

Decision No:

45/ON/2021/027

**IN THE MATTER OF**

the Sale and Supply of  
Alcohol Act 2012

**AND**

**IN THE MATTER OF**

An application by  
**Deliver-e Limited** under  
section 127 of the Act  
for the renewal of an on-  
licence in respect of  
premises situated at 9  
Margaret Road, Raumati,  
and known as Reddin's

**AND**

An application by  
**Barnaby Shiels-Reddin**  
under section 224 of the  
Act for the renewal of  
his manager's certificate

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

Chair: Rob McCann

Members: Trevor Knowles  
Phillip Parkinson

HEARING at PARAPARAUMU on 14 December 2020

**APPEARANCES**

Mr Barnaby Shiels-Reddin  
Ms Kate Shiels-Reddin

*Reporting Agencies*

Sergeant Matt Barraclough (Alcohol Harm Prevention Office - Police)  
Ms Antoinette Bliss (Licensing Inspector)

## RESERVED DECISION OF THE COMMITTEE

### *Introduction*

1. Deliver-e Limited has applied under section 127 of the Sale and Supply of Alcohol Act 2012 for the renewal of an on-licence in respect of premises situated at 9 Margaret Road, Raumati, and known as Reddin's and
2. Barnaby Shiels-Reddin has applied under section 224 of the Sale and Supply of Alcohol Act 2012 for the renewal of his manager's certificate.
3. The application for the renewal of the on-licence and renewal of Mr Shiels-Reddin's manager's certificate have been opposed by the Police and the Inspector on the grounds of suitability due to recent offending.
4. The Police and Inspector support the proposition that Mr Shiels-Reddin be given the opportunity to demonstrate suitability by way of a public hearing.

### **Preliminary procedural matter**

5. The application for the renewal of the on-licence for Reddin's did not include Ms Kate Shiels-Reddin as a company director. Mr Shiels-Reddin contended this was his error and it was accepted by the Committee that Ms Shiels-Reddin was in fact a director.
6. Subsequently the directorship was confirmed through the New Zealand Companies Office.
7. The applicant in this document is referred to in this judgement is Mr Shiels-Reddin.

### **Order of evidence**

8. The Committee agreed to hearing from the Reporting Agencies first as Mr Shiels-Reddin was representing himself.

### ***Reporting Agencies***

#### **Evidence of the Police Inspector**

##### Renewal of Deliver-e Limited Licence and renewal of Mr Shiels-Reddin Manager's Certificate

9. Sergeant Matt Barraclough outlined that as part of the vetting process for a manager's certificate renewal application, he used the Police National Intelligence Application (NIA) to complete a search of the applicant, to assess his suitability.
10. The applicant was within the initial one-year period that is commonly known as a probationary period, during which time the manager can show that their conduct and behaviour is of the required standard.
11. The search also showed that the applicant has a recent conviction for Driving with Excess Breath Alcohol.

##### Excess Breath Alcohol Conviction

12. On Friday the 16th of August 2019, at around 7:31pm, the applicant was stopped by Police driving southbound on State Highway 1 in Porirua following complaints from the public about his manner of driving.
13. A roadside breath screening test showed the applicant had been drinking alcohol and Evidential Breath Test procedures were commenced. The subsequent Evidential Breath Test result was 1165 micrograms of alcohol per litre of breath.
14. The applicant was convicted in the Porirua District Court on the 9th of June 2019 for Breath Alcohol Level Over 400Mcgs/Litre of Breath (Breath 1165). He was sentenced to a fine of \$500.00, disqualified from driving for 28 days, and an Alcohol Interlock Order put in place.
15. Following this conviction, an application was made to the Alcohol Regulatory and Licensing Authority for a suspension with consent for Barnaby Shiels-Reddin's managers certificate number 45/CERT/736/2019 on the grounds that he is not a suitable person to hold the certificate in terms of section 285(3)(b) of the Act

16. On the 27th of November 2019, the Authority issued a suspension for Barnaby Shiels-Reddin's manager's certificate number 45/CERT/736/2019 between 13/01/2020 and 09/02/2020 on the grounds that he is not a suitable person to hold the certificate in terms of section 285(3)(b) of the Act

