

Decision No. 45/MC1067/2023

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

**AND**

**IN THE MATTER** of an application by Kerianne Stacy TOWLER under section 219 of the Sale and Supply of Alcohol Act 2012 for the grant of a Manager's Certificate

**BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE**

Chair: Nigel Wilson

Members: Susie Mills

Trevor Knowles

**HEARING** at Kapiti Coast District Council offices, Paraparaumu, on 22nd March 2023.

**APPEARANCES**

**Kerianne Towler** – the applicant

**Brenda Christiansen** – Advocate for and in support of the applicant

**Janail Singh** – in support of the applicant

**Stefan Wolf** – in support of the applicant

**Objectors:**

**Antionette Bliss** - Licensing Inspector

**Simon Carter** – Senior Constable, NZ Police

All those appearing were sworn in.

**Evidence for the Applicant Kerianne Towler**

1. Pursuant to section 218 of the Act and sections 23(2) and (4) of the Sale and Supply of Alcohol Regulations Ms Towler has provided evidence of holding the prescribed qualification (the Licence Controller Qualification). This qualification was issued on 17 October 2022 and incorporates the required unit standards 4646 and 16705.

2. The applicant advised that all other training related to the sale and supply of alcohol has been undertaken on the job.
3. Ms Towler provided in evidence a written reference from Jarnail Singh, owner of the Family Hotel detailing her experience in the sale and supply of alcohol to the public.
4. Ms Towler is currently employed as a bar tender at the Family Hotel and has worked in this capacity since August 2020.
5. The Inspector Antionette Bliss, in her Report dated 22 December 2022, stated in her opinion the applicant had demonstrated she had good experience in the sale and supply of alcohol.
6. The applicant is over the age of 20 years, in accordance with section 216 (1) of the Act.
7. The applicant provided character references from C F Hakaraia, previous employer, who has known the applicant for a number of years, and Parminder Singh, Manager Family Hotel, who has known the applicant for approximately three years.
8. Ms Towler noted her two previous alcohol related convictions which are the basis of objections by NZ Police and DLC Inspector. She stated she made no excuses for these and had learned her lesson and made several lifestyle changes as a result.
9. Ms Towler's application included a letter of support from 42 regular patrons of the Family Hotel and Sports Club.
10. Ms Towler received a further letter of support from a local business couple Ross and Treena Kahaki who spoke highly of her abilities.
11. During the Hearing testimony was provided by Brenda Christiansen , advocate for and in support of the applicant; Janail Singh – in support of the applicant, Stefan Wolf – in support of the applicant, and Puna Brown in support of the applicant.

**Objectors:**

12. NZ Police, represented at the Hearing by Senior Constable Simon Carter opposed the application on the grounds of suitability of the applicant. Snr Constable Carter referred to the Police Report on the application written by Constable Lance Moretto of the Alcohol Harm Prevention Office at Levin Police.
13. Constable Moretto's report stated the grounds for opposing the application rested on two convictions by Ms Towler;
  - 6 May 2021 – Breath Alcohol Level over 400 Mcgs/Litre Of Breath

- 8 May 2011 - Breath Alcohol Level over 400 Mcgs/Litre Of Breath
14. The Police report noted the ***N R DAVIES*** LLA Decision 1240/98 that in considering applications, the applicant's character and reputation is of crucial importance. Both on and off duty conduct is to be weighed.
  15. The Police report further noted in ***D J Enterprises Limited*** LLA 531 – 532/97; and in citing ***G L Osborne*** NZLLA 2388/95 Police noted a stand down period of two years for a single offence would normally be granted. However, persistent offending, particularly involving the abuse of alcohol, would likely a stand down period of at least five years.
  16. Police believed an appropriate stand down period is required before the applicant could be considered suitable for a manager's certificate.
  17. Inspector Antionette Bliss opposed the application on the grounds the applicant did not meet the suitability criteria based primarily on the applicant's convictions.
  18. The Inspector also cited ***G L Osborne*** NZLLA 2388/95 as referred to in *Wylie v Davis* [2018] NZARLA 322 in which Judge Kelly advised Osborne should not be departed from lightly and a DLC ought to justify itself when doing so.
  19. In considering character and suitability the Inspector further cited ***Sheard*** [1996] 1 NZLR 751 and ***Deejay Enterprises Limited*** (LLA 531/97 – 532/97).
  20. The Inspectors recommendation was to support the NZ Police in their opposition to the application for a Manager's Certificate and to have the matter heard before a public hearing.

