

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **Katie J Finlay** pursuant
to section 224 of the Act for the renewal of
a Manager's Certificate in respect of the
premises situated at 8 Elizabeth Street,
known as 'Waikanae Chartered Club'.

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

Chair: Cr Fiona Vining
Members: Mr Michael Dodson
Mr Trevor Knowles

HEARING at Kapiti Coast District Council offices, Paraparaumu, on 1 February 2018.

PROCEDURAL MATTERS

The Chair convened a public hearing of the District Licensing Committee to consider and determine this application. Notice of the hearing was given to the following parties:

- The Applicant
- The Licensing Inspector
- The Police

APPEARANCES

Ms Katie J Finlay – the applicant
Mr Stefen Leach – in support of the applicant
Ms Katherine McLellan – Licensing Inspector
Sgt Shane Bengtson - NZ Police – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction

1. This is an application by Katie J Finlay for the renewal of a Manager's Certificate to manage the sale and supply of alcohol on licensed premises at the Waikanae Chartered Club, 8 Elizabeth Street, Waikanae.

The Application

2. A copy of the application was forwarded to the reporting agencies and the Licensing Inspector, as is required by section 225. The police opposed the application based on concerns about suitability.
3. All those appearing were sworn in.

Applicant's Evidence

4. As the police had opposed the application based on suitability concerns the Applicant responded to specific issues raised. She acknowledged that she had been charged with assault as a result of an incident in January 2017. She stated that she had been in the wrong place at the wrong time. There is a possibility that the charges will be dropped as this is a first offence. Ms Finlay stated that the incident was not at work and was not work related.
5. The police had also noted that Ms Finlay had come to the attention of the police twice previously, once for theft and once for assault, but had not been charged in relation to either matter. Ms Finlay stated that the shoplifting incident related to her niece when she was 17 years old. The assault incident occurred when an individual spat in Ms Finlay's face in a public place. The police became aware of the incident because Ms Finlay reported it to the police herself.
6. In terms of her driving history, Ms Finlay stated that the majority of the traffic offences related to being on a learner licence and being pulled over when she should not have been driving. She acknowledged that five of those offences had been since she first was granted a Manager's Certificate. The last offence was in December 2017.
7. Ms Finlay acknowledged that her actions had been wrong. She stated that her life had changed since being Duty Manager and she doesn't want her past actions to affect her job in future. In response to questions from the police she acknowledged that the various offences were not trivial and explained steps she had taken to make sure that there would be no further traffic offences.
8. Ms Finlay stated that she has grown up and matured over the past year and did not agree with the police suggestion that she was perhaps too young to be a duty manager.
9. Ms Finlay gave evidence as to how she performs her role. She stated that she got to know many of the club members well during the time she worked at the club and this made it easier to judge when someone was reaching their limit and shouldn't be served more alcohol. She stated that she would take a drink off someone if it became clear that they shouldn't consume more and give them water. She would take steps to ensure that people would get home safely such as encouraging them to use the club's half price taxi service or calling the person's partner for assistance if needed.
10. Ms Finlay was able to give an example of a situation when she had to deal with a difficult visitor to the club and how she managed that situation.

11. Ms Finlay's application was supported by Stefan Leach, who is the Secretary/ Manager, Waikanae Charter Club where Ms Finlay is employed. Mr Leach has been employed at the Waikanae Charter Club for a year.
12. Mr Leach's evidence was that Ms Finlay is honest, reliable and works well with others. He stated that most incidents occur during busy periods and he has been impressed with Ms Finlay's ability to recognise these incidents.
13. Mr Leach observed that Ms Finlay is attentive and responsive and constantly monitoring the environment. He stated that she understands patrons' limits and is extremely confident dealing with patrons who feel self-entitled as members and that members had harassed Ms Finlay about the hearing.
14. Mr Leach was of the view that there is no correlation between Ms Finlay being a great Duty Manager and traffic offences. He stated that he has no complaint with her conduct as a Manager and she will "make the hard decisions". She has never acted in an unprofessional manner at work but does need to make better decisions in her personal life. Mr Leach had seen Ms Finlay cut people off from further drinking. He observed that, in his view, Ms Finlay had grown and matured over the last year.

The Police

15. The police provided as an exhibit a statement of Ms Finlay's traffic history which she acknowledged to be true and correct. As Ms Finlay has been subject to harassment from club members, the details on that statement should not automatically be made public. Following consideration of section 203 of the Sale of Alcohol Act 2013 ("the Act"), the Committee makes an order under subsection 203(5) prohibiting publication of that document.
16. Sgt Benge acknowledged that police had not opposed the initial issue of Ms Finlay's Manager's Certificate one year ago. He explained that this was an issue regarding having the appropriate staff review applications and that the police process had now been changed.
17. He stated that the primary concern of the police was that the number of traffic offences, combined with the previous times that Ms Finlay had come to the attention of the police, together with the assault charge, showed an "obvious propensity to disregard authority". He said that this led to a concern that she would not follow regulations.
18. In response to a question, Sgt Benge suggested that an alternative course of action would be to issue Ms Finlay's renewed certificate for a period of one year. In the event, that Ms Finlay has further convictions during that time, then the matter will be reconsidered by the Committee at the next renewal.

The Inspector

19. Ms McLellan's report refers to Ms Finlay's application and responses to the questionnaire accompanying the application, stating that in her opinion "the

applicant has demonstrate that she has the knowledge and experience required to hold a Manager's Certificate".

