

DISTRICT LICENSING COMMITTEE

Application	018-0141
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u>	
<u>IN THE MATTER</u>	of an application by Shannen Ashleigh Jayne Combs for a manager's certificate pursuant to section 219 of the Act

OTOROHANGA DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Mr R Murphy, Dr M Cameron

HEARING at the Otorohanga District Council Chamber 1 March 2019

APPEARANCES

Miss Combs – Applicant
Mr K Tutty - Licensing Inspector
Sergeant A Connors - Police

DECISION OF THE OTOROHANGA DISTRICT LICENSING COMMITTEE

1. The application for a manager's certificate is adjourned until 3 June 2019.
2. Police are to provide a supplementary report to the Secretary of the District Licensing Committee on or before Monday 3 June 2019 advising whether Miss Combs has received any further convictions. If there is no adverse report from Police, the manager's certificate may be granted on 3 June 2019.
3. If there is an adverse report from Police, the application must be set down for a further hearing in front of the same District Licensing Committee members.

Reasons

1. This application by Miss Combs for a manager's certificate was received on 26 November 2018. Miss Combs has worked at the Oparau Roadhouse since 30 December 2017 and has been acting as a Temporary Manager, due to a staff member leaving recently.
2. The application is not opposed by the Licensing Inspector or Police. However, Miss Combs states in the application that she has some convictions, therefore the licensing committee considered that it was appropriate to decide the application at a public hearing (s 202(1)).
3. In considering an application for a manager's certificate the licensing committee must consider the following questions (s 222):
 - a) Is the applicant suitable to be a manager?
 - b) Have any convictions been recorded against the applicant?
 - c) Does the applicant have any recent experience in controlling any premises for which a licence was in force?
 - d) Has the applicant undertaken appropriate training and completed relevant qualifications under section 218?
 - d) Have the Inspector and Police raised any relevant matters in their reports?
4. Miss Combs holds the required qualification and has sufficient experience. She has the full support of her employer. Mrs Brenda Rogers, owner of the Oparau Roadhouse, gave evidence that Miss Combs completed a 6 month level 3 NZ Management Academies Food and Beverage Course and on completion of the course she came to work at Oparau Roadhouse on 30 December 2017. Miss Combs has a wide range of duties including serving alcohol at the counter. Mrs Rogers says that Miss Combs is an excellent worker who never loses her temper, knows the rules and knows how to ask for ID if a customer looks under 25 years of age.
5. When the licensing committee questioned Miss Combs, she was able to confidently explain the object of the Act, the responsibilities of a duty manager and how to use the SCAB Intoxication Assessment Tool to assist in determining if a person is intoxicated.
6. We note that Miss Combs was not sufficiently familiar with all of the conditions of the licence and has given an undertaking that she will study the licence and ensure she can recite all of the conditions with accuracy.
7. However, having regard to all of the evidence we have heard, the licensing committee is satisfied that Miss Combs has appropriate training, qualifications and experience to hold a manager's certificate. The only issue of concern is the convictions and whether they impact on her suitability to hold a manager's certificate.

Is Miss Combs suitable to be a manager given the convictions?

8. Miss Combs explained that she did go through a bad patch and was in a relationship with a person who was a bad influence. She is no longer associating with that person and is living in Kawhia, raising her young daughter with the help of her parents. She has no fines, has completed her community service and has paid all of her reparation back. She would like to continue working in the hospitality industry.
9. Sergeant Connors gave evidence that Miss Combs has a total of eleven convictions including: Drove While Suspended or Revoked (21/1/13); Drove Whilst Disqualified (6/6/13); Drove Whilst Disqualified 3rd or Subsequent (24/10/13); Using a Document for Pecuniary Advantage, Receiving, Theft, Unlawfully takes a Motor Vehicle (9/4/14); Drove Whilst Disqualified (24/11/14); and Breaches of Community Work (1/9/13, 24/1/14 and 24/11/14). The conviction on 9 April 2014

relates to an incident that occurred on 2 September 2013, when Miss Combs was involved in the theft of a motor vehicle along with two other people. The vehicle was found a short distance away with its mag wheels missing. It was then set on fire. In addition, the same three offenders, including Miss Combs, stole a car on 20 September 2013 along with driving equipment, clothing, electronics and bank cards. The bank cards were subsequently used eight times to purchase \$360 worth of mobile phone top ups. Miss Combs and the other offenders also stole petrol to fill up the car. Miss Combs was sentenced to 120 hours of Community Service and was ordered to pay reparation of \$1,500. In regard to the three convictions for Breach of Community Work, Miss Combs was convicted and discharged on all three occasions.

