amplified entertainers and/or speakers used to amplify noise must not be located in any outdoor area of the premises, including verandah, patio, footpath or beer garden.
- Noise emanating from the outdoor Beer Garden with speakers located in the north-eastern corner of the beer garden, including amplified and/or non-amplified noise and/or patron noise, must not exceed the following criteria, fast response, when measured approximately 3 metres from the primary source of noise:
  - Between 10:00am and 06:00pm - 75dB(A)
  - Between 06:00pm and 10:00pm - 73db(A)
- Noise emanating from inside the premises, with speakers located in the south-western corner of the premises, including amplified and/or non-amplified noise and/or patron noise must not exceed the following criteria, fast response, when measured approximately 3 metres from the primary source of the noise:
  - Between 10:00am and 06:00pm - 87dB(A)
  - Between 06:00pm and 10:00pm - 85db(A)
- Whenever entertainment is provided inside the premises, all doors and windows must be fully closed except for entry/exit to the premises through the northern entry doors only.
- The licensee must purchase and maintain in good working order, a noise meter. The noise meter is to be utilised for the purpose of taking readings at any external, internal or close monitoring location. The noise meter must be capable of reading noise in both dB(A) and dB(C) weighting fast response.