20. Ms McLellan confirmed that no complaints have been received about the club.

Committee's Decision

21. The matters which a Committee must consider in regard to the renewal of a Manager's Certificate are contained in section 227 of the Act:
- (a) the applicant's suitability to be a manager;
 - (b) any convictions recorded against the applicant since the certificate was issued or last renewed;
 - (c) the manner in which the manager has managed the sale and supply of alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol-related harm;
 - (e) any matters dealt with in any report made under section 225.

Suitability

22. Under the previous legislation, the High Court has stated:

The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that are to go with the holding of a license.¹

23. The Liquor Licensing Authority has noted:

Each application is dealt with on a case by case basis. In determining suitability we assess the likelihood of a potential licensee or manager upholding the law in light of the evidence provided.²

24. The police have raised as issues of suitability both the current charge that Ms Finlay is facing, and the previous two times that she has come to the attention of the police.
25. In terms of the current charge, there is insufficient evidence to place much weight on this matter, particularly given the indication that there is a possibility that the charge may be dropped. If Ms Finlay is convicted of an offence of sufficient seriousness, then there is an option of an application for Ms Finlay's Manager Certificate to be revoked. It would be unfair for the Committee to predetermine this matter prior to the matter being heard in the District Court or the police deciding not to take the matter any further.
26. The Committee also views it as inappropriate to place weight on the two incidences where Ms Finlay came to the attention of police. Police have not given much detail of these incidents while Ms Finlay was forthcoming with the Committee. The

¹ *Re Sheard* [1996] 1 NZLR 751 at 758

² *Deejay Enterprises Limited* (LLA Decisions 531/97-532/97)

Committee notes that the second incident referred to might have never been referred to the police if Ms Finlay had not contacted the police herself. This does not support a view that she has a total disregard of authority. In any event, the police did not regard either incident as sufficiently serious to take further, so without further evidence the Committee is not prepared take either incident into account

Convictions

27. In *Re Osborne*³ the Liquor Licensing Authority said in respect of a manager's certificate, there should be an appropriate stand-down period in respect of serious convictions:

"The same approach, in our view, should apply to Managers' Certificates. Without fettering ourselves in this or other applications, it may be helpful if we indicate that we commonly look for a five year period free of any serious conviction or any conviction relating to or involving the abuse of alcohol, or arising in the course of an applicant's duty on licensed premises.

We regard Mr Osborne's convictions on 25 October 1991 as fitting squarely within this categorisation.

Less serious convictions are also weighed. By way of example is an isolated excess breath/blood alcohol conviction, or a single driving offence disclosing no pattern of offending. Nevertheless all convictions must be weighed as required by s.121(1)(b). In these and similar cases we frequently indicate that a minimum of two years from the date of conviction may result in subsequent favourable consideration – providing suitable reports from both the Police and a Licensing Inspector are received. In all situations we usually regard time as running from the date of conviction, rather than the date of offending.

28. Ms Finlay has not been convicted of offences which are on the more serious end of the scale. Her offences have been primarily been for breaches of the conditions of her learner's license (driving unaccompanied or not displaying "L" plates) or driving an unlicensed motor vehicle. We note that while her license has been suspended twice, there are no convictions for driving while suspended. There is no suggestion that any of the convictions involve alcohol or are related to her employment. The issue is with the number of these convictions.
29. We acknowledge the concerns of the police that the number of convictions indicates a level of disregard for the law. Through the hearing it became clear to us that Ms Finlay has taken steps to ensure that there will be not further convictions of any type and that she genuinely believes that she will not allow any further traffic offences to occur.

Management of the sale and supply of alcohol

30. The Committee was impressed by Ms Finlay's approach to her role in serving alcohol, particularly that she has made an effort to know club patrons and how to best deal with each individual's consumption and alcohol tolerance. Ms Finlay was

³ LLA 2388/95 (13/10/1995)

able to clearly explain how she would act if put under pressure by patron's to breach the Act and gave an example of an incident where this had occurred.

31. The Committee also notes that Ms Finlay has the support of her manager Mr Leach who gave evidence that he was confident in her ability to comply with the Act and that she deals well with members that may have a sense of entitlement. Mr Leach had observed Ms Finlay's work on a number of occasions and had seen her comply with the Act by limiting alcohol consumption as needed.

Other matters

32. The matters raised by the Police and Licensing Inspector have been discussed above.

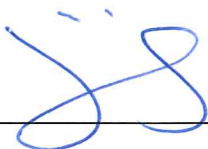
Renewal criteria as a whole

33. The Committee is required to consider all the criteria set out in section 227. This is a balancing act. The Committee has concerns about the number of traffic offences accumulated by Ms Finlay but was impressed with the evidence regarding the way she has managed the sale and supply of alcohol over the time that she has held a Manager's Certificate.
34. The Committee has also taken into account Ms Finlay's evidence of her intention to avoid further offending of any type.
35. In these circumstances, the Committee agrees with the suggestion of the police that the Manager's Certificate should be granted but for a period of twelve months only. This will act as a further probationary period for Ms Finlay. That twelve month period should begin from the date of the hearing, being 1 February 2018.

Conclusion

36. Accordingly, the District Licensing Committee, having read the application and the submissions and reports filed by the parties and having listened to the capable submissions which were made by all parties, and having taken particular notice of the objects of the Act set out in Section 4, and having addressed the criteria for the renewal of a Manager's Certificate set out in Section 227, **approves** the application by Katie J Finlay for a Manager's Certificate to manage the sale and supply of alcohol on licensed premises at the Waikanae Chartered Club, 8 Elizabeth Street, Waikanae. The Certificate is to issue for a period of one year.

DATED at Paraparaumu on this 6TH day of March 2018



Cr Fiona Vining
Chair

Kāpiti Coast District Licensing Committee

