

DECISION

Manager's Certificate

Decision No.
Application No. LL3026

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by LINDSAY JOHN
PETERS for the granting of a
Manager's Certificate pursuant to
SECTIONS 216-223 of the Sale and
Supply of Alcohol Act 2012 in respect
of the premises situated at 99
RAVEN QUAY Kaiapoi 7630.

DISTRICT LICENSING COMMITTEE

Chairman: Commissioner – Neville Atkinson
Members: Commissioner – Philip Redmond
Commissioner – Paul Williams

HEARING at Waimakariri District Council Chambers, Rangiora on 26 May 2022 at 1pm.

APPEARANCES

Applicant - Mr. Lindsay John Peters – New Managers Certificate
Counsel for Applicant - Peter J Egden – Barrister – Representing Mr Lindsay John Peters
Police – Sr. Constable Genevieve Craddock
Chief Licensing Inspector – Raj Deo

In Attendance (Staff)
District Licensing Committee Secretary – Billy Charlton
Minutes – Thea Kunkel

Decision

1. The application for a Manager's Certificate by Mr. Lindsay John Peters at MANDEVILLE TAVERN 99 RAVEN QUAY Kaiapoi 7630 is GRANTED subject to the following conditions:
 - a. Completes a LCQ course
 - b. Completes the Serve Wise Online Course

Documentation of completion of these courses must be presented to the Secretary of the District Licensing Committee no later than 5pm 30 June 2022.

On completion and submission of the listed courses set out in 1a and 1b (above) the Manager's Certificate will be issued after 28 calendar days. For clarification the 28 days will begin when both courses are completed and the relevant documentation has been received by the Secretary of the District Licensing Committee.

Summary and Background

2. The Waimakariri District Licensing Committee (WDLC) received an application from Mr. LINDSAY JOHN PETERS for a New MANAGER'S CERTIFICATE pursuant to Section 219 of the Sale and Supply of Alcohol Act 2012 (The Act) in respect of the premises, MANDEVILLE TAVERN situated at 99 RAVEN QUAY Kaiapoi 7630.
3. The WDLC heard all evidence presented to it by the applicant, Police and Chief Licence Inspector (CLI). On completion of hearing all the evidence put be for it by all parties and final submissions were completed and the WDLC adjourned for deliberations at 2.06pm. The WDLC reconvened at 3pm to complete the process to finalise their decision.

SUMMARY OF APPLICATION

4. WDLC received an application for a renewal of a Manager's Certificate from the applicant on 28 February 2022. As the applicant's Manager's Certificate had expired on 11 June 2021 the renewal application was accepted as a new Manager's Certificate application.
5. A hearing was required due to the Police and the CLI opposing the application on the grounds of suitability pursuant to Section 222(a) the applicant's suitability to be a Manager and Section 222(b) any convictions recorded against the applicant. In this case namely a conviction in the Christchurch District Court on 16 March 2022 for Breath Alcohol Level of over 400 Mcgs/Litre of Breath, hence casting doubt on the applicant's suitability.
6. It is important to note that while the WDLC has considered all of the evidence presented to make their decision, the members of the WDLC acknowledge the seriousness of the conviction and do not condone driving while intoxicated.

SUMMARY OF RELEVANT EVENTS/HISTORY

7. After Mr. Lindsay John Peters (Mr. Peters) was sworn in he read his brief of evidence which explained his conviction for Breath Alcohol Level of over 400 Mcgs/Litre of Breath. Namely working on a friend's property all day assisting with cattle, then having completed the task by approximately 6pm in Mr. Peters' words they "had a few beers at his home and not eating". Mr. Peters acknowledged on reflection that this was "a stupid thing to do". Mr. Peters was subsequently stopped at a Police checkpoint and breath tested.
8. Mr. Peters explained the impact that the conviction has had on his business and also the added impacts that have occurred since his oversight of not renewing his Manager's Certificate on time. The impacts include the extended hours staff were working to cover his inability to act as a Duty Manager. The cost to his business was approximately \$600.00 per week, which equates to approximately \$30,000.00 annually.
9. The impact has also included further costs in money and time as Mr. Peters could no longer drive the courtesy vehicle due to his conviction; meaning further hours for staff covering this activity. Mr. Peters would usually cover any Duty Manager down time for sickness and other unforeseen issues as well as driving the courtesy vehicle.
10. Mr. Peters explained that he has been involved within the hospitality industry for 37 years with no issues arising with the Police. Mr. Peters then explained how he recently dealt with members of a rugby club; being that he banned them from the premises based on behaviour as they were causing issues when drinking alcohol. He would rather take the loss in revenue that put up with bad behaviour.