#### HEARING:

21. **Simon Carter – Senior Constable, NZ Police**, spoke to the report filed by Constable Moretto who interviewed the applicant at Levin Police Station.
22. Snr Constable Carter noted since the Police Report was written there had been a marked improvement in the Applicant's knowledge but advised more formal training would be required to give Police greater confidence in the Applicant ability to carry out the role applied for.
23. Snr Constable Carter further noted the penalties imposed by the court on the two convictions of the Applicant. Snr Constable Carter noted there no other convictions against the Applicant.

24. Snr Constable Carter stated the Police take the breaches very seriously and said the Police Report reflected the current view of Police.
25. Snr Constable Carter further noted the current condition of the Applicant's drivers licence (restricted), stating the Applicant would need to very clear about the law relating to her licence and carrying passengers.
26. Snr Constable Carter told the Hearing abuse of alcohol was a serious breach against the Act and the onus is at a higher level for a Duty Manager.
27. The Inspector, Antionette Bliss noted at the Hearing the interview process may have contributed to the nervousness of the Applicant (Interview was conducted at the Levin Police Station).
28. In that interview the Applicant had not answered sufficient questions to satisfy the requirements of a licence, however the Inspector noted it was not normal practice to hold an interview in a police station or for police to be present and this may have contributed to the Applicant's responses.
29. In the Hearing the Inspector considered the Applicant's answers to her questions significantly improved.
30. The Inspector recommended the Committee, should it decide to grant a licence, impose a stand down period of two years and a condition of such a licence be that the licence would only be for use at the Family Hotel, Otaki.
31. In summing up on behalf of the Applicant, **Brenda Christiansen** noted Ms Towler had learned many life lessons, acknowledged her mistakes, acknowledged the seriousness of the alcohol convictions and had undertaken steps to address this, including personal counselling.

## **Conclusion**

32. The committee are of the view Ms Towler is a person of good character who has indicated she has learned several important lessons regarding her personal use of alcohol. She has sought counselling and is upskilling on her driving and her knowledge of the Act.
33. The Committee also considered the significant support demonstrated on behalf of the Applicant by her employers, community, and patrons.
34. The Committee noted the Police statement that a stand down period of two years for a single offence would normally be granted. However, persistent offending, particularly involving the abuse of alcohol, would likely mean a stand down period of at least five years.

35. The Committee fully considered evidence presented citing **N R DAVIES** LLA Decision 1240/98; **D J Enterprises Limited** LLA 531 – 532/97; and **G L Osborne** NZLLA 2388/95 and is satisfied that the ten year gap between offences is a sufficient gap so fall outside the benchmark of persistent offending.
36. The recommendation of both NZ Police, and the Inspector, of a minimum stand down period being applied to the application was accepted by the Committee.
37. The Committee also noted the further recommendation from the Inspector that any licence granted should apply only to employment at the Family Hotel, the current employer of the Applicant.
38. The Committee has noted the Applicant has given a signed undertaking to the Inspector that the Licence will be used only at the premises The Family Hotel, Otaki.
39. In considering the application for the Manager's Certificate the District Licensing Committee gave consideration to the following matters:
  - The applicant's suitability to be a manager;
  - Any convictions recorded against the applicant;
  - Any experience, in particular recent experience, that the applicant has had in controlling and premises for which a licence was in force;
  - Any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification.

## Decision

40. 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 120 and having addressed the criteria for the application for a Manager's Certificate approves the application by **Kerianne Towler** for the GRANT of a Manager's Certificate under section 219 of the Sale and Supply of Alcohol Act 2012.
41. A two year stand down period for a Manager's Certificate will apply to the Applicant, Kerianne Towler, from the date of her second conviction 6 May 2021.
42. A Manager's Certificate will be granted to Kerianne Towler for a period of 12 months, effective from 7 May 2023.

**DATED** at Paraparaumu on this 8<sup>th</sup> day of May 2023.

A handwritten signature in black ink, appearing to read 'Nigel Wilson', written in a cursive style.

Nigel Wilson

Chairperson

Kapiti District Licensing Committee