#### Wilful Damage complaint, 22/09/2019

17. The search also showed an incident that was reported to Police, which occurred on the 22nd of September 2019.
18. On Sunday the 22nd of September 2019, Police received a report from a complainant who alleged that, the owner and operator of Reddins, had damaged his vehicle and assaulted him.
19. This incident was the result of a dispute which had arisen between the two parties following a private function organised by the complainant at Reddins the night before.
20. This incident was witnessed by an independent witness, whose account is believed to be the most accurate and the one which Police will highlight.
21. The witness, Linda Hackworthy, describes witnessing a loud, and angry argument between two males who she later knew to be the complainant, and from Reddins. This occurred on Sunday the 22nd of September 2019, just after 2:00pm.
22. The argument took place on the footpath, and carparks, outside Reddins, after the witness had seen both parties exit from Reddins.
23. The witness describes the complainant entering his vehicle, followed by Mr Reddin then forcefully opening the car door and reaching into the vehicle. The complainant and Mr Reddin then exited the vehicle and both parties began to "tussle". This ended when they both fell to the ground and a female believed to be Ms Shiels-Reddin, intervened.
24. The independent witness' statement helped Police come to the decision not to proceed with any charges against Barnaby Shiels-Reddin.
25. While this matter was considered closed, with no evidence to support the complainant's claims, the independent witness has described an event that could have been dealt with in a better manner.
26. Other than the two incidents outlined, Police were not aware of any further incidents of note involving the applicant, or his business.

#### Cross Examination of Police Inspector

27. The Committee asked whether knowing that there were two directors of the company, (not one as per the written evidence), would this have made any difference to the Police evidence? Sergeant Barraclough noted that it would not have altered the Police's recommendation, as they would assess each director. While Police were willing to accept this was an administrative error by the applicant, they also noted that they had not checked into the background of Ms Kate Shiels-Reddin.
28. Sergeant Barraclough noted the wilful damage complaint was included as it demonstrated an incident that could have been handled better and that the applicant should be able to demonstrate some learnings from.
29. The applicant raised the issue of a third party statement. Police noted that a third party statement where no further action was taken, would not normally be provided as the complaint went no further.
30. Police confirmed that there wasn't enough evidence relating to the wilful damage complaint to show that there had been an assault.
31. Police clarified the purpose of the emails and meetings between Police and the applicant were to discuss concerns regarding the future of his business. Sergeant Barraclough noted he did not want to stop Mr Shiels-Reddin from getting a licence or prevent him from getting his managers licence, but that these matters needed to be considered by the Committee.
32. Police noted to Mr Shiels-Reddin that one option was a truncated renewal period and Sergeant Barraclough reiterated that he still thought that was the best course of action but that it was for the Committee to decide.

## Evidence of the Licensing Inspector

### On Licence Renewal

33. The Inspectors report was read to the Committee and noted that Mr Shiels-Reddin advised that he has 18 years' industry experience, including as an owner/operator of licensed premises in the UK, and was granted a Manager's Certificate in February 2019. He also has worked as a Business Development Manager, a direct marketing specialist and a real estate agent.
34. That Mr Shiels-Reddin was the day-to-day manager of the business and was currently on-site six days per week. Mrs Shiels-Reddin is responsible for the administration of the business.
35. That based on the discussions with Mr Shiels-Reddin, the inspection of the premises, the supplementary documentation accompanying the application, and taking into account the absence of any issues with the manner in which the applicant had sold and supplied alcohol on the premises in the previous licensing period, it was the Inspectors opinion that the applicant is aware of their responsibilities under the Act, and able to operate the premises.
36. However, as outlined in the NZ Police opposition to the application, the main issue with regard to the suitability of the applicant was the nature of the recent offending by the Director of the applicant company.
37. Mr Shiels-Reddin holds a Manager's Certificate, which expired on 26 February 2020 but has remained valid as an application for its renewal was lodged prior to this date. The NZ Police have also opposed this application on the same grounds.
38. In deciding whether to renew the licence application from Deliver-e Limited for the premises known as Reddin's, the Inspector noted the Committee must have regard to the matters following contained in Section 131 and 105 of the Act.

#### **105. Criteria for issue of licences**

*(1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*

*(a) the object of this Act:*

*(b) the suitability of the applicant:*

*(c) any relevant local alcohol policy:*

*(d) the days on which and the hours during which the applicant proposes to sell alcohol:*

*(e) the design and layout of any proposed premises:*

*(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*

*(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*

*(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*

*(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*

*(i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*

*(ii) it is nevertheless desirable not to issue any further licences:*

*(j) whether the applicant has appropriate systems, staff, and training to comply with the law:*

*(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*

*(2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*

*131. Criteria for renewal*

*(1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*

*(a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*

*(b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*

*(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*

*(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*

*(2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.*

39. The Inspector noted that due to the nature of the director's conviction the applicant company's suitability to hold a license was the basis for opposition.
40. The Inspector noted that after considering all of the above, "as it is often said that the first year of a licence is the 'probationary period' for licensees to prove themselves, in the inspector's opinion, the onus lies with the director of the applicant company to discuss, with the District Licensing Committee, the suitability of the applicant in regards to the director's recent offending."

