

Decision No: 45/CERT/770/2021

**IN THE MATTER OF** the Sale and Supply of  
Alcohol Act 2012

**AND**

**IN THE MATTER OF** An application by Jamie-  
Lee A Burns under  
Section 224 of the Sale  
and Supply of Alcohol  
Act 2012 (the Act) for  
the renewal of her  
Manager's Certificate

BEFORE THE KAPITI COEAST DISTRICT LICENCING COMMITTEE

Chair: Rob McCann  
Members: Trevor Knowles  
Fraser McInnes

HEARING at PARAPARAUMU on 01 December 2020

**APPEARANCES**

Jamie-Lee Burns – applicant  
Graham Dalziel – witness

Cody Tahiwī – Support person

*Reporting Agencies*

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

## RESERVED DECISION OF THE COMMITTEE

### *Introduction*

1. This is a hearing for an application of the renewal of a manager's certificate by Jamie-Lee A Burns (the applicant) who has held a manager's certificate for a period of one year. The application has been referred to the committee to assess the applicant's suitability which has been called into question by a criminal conviction along with historic offending. Both the Police and the Inspector's written submissions opposed the renewal of the manager's certificate.
2. An application to the Alcohol Regulatory and Licensing Authority (the Authority) by the Police to cancel the applicant's manager's certificate was heard on 23 September 2020 where the Authority decided it was not satisfied that the grounds for the application had been established and declined to cancel the manager's certificate.
3. The Authority noted the convictions would be a relevant consideration under s 227(b) of the Act when the District Licensing Committee (the Committee) considered a renewal application.
4. The current manager's certificate has expired but remains valid until the renewal process is completed as an application for its renewal was filed prior to the expiry date.

### **The Application**

5. A copy of the application was forwarded to the reporting agencies, as is required by section 220. The Licensing Inspector and NZ Police opposed the renewal on the grounds of suitability due to the convictions.
6. All those appearing were sworn in.

### **Applicant's Evidence**

7. Jamie-Lee A Burns admitted that she presented a firearm following a long running dispute with a neighbour that included incidents such as having her dog stabbed in the head and having abuse yelled at her on a daily basis.
8. The applicant noted the firearm was a slug gun, that it belonged to her father in law, and was used for the purpose of eliminating rats.
9. The applicant denied the gun was loaded.
10. The applicant noted the neighbours were gang affiliated and that they threatened harm.
11. The applicant explained she retaliated to the threat with the slug gun.
12. The applicant has moved away from the property approximately two months after she was convicted and agreed that the application for renewal information was outdated.
13. The applicant has undertaken eight sessions of anger management.
14. The applicant noted she has learnt how to deal with these situations, how to walk away, and how not to put herself in difficult positions.
15. The applicant currently lives in Stokes Valley, commutes to work where she is a duty manager at the Waikanae Chartered Club three days a week.
16. The Clean Slate Act meant the applicant did not have to tick yes on historic convictions in 2019 as those convictions were over 7 years old.
17. There are a number of other duty managers that work at the premises.
18. The applicant noted that she can now handle stressful situations.
19. The Club provides resilience training on how to deal with stressful situations, and the applicant described the training and noted the procedures for dealing with patrons that are intoxicated.
20. The applicant also noted all staff have been made aware of the firearms incident, and it has been used as a learning tool.

### **Evidence of the Police**

21. Police undertook a search using the Police Database which highlighted a conviction.
22. Sergeant Matt Barraclough noted he had no reason to doubt the applicant's statement about the neighbours associated with the incident that led to a conviction for Presenting a Firearm/Restricted Weapon at Person.