BRIEF SUMMARY OF AGENCIES, OPINIONS, AND OBJECTORS

11. Police and the CLI both opposed the application based on Section 222 (a) and (b) of the Act. That the conviction for driving while intoxicated does not fit with the object of the Act and that because of the recent conviction Mr. Peters' suitability is called into question. Therefore, it is both the Police and CLI opinions that Mr. Peters does not reach the threshold required to be a suitable candidate to hold a Manager's Certificate.

BRIEF SUMMARY OF REASONS FOR OBJECTORS

12. Simply put, both Police and the CLI opposed the application based on the suitability requirements of the Act pursuant to Section 222(a) and (b) based on the conviction presented by the Police for Breath Alcohol Level of over 400 Mcgs/Litre of Breath.
13. Case law presented by both the Police and CLI referenced the well known GL Osbourne NZLLA 2388/95 case to explain to the WDLC that:

"Less serious convictions are also weighted. 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 weighted as required by s.121(1)(b). In these and similar cases we frequently indicate that the minimum of two years from the date of conviction may result in a subsequent favourable decision."

The Osbourne application was refused.

Both Police and the CLI also presented the DeeJay Enterprises Re Millward LLA PH531/97, PH532/97 where the Authority stated on page 6:

"The "guiding hand" or "hands on operator" of any company, or the potential hold of a General Manager's Certificate, now receive greater scrutiny from both the police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently tug in different directions. The Police cannot be everywhere. Little but a licensee's or Manager's character and suitability may stand between upholding the law and turning a blind eye. Self-imposed standards in accordance with the law must be set by licensees and by holders of General Managers' Certificates who control and manage licensed premises"

14. **SUMMARY OF POLICE REPORT AND OPINION**
The importance of both licensees and managers suitability is clear in that they are seen as persons who are under close scrutiny with both character and reputation.

BRIEF SUMMARY OF REASONING FOR DECISION

15. Although the WDLC takes a dim view of convictions related to excess Breath Alcohol, the decision to grant a new Manager's Certificate is based on the holistic framework of this application and all of the facts put before the committee.
16. Firstly, the conviction in context of Mr Peters' 37 years in the industry is seen as an isolated offence based on the last 20 years of Mr Peters' involvement in the industry. Mr Peters had a previous conviction in 2002 which is not being considered with the application but it is important to acknowledge that there has been a 20 year span of time since a previous and similar conviction. This aligns with Judge Young's analysis of the Schroeder case LLA PH168/2002 – PH169/2002, an appeal in the High Court against the decision of the Authority to decline a Manager's Certificate.

17. It is acknowledged that the WDLC is not considering the previous Breath Alcohol Level of over 400 Mcgs/Litre of Breath conviction in 2002.
18. Had Mr. Peters renewed his Manager's Certificate on time, it is acknowledged his certificate would most likely have been suspended for 28 days, which is far less time than has passed since Mr Peters' conviction and subsequent alternative working arrangements.
19. When questioned, the Police (as a general question) and CLI (on the stand) both stated they had no issues with how Mr. Peters ran his business. The applicant's Counsel referenced the Schroeder case which was appealed at the High Court LLA PH168/2002 – PH169/2002 where the High Court allowed the Appeal of the Licensing Authority's decision to decline Schroeder's application and subsequently granted him a Manager's Certificate. This was presented by Mr. Peters' Counsel, Mr Egden as extra evidence which the WDLC allowed.
20. Questions asked of Mr. Peters by the WDLC also provided insight and allowed the WDLC to form the opinion that Mr. Peters had a good record in the industry and an isolated incident which brought a conviction for Breath Alcohol Level of over 400 Mcgs/Litre of Breath should not always create a stand down period such as referenced in the Osbourne Case NZLLA 2388/95.
21. WDLC Member, Commissioner Williams asked Mr. Peters how many extra hours staff were having to work as a consequence of his conviction. Mr Peters replied between 60-80 hours per week, which was of concern for their welfare and the financial viability of the business.
22. Commissioner Redmond asked if there had been any issues with staff due to COVID. Mr Peters explained the loss of staff hours over time with 3 weeks lost over the past month. Furthermore, the two duty managers had not yet had COVID so there was underlying concerns if they did fall to the virus, Mr. Peters was not sure how he would run the business should that occur. Mr. Peters also added that it is difficult to get people into hospitality at the moment due to the uncertainties of the industry.
23. The Chair, Commissioner Neville Atkinson enquired about the courtesy coach. Mr Peters explained that he was the usual driver. However, due to his loss of licence other staff had to cover this duty and this created further business costs. Mr. Peters acknowledged that the cost would be there regardless of the Manager Certificate decision as he has a six month driving disqualification period until 15 Sept 2022.
24. Commissioner Redmond asked Mr Peters to comment on what he would do if one of his two managers were off work with COVID. Mr Peters replied "that he would ring Raj to get a temporary Manager's Certificate".