Renewal of Mr Shiels-Reddin Manager's Certificate

41. The report from the Licensing Inspector on the application was finalised on 23 July 2020 and has been distributed to all parties.
42. The Inspector noted in considering an application for the renewal of a licence, 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.
43. Mr Shiels-Reddin's application was received on 12 February 2020 with the required documentation, a conviction having been disclosed on the application.
44. The Inspector considered Mr Shiels-Reddin's suitability to hold a Managers Certificate, as directed by s.227 of the Act in the light of his criminal conviction and the Police opposition.
45. The Inspector emphasised that she had no concern with the manner in which the manager Mr Shiels-Reddin has managed the sale and supply of alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol-related harm.
46. The Inspector concluded that she opposed the application based on information from the police due to an alcohol related criminal conviction. The main issue is the nature of the offending, in particular the part played by alcohol and how this reflects on the applicant's suitability to be a manager.

Cross Examination of Licensing Inspector

47. The Committee asked whether when writing the report, the Inspector knew that there was more than one director. The Inspector confirmed that she understood there was only one director and checked this information with the applicant. The applicant did not correct the error at that time.
48. The Inspector was asked whether she believed the drink driving offence was thought of as a serious offence. The Inspector believed the offence was serious.

Confirmation the Committee was hearing evidence regarding the Manger's Certificate and the Licence at the same time.

49. The Committee confirmed with the agencies that there was no other evidence they wished to raise in relation to the Manager's Certificate Renewal, as the evidence for the licence renewal was materially the same.

Reports from other agencies

50. The reporting Officer for the Medical Officer of Health inquired into the application, and does not oppose the renewal of the licence.
51. The District Licensing Committee Secretariat did not receive any other objections to the application in accordance with Section 128 of the Sale and Supply of Alcohol Act 2012.

The Applicant

52. Mr Shiels-Reddin read from a pre-prepared statement and outlined that he was remorseful and ashamed and had broken the law.
53. Mr Shiels-Reddin outlined his personal history growing up in the hospitality industry, serving a 3-year apprenticeship in the licensed trade in Dublin in the early 1980's and close to 20 years running and owning bars in London and that he had now damaged his reputation beyond repair.
54. He noted he received his first "on-licence" at the age of 19 and had never had any application opposed previously.
55. Mr Shiels-Reddin also believes he has already been punished, and proceeded to explain why he felt that this was the case.
56. Mr Shiels-Reddin described how when he turned up at Court, his case had not been processed correctly. He insisted on waiting for the case to be heard. This took seven hours.
57. He noted he was fined and ordered to have an interlock fitted. The combined cost of the fine and interlock was \$4,200.
58. Mr Shiels-Reddin noted he did not mention to his legal team that he was on blood thinners due to an underlying heart condition, because "I genuinely believed I needed to be punished for what I had done and to attempt to lessen my crime would be more shameful".
59. Mr Shiels-Reddin lost his driving licence for a total of 56 days, and says he often slept in his office to keep the business going.
60. On November 11th Mr Shiels-Reddin was contacted by Brett Callander, the District Prevention Co-ordinator for Alcohol Harm Reduction, to inform me that he was "sorry", but the 1-month duty manager's licence suspension which should have been applied for in September, was now going to probably happen in mid-summer.
61. Mr Shiels-Reddin noted this loss of the duty licence was now to be in high season and not late winter.
62. Mr Shiels-Reddin noted his voluntary managers licence suspension cost his business \$4,000 in extra wages to cover the extra duty managers, but accepted this was the result of his own actions - even though he felt this was an additional punishment.
63. Mr Shiels-Reddin believed he was misled by Police that there would be no potential impact on future licences and licence applications when he became aware Police were opposing both licences.
64. Mr Shiels-Reddin contended the police statement 'incident that Police were required to attend' was unintentionally misleading and that the Police had never attended an incident at his premises at 9 Margaret Road.
65. He explained that what happened was an allegation was made, it was then investigated and came to nothing.
66. That he had to hire a barrister.
67. Mr Shiels-Reddin believes the premises complied with every aspect of how a licensed premises should run, but because of the assault allegation, he was now having to defend the licence renewal and managers certificate renewal.
68. Mr Shiels-Reddin recounted his actions;