23. Police presented the summary of facts which noted the parties had been neighbours for approximately ten years, and the relationships had deteriorated resulting in regular Police involvement, attending the address on 26 separate occasions.
24. The Sergeant outlined the incident, the material facts of which are that on the 31/08/2019 an argument about the victim's dog which became heated. The defendant has cocked and loaded the slug gun and pointed it directly towards the victims who both feared for their safety. The victims retreated inside their house and called Police.
25. Police attended the incident and the slug gun was located hidden underneath the house.
26. The applicant was later charged, and the summary of facts prepared for the Porirua District Court was read which included that the defendant had previously appeared before the court.
27. The defendant stated the slug gun was for rats and had not been loaded.
28. The defendant was sentenced to six months supervision and a \$2000 fine.
29. Both the incident and the sentencing occurred during the applicant's first year holding a manager's certificate.
30. It was noted that the applicant also has five historic convictions, which are dated 2009-2010. These are for Wilful Damage, Disorderly Behaviour, Drove While Disqualified, Person Under 20 Exceeded Breath Alcohol Limit (Breath 366), and Person on a road failed to give name and address on demand.
31. These historic convictions were not noted in the application for renewal of a manager's certificate due to *The Clean Slate Act* which meant the applicant did not have to tick yes - as the historic convictions were over 7 years old.

#### **Cross examination of Police**

32. Sergeant Barraclough noted that the Authority's decision not to uphold a cancellation or suspension of the applicants' manager's certificate was not reflected in the documents provided to the Committee as the documentation for this hearing was written prior to the Authority's decision.
33. Sergeant Barraclough noted that the Authority indicated that it will be incumbent on the Committee to address the convictions under 227(b) of the Act.
34. Sergeant Barraclough could see the Authority's reasoning that the conviction did not involve alcohol, and was not related to licensed premises, but that it was still pertinent to have the hearing before the committee.
35. In terms of the outcome, Sergeant Barraclough suggested Police would be open to a different outcome other than a refusal to renew the manager's certificate.
36. It was noted Police have documented that the incident was considered *serious violence*. Sergeant Barraclough noted that a slug gun was considered a firearm, but that the sentence did seem to be at the lighter end of the scale, and this might indicate the Judge felt the offending was at the lighter end of the scale. Mitigating factors such as the provocation may have been considered.
37. Sergeant Barraclough noted when questioned about the previous convictions from 2010, that in his opinion, he considered them historic, and that there was a ten year period where no offending occurred.
38. There were still concerns that the applicant's response to the provocation in raising a firearm was rather extreme, despite this not being linked to her work as a duty manager.
39. Police also noted it was pleasing to see the applicant had removed herself from the situation, and had attended anger management.
40. Sergeant Barraclough did not think the applicant would make the same mistake again and noted she has no history of any mismanagement of licensed premises.
41. Sergeant Barraclough did not see any issues of double jeopardy as raised by the applicant.
42. Sergeant Barraclough noted that having heard the applicant talk about the changes that she has made, he noted he would be happy to consider another outcome [as opposed to not renewing the manager's certificate with a suitable stand down period].

#### **Evidence of the Licensing Inspector**

43. Antoinette Bliss read out the submission of the Licensing Inspector, the key issues of this are:

44. The application for a renewal of a manager's certificate required the applicant to advise of any criminal convictions.
45. The applicant noted a 2010 Drink Driving offence, Family Violence offence and Wilful Damage offences and in 2020 a Firearms Charge.
46. The Inspector noted that the criteria for renewal of a manager's certificate in s227 of the Act says;

In considering an application for the renewal of a manager's certificate, the licensing committee 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.
47. The Inspector referenced DeeJay Enterprises Limited LLA 531 – 532/97, N R DAVIES NZLLA Decision 1240/98, and G L Osborne NZLLA 2388/95 to draw the conclusion that the applicant was not suitable to hold a manager's certificate at this point in time, in light of the convictions.
  48. The Inspector recommended that the manager's certificate should not be renewed at present, to allow for a suitable stand down period before reapplying.

#### **Cross examination of Inspector**

49. It was noted that the Inspector had not interviewed the applicant in the preparation of the submission to the Committee, as this was prepared previously.
50. The Inspector noted she agreed with the position of Police [as stated in the cross examination] that an alternative outcome to that proposed in the submission might be advisable.
51. The Inspector noted the inspection of the premises since the conviction raised no concerns, and in fact the applicant was well versed in alcohol harm prevention and was good with customers.
52. The Inspector noted the applicant answered questions thoroughly and comprehensively during the inspection. She gave good examples around harm reduction.
53. The Inspector noted that putting aside the conviction, there was nothing from the inspection that would have signalled the applicant was unsuitable.

