

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **Terri M K Webber**
pursuant to section 224 of the Act for the
renewal of a Manager's Certificate in
respect of the premises situated at 5 Arthur
Street, Otaki known as 'Reds Café'.

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

Chair: Fiona Vining
Members: Trevor Knowles
Fraser McInnes

HEARING at Kāpiti Coast District Council offices, Paraparaumu, on 24 February 2020.

APPEARANCES

Terri Webber – the applicant
Alastair Mackay – in support of the applicant
Hollie Halvorsen – in support of the applicant
Antoinette Bliss – Licensing Inspector
Jacqui Muir, Environmental Standards Manager
Sgt Shane Bengé - NZ Police

RESERVED DECISION OF THE COMMITTEE

Introduction

1. This is an application by Terri M K Webber for the renewal of a Manager's Certificate to manage the sale and supply of alcohol on licensed premises at Reds Café, 5 Arthur Street, Otaki.

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 on the ground of suitability as set out below.
3. All those appearing were sworn in.

Applicant's Evidence

Terri Webber

4. Ms Webber provided a statement to the Committee in which she noted that she is employed at Reds Café in Otaki for two years and is currently employed as the front

of house manager / duty manager. She noted that she has held her managers certificate for eight years and has not had a "problem, fine or suspension".

5. In respect of the issue of not disclosing her convictions, she stated that she understood that the question did not require her to include convictions against "the land transport" and that as she had declared her assault charges in 2012 when first applying for a manager's certificate she did not need to declare those convictions again. She noted that she had answered "no" to the question about convictions for the past two renewals in 2013 and 2016 which she felt cemented her understanding about how to answer the question.
6. She stated that the majority of her traffic infringements were learner licence offences which resulted in her licence being suspended for demerits. She stated that the most recent suspension occurred in 2018 when the Ministry of Justice suspended her licence as they deemed she was not paying enough per week for her fines. She noted that she obtained her restricted licence on 14 October 2018 and since then has not lost her licence or received any fines.
7. She concluded that over the last two years she has "worked hard to be a responsible and positive contributing member of society" and that she regrets the mistakes she made in her young adulthood. She believes that she is responsible and mature enough to have her manager's certificate renewed.

Alastair Mackay

8. Mr Mackay is the partner of Wendy Reid who is the owner and operator of Reds Café. As Ms Reid was unable to attend the hearing, Mr Mackay attended on her behalf.
9. Ms Reid provided a letter of support for the renewal of Ms Webber's manager's certificate noting that Ms Webber makes sure that all staff are adhering to the guidelines set out regarding liquor licensing and that she is a good role model for all staff. She states that she has shown to be committed and confident with her knowledge of the laws.
10. At the hearing, Mr Mackay confirmed that Ms Webber is a valued member of staff.

Hollie Halvorsen

11. Ms Halvorsen is the Operations Manager at Reds Café. She provided a letter of support and attended the hearing.
12. In her letter she has stated that during her employment, Ms Webber has shown herself to be responsible and mature noting that on a number of occasions she has had to ensure that licensing conditions were followed. She also noted that she actively passes on her knowledge to junior staff members to ensure that they are following the restrictions and guidelines set out in the liquor licence.
13. At the hearing, Ms Halvorsen described Ms Webber as showing nothing but responsible nature and stated that she would take on any and all extra duties with a massive amount of professionalism.

14. Ms Webber stated that she had been going through a bad period and acknowledged that it had been over an extended period. She stated that she gets support from friends and colleagues to deal with stress.
15. She noted that she has made a change by getting her restricted licence and has not had any infringements since October 2018. She stated that she has made a number of changes in the last two years by keeping away from trouble, working and staying focussed. She also noted that she now has full-time care of her nine year old daughter which is an additional responsibility.
16. The Committee noted there is a concern that if the Applicant is blasé about traffic laws she might also be blasé about alcohol licensing laws. Ms Webber stated that her Manager's Certificate is very important to her.

The Inspector

17. Antoinette Bliss attended as Licensing inspector but noted that the Licensing Inspector's report was completed by Katherine McLellan.
18. The Licensing Inspector's report refers to Ms Webber's application and responses to the questionnaire accompanying the application, making a number of comments. Ms McLellan has noted Ms Webber's work history in various licensed premises.
19. Her report notes that Ms Webber's application form did not include a declaration of her 2012 convictions but that Ms Webber declared these two convictions in her application for a manager's Certificate in 2012.

The Police

20. The police opposed the renewal of a manager's certificate on the following grounds:
 - Failure to list convictions on the application form
 - Seventeen breaches of the Land Transport Act 1998 since the last renewal
 - Three suspension of driver's licence since 2012, most recently in 2018.
 - Five convictions since 2012
21. The police position is summarised in the objection as a failure to comply with "basic legislative requirements".
22. At the hearing the police provided the Committee with the Applicant's Driver Demerit and Suspension History. At the hearing the police also provided a Criminal and Traffic History report in respect of the Applicant. As the detail in those statements would not normally be public knowledge, the Committee makes an order under section 203(5) prohibiting publication of those documents unless lawfully obtained in a manner unrelated to this application. The general nature of the material in these documents is set out in this decision and is not prohibited from publication.
23. Following Ms Webber's statement police accepted Ms Webber's explanation for ticking "no" in respect of the question regarding previous convictions but stated that they would still have objected based on her recent driving convictions.