69. That the other party had not paid his bill, had been rude to staff and that a 'tussle' resulted when the other party attempted to leave in their car.
70. Mr Shiels-Reddin acknowledged his behaviour could have been better and had put in place measures to deal with these situations, which included that no private group bookings would be taken without written assurances and financial guarantees being in place.
71. Mr Shiels-Reddin also noted if required he would call the Police to deal with belligerent and threatening customers and not escalate a situation again.
72. Mr Shiels-Reddin also drew the Committee's attention to the fundraising he undertook through Reddins on behalf of the local Raumati community. This amounted to \$15,000 in the previous year and \$6,000 in 2020, the Raumati fair and the sponsorship of local sports clubs.
73. Mr Shiels-Reddin noted that the Police had never been called to Reddins for an alcohol related event.
74. Mr Shiels-Reddin recounted that in his conversations with Sergeant Barraclough that the likelihood was a shorter licence period.
75. Mr Shiels-Reddin reiterated the cost to his business and his employees should he be unsuccessful in renewing the licences.

#### Evidence as a result of cross examination

76. The Committee asked why the blood thinning incident was being raised now? Mr Shiels-Reddin noted he was only mentioning it in passing, not to lessen the seriousness of what had occurred, but to ensure all the facts are on the table.
77. The Committee asked what changes Mr Shiels-Reddin had put in place? He noted that he hardly drinks at all, that he's a better driver, that it's always on his mind because of the shame of what occurred. He worries more about people drinking and driving and ensuring that people are safe.
78. The Committee asked about Mr Shiels-Reddin's ability to deal with high pressure situations. He noted he had dealt with many such situations in the UK, and that he would have no hesitation and would now call the police.
79. The Committee questioned Mr Shiels-Reddin about the assault. He talked of the injuries he sustained, the manner in which the third party talked and behaved (belligerent and rude) with the staff. Mr Shiels-Reddin believed he was 'threatening belligerence' and Mr Shiels-Reddin believed he had to be dealt with to protect his staff. He indicated the staff were not threatened, but were made to feel very uncomfortable.
80. Mr Shiels-Reddin explained that on that night he was expecting 33 diners but only 13 were present which meant there was a financial impact for him.
81. He noted that following his first wife's death he had to rebuild his life and if he could avoid trouble he would, and did not make a complaint to the Police.
82. The Committee asked how he was protecting the staff when the third party was attempting to drive off and Mr Shiels-Reddin was in effect trying to prevent that from occurring.
83. Mr Shiels-Reddin admitted that he wanted to make sure that the third party knew that his behaviour wasn't right.
84. The Committee asked whether Mr Shiels-Reddin's behaviour was actually escalating the incident and whether this reflected his modis operandi as a manager.
85. Mr Shiels-Reddin said this was not normal behaviour for him, and that this would not occur again. He also noted the third party is banned from numerous establishments.
86. The Committee asked Mr Shiels-Reddin about the events that led to the drink driving, where the offending occurred, the amount of drinking that occurred.
87. Mr Shiels-Reddin confirmed it was over one litre of wine and that this was in the afternoon at 4:00pm or 4:30pm.
88. It was established via Mr Shiels-Reddin that the drinking that led to the drink driving offence took place at Reddins, that he was on a break and there would have been another duty manager on site.
89. Mr Shiels-Reddin confirmed he was only consuming alcohol when he was on a break.