#### **Evidence of the Graham Dalziel, Manager of the Waikanae Chartered Club.**

54. Noted that Jamie Lee, the applicant, works at the Club and her mother is the bar manager. She has seven years' experience.
55. Noted that it is a club, so people in the venue are members, so can't just misbehave. They do not run events for non – club members, so do not apply for special licences.
56. Guests can be invited and have to be signed in and would make up around 1% to 2% of patronage.
57. Noted that a club does not have to have a duty manager on the premises, as they are not required, although conditions can be imposed to have a duty manager.
58. The Club puts all relevant staff through their manager's certificate to give them experience.
59. Graham did not agree with the applicant's behaviour, but noted that she will not be bullied.
60. Graham noted the applicant is well liked and a good worker.
61. Graham was not able to recall any incidents of concern regarding the applicant.
62. Noted that if the applicants' manager's certificate was not renewed, it would not have any impact on her job.

#### **Closing Submissions**

##### **Police**

63. Sergeant Barraclough noted the Police submission is based upon a conviction for serious violence and that is still the case, combined with a lack of good judgement and decision making.

64. Sergeant Barraclough noted he was willing to amend the Police position that a suitable stand down period occur, and look at other options. He noted;
- a. The date of the offence which was June 2019
  - b. There has been no further incidents of concern
  - c. The applicant has been through court
  - d. Has completed anger management courses
  - e. Has removed herself from the situation that was linked to the offending
65. Sergeant Barraclough concluded a further probationary period might be appropriate along with a warning that any further incidents would be viewed in a more serious light during the renewal process.

#### Licensing Inspector

66. The Licensing Inspector noted that the character and reputation of duty managers is important both on and off duty, and that duty managers should lead by example in our community.
67. The Inspector noted a further probationary period would send the right message to managers.

#### The Applicant

68. The Applicant noted she had learnt her lesson and does not want to be back [before the Committee] again and would not be making this type of mistake again.
69. The job means a great deal to the applicant and is her 'bread and butter' and she has learnt a great deal working at the club.

#### Committee's Decision

70. The matters which a Committee must consider in regard to renewing 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.
71. While all of the criteria are relevant, in terms of this hearing it is (a) and (b) that we are particularly concerned with which were brought to the committee's attention under s.225 by Police and the Licensing Inspector.

#### Suitability

72. Under the previous legislation, the High Court has stated in *Re 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.*

73. The Alcohol Regulatory and Licensing Authority has noted in *Deejay Enterprises Limited* (LLA Decisions 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 the evidence provided.*

And

*The guiding hand or hands-on operator of any company or the potential holder of a general manager's certificate now receive greater scrutiny from both the Police and other reporting agencies. The character and reputation are closely examined. The law and human desire of the patrons frequently tug in different directions. The Police cannot be everywhere. Little but a licensee's or manager's character and suitability may stand between upholding the law and turning a blind eye. Self imposed standards in accordance with the law must be set by licensees and holders of general manager's certificates who control and manage licensed premises.*

74. The Committee heard that the applicant is a competent worker, in a very supportive environment with well trained staff and supportive management.
75. The Committee also noted the stresses of public bars were potentially not present due to the operating environment of the Waikanae Chartered Club.
76. The Committee has accepted that the applicant was;
- (a) sorry for their behaviour
  - (b) took responsibility for the behaviour
  - (c) has attended anger management courses and is clear about how to now respond in stressful situations.
  - (d) has removed herself from the stressful situation (new living address)
77. The Committee also heard that the applicant has been interviewed following the conviction and reports that have been relied upon by the Inspector and that;
- (a) the applicant had a good understanding of the Act and the prevention of harm
  - (b) the working environment had good support and systems in place.
78. The Committee also heard from both reporting agencies that, in their opinion, the applicant was capable and more likely than not to be suitable based on the above evidence to carry out the requirements of a duty manager.
79. The Committee notes the advice from the reporting agencies was amended during oral evidence and they now are not adverse to a result that is not a stand down period.

