

**LICENSING COURT OF SOUTH AUSTRALIA**

MITCHAM CINEMAS

and

PICCADILLY CINEMAS

**JURISDICTION:** Application for Review of or an Appeal from the Commissioner's Decision

**FILE NO:** 111 and 112 of 2021

**HEARING DATE:** 14 December 2021

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

**DELIVERED ON:** 17 December 2021

**CATCHWORDS:**

*Application seeking a review of the decision of the Commissioner for Liquor and Gambling to essentially refuse applications made by the Piccadilly and Mitcham Cinemas to be relieved of a condition limiting their right to sell liquor to persons who have a cinema ticket or voucher, or to persons attending a pre-booked function or reception at the premises – The Commissioner's delegate varied the condition to enable the sale of liquor to a parent or guardian accompanying a minor who has a cinema ticket or voucher but no further – The application for review in connection with the Mitcham Cinema was not pressed – It was agreed that the reference to 'a parent or guardian' in the delegate's amended condition was antiquated and that a preferable wording would be 'a responsible adult within the meaning of the Liquor Licensing Act 1997' – In connection with the application by Piccadilly which was pressed, it was conceded that some further variation to the condition was warranted – The Commissioner for Liquor and Gambling and the Commissioner of Police objected to the wholesale removal of the condition out of concern that the Piccadilly could become a de facto bar but supported an amendment to the condition that limits the sale of liquor to persons who have purchased a ticket to attend the entertainment on offer at the Cinema and to those who have 'registered' as attendees – Held that it is in the public interest for the Piccadilly to be a viable entity and that its proposed transformation into a multi-faceted entertainment venue has much to commend it and it will provide opportunities for artists, musicians and others involved in the provision of live entertainment*

*consistent with one of the stated objects of the Act – Held that the unqualified removal of the condition proposed by the Piccadilly is in the context of what was initially a special circumstances licence granted for the benefit of cinema patrons was a step too far and that it should not be permitted to trade as a bar – Held that the proposed change supported by the Commissioners was problematic and at odds with the atmosphere that the Piccadilly is hoping to create – Held that these concerns, that the Cinema would trade like a bar, can be assuaged by the imposition of conditions that prevent the premises for trading in this way – The condition is removed and replaced with other conditions on an interim basis up to 31 December 2024 with the Commissioner for Liquor and Gambling and the Commissioner of Police having liberty to apply – Liquor Licensing Act 1997.*

*Shahin Enterprises Pty Ltd [2018] SALC 111*

*Bratcas Pty Ltd t/as The Olive Tree Fine Food and Wine [2019] SALC 71*

*Rhino Room Pty Ltd trading as the Howling Owl [2020] SALC 40*

## **REPRESENTATION:**

Counsel:

Appellant:

Mr G Coppola

Intervenor

Ms V Montandon

Intervenor:

Brevet Sergeant M Osterstock

Solicitors:

Appellant:

Australian Hotel's Association

Intervenor:

Crown Solicitor's Office

Intervenor:

Commissioner for Police

1 This is an application for a review of decisions made by the Commissioner for Liquor and Gambling in respect of applications to vary the conditions of on-premises licences at the Piccadilly and Mitcham Cinemas.

2 At the time of the application the licences for both cinemas were subject to a condition in the following terms:

Liquor shall only be sold or supplied to persons who have a cinema ticket or voucher, or to persons attending a pre-booked function or reception at the premises.

3 Both applications initially sought the removal of the condition to permit the sale and supply of liquor to members of the public.

4 The applications drew a belated objection from the Commissioner of Police.

5 A delegate of the Commissioner for Liquor and Gambling was, subject to one qualification, not persuaded that it was in the public interest to allow the applications. The only qualification was that the delegate was persuaded to insert the words ‘or to a parent or guardian accompanying a minor who has a cinema ticket or voucher’ such that the revised condition read:

Liquor shall only be sold or supplied to persons who have a cinema ticket or voucher, or to a parent or guardian accompanying a minor who has a cinema ticket or voucher or to persons attending a pre-booked function or reception at the premises.

6 In respect of the Mitcham Cinema, the application to remove the condition is no longer pressed. What was agreed was that the reference ‘to a parent or guardian accompanying a minor’ was antiquated and needed revision. It was agreed that the condition should read:

Liquor shall only be sold or supplied to persons who have a cinema ticket or voucher, or to a responsible adult within the meaning of the *Liquor Licensing Act 1997* accompanying a minor who has a cinema ticket or voucher or be persons attending a pre booked function or reception at the premises.