90. Mr Shiels-Reddin outlined that he began work early on a Friday and works through to when he is not required anymore. That involves taking a break in the afternoon in case he is required to come back on duty.
91. In this particular instance he was on a break, would not have been required and made the decision to go home.
92. The Committee asked whether Mr Shiels-Reddin withheld the information that he had been drinking at work from the authorities involved in the suspension with consent process.
93. Mr Shiels-Reddin said he had not withheld this information; he had simply not been asked the question.
94. Police confirmed they would have been unaware unless that information had been volunteered.
95. The Committee asked whether it was acceptable for the staff to have a drink while they were on a break. Mr Shiels-Reddin noted that it was not acceptable, that it doesn't happen anymore, that is was a one off incident.
96. Mr Shiels-Reddin noted that there was no staff discussion about the incident afterwards.
97. Mr Shiels-Reddin believed that the duty manager was Jayden Dawson.
98. Mr Shiels-Reddin noted he only learned to drive a car when he was 48 and that his formative years were in the licensed trade and that one did not mix with the other. That this was a one off incident and would never be repeated again.
99. The Committee enquired as to why Mr Shiels-Reddin has installed an interlock on his own car and whether that indicated a drinking problem. Mr Shiels-Reddin stated clearly that it was precaution and a way of punishing / reminding himself every day.
100. The Committee enquired as to whether the quizzes also made money for Reddins. It was agreed that the profits went to the charities and that Reddins also made money of these events.
101. The Committee further enquired about the drinking that led to the licence suspension. Mr Shiels-Reddin explained that he had finished work and was off duty and had dinner and helped himself to drinks.
102. Mr Shiels-Reddin recalled he sat at a table that was not visible to the bar manager. Therefore the staff member was unaware.
103. This raised further questions as to the suitability of the premises layout which has been documented under the heading *design and layout of premises* , the recollection of Mr Shiels-Reddin, and or the application of the law by the bar manager in allowing intoxication to occur on the premises.
104. The difficulty in ascertaining the truth of the matter was considered with the Committee considering whether the hearing should be adjourned for a site visit and potentially calling the bar manager as a witness.
105. The Committee felt on the balance of probabilities Mr Shiels-Reddin's account was believable and that when he was stopped on the SH1 by the Police, the time indicated the likelihood that another bar manager had been on duty and that there was no evidence that Mr Shiels-Reddin was drinking alcohol while on duty.
106. It was noted that the event in question had taken place on 16<sup>th</sup> August 2019, some 16 months prior.
107. The Committee was satisfied that the differences between the account of the assault by the witness and Mr Shiels-Reddin were not material to this decision.
108. The Committee asked how his wife came to be left off the directorship. Mr Shiels-Reddin contends this was an oversight, and in questioning noted the neat handwriting on the application was his wife's and he would have been dictating to her.

#### Cross Examination by Sergeant Barraclough

109. Established that Mr Shiels-Reddin drank around a litre of alcohol at work, and would have drunk this not long before getting in his car.
110. Mr Shiels-Reddin noted he was unaware that his drinking had impacted on his ability to drive, but he had thought to himself that maybe he should not be doing this. He noted he had a lot on his mind and wasn't thinking straight.
111. Established with Mr Shiels-Reddin that:



- (a) the alleged assault had been clarified
- (b) that processes were now in place to deal with similar incidents
- (c) and that the applicant now understood he had had escalated the incident and understands the implications of that.

#### Cross Examination by Licensing Inspector

- 112. The Inspector clarified that Mr Shiels-Reddin has suggested that there will be an impact on the business. Mr Shiels-Reddin noted he has one other duty manager and one in training that hopefully will be approved in the next few weeks.
- 113. The Inspector noted that potential manager required 4-6 months and the Committee noted the paperwork would not be able to come before the Chair before mid-January.

#### Evidence from Mrs Kate Louise Shiels-Reddin

- 114. Ms Shiels-Reddin has been involved since they bought the business undertaking all the administration.
- 115. The Committee asked about the directorship. Ms Shiels-Reddin was informed by her lawyer that she should be a director and went onto the companies site to amend the information and for some reason the paperwork did not load and it was pending for two years.
- 116. The Committee asked about the alleged assault incident. Ms Shiels-Reddin indicated that money was supposed to change hands when the third party returned, but that this had not occurred.
- 117. Ms Shiels-Reddin recounted the incident, which matched the witness statement except that she believed the third party had opened the car door rather than her husband.
- 118. Ms Shiels-Reddin explained that she in her role as a director did not approve the way Mr Shiels-Reddin had behaved, and noted it was a spur of the moment incident and that he does not normally behave that way.
- 119. Ms Shiels-Reddin noted she did not talk to the staff about the drinking incident because she did not feel it necessary.
- 120. Ms Shiels-Reddin noted that Mr Shiels-Reddin had finished work for the day and had a few too many drinks. It was not like he was sat at the premises openly getting drunk, he would have had something to eat when he finished his shift and had a few too many wines with his meal.
- 121. The Committee asked where the drinking took place given the statement that it was not in view of staff. Ms Shiels-Reddin noted she was not at the premises, she was at home with her son. She noted Mr Shiels-Reddin may have had a drink off site, she didn't know.
- 122. Ms Shiels-Reddin has not considered obtaining her managers certificate as she has another job.

#### Licensing Inspector

- 123. The Inspector noted that the applicant had submitted an application for a new Trading in Public Places Licence. The planned area has changed and the outside seating has been moved from outside the window, to outside the garden area to allow for patrons to smoke outside the building. A new plan was being submitted.
- 124. The Inspector noted the normal process for the document would for it to have been attached to the Inspector's report and that there was no opposition for this change.

