



DECISION AND REASONS FOR DECISION

In the matter of an application by St Mary's Antiochian Orthodox Church Inc. under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a refusal to grant a renewable limited licence in respect of the premises situated at 291 Somerville Road, Yarraville.

Commission: Mr Ross Kennedy, Deputy Chairman
Miss Gail Owen, Deputy Chairman
Mr Robert Kerr, Commissioner

Date of Hearing: 23 June 2015
Date of Decision: 24 July 2015
Date of Reasons: 24 July 2015

Appearances: Mr Peter Aldred, PAJ Consultants, for the Applicant

Mr Scott May as Counsel Assisting the Commission

Decision: The Commission has determined to set aside the decision of the Delegate and substitute the decision found at paragraph 28.

Signed:



Ross Kennedy
Deputy Chairman



REASONS FOR DECISION

BACKGROUND

1. On 29 October 2014, St Mary's Antiochian Orthodox Church Inc. (**the Applicant**) applied for a renewable limited licence under the *Liquor Control Reform Act 1998* (**the Act**) for the premises situated at 291 Somerville Road, Yarraville (**the Premises**).
2. The Applicant sought a licence to supply liquor at functions (such as weddings, baptisms, religious days and various community events) to be held in a Church Hall located within the Premises. The Applicant sought to restrict the supply of liquor to members of its congregation and their family members.
3. Pursuant to section 33 of the *Liquor Control Reform Act 1998* (**the Act**), a copy of the application was served on Victoria Police (**Victoria Police**) and the Maribyrnong City Council (**Council**).
4. On 17 November 2014, Council objected to the application stating that the supply of liquor was not limited in scale and scope as the Applicant sought to operate seven days a week and trade until 1am. Council also raised concerns regarding the potential risk of amenity issues arising due to the location of the Premises in a residential area.
5. On 8 December 2014, the Commission received an objection from Victoria Police stating the grant of the licence would be likely to detract from or be detrimental to the amenity of the area. Victoria Police stated it would withdraw its objection if the trading hours were reduced to 11pm.
6. The Applicant responded to the objections and reduced its proposed trading hours to 11pm. The Applicant indicated that it only wished to supply liquor to members of its congregation and their families, arguing that this constituted a significant limitation in scope. Additionally, the Applicant advised that liquor would only be supplied at infrequent functions, would be ancillary to the provision of meals and would not be served on a daily basis.
7. On 24 March 2015, the application for a renewable limited licence was refused by an authorised delegate of the Commission (**the Delegate**), who was not satisfied the supply of liquor as proposed by the Applicant was sufficiently limited in scale and scope, as:
 - 7.1. the proposed operating times between 9am to 11pm constitutes ordinary trading hours for most licence categories;



- 7.2. while the Applicant claimed that functions may be infrequent, the application did not limit the frequency of functions; and
 - 7.3. the proposed restriction (to supply to the Applicant's congregation and their family members) was problematic as it is difficult to define who is a member of a congregation.
8. On 27 April 2015, the Applicant applied for an internal review, pursuant to section 153 of the Act, of the Delegate's decision to refuse to grant a renewable limited licence.

LEGISLATION AND THE TASK BEFORE THE COMMISSION

9. The powers and obligations of the Commission in relation to decisions on internal review are set out in section 157 of the Act. The Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision under section 47 of the Act, which applies to contested applications.
10. Section 26(1) of the Act states that the Commission may only grant a limited licence if it is satisfied that the scale and scope of the supply of liquor is limited in nature.

MATERIAL BEFORE THE COMMISSION

11. The Commission on review had before it, and considered, all of the material before the Delegate, including:
 - 11.1. an application for a renewable limited licence, dated 29 October 2014;
 - 11.2. questionnaires completed by the executive committee members of the Applicant;
 - 11.3. a plan of the Premises;
 - 11.4. an extract from the Australian Securities and Investments Commission database;
 - 11.5. copies of the New Entrant Training and Responsible Service of Alcohol (**RSA**) training certificates;
 - 11.6. a declaration of right to occupy;
 - 11.7. a Statement of Display;
 - 11.8. submissions prepared by Mr Peter Aldred of PAJ consultants, on behalf of the Applicant, dated 20 January and 10 March 2015; and



11.9. a statement of reasons prepared by the Delegate, dated 24 March 2015.

12. The Commission also received the following documents:

12.1. an application for internal review dated 27 April 2015;

12.2. a further submission prepared by Mr Peter Aldred on behalf of the Applicant, dated 1 June 2015; and

12.3. a letter from Council dated 5 June 2015.

13. The Commission also had before it a Pre-Hearing Inspection and Compliance Report prepared by Commission officers and dated 15 June 2015, a copy of which was provided to the Applicant and Council.

DISCUSSIONS BETWEEN THE APPLICANT AND COUNCIL

14. By letter dated 5 June 2015, Council informed the Commission that discussions had taken place between the Applicant and Council representatives regarding the application. The Commission was advised that an agreement had been reached whereby Council would amend its objection, provided the Applicant agreed to further restrictions.

15. The agreement reached was that the Applicant restrict use of the hall to members of its congregation and not make the hall available for public use or hire, that a member of the Church Management Committee be in attendance for all events and responsible for issues/concerns raised with the use of the licence and that the Applicant reduce the requested trading hours so as to cease trading at 9pm on Monday to Wednesday and 11pm on Thursday to Sunday and specified religious dates).

PUBLIC HEARING

16. On 23 June 2015, the Commission conducted a public inquiry. Council did not attend.

EVIDENCE OF MS MATILDA MATTAR

17. The Applicant called Mrs Matilda Mattar to give evidence at the inquiry concerning the operation of the Church. Ms Mattar is the wife of the Parish Priest and the President of the Ladies' Committee at the Church. She advised that the Applicant had been operating at the Premises since 2005 and became the freehold owner in 2012.