POLICE REPORT AND EVIDENCE

25. The Police representative, Sr. Constable Genevieve Mary Brownlee CRADDOCK confirmed their delegated authority and read their brief of evidence.

SUMMARY OF POLICE REPORT AND OPINION

26. Police received the application on 2 March 2022 and subsequently ran a check in their National Intelligence Application (Database) and discovered Mr Peters had a recent conviction of Driving with Excess Breath Alcohol. The date of the offending was 20 February 2022 and the conviction and sentencing were on 16 March 2022. Police

reported in opposition to the Manager's Certificate being granted due to suitability issues pursuant to Sec. 222 (a) and (b) of the Act.

27. As the Act is in place to ensure that the sale, supply and consumption of alcohol is undertaken safely and responsibly; and the harm caused by excessive or inappropriate consumption of alcohol should be minimised. The Police argued that this places an obligation on a manager to comply with the requirements of the Act and ensure the object of the Act is met.
28. Police referenced the well-known GL Osbourne NZLLA 2388/95 case to explain to the WDLC that:

“Less serious convictions are also weighted. 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 weighted as required by s.121(1)(b). In these and similar cases we frequently indicate that the minimum of two years from the date of conviction may result in a subsequent favourable decision.”

and

the DeeJay Enterprises Re Millward LLA PH531/97, PH532/97 where the Authority stated on page 6:

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SUMMARY OF POLICE REPORT AND OPINION

29. The Police argued that the importance of both licensees and managers suitability is clear in that they are seen as persons who are under close scrutiny with both character and reputation.
30. In considering a Manager's Certificate the Police reaffirmed that the WDLC must consider Section 222 which outlines the following criteria:
 - 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 a licenced 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 under section 218:
 - e) any matters dealt with in any report made under section 220.

SUMMARY OF POLICE EVIDENCE

31. Police presented two exhibits:
EXH GC01 a copy of the Conviction and Traffic History
EXH GC02 a copy of the Summary of Facts and the Statement from Constable ALTY.

EXH GC01 illustrated the Conviction for Breath Alcohol level over 400 Mcgs/Litre of Breath.

EXH GC02 details the Summary of Facts as taken and the Police Constable's statement of the process followed.

SUMMARY OF QUESTIONS POSED TO THE POLICE AND ANSWERS GIVEN

32. No questions were posed to the Police while on the stand.

LICENSING INSPECTORS REPORT AND EVIDENCE

33. The CLI, Raj Deo confirmed their delegated authority and read their brief of evidence.

SUMMARY OF INSPECTOR REPORT AND OPINION

34. The CLI acknowledged Mr. Peters' application and also acknowledged that he held the required qualification pursuant to Section 218 of the Act. The CLI also acknowledged that due to the expiry of Mr. Peters' Manager's Certificate on 11 June 2021 the application had to be for a new Manager's Certificate. The CLI reported he informed Mr Peters of the Police and the CLI opposition to his application because of the recent conviction for Breath Alcohol Level of over 400 Mcgs/Litre of Breath. The CLI reported the criteria that the WDLC must consider when making their decision on the application; being:

- 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 a licenced 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 under section 218:
- e) any matters dealt with in any report made under section 220.

35. **SUMMARY OF POLICE REPORT AND OPINION**

The CLI considered the Police report pursuant to Section 220 of the Act and also made reference to the following case law:

GL Osbourne NZLLA 2388/95 case to explain to the WDLC that:

"Less serious convictions are also weighted. 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 weighted as required by s.121(1)(b). In these and similar cases we frequently indicate that the minimum of two years from the date of conviction may result in a subsequent favourable decision."

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the DeeJay Enterprises {Re Millward LLA PH531/97, PH532/97 where the Authority stated on page 6:

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everywhere. Little but a licensee's or Manager's character and suitability may stand between upholding the law and turning a blind eye. Self imposed standards in accordance with the law must be set by licensees and by holders of General Managers' Certificates who control and manage licensed premises".

36. The CLI also referenced Henry V Strange LL 1632/96 to illustrate that the off duty conduct of managers is on the same footing as their on-duty conduct.

SUMMARY OF POLICE REPORT AND OPINION

37. The CLI recommended to the WDLC that it declines Mr Peters' application based on suitability under Section 222 of the Act.