#### Closing Submissions

##### Police

- 125. Both applications have been opposed by Police due to the suitability of the applicant, this is first and foremost due to the drink driving conviction, a high reading, and as established today, the applicant was drinking at his place of work after finishing for the day.
- 126. It is expected that people working in the industry understand the effects of alcohol and the risks involved referring to both the speed of consumption and operating a motor vehicle after consuming alcohol.
- 127. This matter was referred to the Alcohol Regulatory Licensing Authority where the applicant was issued with a 28-day suspension.

128. In terms of the assault and wilful damage incident, this raised questions as to the ability and judgement of the applicant to deal with heated or stressful situations. This incident would appear to have led to some changes to his business and it would appear this incident is a one off.
129. In relation to the applicant's manager's certificate, the Committee will be aware of the Osborne Liquor Licensing Authority 1995 decision, and the guidelines explained within that decision in relation to a stand-down period following a conviction.
130. This conviction occurred on 6/9/19, following date of offence 16/08/19.
131. Police would be satisfied that the matter has been dealt with through suspension however this also needs to be balanced against the fact that the consumption of alcohol took place on the premises where the applicant is working.
132. In terms of the on-licence, Police are satisfied that both incidents appear to be one-offs and there have been no repeats and Police would be satisfied with a truncated renewal or further probationary period.
133. Police believe if the Alcohol Regulatory Licensing Authority had been aware the drinking took place on-site, there would have been a more lengthy suspension of the managers certificate.

#### Licensing Inspector

134. The application for the On Licence renewal and the Managers Certificate for Mr Shiels-Reddin, are both opposed based on information from the Police due to an alcohol related criminal conviction.
135. The main issue is the nature of the offending, in particular the part played by alcohol and how this reflects on the applicant's suitability to be a manager.
136. The character and reputation of a manager and licensee is of crucial importance both on and off duty and as such, duty managers and licensees should lead by example in our community.
137. The Licensing Inspector proposed the on licence is renewed for a one-year period and for the managers certificate a stand down period of two years from the conviction.
138. The Licensing Inspector clarified the reason for recommending a two-year stand down period was that the offending took place on the premises and that she had not been aware of this material fact.

#### The applicant

139. Thanked everyone for the opportunity for the hearing and noted he believed the facts have been dealt with openly and fairly. Mr Shiels-Reddin reiterated he was mortified by his actions in getting behind the wheel of a motor car whilst essentially drunk. He noted that is something that will stay with him forever.
140. Mr Shiels-Reddin asked the Committee to consider not just the ramifications for his business but also for his employees. That while he had dusted himself off after the loss of his wife, the loss of his business would be heart-breaking but he will get up, dust himself off and do it all again.
141. The issue he said was the six staff that rely on him noting that without the licence the business would have issues generating enough revenue.
142. Mr Shiels-Reddin noted the offence was 16 months ago and lessons have been learnt.
143. Mr Shiels-Reddin clarified that wherever he was sitting on the day in question, it was not within the sight of the manager, but he could not remember where exactly.

#### **The Law**

##### **On Licence Renewal**

##### ***131. Criteria for renewal***

*(1) In deciding whether to renew a licence, the licensing authority or the licensing Committee concerned must have regard to the following matters:*

*a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*

- b) *whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*
  - c) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*
  - d) *the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*
- (2) *The authority or Committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.*

**Section 105 Criteria for issue of Licences**

- (1) *In deciding whether to issue a licence, the licensing authority or the licensing Committee concerned must have regard to the following matters:*
- a) *the object of this Act:*
  - b) *the suitability of the applicant:*
  - c) *any relevant local alcohol policy:*
  - d) *the days on which and the hours during which the applicant proposes to sell alcohol:*
  - e) *the design and layout of any proposed premises:*
  - f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
  - g) *whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
  - j) *whether the applicant has appropriate systems, staff, and training to comply with the law:*
  - k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*

144. Turning our attention to those criteria of Section 131 that are not in dispute. No concerns have been raised in relation to whether the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:
145. There were no issues raised by the agencies regarding the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.
146. However, during questioning it became apparent the applicant had been drinking to excess onsite on one occasion, which raised a number of questions including whether the layout of Reddins was fit for purpose or whether the duty manager had been negligent in upholding the Act.
147. The Committee decided that we would accept the account of Mr Shiels-Reddin that his actions were not in view of the duty manager. We made this decision given the time elapsed since the incident, the need to adjourn if we wished to hear from the bar manager on duty, and weighing up whether a duty manager would in this instance contradict an employer, and further that if there was an alternative explanation, that it would not materially alter any decision by the Committee.
148. Both the Police and the Licensing Inspector had raised matters in their reports under Section 131 (1) (c) of the Act and recommended that Mr Shiels-Reddin be given the opportunity to demonstrate his suitability both as the holder of the On-Licence for Reddin's and as a duty manager.