### Convictions

80. The Authority, when deciding not to suspend the applicant's manager's certificate noted the lack of a connection to the offending and the Act.
- In light of the absence of a nexus between the offending and the responsible sale, supply and consumption of alcohol, or of evidence going to harm done by the excessive or inappropriate consumption of alcohol, the Authority is not satisfied that the grounds of the application have been established.*
81. The Authority also noted;
- That said, convictions recorded against the applicant for the renewal of a manager's certificate are a relevant consideration under s 227(b) of the Act independently of suitability. It will be incumbent on the District Licensing Committee, given Ms Burns seeks to renew her certificate, to have regard to Ms Burns' convictions which now span ten years. What weight the District Licensing Committee puts on these, particularly the older convictions, is not a matter on which the Authority can comment other than to note that Ms Burns' latest conviction occurred during the initial one-year 'probationary' period of her certificate, and that further offending is unlikely to stand Ms Burns in good stead.*
82. In Re Osborne LLA 2388/95 (13/10/1995) the Alcohol Regulatory Licensing Authority said in respect of a manager's certificate, there should be an appropriate stand-down period in respect of serious convictions.
83. 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 Re Osborne LLA PH2388/95, 13 October 1995.
84. In Wylie v Davis [2018] NZARLA 322, Judge Kelly stated:

- (a) [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.
  - (b) [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.
  - (c) [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.
85. The Committee noted the Police consider the convictions that occurred in 2009 and 2010 were historical and were no longer part of a pattern of behaviour with ten years between offending.
86. Given the significant time that has passed since the applicant's previous convictions and the nature of those convictions, we are satisfied that they have little weight in determining the applicant's suitability.
87. Regarding the more recent offence, the Committee accepts the evidence from the applicant that there was ongoing provocation which may have led to the 2019 offence. This was evidenced by the 26 occasions where Police were called to the property.
88. The mitigating circumstances do not nullify the behaviour, rather they give more weight to the evidence provided by both agencies, that the applicant is capable and has demonstrated an ability to uphold the Act.
89. In deciding that the rule established in Osborne regarding a stand-down period is not relevant to the current facts, the Committee found that the offences and nature of the offending was substantially different.
- a. The Committee weighed the advice from Police that while Presenting a *Firearm/Restricted Weapon at Person* was technically considered a serious offence, a conclusion supported by Police evidence and from the sentence imposed, was that the offending in this situation was at the light end of the scale.
  - b. The Committee also weighed the evidence that The Authority had previously decided not to uphold a cancellation or suspension of the applicants' manager's certificate.
  - c. The Committee also found there was a lack of any causal nexus between the offending and the Act.
  - d. The Committee also noted that both agencies no longer recommended a stand down period, and instead suggested a further probationary period.
90. The Committee notes suitability in light of the offending has been considered.

#### **Management of the sale and supply of alcohol under the Act**

91. The Committee must consider section (c) of section 227 of the Act  
*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;*
92. The Committee noted that there were no issues raised by the agencies, conversely, the Inspector had been impressed with the applicant during a routine inspection of the club.

#### **Renewal criteria as a whole**

93. The Committee is required to consider all the criteria set out in section 227. This is a balancing act. The Committee acknowledges that Jamie-Lee A Burns has a number of previous convictions, however the 2010 offences are historical and relate to a different period in the applicants' life.
94. The committee also notes the lack of a causal nexus between the current offending and the Act which, in the view of the committee, reduces the weighting given to the offending.

95. Jamie-Lee A Burns has fully acknowledged the current conviction, and has taken steps to learn from this incident. Her honesty and frankness with regard to that offending, and the support of the Waikanae Chartered Club and staff, support the view of the Committee, that the applicant is able to undertake her duties and uphold the Act.

#### **Conclusion**

96. 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, makes the following decisions:

#### **Decision**

97. The District Licensing Committee hereby:
- (a) Approves the application by Jamie-Lee A Burns for the renewal of a manager's certificate
  - (b) The managers certificate is to issue for a period of one year from the date of this judgement.
  - (c) The manager's certificate is only to be used at the Waikanae Chartered Club. This condition will be reviewed at the next renewal of the certificate.

Dated at Paraparaumu on 27<sup>th</sup> day of May 2021



Councillor Rob McCann  
Chair  
Kāpiti Coast District Licensing Committee