SUMMARY OF QUESTIONS POSED TO THE INSPECTOR AND ANSWERS GIVEN

38. Counsel for the applicant, Mr Egden put to the CLI that he had referenced a number of cases. As the WDLC had allowed further information to be tabled, Mr. Edgen asked the CLI if he was aware of the Schroeder Case LLA PH 168/2002 – PH 169/2002 which was an appeal to the High Court to challenge the CHCH District Licensing Agency's decision to decline his Manager's Certificate. The decision of the High Court was to grant the Manager's Certificate. The CLI acknowledged that he was not aware of the Schroeder case.
39. Mr. Egden also asked the CLI whether he thought Mr Peters was good as a Manager and as a Licensee. The CLI replied that Mr Peters ran a good establishment and he had not had any issues with him in the past.
40. It is noted that the Police were asked the same question while seated (not on the stand) and Sr. Constable Craddock was of the same opinion as the inspector, that is the Police did not have any issues with how Mr Peters ran his business.

FINDINGS

SUMMARY OF COMMITTEE FINDINGS AND ANALYSIS

41. The WDLC acknowledge that the case would seem straightforward when reading through the evidence put to them. However, there is room for discretion based on all of the information provided and the complexity of the situation.
42. The fact that had Mr Peters put his application in on time, there may have only been a 28 day stand down period imposed based on the conviction. Mr Peters has not acted as a Duty Manager since 11 June 2021, some 11 months.
43. Mr Peters is willing to re-sit his LCQ which provides evidence that he has in some way thought through the issues that have arose from his conviction and wants to re-educate himself.
44. When deliberating the WDLC gave credit and weighting to the 37 years in the industry with a good history of compliance, albeit two driving convictions for excess alcohol with one being relevant to this application.
45. Although the onus is on the applicant to apply for a renewal of a Manager's Certificate before the expiry of the current certificate, leniency can be considered due to the circumstances created over the last two years with the COVID-19 pandemic. This has had a major effect on the hospitality industry, including Mr. Peters' business. The WDLC

have chosen to use their discretion to apply an understanding and lenient view point on this matter.

RELEVANT LEGAL CONSIDERATIONS AND CRITERIA

46. In considering an application for a Manager's Certificate the WDLC is directed by sections 216 - 223 of the Act as well as reports under section 103. The criteria is listed below as required under Section 222.
- 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 a licenced 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 under section 218:
 - e) any matters dealt with in any report made under section 220.

SUITABILITY OF THE APPLICANT

47. The suitability of the applicant to conduct the role as a Duty Manager is the underlying consideration the committee deliberated over with the understanding that the conviction for Breath Alcohol Level of over 400 Mcgs/Litre of Breath was not taken lightly.
48. Using a similar approach taken in the Sheard case AP 119/95 to question whether the applicant, Mr Peters could be expected to discharge his duties competently under the object of the Act. The WDLC considered carefully the information presented and the questions asked of the CLI and Police. Both agencies were of the opinion that Mr. Peters runs a good business and the conviction is the only matter that brings his suitability into question.

COMMITTEE'S DECISION REASONING

49. Considering the fact before the WDLC the members' decision is based on four main factors.
- a) Had Mr Peters put his application in on time there may have only been a 28 day stand down period imposed. Mr Peters has not been a Duty Manager since 11 June 2021, some 11 months.
 - b) Mr Peters has organised to re-sit his LCQ which provides the WDLC with confidence that Mr. Peters has considered his actions and wants to "put things right". The LCQ will remind Mr. Peters of his obligations under the Act and he is also willing to complete the Serve Wise Online course as extra education.
 - c) Mr Peters has worked in the hospitality industry for 37 with a good record of compliance, albeit two driving convictions for excess alcohol with one being relevant to this application.
 - d) The COVID-19 pandemic has had a major impact on the hospitality industry and the effects of this are not lost of the WDLC.
50. As with the Schroeder case LLA PH168/2002 – PH 169/2002 in the High Court before Judge Young where Judge Young pointed out that:

"Despite the conviction the Authority was satisfied that Mr Schroeder was suitable to be a Licensee. It expressed "confidence" in his ability to work in the hospitality industry" the Authority at the time did see "an isolated incident". It also accepted that the proposition that the conviction was "an isolated incident"

the WDLC also agreed that the GL Osbourne NZLLA 2388/95 case was a guideline and not a compulsory position and that all cases should be considered on their merit.

51. The WDLC agreed that Mr. Peters' conviction can be seen as an isolated incident and is guided by the decisions made by the High Court in the Shoeder Case. To decline the application would be unfair taking all of the factors into consideration. The WDLC have considered the seriousness of the conviction, the timeframes involved and the otherwise good record of Mr. Peters to reach the decision to Grant the New Manager's Certificate

DATED at Rangiora this 7 June 2022



Chairperson
Waimakariri District Licensing Committee