7 I did not hear full argument in respect of the Mitcham Cinema application. Hence what I now say about that application is no more than a tentative view.

8 The ultimate yardstick by which an application under the *Liquor Licensing Act 1997* is measured, is whether the grant of the application is in the public interest.<sup>1</sup>

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<sup>1</sup> Section 53(1a) of the Act provides: An application must be refused if the licensing authority is satisfied that to grant the application would be contrary to the public interest.

- 9 The Mitcham Cinema is within the Mitcham Shopping Centre, a typical, busy suburban shopping centre. It is one thing to permit patrons of the cinema to purchase an alcoholic beverage to consume before, during or perhaps after a movie. It is another thing altogether to enable those who enjoy a tipples with their sojourn to a suburban shopping centre to do so in the precincts of the local cinema when there is a perfectly acceptable hotel that can cater for that need, just over the road. I stress that this is no more than a tentative view, but for now, I am struggling to see how it would be in the public interest to remove the condition to enable the public to have unfettered access to the cinema to purchase liquor.
- 10 I am otherwise satisfied that the proposed amendment to the condition is appropriate.
- 11 In respect of the Piccadilly Cinema (the Piccadilly) the removal of the condition is pressed. For reasons that I shall develop shortly, the nature of this application is very different to the application in connection with the Mitcham Cinema.
- 12 Indeed, the Commissioner of Police and the Commissioner for Liquor and Gambling accept that it is in the public interest to further vary the condition. But they maintain that it should not be wholly removed.
- 13 To put the competing contentions into perspective, I need to outline some relevant facts and the circumstances underpinning the application.
- 14 The Piccadilly is situated on the corner of Childers Street and O'Connell Street, North Adelaide. It is an iconic Art Deco building. It was granted a special circumstances licence in June 2007. Upon its application the licence was suspended between October 2010 and May 2016. Following the significant amendments to the Act, the licence transitioned to an on-premises licence. Unless otherwise qualified by conditions, such a licence permits the sale of liquor 'to a person on licensed premise for consumption on the licensed premises'.
- 15 The cinema industry has been significantly affected over the last few decades by the provision of home entertainment and more recently, by the availability of streaming services. This has resulted in the demise of the many drive-ins that not so long ago were a regular feature in the suburbs. There has also been a marked reduction in the number of movie theatres across Adelaide.
- 16 To survive, contemporary movie theatres have had to change their modus operandi. They are no longer just places to watch a movie. They have re-invented themselves as function centres for birthdays, fund raising venues and places to conduct corporate events. Many have become licenced, offering alcoholic beverages for consumption prior to and during a movie. Whilst ice cream tubs, popcorn, and candy are often still

available, the food offerings are usually much more exotic than the staples of the past, such as pies, pasties and chiko rolls.

- 17 The Covid 19 pandemic has added an additional impediment to their survival. Mr Anthony Edmonds, the Chief Executive Officer of the Wallis Group, which operates several cinemas, including the Piccadilly, estimates that cinema revenue has slumped by 70% since the start of the pandemic.
- 18 The Piccadilly has come up with a novel solution to its trading woes. It intends to transform itself into a multi-faceted entertainment venue. Whilst retaining its primary focus as a cinema complex, it intends to add to its entertainment offerings live performances within a licensed venue. It intends to pitch to a sophisticated clientele, by providing live jazz music, recitals, art, stand-up comedy and poetry readings. It says that it is not interested in attracting a younger audience who might be seeking a night club experience.
- 19 Ideally, the Piccadilly wishes to trade to the full extent that an on-premise licence permits. Hence its primary position is that it seeks the unconditional removal of the condition.
- 20 As observed earlier, ultimately the fate of this application depends upon what is in the public interest. The difficulty is that the interests of the public do not always point in the same direction.
- 21 The Piccadilly is in a part of North Adelaide that is replete with cafes, restaurants, and hotels. I am permitted to appreciate that the addition of a restrained, intimate entertainment venue would be a welcome addition to the facilities on offer in this part of the city. I am permitted to draw upon my experience as the Licensing Court judge to find that it is in the interests of the public for an historic, iconic building such as the Piccadilly, to not only be preserved for prosperity, but to be a vibrant edifice that attracts visitors from Adelaide and beyond.
- 22 It is plainly in the public interest for the Piccadilly to be a viable entity. Its transformation into a a multi-faceted entertainment venue has much to commend it. It can be anticipated that it will add to the attractiveness of this precinct and provide opportunities for artists and musicians and others involved in the provision of live entertainment. This is consistent with one of the stated objects of the Act which is:

to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry ...<sup>2</sup>

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<sup>2</sup> Section 3(1)(d).

