

Decision No: 45/2025/237

**IN THE MATTER**

of an application under section 224 of the Sale and Supply of Alcohol Act 2012 for the renewal of a Manager's Certificate for Thuy Vu (MC268) (the Applicant)

**AND**

**IN THE MATTER**

an application for **THUY VU** under section 224 of the Sale and Supply of Alcohol Act 2012 for the **RENEWAL** of a **MANAGER'S CERTIFICATE**

**BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE**

*Chairperson:* Cr Nigel Wilson

*Members:* Ms Susie Mills

Ms Julia Palmer

**HEARING** at the Kāpiti Coast District Council offices, Paraparaumu on 2 May 2025

**PROCEDURAL MATTERS**

The Licence Renewal was opposed by the Licensing Inspector and referred to the District Licensing Committee to convene a public hearing to consider and determine this application.

Notice of Hearing was given on 1 April 2025, and an Extension for evidence submissions was granted, by minute of the District Licensing Committee on 2 April 2025; to the following parties

- *The Applicant*
- *The Licensing Inspector*
- *The Police*
- *Medical Officer of Health*

**APPEARANCES**

**Ms Thuy Vu** – the applicant

**Mr Nicholas Robben** – in support of the applicant

**Ms Antoinette Bliss** – Kāpiti District Licensing Inspector

**All those appearing were sworn in.**

## **INTRODUCTION – BACKGROUND:**

1. An application for Renewal of a Manager's Certificate under Section 224 of the Sale and Supply of Alcohol Act 2012 (the Act) was made on 7 May 2024 for Thuy Vu from Waikanae Beach Four Square, 28 Tutere Street, Waikanae Beach.
2. On the 26<sup>th</sup> June 2024, Police conducted a Controlled Purchase Operation (CPO) at the premises of Tran Vu Limited trading as Waikanae Beach Four Square. During the CPO alcohol was sold to a person under the purchase age in breach of s239 of the Act. Police submitted applications to ARLA (Alcohol Regulatory and Licensing Authority) for the suspension of the Off Licence and Manager's Certificate. As a result, the Off Licence for Tran Vu Limited was suspended for 7 days and the applicant's Manager's Certificate was suspended for 28 days.
3. Thuy Vu's name was displayed as the Duty Manager at the time of the CPO. The staff member involved in the sale to the minor pushed the call button on two different occasions to request the attendance of the Duty Manager. It took some time for the Applicant to appear, and she stated she was in the back room ticketing vegetables. This area was not within the approved licensed premises and given the time taken to appear, it would seem unlikely she was in this area at the time. The Licensing Inspector opposed the application and requested a public hearing.
4. **Police** were not opposed to the application as they consider the matter has been dealt with by way of ARLA suspending the Applicant's Manager's Certificate as a result of a failed CPO, however Police noted the Committee might wish to consider a truncated licence period.
5. **Medical Officer of Health** did not make a submission.

## **APPLICANT - Evidence in Chief**

6. Waikanae Beach Four Square owner Thuy Vu and store manager Mr Nick Robben, presented evidence on behalf of the applicant. Ms Vu has held a Manager's Certificate for 12 years.
7. Ms Vu firstly apologised for the 'error of judgement' from staff members. She stated the staff member, Jason Jackson, who had sold alcohol to a minor in the CPO, had apologised and said he had felt nervous in front of the girls (volunteering for the CPO). Mr Jackson said he considered they looked as old as he did. They had entered the store at 8.05pm and the sale had taken place at 8.11pm. Ms Vu said the staff member had been going through some health issues at the time and had since resigned on March 8, 2025.
8. Ms Vu said all staff had been trained in the Foodstuffs testing programme regarding age checks.
9. Ms Vu said at her store they apply Under 30 age criteria and up until this incident they had a long history of no incidents.
10. Ms Vu explained that at the time of the failed CPO, she and Mr Robben were in the back room ticketing vegetables. She had instructed the staff member present to close the shop as it was 8pm. She said there were some late customers which meant the shop

wasn't closed immediately. After 8pm two girls came into purchase alcohol, which the till operator sold to them without ID.

11. The Police came in directly as this was a Controlled Purchase Operation. Thuy Vu explained there is a code for the call button – 1 press for being busy at the tills, 2 presses for needing assistance at the tills, and 3 presses for an emergency or dangerous situation. The till operator in a panic pressed the button 3 times (did this twice). She and Mr Robben looked at the cameras and could see two Police Officers present. Thuy Vu said she sent Mr Robben to the tills in case there was a dangerous situation at hand. Eventually she went to the till. The back room is not currently part of the licensed premises.
12. Police had asked the Applicant to keep the store's video footage of the incident but Ms Vu said this had been erased or lost.
13. The Applicant submitted that training of the till operators has been robust and gave evidence of the restricted product sales and delivery training completed by operators. She said more Duty Managers have also now been appointed. At the time of the incident there were only two Duty Managers for the site, the Applicant and Mr Robben.
14. Ms Vu said she takes full responsibility for the failed CPO and has taken steps to minimise the risk of this happening again, including re-training all the staff in their responsibilities with regard to sales of alcohol, tobacco and tobacco related products. She said more Duty Managers have also been trained and appointed.
15. Ms Vu said this is the first time the store has had a failed CPO, and she realises the gravity of the failure.
16. A letter in support of the Application renewal was received from Mr Ben Shaw, Principal of Active Chartered Accountants who had known Ms Vu for 15 years.

