

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **Mr Reuben M Batten**
pursuant to section 219 of the Act for a
Manager's Certificate in respect of the
premises situated at 3 Garden Road,
Raumati Beach known as 'The Waterfront'.

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

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

HEARING at Kapiti Coast District Council offices, Paraparaumu, on 22 March 2018.

APPEARANCES

Mr Reuben M Batten – the applicant
Mr Ricardo Reis – in support of the applicant
Mr Blair Nicholl – in support of the applicant
Ms Katherine McLellan – Licensing Inspector
Sgt Leanne Thomson - NZ Police – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction

1. This is an application by Mr Reuben M Batten for a Manager's Certificate to manage the sale and supply of alcohol on licensed premises at the Waterfront, 3 Garden Road, Raumati Beach.

The Application

2. A copy of the application was forwarded to the reporting agencies and the Licensing Inspector, as is required by section 220. The police opposed the application based on the Applicant's two convictions for driving with excess blood/breath alcohol in 2010 and 2017. The police position is that a two year stand-down period would be appropriate.
3. All those appearing were sworn in.

Applicant's Evidence

Mr Batten

4. Mr Batten's evidence was that he has had 18 years' experience in the hospitality industry. He held a Manager's Certificate from 2006 until he let it expire in 2017. He is now seeking a new Manager's Certificate.
5. On having children, he felt like a change of scene as he felt it would help him be a better father. He wanted to apply for Police College but this was not possible due to a drink driving conviction in 2010. His second choice was to be a school teacher. He undertook training after obtaining a career changer scholarship through Teach NZ which helps Maori people change their future doing a bilingual primary teaching degree and working in hospitality part-time.
6. In 2016 a personal loss had a significant impact on Mr Batten. His difficulties in dealing with the situation had an effect on all parts of his life with various negative consequences leading to severe depression. He acknowledged being in a "downward spiral" and drinking to "mask the reality of what was going on".
7. Mr Batten stated that losing his licence was the wakeup call he needed. He realised that he was doing a lot of damage, not only to himself but to his children, friends and family. As a result of his realisation he undertook counselling on his own accord and went on medication. He stopped drinking and he was now able to deal with his emotions with a clear head.
8. Mr Batten stated that he has nothing but regrets about his actions. He acknowledged that he respects the decision to oppose his application but stated that he was also thankful to be given the opportunity to speak to share his story to be allowed a second chance.
9. Mr Batten tabled a reference letter for the Committee's attention from his Counsellor. Following consideration of section 203 of the Sale of Alcohol Act 2013 ("the Act"), the Committee makes an order under subsection 203(5) prohibiting publication of that document.

Mr Nicholls

10. Mr Nicholls is the owner of the Waterfront and various other hospitality venues. He is the employer and friend of the Applicant and gave evidence in support of his application for a Manager's Certificate.
11. Mr Nicholl's evidence was that he has been in the hospitality industry since childhood. He currently runs two sites and is opening a third site with Mr Reis. He estimated that he has had over 500 staff work for him over the years, mostly in the hospitality industry.
12. Mr Nicholls met Mr Batten about seven or eight years ago. Mr Nicholls hired Mr Batten to replace him in the management role that Mr Nicholls had at his then business at Longbeach at Waikanae Beach.

13. He stated that Mr Batten had the best capability to take over the role and that he found Mr Batten to be very diligent and responsible.
14. Mr Batten was then a manager at Waimea Restaurant for Mr Nicholls. He went from a junior to a senior duty manager, a role which he took extremely seriously. He was continuously up-training and up-skilling staff on the requirements of the safe supply and sale of liquor. He was involved in writing host responsibility plans. He was a star employee.
15. Mr Nicholls said that Mr Batten has been an outstanding example of an employee and a manager and has been by far the best duty manager who had worked for him, except for Mr Reis. He takes his job extremely seriously. He said that they have never had any incidents with him or heard of any issues from any other people in the industry.
16. Mr Nicholls stated that he was sad to see Mr Batten go when he left to take on teacher training, but knew he would be an amazing teacher.
17. Mr Nicholls observed that he has been through this process with other staff over the years who didn't take their responsibilities half as seriously as Mr Batten does, and he had not stood behind them for this reason. In his opinion, the responsible sale of liquor on the Kapiti Coast will be at a high level if people like Mr Batten are allowed to be duty managers.
18. Mr Nicholls stated that he and Mr Reis will be the biggest hospitality employers on the Kapiti Coast over the next three months, and that for him to put Mr Batten at the top of all his duty managers speaks volumes. He emphasised that he wanted the Committee to know that he takes alcohol responsibility very seriously and fully supports Mr Batten in his application.
19. Mr Nicholls confirmed Mr Batten's account of the issues he faced in 2017 and the difficulties he had dealing with them. Mr Batten advised Mr Nicholls and Mr Reis of his drink driving conviction even though he was no longer in their employment. He stated that Mr Batten went and got counselling on his own behalf.
20. Mr Nicholls stated that he knows Mr Batten both personally and work-wise. In his opinion, he is a humble, very reliable, extremely responsible unique human-being. When Mr Nicholls first met Mr Batten, the applicant didn't really drink and he has never taken drugs.

Mr Reis

21. Mr Reis is Mr Nicholls' business partner. He confirmed that he fully supports the statement made by Mr Nicholls.
22. He stated that he has worked in hospitality for over 20 years and has never come across anyone like Mr Batten who is so committed. In his opinion, Mr Batten will be a huge potential benefit to the hospitality industry and their business.