18. Mrs Mattar told the Commission that the congregation consists of approximately 140 families. The Applicant does not keep records of the number of individual parishioners but that they are known to church members. Mrs Mattar explained that these families are referred to as “the Community” and had invested money and labour to renovate and improve the Premises.
19. Mrs Matter stated that the Church Hall is used for a variety of events and functions associated with the Community, including birthdays, christenings, engagements, family nights, luncheons, bereavements and baptisms. The Church Hall is also utilised for supervised youth activities and teaching activities. Mrs Mattar stated that supplying liquor at events such as baptisms and 21st birthday parties would assist the Applicant in achieving its goal of engaging the youth in the Community.
20. In response to Council’s original objection (relating to the risk of amenity issues in a residential area), Mrs Mattar stated that she was unaware of any complaints received concerning the use of the Church Hall and that the Applicant has a positive reputation within the neighbourhood and has built a good rapport with surrounding residents.
21. Mrs Mattar also indicated that the Applicant would appoint a person from the Church to be present at all events and functions held at the Premises, in accordance with the condition proposed by Council, and that person would undertake an approved RSA training course.
22. Finally, Mrs Matter told the Commission that the Applicant is not intending to run a business. Rather, the aim is to engage community members and use of the Premises by the Community for functions and events would be free of charge.

SUBMISSIONS BY THE APPLICANT

23. The Applicant submitted that, in summary:
 - 23.1. it had not received complaints from neighbouring residents;
 - 23.2. the Premises (specifically, the Church Hall) would not be available to the general public and functions held at the Premises would be Church related and would not contravene the existing use rights of the Premises;
 - 23.3. other renewable limited licences have previously been granted by the Commission to church organisations, including a licence granted to a sister church of the Applicant which contains conditions similar to those sought in the current application;



23.4. it wished to further limit trading hours to:

Monday to Wednesday – between 12 noon and 9pm

Thursday to Sunday – 12 noon to 11 pm

Other religious dates¹ not on Thursday to Saturday – 12 noon to 11pm;

23.5. limit the number of functions held at the Premises to no more than 30 functions in a calendar year and restrict the maximum patron capacity to 150 patrons. The Applicant submitted that the Premises has three female toilets, three male toilets and three male urinals, capable of accommodating 150 patrons in accordance with Building Code of Australia calculations.

DECISION AND REASONS FOR DECISION

24. While the Commission accepts that previous liquor licences have been granted to a similar church with conditions similar to those originally proposed by the Applicant, the Commission must assess each application on the particular circumstances before it.
25. The predominant issue in question is whether the application meets the test contained within section 26 of the Act – that is, whether the Commission is satisfied that the scale and scope of the supply of liquor is limited in nature.
26. In refusing the initial licence application, the Delegate found that the limitations proposed by the Applicant were insufficient, particularly that the trading hours sought by the Applicant resembled ordinary trading hours which apply to other licence categories. The Delegate also indicated that the difficulty in determining who was a member of the church resulted in the condition restricting use to the congregation not constituting an effective limitation.
27. The Commission notes that the application has changed significantly on internal review from that which was before the Delegate. The Applicant has, amongst other things, further reduced its requested trading hours, agreed to all conditions sought by Council and agreed to limit the total number of functions to no more than 30 per year. Although the Commission notes the concern of the Delegate that a “member of a church” is difficult to define, the Commission considers that the restriction will act to prevent the Applicant from operating functions in a commercial manner unrelated from its role as a faith based community organisation.

¹ The applicant clarified that “other religious dates” were references to New Year’s Eve, Christmas Eve, Christmas Day, Easter Sunday, Easter Monday, Saint Mary’s Day (24, 25 March) and the Dormition of the Virgin Mary (15 August).



28. The Commission considers that, collectively, the proposed conditions do now act to sufficiently limit the scale and scope of the supply of liquor as required under section 26 of the Act.

Accordingly, the Commission has determined to set aside the decision of the Delegate and grant the Applicant a renewable limited licence under the Act, subject to the following conditions:

Type of licence

This licence is a renewable limited licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises to members of the church congregation and their families for pre-booked functions only.

Supply of liquor at a pre-booked function

The licensee will maintain a register containing the details of pre-booked functions conducted under this licence. The register must contain details concerning the date, time, type of function, name of the function organiser and the member of the Management Committee present at each pre-booked function.

The licensee must make the register available for inspection on being asked to do so by a police officer or a gambling and liquor inspector.

The Licensee must display a copy of this licence during each pre-booked function conducted under this licence.

Special conditions

The licensee may hold no more than 30 pre-booked functions in any calendar year.

A member of the Management Committee of the St Mary's Antiochian Orthodox Church Inc. who has completed an approved responsible service of alcohol program must be present at all pre-booked functions where liquor is supplied.

Amenity

The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.



The licensee shall ensure that the level of noise emitted from the licensed premises shall not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No.N-2.

Maximum patron capacity

Overall maximum: 150 patrons

Trading hours

Monday to Wednesday – 12 noon to 9pm

Thursday to Sunday – 12 noon to 11pm

New Year's Eve, Christmas Eve, Christmas Day, Easter Sunday, Easter Monday, 24 March, 25 March and 15 August - 12 noon to 11pm.

The preceding twenty-eight (28) paragraphs is a true copy of the Reasons for Decision of Mr Ross Kennedy (Deputy Chairman), Miss Gail Owen (Deputy Chairman) and Mr Robbie Kerr (Commissioner).