### **INSPECTOR – Evidence in Chief**

17. The Inspector Antoinette Bliss said as stated in both the Inspector and Police reports, the agencies ran a joint Controlled Purchase Operation on the Kāpiti Coast on Wednesday 26 June 2024, which included the Waikanae Beach Four Square.
18. Ms Bliss stated Thuy Vu's name was displayed as the Duty Manager at the time of the operation during which the staff member sold alcohol to the minor who was volunteering for the Police.
19. Ms Bliss said the matter was referred to the Alcohol Regulatory and Licensing Authority (the Authority) with Police seeking a 28 day suspension of the Applicant's Manager's Certificate.
20. The Authority dealt with the matter on the papers as the Applicant did not dispute the grounds of the application and had agreed to the suspension. The Authority made the order to suspend the Applicant's Manager's Certificate for 28 days and the Applicant was made aware that the order is a negative holding in terms of ss 288 to 290 of the Act. If the certificate has not already been cancelled, three negative holdings incurred within a three-year period will result in an application to the Authority for cancellation of the certificate.
21. The Inspector said her opposition to the Manager's Certificate application is due to the Duty Manager not being within the approved alcohol licensed area at the time of the Controlled Purchase Operation and the time it took the Duty Manager to enter the licensed premises, when requested by the Police Officer and the Inspector present.

22. The Inspector noted section 214 of the Act requiring the Manager to be on duty at all times and responsible for compliance. The Inspector further cited case law underlining the importance of Duty Managers to comply with the conditions of the Act.
23. The Inspector noted from the relevant sections of the Act and the case law provided, that it is the role of the Duty Manager to ensure the premises are conducted 'with an aim to contributing to the reduction of alcohol related harm' per the Act's purpose and how this should be achieved.
24. The Inspector said, given the issues identified, the Committee may consider it appropriate to truncate the renewal of the Manager's Certificate to give the applicant the opportunity to provide evidence of compliance with the Act within the next 12 months.
25. The Inspector also noted that the staff member involved in the CPO on 26 June 2024 remained a staff member until March 2025.
26. Committee member Ms Palmer asked how long it took for Ms Vu to get to the shop counter. The Inspector said staff member Jason pressed the buzzer and after five minutes pressed the buzzer again, and then a third time. Ms Vu said she did not respond immediately because she was concerned for her safety but went out when she saw the Inspector (Antoinette) who she knew.
27. Ms Palmer asked if the staff member was given any additional training. Ms Vu said yes, and staff were also trained about age ID. Ms Vu said she thought it was clear the minor served was under age.
28. Committee member Ms Mills asked how long Ms Vu had held a Manager's Certificate. Ms Vu said 14 years and she had never failed a CPO.
29. Ms Mills asked if the Duty Manager was also involved in food preparation outside of the licensed area. Ms Vu said yes she had also worked in food preparation but from now on she would ensure the Duty Manager was inside the licensed area at any time alcohol was being sold.
30. Ms Mills asked the actual age of the minor served in the CPO and the answer was age 16.

### **EVIDENCE OF POLICE**

31. It is noted the Police did not attend the hearing as there was not a requirement for them to do so.
32. The Committee noted in response to the application Sergeant Luke Taunton, referring to the applicant being referred to the Authority, stated 'the DLC may wish to consider whether or not a truncated period of certification is now appropriate. He said this is the only record held by Police in which the applicant has been referred to the authority.

### **CLOSING STATEMENTS**

33. The Inspector said the video would have been helpful to the hearing. She said a truncated licence period would be appropriate. In response to Ms Palmer, the Inspector suggested truncating the licence to one year from the Committee's decision date.
34. Mr Robben in closing for the Applicant said the Applicant had already had her Duty Manager's certificate suspended for 28 days and the business Off Licence suspended for 7 days (by the Authority).

35. Mr Robben said the store had already taken steps including having older staff members who he considered more capable. He said there would be two Duty Managers on at all times and 'staff have had it drilled in' that no ID, means no sale.
36. Mr Robben said the store had a policy that no Duty Manager shall leave the licensed area unless for a bathroom break.
37. Mr Robben said he is quoting Sgt Luke Taunton in saying the matter has been dealt with.
38. Ms Vu said she works very long hours to serve her community. She said she considered the failed CPO was a serious mistake and she takes full responsibility for that. She asked the Committee to consider that the CPO does not reflect a long and clear record. Ms Vu said she had already had her licence suspend for 28 days and she accepted that without protest. She said she want to continue to serve the community with care.

