

DISTRICT LICENSING COMMITTEE

Application	018-0345
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u>	of an application by
<u>IN THE MATTER</u>	Natasha Gould for a manager's certificate pursuant to section 219 of the Act

OTOROHANGA DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Ms T McIntyre, Dr M Cameron

HEARING at the Waipā District Council Chamber 6 May 2022

APPEARANCES

Ms N Gould – Applicant
Mrs M Fernandez - Licensing Inspector

DECISION OF THE OTOROHANGA DISTRICT LICENSING COMMITTEE

1. The application for a manager's certificate is granted. The manager's certificate may issue immediately.
2. The manager's certificate shall continue in force until the close of the period of the day 12 months after the day it is issued.

Reasons

The application

1. This application by Ms Gould for a manager's certificate was received on 15 February 2022. Ms Gould has worked at the Ōtorohanga Club Inc since October 2020 as a bar person.

The reports

2. The application is not opposed by the Licensing Inspector or Police. However, Ms Gould failed to reveal convictions on her application form. When asked about convictions by the Licensing Inspector, Ms Gould provided a Ministry of Justice Conviction History Report dated 5 August 2021 that revealed four convictions from November 2001 to June 2020. Three convictions involve driving with excess breath alcohol and one involves threatening behaviour. The licensing committee had concerns about whether Ms Gould is a suitable person to hold a manager's certificate considering the failure to reveal convictions on the application form, the nature of the convictions, and the recent nature of the latest conviction. Therefore, the licensing committee considered that it was appropriate to decide the application at a public hearing

(s202(1)).

The law

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. Ms Gould holds the required qualification and has sufficient experience. She has worked in front of house, kitchen and bar roles at Roselands in Waitomo for several years, and after Roselands closed, she started working at the Ōtorohanga Club in October 2020. The Licensing Inspector interviewed Ms Gould and found that she demonstrated a very good understanding of a duty manager's responsibilities under the Act. She was able to give good answers to two scenarios given to her.
5. Ms Gould has the full support of her employer. Ms Merrin, Manager of Ōtorohanga Club Inc, gave evidence that Ms Gould has gained confidence since she started working at the club in October 2020. Ms Merrin has observed that Ms Gould interacts well with the customers and is confident in slowing or stopping service. She observes the customers in different parts of the premises and checks the security camera footage. Ms Gould attends monthly meetings and participates in discussions about different scenarios and how they should be handled. Ms Gould has a wide range of duties including serving alcohol at the bar and driving the courtesy vehicle. Ms Merrin is confident that Ms Gould has all the necessary skills to be in sole charge in the role of a duty manager.
6. Ms Kepa-Hughes, Bar Manager at Ōtorohanga Club Inc, gave evidence that Ms Gould was initially too shy to take on the role of duty manager. However, Ms Kepa-Hughes stated that Ms Gould has stepped up the past year and is quite capable of being stern with customers now.
7. Ms Gould told the licensing committee that she likes her customers to be happy when they leave, so that they won't go home and have arguments. Ms Gould attended the Club Champs training and saw a video about a young girl involved in a crash. This was a good reminder of the importance of keeping customers safe. Ms Gould was able to explain how to use the SCAB Intoxication Assessment Tool to identify when customers are intoxicated and to make sure that no one drinks and drives. When the licensing committee questioned Ms Gould, she was able to confidently explain the Object of the Act and the conditions of the club licence .
8. Having regard to the evidence we have heard, the licensing committee is satisfied that Ms Gould has appropriate training, qualifications and experience to hold a manager's certificate. Ms Gould presented as bright and personable, showed above average customer service skills and great maturity. She appeared to have the attributes of a responsible duty manager. The only remaining issue of concern is the convictions and whether they impact on her suitability to hold a manager's certificate.

Is Ms Gould suitable to be a manager given the convictions?

9. Ms Gould apologised for not filling out the application form correctly. Ms Merrin states that she submitted the application form on behalf of Ms Gould, and it was an oversight that the conviction sheet was not

submitted, as that had been Ms Merrin's intention.

10. Ms Gould has three drink driving convictions, in 2001, 2004 and 2020. However, the licensing committee accepts the Licensing Inspector's suggestion that the two earlier convictions should not be considered in conjunction with the more recent 2020 conviction, because there is a 16-year gap in between. In addition, Ms Gould was under 20 at the time of the earlier offending. Ms Gould explained the circumstances of the 2020 offence. She had been drinking at a birthday function and stopped drinking at about 9.00pm. She had put a bed in her van and slept in there until she woke up in the early morning and decided to drive home. It was still dark when she was pulled over by Police on 19 January 2020. A subsequent evidential breath test gave a result of 526 micrograms/litre of breath (the limit is 400 mcg/L for charges). On 5 June 2020, she was convicted of her third charge of 'Drove with Excess Breath Alcohol'. She received a fine of \$500.00 and was disqualified from driving for one year.

11. In response to questioning from the licensing committee, Ms Gould admits that she does drink at family functions when she has a weekend off, and also drinks at the Ōtorohanga Club Inc sometimes when she is off duty. However, Ms Gould does not think that she has a drinking problem and is sorry for the decision to drive when she was still affected by alcohol.

12. Ms Gould also explained to the licensing committee about the events leading up to the conviction on 19 September 2016 for 'With Intent To Frighten (fourteen year old female)' and 'Threaten to Injure That Person'. An incident occurred in relation to a teenager in her care and involved an argument in a public place. Ms Gould regrets her actions on that day and is ashamed of her behaviour. She attended mediation type help at the suggestion of the court and was not called to the court for any further sentencing.

13. 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).

14. 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.

15. 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.

16. When assessing the 2020 drink driving conviction against the guideline in *Osborne*, the licensing committee has formed the view that it is an isolated excess breath/blood alcohol conviction disclosing no pattern of offending, that requires a two-year conviction free period from the 19 January 2020 (the date of the offence). We consider that the same “stand down period” should apply to the ‘With Intent To Frighten (fourteen year old female)’ and ‘Threaten to Injure That Person’ convictions relating to the 12 September 2016 offence. Therefore, a two-year conviction free period has now passed for both offences and these convictions will not prevent the licensing committee from granting the manager’s certificate.
17. The licensing committee has formed the view that Ms Gould has all of the necessary qualities to be a good duty manager. In particular, she has a very supportive employer and a good attitude. Ms Gould values her job and wants to continue to work in the hospitality industry, therefore she is motivated to comply with the law.
18. In conclusion, the application for a manager’s certificate is granted. We remind Ms Gould that a high standard of behaviour both on- and off-duty is required for the holder of a manager’s certificate. Any further convictions may prevent her manager’s certificate from being renewed in the future.

Dated this 20th May 2022



Sara Grayson
Commissioner
Ōtorohanga District Licensing Committee