

Information Notice

Application Type: Variation of conditions
Trading Name: Hard Fizz Brewery
Address of Premises: 16 Hibiscus Haven, Burleigh Heads
Date of the Decision: 21 September 2022
Applicable Legislation: Section 111 - *Liquor Act 1992*

Brief Summary of the Reasons for the Decision

As a delegate of the Commissioner for Liquor and Gaming, I conducted a review of the application for a variation of conditions lodged on 8 March 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 Queensland Police Service.
3. The Office of Liquor and Gaming Regulation's (OLGR) Compliance Division, who are responsible for ensuring compliance of premises under the provisions of the Liquor Act, offered no objection to the application (subject to conditions to be endorsed on the licence).
4. Six (6) valid letters of objection and one (1) late objection were received from the community.
5. Appropriate noise mitigation conditions supported by an acoustic report from a qualified sound engineer are to be imposed.
6. The Act provides avenues to complain and empowers OLGR to address issues in the event non-compliance is substantiated
7. Human rights are not 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 centred on allegations of noise and patron nuisance currently associated with the operation of the business.

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. OLGR compliance and police offered no objection to the application.
2. The decision is reasonable and demonstrably justifiable under the *Human Rights Act* as impact on the amenity of the locality will be minimised if the applicant complies with its licence conditions and statutory obligations under the *Liquor Act*.

3. The applicant has a responsibility to ensure its activities do not impact neighbouring residents. If issues cannot be resolved directly with the applicant, there is a complaint process available for the community and for OLGR to take appropriate action if it is required.
4. Without any substantiated evidence, it would be unfair to deny the applicant the opportunity to trade under the higher noise levels.
5. The *Liquor Act* does not contemplate nil impact on the amenity of the locality. The presumption is in favour of, rather than against, granting of the application unless community impact cannot be minimised.

After considering all 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 conditions application to effect the following changes to the licence:

Removal of condition/s:

- *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.*

Imposition of condition/s:

- *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 external to the premises at Hibiscus Haven boundary in the centre of the access driveway to Hard Fizz Brewery (CEML 1)*
 - *Roller doors all open, multi-fold window open and person door open - CEM L1 59dB(A)*
 - *Roller doors all closed, multi-fold window closed and person door open - CEM L1 51dB(A)*
- *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.*