

# Decision Notification

## Application Details

Application no.	206730
Licence No.	57500077
Licence Class	Small Venue
Premises Name	Mr Goodbar
Premises Address	12 Union Street ADELAIDE SA 5000
Licensee	Fundamental Flow Pty Ltd
Applicant	LEMONTINI PTY LTD
Application Type	Application for Transfer of Licence

## Outcome

Decision	Granted
Effective Date	12 Apr 2021

## Requirements

The requirement to provide the following in support of the application has been waived:

The requirement to advertise the application by notice placed on the premises

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 and to receive proceeds of the business conducted under the licence:

- JASMIN GHANSHYAMBHAI PATEL (166059)
- MAYANK ANILKUMAR PATEL (166060)

## Licensee

### Transfer

The licence is transferred to LEMONTINI PTY LTD effective from 12 Apr 2021.

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.

## Determination Details

Submissions from the following persons or corporate entities were received and taken into consideration when determining this application: Ms Elke Obermeier, Miss Fiona Beauchamp and Mr Kanda Wang

## Reasons for Decision

Under section 81(1)(a) of the *Liquor Licensing Act 1997* (the Act) I exercise my discretion to determine this matter

without holding a hearing.

### Submission

A submission has been lodged against the application by the following persons, who oppose the grant of the application:

- Ms Elke Obermeier
- Miss Fiona Beauchamp
- Mr Kanda Wang

All of the persons above raised similar concerns in their submissions against the application. They can be summarised collectively as follows:

- Since the venue commencing trade as a licensed venue in 2016 there have been ongoing issues in relation to noise and annoyance being cause to nearby residents due to the proximity of the venue to a block of units (In particular the emptying of bottles near the residential building in the early hours of the morning).
- Ms Obermeier notes that she had been liaising with the licensee at the time, but as the problems persisted she ended up lodging two formal complaints with this office in 2017 and 2019, which she believes resulted in unsatisfactory outcomes and continuing to impact on the health, well being and safety of residents.
- The venue has also impacted residents financially with tenants not renewing their leases due to the noise.
- They submit that this type of premises is unsuitable so close to a residential block and that this office should either refrain from allowing the venue to continue under the current licence or impose tight restrictions on the licensee.

I note that this office has recently dealt with a complaint lodged under section 106 of the *Liquor Licensing Act 1997* (the Act) in relation to this premises in which Ms Obermeier was one of the complainants. However, this matter was finalised last year and was heard by another of the Commissioner's Delegates, not myself.

### Decision

It is important to note that the application is for the transfer of an existing licence from one entity to another entity and so the submissions can only be considered in regards to the nature of the application which they have been lodged against. With regards to transferring a licence I am not required to consider section 57 of the Act, which is the requirement for the applicant to satisfy the authority that the operation of the venue will not result in undue offence, annoyance, disturbance or inconvenience to those who reside, work or worship in the vicinity. This is only required to be satisfied at the point the licence is initially granted, or if it is moved to a new address. As the licence in question was an existing licence the authority has already been satisfied of these requirements at some point in the past. In any event, section 57(1a) specifically requires the licensing authority to disregard any entertainment (which includes DJ's and live bands) that may be provided on the premises when considering whether the operation will cause undue noise.

The parties lodged a number of documents with their submissions such as photos and text messages with the licensee. However, as all these documents relate to the conduct of the outgoing licensee it does not seem appropriate to use this information against the incoming applicant who was not involved with the premises when this information was collected.

I do not think it fair to burden the incoming transferee purely because of the actions of past tenants. It has been commonly held in the Licensing Court that it is reasonable to expect some level of noise from a licensed premises, it only becomes an issue if the noise becomes 'undue', or unreasonable. There are mechanisms within the *Liquor Licensing Act 1997* to remedy situations where undue noise or offence occurs. It does not seem reasonable for the authority to make an assumption before the incoming licensee even begins trading that the incoming licensee will

produce an undue level of noise and impose additional burdens above and beyond what is ordinarily required, particularly given to the amenity of the area. This is not a premises in a suburban residential street promoting itself as a late night bar, it is in the CBD in an area that hosts a significant number of licensed venues, and in particular late night venues.

Turning to the submission that the premises is not suitable to be licensed, under section 77(2)(e) of the Act, this ground of submission can only be used on an application for a new licence or removal of a licence to a new location, which this application is not. I will therefore not be taking this grounds of submission into consideration against this application.

After considering the submission lodged I am of the opinion that the application should be granted as sought.

## Under Delegation from the Liquor and Gambling Commissioner



Ashleigh Hughes  
Hearings Delegate  
31 Mar 2021