

OTOROHANGA DISTRICT LICENSING COMMITTEE

Application

018-0073

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND
IN THE MATTER

of an application by
Bronwyn Merrin
for the renewal of a manager's certificate
pursuant to section 224 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 4 May 2018

APPEARANCES

Miss Merrin – Applicant
Miss Tahī – Employee, Otorohanga Club
Mrs M Fernandez - Licensing Inspector
Sergeant J Kernohan - Police

DECISION OF THE OTOROHANGA DISTRICT LICENSING COMMITTEE

1. The application for a renewal of a manager's certificate is granted.
2. The manager's certificate may issue immediately. The manager's certificate shall continue in force until the close of the period of the day 24 months after the day it is issued.

Reasons

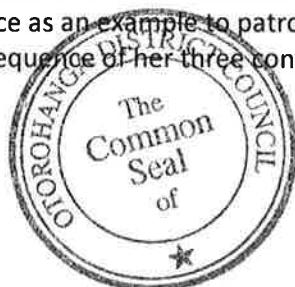
1. This application by Miss Merrin for the renewal of a manager's certificate was received on 7 March 2018. Miss Merrin has held a manager's certificate and has worked as a certificated duty manager at Otorohanga Club since 2007.



2. The Liquor Licensing Inspector opposes the application on the grounds that Miss Merrin advised that she has one drink driving conviction since her last renewal. Accordingly, the application was set down to be considered at a public hearing (s 202(1)). Police did not oppose the application and failed to report on the conviction. Sergeant Kernohan attended the hearing and could not explain why this happened but indicated it was likely to be an oversight. In addition, Sergeant Kernohan advised that Police should have applied to have the manager's certificate suspended.
3. In considering an application for the renewal of a manager's certificate the licensing committee must consider the following questions (s 227):
 - a) Is the applicant suitable to be a manager?
 - b) Have any convictions been recorded against the applicant since the certificate was issued or last renewed?
 - c) How has the applicant managed the sale and supply of alcohol with the aim of contributing to the reduction of alcohol-related harm?
 - d) Have the Inspector and Police raised any relevant matters in their reports?
4. Miss Merrin holds the required qualification and has a considerable amount of experience. Miss Merrin states that she is a senior bar person and is responsible for the training staff about Host Responsibility and the conditions of the licence. She works in an administration role, but also works in the bar about four days per week for two hours or whenever extra staff are required for events such as funerals. She has the full support of her employer Otorohanga Club. There is no evidence to suggest that Miss Merrin has not managed the sale and supply of alcohol with the aim of contributing to the reduction of alcohol-related harm.
5. Therefore, the only issue of concern is the recent excess breath alcohol conviction and whether this impacts on her suitability to hold a manager's certificate.

Is Miss Merrin suitable to be a manager given the excess breath alcohol conviction?

6. Miss Merrin explained that the incident happened on 8 November 2016. She had left her car at a party and walked home. She went to pick up the car after work the next day and had some drinks. She then drove home and was pulled over by Police who were checking on the welfare of her sister. She was breathalysed and found to have a breath alcohol level of 525 mcgs per litre of breath.
7. Sergeant Kernohan confirmed that Miss Merrin was convicted on 15 March 2016, received a fine of \$750.00, and was disqualified from driving for twelve months. In addition, Miss Merrin now has a zero alcohol licence. This is Miss Merrin's third conviction, with two previous convictions for excess breath alcohol in 2002 and 2010. Therefore, Sergeant Kernohan recommends that Miss Merrin's manager's certificate be granted for a truncated renewal period of two years, to send a strong message.
8. Miss Merrin states after the last conviction she accepted she had a drinking problem and attended alcohol counselling in Te Kuiti. As a result of this, she has made some changes. She now only has up to three beers on a Tuesday night and goes straight home from work, rather than staying to have a drink after her shift. Miss Merrin says that she uses the SCAB Intoxication Assessment Tool, which is located on the till and staff notice board, to assess whether patrons are affected by alcohol or intoxicated. She uses her experience as an example to patrons, by showing them her pink "zero alcohol licence" as being one consequence of her three convictions.



9. 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. A duty manager must take steps to run the premises in a manner that minimises harm caused by excessive or inappropriate consumption of alcohol. In the decision *Henry v Strange* LLA 1632/96, the Liquor Licensing Authority stated that:

A serious question raised by this application is how off-duty conduct involving the consumption of alcohol should be weighed when considering the suitability of an individual to continue to hold a General Manager's Certificate. In many occupations off-duty conduct is commonly ignored. An exception may arise when the conduct impacts upon work performance. Few trades or professions have a direct legislative link which requires that conduct - including out of hours activities, be considered under the quasi-disciplinary procedure of section 135 of the Act. Nevertheless, that burden is imposed by Parliament on licensees (under section 132) and managers under the Sale of Liquor Act 1989. Their conduct and suitability may be examined at any time if an application is brought before this Authority.

10. Section 135 of the Sale of Liquor Act made reference to situations where the conduct of the manager indicated that he or she was not a suitable person to hold the certificate. The concept of suitability to hold a manager's certificate is also contained in several sections of the Sale and Supply of Alcohol Act 2012 including section 227 which contains the criteria for renewal of a manager's certificate.
11. When considering an applicant's suitability to become a manager, the Licensing Authority provided guidance in *Re Sheard* [1996] 1 NZLR 751 that "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 go with the holding of a licence".
12. The licensing committee has formed the view that Miss Merrin has all of the necessary qualities to be a very good duty manager. In particular she has a considerable amount of experience, a very supportive employer, a good attitude and a very good understanding of Host Responsibility principles.
13. While the licensing committee does not have any evidence to suggest that Miss Merrin's off-duty drinking has impacted on her on-duty behaviour, we are concerned that drinking and driving is not the high standard of off-duty behaviour that is expected of a duty manager. In addition, even though the previous convictions are well spaced out, there is a concerning pattern developing.
14. We accept the recommendation made by Sergeant Kernohan that Miss Merrin's manager's certificate be granted for a truncated period of 24 months. This will remind Miss Merrin that the way she conducts herself must be exemplary. In addition, the shortened renewal period from the usual three years will give the reporting agencies another opportunity to assess Miss Merrin's suitability to hold a manager's certificate after a shorter period of time.

Dated this 1st day of June 2018



Sara Grayson
Commissioner
Otorohanga District Licensing Committee