10. Sergeant Connors explained that the person Miss Combs was in a relationship with, was well known to Police, and is in and out of prison. However, Miss Combs has not been in a relationship with this person for the last four years. Miss Combs has not come to the attention of Police since the last conviction on 24 November 2014. In a positive step forward, Miss Combs has now gained her restricted driver's licence.
11. Owner of the Oparau Roadhouse, Brenda Rogers gave evidence that she has known Miss Combs for 20 years and she also worked at the Oparau Roadhouse for a period of time 10 years ago. Mrs Rogers is aware that Miss Combs "went off the rails" for a period of time and has some convictions. However, Mrs Rogers says that Miss Combs has not been in trouble for more than three years and she considers her to be trustworthy.
12. A Duty Manager is responsible for ensuring compliance with the Sale and Supply of Alcohol Act 2012 and with the specific conditions of the licence for the premises they are managing. A prospective Duty Manager must be able to demonstrate high standards of behaviour both on and off-duty. This is discussed in the Liquor Licensing Authority decision Henry v Strange 1632/96. Responsible consumption of alcohol is particularly important given the requirement of a Duty Manager to minimise harm caused by excessive or inappropriate consumption of alcohol (s 4 of the Act).
13. The decision by the Liquor Licensing Authority in the case of GL Osborne NZLAA 2388/95 provides guidance for District Licensing Committees when considering an application for a manager's certificate where the applicant has convictions. In this decision the Licensing Authority said:

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 ... 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 period of two years from the date of conviction may result in 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.
14. The Licensing Authority has since confirmed that these guidelines remain appropriate under the Sale and Supply of Alcohol Act 2012 and that the "stand-down period" runs from the date of the offence. In Police v Manson [2015] NZARLA 590, the Licensing Authority explained that the purpose of the "stand down period" is in order for the "applicant to be able to establish an incident free period, thereby ensuring that standards are upheld. The ultimate aim being that of achieving the object of the Act". The Licensing Authority went on to say that the guideline in Osborne should not be departed from lightly and only where justified by the circumstances.

15. The licensing committee considers the dishonesty offences to be serious. In addition, Miss Combs has a large number of convictions over a two-year period which indicates a concerning pattern of offending. Therefore, we must be guided by the five-year “stand-down period” recommended in the *Osborn* and *Manson* decisions.
16. The licensing committee has formed the view that Miss Combs has all of the necessary qualities to be a good duty manager. In particular she has a very supportive employer and a good attitude. Miss Combs has taken steps to remove herself from any situation that may lead to any further convictions and wants to have a better future for her daughter. She values her job and wants to continue to work in the hospitality industry, therefore she is motivated to comply with the law.
17. However, given the seriousness of some of the convictions, the number of convictions and the fact that it is less than five years since the last conviction, there is no reason to depart from the *Osborne* guidelines. We accept the recommendation of the Licensing Inspector Mr Tutty, that the five year stand-down period should run from 3 June 2014, which is the date of the offence relating to driving while disqualified. This is a most recent offence prior to the breaches of community work. We agree that the breaches of community work may be disregarded, due to their minor nature. This was the advice of Sgt Connors and is indicated by the fact that Miss Combs was convicted and discharged on all three occasions.
18. Therefore, the application will be adjourned until 3 June 2019, which is five years since the most recent offence of concern. Police are to provide a supplementary report to the Secretary of the District Licensing Committee on or before 3 June 2019 advising whether Miss Combs has received any further convictions. If there is no adverse report from Police, the manager’s certificate may be granted on 3 June 2019. If there is an adverse report from Police, the application must be set down for a further hearing in front of the same District Licensing Committee members.

Dated this 10th day of March 2019



Sara Grayson
Commissioner
Otorohanga District Licensing Committee