- 23 The Commissioner of Police and the Commissioner for Liquor and Gambling accept that it is in the public interest to enable the Piccadilly to transform itself as proposed. They accept that this will necessitate changes to the conditions attached to its licence. But they do not support the removal of the condition altogether. Their view is that the transformation cannot be permitted to allow the Piccadilly to act like a public bar that would give members of the public the unfettered right to enter the premises and purchase alcohol, independently of any entertainment on offer at the premises. They support an amendment to the condition that limits entry to persons who have purchased a ticket to attend the entertainment. In response to evidence that on occasions the Piccadilly will offer free entertainment they agree to extend attendance to those who have ‘registered’ as attendees.
- 24 To this I add that what is proposed is novel. And in the context of liquor licensing and the potential for liquor to be harmful, especially to minors and vulnerable groups, this Court’s natural inclination is to be cautious.<sup>3</sup>
- 25 The Court is also mindful of the precedents it sets. It is likely that that an application for a special circumstances licence to support the business model that the Piccadilly now proposes would have been refused under the former liquor licensing regime. I doubt that the licensing authorities would have contemplated that their grant of special circumstances licences to cinema complexes would eventually turn into unqualified licences to permit the sale of liquor to the public generally and without qualification. With these matters in mind, in considering application such as this, the licensing authority will keep a watchful eye on ensuring that the hierarchy of the licensing regime is maintained.<sup>4</sup> Applications to vary the conditions of licences that were special circumstances licences that have transitioned, require special scrutiny because of their potential to enable the licence to permit trading rights well beyond those that were envisaged, when the licence was first granted.<sup>5</sup>
- 26 I think the unqualified removal of the condition proposed by the Piccadilly is a step too far. But I think the proposal put forward by the Commissioner of Police and the Commissioner for Liquor and Gambling is problematic. The notion of checking for tickets and registration of patrons seeking to purchase liquor seems excessive and out of kilter with the ‘fun’ atmosphere that the Piccadilly wishes to create.
- 27 I think that conditions can be put in place to accommodate the competing directions that the public interest points to.

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<sup>3</sup> See, for example: *Shahin Enterprises Pty Ltd* [2018] SALC 111

<sup>4</sup> *Bratcas Pty Ltd t/as The Olive Tree Fine Food and Wine* [2019] SALC 71 at [32].

<sup>5</sup> Although not on all fours, see, generally the discussion in *Rhino Room Pty Ltd trading as the Howling Owl* [2020] SALC 40.

- 28 Hotels and bars typically sell keg beer. Many trade on the fact that they sell a variety of craft beers on tap. Their prime focus is the provision of liquor. They typically advertise that fact and offer things like ‘happy hours’ and ‘drink specials’. Indeed, they are not obliged to focus on anything else but the responsible supply of liquor.
- 29 If conditions were imposed upon the licence that prevented the premises for trading in this way, I think the Commissioners’ concern, which also reflects the public’s concern, that the premises could become a public bar in the guise of a cinema complex would be assuaged.
- 30 I would propose imposing the following conditions on the licence:
- 1 The licensee cannot sell or supply liquor from a keg and must only sell beer and cider by the bottle.
  - 2 The licensee (or any other person for or on behalf of the licensee) will not promote the premises in any way whatsoever (either at the premises –including by way of any art display – or in any external or online advertising or promotion) as a bar, lounge bar, lounge, tavern, inn, hotel, nightclub or karaoke bar.
  - 3 The primary and predominant service to be provided to the public at the licensed premises is the provision of entertainment.
- 31 I would further propose that the variation would be on an interim basis for a period of at least two years from the commencement of trade under the revised licence. That period should provide a sufficient opportunity to test the genuineness of Piccadilly’s proposed business model and to ascertain whether the revised licence is causing any issues of concern to the Commissioners.
- 32 I understand that it is anticipated that the Piccadilly’s renovations will be completed by the middle of next year. Out of an abundance of caution, I would grant the application to remove the condition on an interim basis until 31 December 2024. I would impose the additional conditions as set out above. I would grant the Commissioner of Police and the Commissioner for Liquor and Gambling liberty to apply. If no application is made prior to 31 December 2024, I would revoke the interim status of the conditions and make them ongoing.