

*Mount Barker Cinemas Pty Ltd* [2016] SALC 43

**LICENSING COURT OF SOUTH AUSTRALIA**

MOUNT BARKER CINEMAS PTY LTD

**JURISDICTION:** Referral from the Commissioner of Liquor and Gambling

**FILE NO:** 5227 of 2016

**HEARING DATE:** 21 September 2016

**JUDGMENT OF:** His Honour Judge BP Gilchrist

**DELIVERED ON:** 21 September 2016

**REPRESENTATION:**

Counsel:

Applicant: Mr J Firth with Mr R Kennett

Solicitors:

Applicant: Cowell Clarke Lawyers

- 1 This is an application for a Special Circumstances Licence and an Application for Extended Trading Authorisation and Entertainment Consent.
- 2 Having heard submissions from counsel for the applicant on 21 September 2106, I granted that application, and granted extended trading and entertainment consent to permit trading and entertainment to take place at the licensed premises between 9.00am and 11.00am and between 8.00pm and midnight on Sundays and between midnight and 1.00am on Monday to Sunday.
- 3 The applicant is Mount Barker Cinemas Pty Ltd, as trustee for the Mount Barker Cinemas Trust.
- 4 The Mount Barker Cinema complex trades under the Wallis Group. It is a modern facility that has seven auditoriums. The applicant sought the licence to permit it to sell liquor to patrons before, during and after a movie session and to guests attending functions at the cinema.
- 5 For the application to succeed the Court needed to be satisfied that the prerequisites for the grant of a special circumstances licence have been met. If so, the Court, as the licensing authority, then had to consider, in the exercise of its discretion, whether it is appropriate to grant the application.
- 6 The nature of and circumstances permitting the grant of a special circumstance licence are prescribed by s 40 of the *Liquor Licensing Act 1997* in the terms following:
  - “(1) A special circumstances licence authorises the licensee to sell liquor for consumption on or off the licensed premises in accordance with the terms and conditions of the licence.
  - (2) A special circumstance licence cannot be granted unless the applicant satisfies the licensing authority that –
    - (a) a licence of no other category (either with or without an extended trading authorisation) could adequately cover the kind of business proposed by the applicant; and
    - (b) the proposed business would be substantially prejudiced if the applicants trading rights were limited to those possible under a licence of some other category.”
- 7 It is plain that the type of licensed business that the applicant proposed could not be catered for by an existing form of licence. The substantial prejudice that it would have encountered if it was required to do so was self-evident.

8 The supply of liquor in connection with a movie experience at cinemas is an increasing practice. There is no evidence that indicates that it leads to inappropriate conduct. As I observed in *Gold Class Cinemas*:

“Permitting a patron who has purchased a drink prior to seeing a movie promotes responsible consumption. The patron does not have to rush and finish the drink quickly before the movie starts. Allowing this practice also makes the cinema more attractive. Both of these reflect stated objects within the Act.”<sup>1</sup>

9 There is no basis to exercise the Court’s discretion to refuse the licence.

10 The extended trading authorisation and entertainment consent are necessary to conform to the cinema’s potential trading hours. The authorisation and consent are unlikely to cause any issues of disturbance and I was persuaded to grant them.

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<sup>1</sup> [2011] SALC 60 at para 21