149. The Committee does not find any substantive issues related to Ms Shiels-Reddin who became a Director following the two incidents raised by the reporting agencies. Ms Shiels-Reddin has been added as a party to the application for a renewal of the On-Licence for Reddin's with the agreement of the Committee.
150. The issues raised by the Police and the Inspector relate to Section 105 (b) and have asked the applicant company prove its suitability by way of a hearing.
151. The suitability of the applicant company is called into question by the fact that its active director's and the person who primarily controls its business has been involved in three incidents reflecting on his ability to do so
- (a) the conviction for an alcohol related drink driving offence
  - (b) evidence that the drinking occurred at Reddin's the premise (for which the applicant has the licence and is a manager)
  - (c) aggressive or uncontrolled behaviour during an incident that led to a criminal complaint .

### **Mangers Certificate Renewal**

152. The matters which a licensing 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;*
  - (d) *any matters dealt with in any report made under section 225.*
153. As noted in the commentary to the Act at section 105.04, there is no statutory definition of "suitability". The former Authority referred to the Concise Oxford Dictionary definition of "well fitted for the purpose, appropriate" and stated in *Re Jays LLA 994/94*, 15 July 1994, that:
- Differing aspects of suitability will be given different weight by decision makers (sic) under the Act. Among them are experience in the hospitality industry, management ability and personal integrity.*
154. Mr Shiels-Reddin has had a long career in the hospitality industry, and until these incidents, it has been without issue.
155. Under the previous legislation, the High Court has stated in *Sheard [1996] 1 NZLR 751* at 758:
- 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.*
156. The former Authority noted in *Deejay Enterprises Limited (LLA 531/97 – 532/97)*:
- 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 evidence provided.*
157. The Committee found that the wilful damage complaint incident was an isolated instance of poor judgement based on the information provided by the applicant and the lack of any further known incidents.
158. The Committee accepted that this incident would be used by Mr Shiels-Reddin as a learning experience to better manage patrons, Reddins and his own behaviour.
159. On balance the Committee did not find this incident was serious enough to become a relevant consideration as to whether Mr Shiels-Reddin meets the suitability criteria.
160. The evidence accepted by the Committee demonstrated Mr Shiels-Reddin's community mindedness, his personal responsibility, and a willingness to accept that the decision to drink

- alcohol to excess on his own premise was his decision for which he took full responsibility and accepted the consequences.
161. In the decision of the Authority *Sukhdev Singh NZARLA 405/2014*, the Authority refused an application for the renewal of a manager's certificate on the grounds that he had not disclosed pertinent facts which the Authority considered would have resulted in Mr Singh's application for a managers certificate being refused by the Auckland District Licensing Agency. The Authority found the applicant was dishonest and declined to renew Mr Singh's Managers certificate. The Committee accepts Mr Shiels-Reddin did not try to conceal the fact that he had consumed alcohol on his premise, and readily admitted to this when questioned.
162. The issue then is not an issue of dishonesty, but whether the drinking onsite is evidence of unsuitability, or evidence of bad judgement while off duty.
163. In *Markovski [2016] NZARLA PH 118* at para [12] the Authority stated:  
*"When considering an applicant's suitability to be a manager, it is important to note that the section relates to 'suitability to being a manager'. The criterion is not about an applicant's character in a general sense."*
164. This was emphasised in *Sheard [1996] 1NZLR 751* where Holland J stated at [758]:  
*"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 go with the holding of a licence."*
165. The Committee finds on the balance of probabilities, the drinking was more likely than not, to be an isolated instance of poor judgement, and not an indication that applicant is not likely to carry out properly the responsibilities that are to go with the holding of a license. There is no evidence to suggest the applicant has behaved like this before and the Committee has decided to accept that the applicant accepts his mistake and has learned from the incident. Therefore on the evidence submitted the Committee finds that the applicant has proved his suitability.
166. The next issue is whether the stand down period for the Managers Certificate was adequate given the new evidence that came to light during the hearing.
167. As noted in the commentary to the Act at section 227.03, in December 2018 the Authority reviewed its approach to suitability, convictions and stand-down periods, which dates from Osborne LLA PH2388/95, 13 October 1995.
168. In *Wylie v Davis [2018] NZARLA 322*, Judge Kelly stated:  
*[25] While we agree with the DLC that the Osborne decision is a guideline, rather than a rule, it is one that in our view should not be departed from lightly and only where justified by the circumstances. However, the Authority has in the past reduced the stand down period required to take into account exceptional circumstances. It would be an extremely rare case where convictions such as these have been incurred and no stand down period at all was required.*  
*[61] The Authority remains of the view that Osborne should not be departed from lightly and a DLC ought to justify itself when doing so.*  
*[65] The weight to be applied to each of the criteria in s 222 is a matter for the DLC. While the DLC must actively and thoughtfully consider the respondent's suitability and convictions (per s 222(a) and (b)), there is nothing in this appeal that shows that the DLC did not correctly understand the matters to which it was required to consider. It has justified its departure from Osborne.*
169. Mr Shiels-Reddin has already been disqualified from driving for 28 days, and received an Alcohol Interlock Order.
170. Following this conviction, an application was made to the Alcohol Regulatory and Licensing Authority for a suspension with consent for his manager's certificate between 13/01/2020 and 09/02/2020.
171. The question for the Committee then becomes whether the new information that the drinking took place in Reddins, should increase the stand down period and or whether a further punishment amounts to double jeopardy.