## **COMMITTEE'S DECISION AND RATIONALE:**

### **The Law:**

**Section 214** requires the manager to be on duty at all times and be responsible for compliance:

- (1) *Except as provided in section 215, a manager must be on duty at all times when alcohol is being sold or supplied to the public on any licensed premises*
- (2) *A manager on duty on any licensed premises is responsible for:*
  - a. *The compliance with and enforcement of –*
    - i. *The provisions of this Act; and*
    - ii. *The conditions of the licence in force for the premises; and*
  - b. *The conduct of the premises with the aim of contributing to the reduction of alcohol related harm.*
- (3) *At all times while a manager is on duty on any licensed premises, the full name of the manager must be prominently displayed inside the premises so as to be easily read by people using the premises; and the person named as manager at any time is to be treated for the purposes of this Act as the manager at that time.*
- (4) *At all times when alcohol is being sold or supplied on licensed premises, the licensee must take all reasonable steps to enable the manager to comply with this section.*

### **Section 239 Offences relating to minors and people under purchase age**

*239Sale or supply of alcohol to people under purchase age on or from licensed premises*

- (1) *A licensee or manager of any licensed premises who sells or supplies alcohol, or allows alcohol to be sold or supplied, on or from the licensed premises to any person who is under the purchase age commits an offence.*
- (2) *A person who is not a licensee or a manager of any licensed premises who sells or supplies alcohol on or from the licensed premises to any person who is under the purchase age commits an offence.*
- (3) *A person who commits an offence against subsection (1) is liable on conviction,—*
  - (a) *in the case of a licensee, to either or both of the following:*
    - (i) *a fine of not more than \$10,000;*
    - (ii) *the suspension of the licensee's licence for a period of not more than 7 days;*
  - (b) *in the case of a manager, to a fine of not more than \$10,000.*
- (4) *A person who commits an offence against subsection (2) is liable on conviction to a fine of not more than \$2,000.*

*(5) Subsection (2) applies despite any liability that may attach to the licensee or any manager in respect of the same offence.*

*(6) In any proceedings for an offence against subsection (1) or (2) in respect of selling or supplying alcohol, or allowing alcohol to be sold or supplied, to a person (the customer), it is a defence if the defendant proves that,—*

*(a) before or at the time of the sale or supply of alcohol concerned, there was produced to the person who sold or supplied the alcohol a document purporting to be an approved evidence of age document; and*

*(b) the person believed on reasonable grounds that the document—*

*(i) was an approved evidence of age document; and*

*(ii) related to the customer; and*

*(iii) indicated that the customer was not under the purchase age; and*

*(c) the person reasonably believed that the customer was not under the purchase age.*

*(7) In any proceedings for an offence against subsection (1) or (2) in respect of selling or supplying alcohol, or allowing alcohol to be sold or supplied, to a person (the customer), it is a defence if the defendant proves that, before or at the time of the sale or supply of alcohol concerned, the person who sold or supplied the alcohol verified the customer's age using an approved evidence of age system in the approved manner.*

*(8) A person does not commit an offence against subsection (1) or (2) by selling or supplying alcohol to a person who then supplies it to a third person who is under the purchase age, unless it is proved that the person knew or had reasonable grounds to believe that the alcohol was intended for a person under the purchase age.*

*Compare: 1989 No 63 s 155*

39. The Committee noted the Authority in its decision has already determined there was a breach of the Act and imposed a 28 day suspension of the Applicant's certificate and that these are Negative Holdings under ss288-290 of the Act and the serious consequences of a further breach.
40. The Committee noted the Police do not oppose the renewal of the Manager's licence but to suggest a possible truncation of the licence renewal period.
41. The Committee noted the Inspector had opposed the renewal and requested the application be referred to the District Licensing Committee.
42. The Committee notes that since the hearing Tran Vu Limited trading as Waikanae Beach Four Square has extra staff qualified as Duty Managers, thereby easing the burden on the Applicant.
43. The Committee also emphasises how seriously the DLC takes breaches of s239 of the Act.
44. The Committee has taken into account the penalty already imposed by the Authority in its ruling [2024] NZARLA 141-142.
45. The Committee considers that a truncated licence renewal period will allow the Applicant to demonstrate compliance with the Act, while also enabling ongoing improvements to systems and the implementation of Duty Manager rosters to ensure adequate coverage during times when the Applicant is occupied with other responsibilities as the Store owner.

## DECISION

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 Sections 214, 224, 239, 247, 288-290 and having addressed the criteria for the application for a renewal of a Manager's Certificate approves the application by **Thuy Vu** for the GRANT of a renewal of a Manager's Certificate under section 224 of the Sale and Supply of Alcohol Act 2012 with the following condition:

**The Manager's Certificate renewal for Thuy Vu is for a truncated period of 12 months from the date of this decision.**

DATED at Paraparaumu on 10 August 2025.



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Nigel Wilson  
Chairperson  
Kapiti Coast District Licensing Committee