23. In response to questions, Mr Nicholls confirmed that if Mr Batten is not granted a manager's certificate that it is likely to impact on him employment as he was employed to be a duty manager. While they could manage a short stand down such as 28 days, a longer period would require them to look at the best interests of the business. Mr Nicholls confirmed that they were aware of Mr Batten's conviction when they offered him employment.

The Inspector

24. The Licensing Inspector's report refers to Mr Batten's application and responses to the questionnaire accompanying the application, making a number of comments. Ms McLellan has noted Mr Batten's work history both in licensed premises and also working at Lollipops Paraparaumu (early childhood education centre) for most of 2017.
25. Her report notes that Mr Batten's application form did not include a declaration of his 2010 conviction. She stated that Mr Batten did not believe it was still relevant to the application. As a result of that conviction, Mr Batten was subject to a 28 day stand-down period.
26. In the hearing Ms McLellan confirmed that when Mr Batten applied for a Manager's Certificate in 2012 he declared his conviction from 2010. That application for a Manager's Certificate was granted.
27. In her report, the Inspector has noted that Mr Batten explained to her the circumstances surrounding his conviction in 2017. She also confirmed that when she interviewed the applicant he was "able to demonstrate good knowledge on the principles of host responsibility, and the requirements of a duty manager in respect of the Act".

The Police

28. Sgt Thomas acknowledged standing in for Sgt Muir who filed the opposition to the application and who would have more in-depth knowledge of this application and the surrounding circumstances.
29. The police oppose the grant of a manager's certificate on the basis of two convictions for driving with excess blood/breath alcohol; one in 2010 and the second in 2017.
30. The police position is that a stand down period of two years from the date of the last conviction is appropriate. Mr Batten's last conviction was on 6 October 2017 for an offence that occurred on 26 August 2017.

Committee's Decision

31. The matters which a Committee must consider in regard to granting a Manager's Certificate are contained in section 222 of the Act:
- (a) the applicant's suitability to be a manager:
 - (b) any convictions recorded against the applicant:

- (c) any experience, in particular recent experience, that the applicant has had in controlling any premises for which a licence was in force:
- (d) any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification required under section 218:
- (e) any matters dealt with in any report made under section 220.

Suitability

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

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

33. The Liquor Licensing Authority has noted:

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

34. Other than Mr Batten's convictions (discussed below) one concern has been raised about Mr Batten's suitability by police. This is that Mr Batten failed to disclose his 2010 conviction on his application form. We accept that on the evidence there was no intent to mislead by Mr Batten, who had disclosed this conviction on a previous application. We are of the view that this is not sufficient to make Mr Batten unsuitable.
35. Both Mr Nicholls and Mr Reis gave clear evidence of Mr Batten as a duty manager who takes his responsibilities under the Act quite seriously and who has not had any issues at work. The Committee is satisfied as to Mr Batten's suitability when considered in isolation from Mr Batten's convictions.

Convictions

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

"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

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

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

³ LLA 2388/95 (13/10/1995)

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.

37. Mr Batten has been convicted of two offences of driving under the influence of alcohol. The first was in 2010 and the second was in 2017. These convictions are relevant because they are related to the misuse of alcohol. Mr Batten's Manager's Certificate was suspended for 28 days after the 2010 conviction. There was then a gap of seven years with no offending. Given the lapse of time, we are of the view that it is not appropriate to treat the two convictions as disclosing a "pattern of offending".
38. We are of the view that the circumstances surrounding the 2017 offence together with the steps taken by Mr Batten to address the issues which led to the offence amount to special circumstances which we should take into account as per *Howell v Sargent*⁴. Nevertheless, this is Mr Batten's second conviction for this type of offending so a stand-down period is appropriate.
39. We note that in *Re Pompey*⁵ it was made clear that the stand-down period should run from the date of offending.
40. In our view, given all the circumstances, a stand-down period of six months is appropriate. This should be from the date of offending in August 2017. This time has now passed. We note that as this application is for a new Manager's Certificate rather than a renewal it will only be issued for one year, which acts as a form of probationary period.

Experience controlling licensed premises

41. Mr Batten has significant experience in the hospitality industry as a duty manager and no issues have been raised as to how he has conducted himself in this regard. The Committee is satisfied with Mr Batten's experience.

Training and Qualifications

42. Most of Mr Batten's training has been "on the job" over a significant period of time. He has the required qualifications. The Committee is satisfied with Mr Batten's training and qualifications.

Other matters

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

⁴ [2016] NZARLA PH 396

⁵ NZLLA PH 623/04 (6 September 2004),

Criteria as a whole

44. The Committee is required to consider all the criteria set out in section 222. This is a balancing act. The Committee acknowledges that Mr Batten's two convictions are of concern, but was impressed with the Mr Batten's evidence regarding the steps he has taken to deal with the issues which led to his recent conviction. We are of the view that his evidence showed a high level of engagement in the process and that his regret for his actions is genuine.

Conclusion

45. 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 grant of a Manager's Certificate set out in Section 222, noting that more than six months has passed since the offending by Mr Batten, approves the application by Reuben M Batten for a Manager's Certificate to manage the sale and supply of alcohol on licensed premises situated at 3 Garden Road, Raumati Beach known as 'The Waterfront'. The Certificate is to issue for a period of one year.

DATED at Paraparaumu on this 31st day of May 2018



Cr Fiona Vining

Chair

Kāpiti Coast District Licensing Committee