24. At the conclusion of the hearing Police submitted that, based on authority, it would still be appropriate for a stand-down period to be applied, but acknowledged that it might effectively already have been served.

Committee's Decision

25. The matters which a Committee must consider in regard to renewing a Manager's Certificate are contained in section 227 of the Act:

Criteria for renewal

In considering an application for the renewal of a manager's certificate, the licensing authority or licensing committee concerned must have regard to the following matters:

- (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:
- (d) any matters dealt with in any report made under section 225.

Suitability

26. 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

27. 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

28. Other than Ms Webber's convictions (discussed below) two concerns have been raised about Ms Webber's suitability by police. The first is that Ms Webber failed to disclose her convictions on her application form. The second is that Ms Webber has accumulated a significant driver demerit and suspension history that combined with her convictions under the Land Transport Act 1998 would raise a concern about Ms Webber's attitude to legislative compliance.
29. In respect of the first issue, police accepted prior to the hearing that the application form used by the Kāpiti Coast District Council (which follows that set out in the legislation) specifically excludes offences under the Land Transport Act 1998 unless they are under part 6 of that Act. As a result, Ms Webber was not required to declare her driving convictions.

¹*Re Sheard* [1996] 1 NZLR 751 at 758

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

30. We accept that on the evidence there was no intent to mislead by Ms Webber, who had disclosed her convictions for assault on a previous application. We are of the view that this is not sufficient to make Ms Webber unsuitable. We note going forward however, that Ms Webber is now on notice that all convictions must be declared even if they have been declared previously.
31. The second issue is that Ms Webber does have a fairly significant list of driver demerits accumulated over just six years. The majority of these are for driving unaccompanied as a learner driver or breaching other conditions of her learner's licence.
32. When the concern was raised that this might indicate a blasé attitude to complying with the law, Ms Webber's response was that she places a very high importance on her Manager's Certificate. While it is not ideal that Ms Webber does not seem to have placed as much importance on compliance with the conditions of her driver's licence we note that she has also made the point that she has made changes in her life and has not had any infringements since October 2018.
33. Mr Mackay, Ms Reid and Ms Halvorsen gave clear evidence (either written or oral) of Ms Webber has a particular skill in ensuring that more junior staff members comply with the Act and who has not had any issues at work.
34. The Committee's view is that Ms Webber provided an honest self-appraisal of herself and has made some clear life changes. However, the Committee notes that there may not have been sufficient time to confirm that those changes will continue noting that a Manager's Certificate is usually renewed for a period of three years. Assuming that Ms Webber continues down her new path, the Committee is of the view that she would be a suitable person to hold a licence. As that cannot yet be determined, the Committee is of the view that a condition on any Manager's Certificate issued would be appropriate.

Convictions

35. Ms Webber has two convictions for common assault in 2012, which were declared when first applying for a Manager's Certificate. She then has three convictions (from two incidents) for breaches of the Land Transport Act 1998 being two counts of careless driving and one of driving while disqualified. These occurred in 2013 and 2017.
36. 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. In terms of convictions for driving offences, those that are most concerning are those that involving driving while under the influence of alcohol.
37. We note that in *Re Pompey*⁴ it was made clear that the stand-down period should run from the date of offending.

³LLA 2388/95 (13/10/1995)

⁴NZLLA PH 623/04 (6 September 2004),

38. We have not determined whether the convictions are sufficient to justify a stand-down period. This is because even if they were, it is clear that a stand-down period would not be substantial and would now have passed.

Management of licensed premises

39. Ms Webber has worked in a number of licensed premises over a number of years. She has not come to the attention of the authorities in relation to this role. It seems that she has taken on a mentoring role for more junior staff and done it well.

Other matters

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

Renewal criteria as a whole

41. The Committee is required to consider all the criteria set out in section 227. It is a balancing act. In summary, the only criteria which is of concern is that regarding suitability. As noted above, the Committee is of the view that this can be best managed by imposition of a condition. In many cases, this might be to limit the Applicant's Manager's Certificate to being used at one premise. In the current circumstances, the Committee is of the view that it would be more appropriate to apply a condition limiting the use of the certificate to low risk premises.

Conclusion

42. 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 **Terri M K Webber** for a Manager's Certificate to manage the sale and supply of alcohol on licensed premises with a condition that Ms Webber's Manager's Certificate may only be used at premises which have a fee classification of low risk or very-low risk under the Sale and Supply of Alcohol (Fees) Regulations 2013 for twelve months following the date of renewal.

DATED at Paraparaumu on this 9th day of June 2020



Commissioner Fiona Vining
Chair
Kāpiti Coast District Licensing Committee