

Decision Notification

Application Details

Application no.	214914
Licence No.	57318056
Licence Class	Restaurant & Catering
Premises Name	Black Cherry Dessert Bar
Proposed Premises Name	Il Mulino
Premises Address	13-15 Mount Barker Road Hahndorf SA 5245
Licensee	NICOLAAS VAN ROOYEN
Applicant	Il Mulino Pty Ltd as trustee for De Lio Unit Trust
Application Type	Application for Transfer of Licence

Outcome

Decision	Granted
Effective Date	06 May 2022

Requirements

The following requirements in support of the application have been satisfied:

- Landlord's consent has been obtained
- The application has been advertised

People

Position of Authority

The following persons are approved to occupy any position of authority in the entity holding the licence:

- Danilo Lio (155499)
- Cristian Lo Coco (171719)

The following persons approvals to occupy a position of authority in the entity holding the licence is revoked:

- Nicolaas Jacobus Van Rooyen (165679)

Licensee

Transfer

The licence is transferred to Il Mulino Pty Ltd as trustee for De Lio Unit Trust effective from 06 May 2022.

The licence is transferred, subject to settlement taking place on or before that date. If settlement does not take place on or before that date the applicant must advise this office in writing of the new settlement date.

Reasons for Decision

In reaching my determination, I have had regard to the objects of the *Liquor Licensing Act 1997*.

SA Police lodged an intervention opposing the approval of Danilo Lio as a fit and proper person to hold a liquor licence. SAPOL noted:

As part of the application process for approval for the Position of Authority the applicant completed a Personal

Information Declaration (PID) document. The Commissioner of Police is of the opinion that some questions asked of the applicant were not truthfully answered and indicates dishonesty on the part of the applicant.

In response to the question - 'Have you ever been issued with any type of expiation notice (e.g. 'on the spot speeding fine') in any State or Territory in Australia or another country?'

The applicant stated yes, stating only that he had received a speeding fine in 2021.

In fact, Mr LIO received an expiation in July 2021 for providing a positive drug sample and driving whilst using a mobile phone. This is quite different from a speeding fine.

In 2013 Mr LIO received an expiation for speeding and in 2017 for going through a red light.

In 2014 Mr LIO was involved in a road traffic collision, at which time he also received an expiation for providing a positive drug sample whilst driving.

Of concern is that despite being in a collision and using drugs he has continued to use drugs as shown by the expiation in 2021. These are two occasions where police have been involved and aware of his drug use, there is no evidence to demonstrate what Mr LIO's actual drug use may be.

The police commissioner is of the opinion that the applicant has little regard for the law, especially through endangering others through drug driving.

The applicant provided a response to SAPOL's intervention. The following is an excerpt of the applicant's response:

... we have been instructed to provide you with the background to the two offences which in our submission not only explain why they were dealt with by way of expiation notice but also provide context to the actual offending and support our ultimate submission that such offences do not render our client not to be a fit and proper person under the Liquor Licensing Act.

Involved in crash - THC on 17/11/2014 – on the day in question our client was driving his vehicle when he was struck from behind/at the rear of the vehicle by a speeding vehicle as he was making a right hand turn. SAPol attended at the crash and our client

was not subjected to any form of drug or alcohol testing. However as a result of injuries suffered by our client he attended at hospital where as part of assessing his injuries a blood sample was taken. It was via the blood test that remnants of THC were found in our client's blood.

Our client was a casual recreational user of cannabis. His use was rather sporadic (i.e not regular). We are instructed that our client had not used cannabis for a considerable period of time prior to the accident, his recollection is that it was a period of weeks prior

and we understand that this information was relayed to SAPol/hospital at the time of the testing/result. As can be seen our client's offending was far from "normal" and in our submission could not have been foreseen when he drove on the day.

Mobile driver testing – THC on 29/7/2021 – We are instructed that immediately prior to this date, our client was in Covid lockdown (along with the rest of South Australia). As a result of being in lockdown and unable to drive anywhere and feeling rather stressed

by the whole situation, our client smoked a small amount of cannabis at his home 3 days after this, and with the lockdown lifted our client was driving his vehicle when he was stopped for use of a mobile phone and subjected to a

drug and alcohol test. He

tested positive despite not having consumed any cannabis for 3 days. He explained this to the police officer. In our submission our client had taken reasonable steps to ensure compliance with the law by waiting 3 days before he drove and thus the positive

test was unexpected. We are instructed that he certainly would not have driven had he known that there was cannabis still in his system.

We are instructed that the loss of licence associated with the latest offence caused great inconvenience to our client's young family and put a particular strain on not only our client's ability to work but also his relationship with his wife. Our client was particularly embarrassed by the situation he found himself in and was very remorseful for his actions. We are instructed that our client realised that his casual use of cannabis was not a good thing and the harm it caused to his family and the potential harm it may cause to others led him to cease his use of cannabis altogether.

In relation to the failure to declare concerns expressed by SAPOL, the applicant submitted:

We also note that the Notice of Intervention from SAPol indicates that Mr Lio has not properly or fully disclosed the above offences and such action renders him not a fit and proper person for the purposes of the Liquor Licensing Act.

With respect, given the circumstances of the matter, we disagree with this submission.

Firstly, as previously indicated, our client was approved under the Liquor Licensing Act in early 2019. As a result his offences prior to then (all of which were expiation offences) had already been disclosed to the Licensing Authority.

Our client's wife assumed responsibility of lodging the application forms for the current application for transfer, including filling out PID/Declaration for Mr Lio. This is because English is not our client's (nor his wife's) first language and at times our client's is not

confident of correctly filling out such forms.

Unfortunately both my client and his wife were of the mistaken belief that previous expiation notices did not need to be disclosed as part of this application as the Licensing Authority were already aware of these when granting Mr Lio's approval in March 2019.

Our client's wife however cannot really explain why she did not disclose the Mobile driver testing – THC expiation notice other than she to say she may have been distracted at the time of filling out the form by her young children. Mr Lio however takes full responsibility for not checking the form properly before it was submitted by his wife and understands that this notice should have been disclosed. Mr Lio was under no illusion that not disclosing it would result in it being hidden as it only occurred some 8/9

months prior to the transfer application being lodged. As such we submit that the failure to disclose the Mobile driver testing – THC offence was inadvertent and not intentional.

Pursuant to section 63 of the Act, I am satisfied that each person who occupies a position of authority is a fit and proper person to occupy such a position in the entity to hold the licence. In particular, I am satisfied Danilo Lio has appropriately addressed the concerns raised by SAPOL and I do not consider him unfit to operate a Restaurant and Catering licence.

Pursuant to section 72 of the Act, I am satisfied the lessor has consented to the application.

I am satisfied the current licensee has consented to the application.

Under Delegation from the Liquor and Gambling Commissioner



Ben Johns
Manager, Liquor & Gambling
06 May 2022

