

LICENSING COURT OF SOUTH AUSTRALIA

THE PALACE

JURISDICTION: Application for Variation to conditions of Special
Circumstances Licence

FILE NO: 5143 of 2012

HEARING DATE: 18 December 2012 and 23 January 2013

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 23 January 2013
Published on 27 March 2013

REPRESENTATION:

Counsel:

Applicant: Mr J Firth

Respondent: Sergeant A Heffernan

Solicitors:

Applicant: Duncan Basheer Hannon

Respondent: Commissioner for Police

- 1 This is an application for a variation to conditions of a Special Circumstances Licence held by The Palace Gallery Pty Ltd, the proprietor of the Palace nightclub in Hindley Street, Adelaide.
- 2 The police intervened in connection with the application and it was referred to the Court.
- 3 On 28 July 2011 I granted an application to increase the capacities of certain areas of the premises.
- 4 This application is not to increase any of those capacities, but to simply aggregate the capacities so that there is a total aggregate for the ground floor and a total aggregate for the first floor when all areas were trading.
- 5 Unlike the earlier application this did not attract intervention from the Office of the Liquor and Gambling Commissioner or from the Adelaide City Council.
- 6 I was told that underpinning the application was a recommendation made by the Commissioner to make it easier to monitor capacities at busy periods.
- 7 The previous application resolved upon production of a report and certificate of occupancy from Mr Terrence Feltus, a qualified architect. His certificate dealt with individual capacities for the various areas. I was told that it is unusual for one of these certificates to break down the individual areas, but he did so in this case to assist in the negotiations. I was told that normally a certificate of occupancy would simply for these premises say, "Ground floor 830 persons" and "first floor 500 persons."
- 8 The police maintained their objection because of a concern that individual areas might be overcrowded yet to overall numbers within a particular floor might be within capacity.
- 9 As Mr Feltus gave his evidence it became apparent that what was driving the application was the applicant's concern that the existing individual capacities failed to take into account transient movement between areas.
- 10 It seemed to me that a sensible compromise might be to increase the individual capacities by a factor of about 10% and then set a maximum aggregate capacity for each floor.
- 11 The parties agreed. I made orders accordingly.
- 12 Another issue concerned an existing obligation in respect of an outdoor area, Area 5. It imposed an obligation upon the licensee to monitor crowd numbers even when the premises were not trading. The police

accepted that that was unreasonable but expressed the concern as to how they would know when the premises were not trading in that area.

13 I suggested that the condition be changed to read:

“There will be no more than 56 persons shall be in Area 5 when that area is being used for the sale or consumption of alcohol. If area 5 is not being used for the sale or consumption of alcohol during trading hours the licensee shall prominently display a sign or notice at the entrance and exit to areas 2 and 5, and the size of that notice shall be no less than 400 by 200 centimetres. The notice shall contain the following words:

At the entrance/exit to Area 2

‘Please note no sale of alcohol should be made for consumption in the outdoor area/footpath. No alcohol shall be removed from the premises other than in sealed containers (unopened bottles).’

And at the entrance/exit to Area 5:

‘Please note no alcohol shall be consumed in this area.’”

14 The parties agreed and I made an order accordingly.