

Information Notice

Application Type:	Variation of conditions and change of licensed area – Commercial other artisan producer licence.
Trading Name:	Cauldron Distillery
Address of Premises:	89-123 Hartley Road, Tamborine Mountain
Date of the Decision:	15 December 2023
Applicable Legislation:	Section 105 of the <i>Liquor Act 1992</i> Section 111 of the <i>Liquor Act 1992</i> Section 154 of the <i>Liquor Act 1992</i>

Brief Summary of the Reasons for the Decision

As delegate, I conducted a review the applications for a variation of conditions (lodged 06 September 2022) and change of licensed area (lodged 17 January 2023) for a commercial other artisan producer licence. In deciding the applications, I took into account the following findings of fact:

1. The applicant is eligible to apply for a variation of licence and change of licensed area under the *Liquor Act 1992* (the Act).
2. The Queensland Police Service have provided no objection.
3. OLGR's compliance unit did not object to the variation of conditions but were not supportive of the licence being increased to cover all of the land on the lot. Compliance would support the licence being increased to only the grassed area to the North of the distillery building, not including any of the vineyard.
4. The local government is only supportive of small scale, ancillary entertainment at the premises and objects to the licence being increased outside of the building envelope associated with the relevant development approval minus any carpark areas. This aligns with the increase in area support by Compliance.
5. Five objections were lodged when the variation of conditions was advertised for public comment.

I have considered the relevant matters outlined in sections 105, 111 and 154 of the Liquor Act. I took into account the public objections received, which centred on allegations of disruptive noise associated with the operation of the business, and the comment of the local government and OLGR's compliance unit.

Variation of conditions

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

1. An acoustic report has been prepared in compliance with Guideline 51 and suitable noise conditions, based on professional acoustic testing, have been recommended.
2. The decision is reasonable and demonstrably justifiable under the Human Rights Act as the changes to conditions will be based on a professional prepared acoustic report designed to minimise any potential impact on the amenity of the area.
3. It is likely that the noise which had previously disturbed residents was being provided at a level above the 75dB(C) noise limit on the licence. Accordingly, approving this application does not equate to authorising the licensee to operate in a way that would be more disruptive than the activities initially causing concern for objections. Rather, the approval of this application will ensure the licence is conditioned based on a professionally prepared acoustic report, the purpose of which is to ensure noise emanating from the premises is not unreasonable.
4. The applicant has a responsibility to ensure its activities do not adversely impact neighbouring residents. If issues cannot be resolved directly with the applicant, there is a complaint process available for the community and the Act empowers OLGR to take appropriate corrective action if it is required.
5. The approval of this application does not relieve the applicant of any responsibility to comply with the requirements of the local government in relation to noise and/or entertainment at the premises.

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 variation of conditions to:

Remove the following condition:

- 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.*

Substitute with the following conditions:

- *Between 10:00am and 10:00pm noise emanating from the outdoor stage, including amplified and/or non-amplified noise and/or patron noise must not exceed 82 Db(C), fast response, when measured approximately 5 metres from the source.*
- *Between 10:00am and 10:00pm noise emanating from the veranda, including amplified and/or non-amplified noise and/or patron noise must not exceed 79 Db(C), fast response, when measured approximately 5 metres from the source.*
- *Noise emanating from indoor areas of the premises including amplified and/or non-amplified noise and/or patron noise must not exceed 75 Db(C), fast response, when measured approximately 3 metres from the source.*
- *Management 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 a distance of approximately 5 metres from the source of noise in the stage and veranda*

areas, at each one hourly interval while entertainment is being conducted in those areas. Each reading must be recorded in a Register, which must be made available to an OLGR Investigator on request.

- Amplified and/or non-amplified entertainment in the veranda and stage areas is not permitted between 10:00pm and 10:00am.
- Between 10:00pm and 10:00am, noise emanating from the premises must not exceed 75dB(C), fast response, when measured approximately 3 metres from the primary source of the noise.
- All speakers located in the stage area must be oriented toward the South and all speakers located on the veranda must be oriented toward the West.

Change of licensed area

In relation to the application to increase the licence to cover all of the land on the lot, I am not satisfied that all of the requirements for such an application have been met and, accordingly, will only approve a limited increase in the size of the licence as:

1. Both OLGR's compliance unit and the local government are not supportive of the full increase.
2. It is a legislated requirement of an application of this nature that the applicant provide '*evidence, satisfactory to the commissioner, that using the premises for the licence to which the application refers is permitted under the planning scheme of the relevant local government*'.
3. As the relevant regulator, the local government has maintained a consistent position that an increase to the borders of the property is not permitted under the planning scheme.
4. The local government has considered submissions, made on behalf of the applicant, asserting that the increase would be permitted under the planning scheme and have not altered their advice to OLGR.
5. The local government and OLGR's compliance unit both support a limited increase to the size of the licence to include the area referred to as the 'building envelope' on development approval plans, minus any car park areas.
6. As the applicant is a corporation to which the *Human Rights Act 2019* does not apply, a decision to approve a smaller increase in area than what has been requested does not limit human rights.

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 change of licensed area, in a limited manner, to alter the licensed area description as follows.

From:

Distillery situated at 89-123 Hartley Road, Tamborine Mountain.

To:

Distillery situated at 89-123 Hartley Road, Tamborine Mountain, with a total area of 50 metres x 40 metres comprised of the main distillery shed, adjoining veranda and grassed area on the northern side of the distillery. Note that this area does not include any of the car park.