172. The Authority in its decision of *Hamblett v Party world Entertainment Limited [2016] NZARLA 174*, stated that since an infringement notice had been issued for an offence (minors in a restricted or supervised area) that to suspend for the same offence would be double jeopardy. It also went on to suspend the licence for other breaches including two of s.249 (intoxication). Due to these offences it was alleged that the licensee was not a suitable person to hold a licence. The result was suspensions for the offences which were a cumulative seven days in total.

173. In *Osborne LLA 2388/95 (13/10/1995)* 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.*

174. The Committee found that the drinking on the premises to an intoxicated state occurred seemingly without the duty manager knowing, without being served through a process whereby the Act was being circumvented was not considered by the Alcohol Regulatory and Licensing Authority.

#### **Renewal Criteria as a whole**

175. The Committee is required to consider all the criteria set out in section 227. This is a balancing act.

176. The Committee has taken into account the disqualification from driving, the Alcohol Interlock Order and the suspension with consent for his manager's certificate number between 13/01/2020 and 09/02/2020.

177. The Committee has also considered the elements that were not known to Police such as the drinking to excess in the licensed premises in which Mr Shiels-Reddin both works and is a part owner. The position of responsibility that Mr Shiels-Reddin has as an owner, and also as one of the employers of the staff. These elements all point to an abuse of his position, and or the setting of a very poor example for staff responsible to him, and responsible for the enforcement of the Act.

178. The Committee considered the effect this behaviour would have on staff, and on their ability to uphold the Act when their immediate superior was not following the law.

179. The Committee noted in cross-examination that Mr Shiels-Reddin had not addressed the onsite drinking to excess with staff, or referred to the incident for the purposes of training.

180. The Committee felt that the combination of these factors amounted to behaviour that further called into question the applicant's suitability to be a manager.

181. The Committee weighed the recommendation by Police that they did not oppose Mr Shiels-Reddin's Managers Certificate being renewed for a probationary period of twelve months and or a further probationary period.

182. The Committee also noted the Police were satisfied that both incidents were not related and were unlikely to be repeated.

183. The Committee weighed the recommendation from the Inspector and noted the Inspector now proposed the on licence is renewed for a one-year period and the applicant have a stand down period of two years from the conviction.
184. The Committee weighed evidence of good behaviour over a long period of time.
185. On balancing all the criteria and evidence, the Committee felt that an increased stand down period of a year would have been appropriate in light of the serious nature of the drink driving offence where the drinking occurred on the premises – evidence that was unknown and not factored into the decision of the Authority.
186. The Committee note they do not have the jurisdiction to suspend a manager’s certificate, but do have the authority to decline a renewal. In this case the manager’s certificate would have been declined and then potentially reheard in a year’s time.
187. The Committee also agreed that following the stand down period, the applicant’s manager’s certificate, based on the evidence put before the Committee would likely be renewed for a period of twelve months as a further probationary period during which the applicant has the opportunity to prove that the incidents were indeed a one-off.
188. However, given the effluxion of time, the stand down period has effectively passed.
189. Therefore, the Committee agreed that the licence should be renewed, but for a period of twelve months as a probationary period - given the actions that occurred onsite that were incompatible with the Act.

#### Decision

190. 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, and the criteria for renewal of Licences under Section 131 makes the following decisions:
- a. The Committee renews Mr Shiels-Reddin’s Manager’s Certificate for a period of twelve months, from the date of decision.
  - b. The Committee renews Deliver-e Limited’s ON Licence for a period of twelve months, form the date of decision, with its existing conditions.

Dated at Paraparaumu on 6th day of June 2021



Councillor Rob McCann  
Chair  
Kāpiti Coast District Licensing Committee



