

TASMAN DISTRICT LICENSING COMMITTEE

Decision No. MGR2643

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Vincent James Sibbald pursuant to s.219 of the Act for a new Manager's Certificate

BEFORE THE TASMAN DISTRICT LICENSING COMMITTEE

Chairperson: Cr D J Ogilvie
Members: Mr M Fitzsimons
Mr L C Gabites

HEARING at RICHMOND on 20 June 2018

APPEARANCES

Mr Vincent James Sibbald –applicant
Mr W Liebisch – Tasman District Licensing Inspector – to assist
Sergeant K Bruning – NZ Police – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction

[1] There is one application before the Committee for the issue of a Manager's Certificate under section 219 of the Sale and Supply of Alcohol Act 2012. The applicant Vincent James Sibbald is currently employed at Hotel Motueka as a project manager with additional responsibilities of managing events and entertainment.

[2] This application was forwarded to the agencies in accordance with section 220 Sale and Supply of Alcohol Act 2012 and attracted opposition from the Police. The Police objection raised the issues of criminal convictions, suitability and experience under the provisions of section 222 (a), (b) and (c) of the Sale and Supply of Alcohol Act 2012.



The Applicant

[3] Mr Sibbald informed the Committee that he wished to obtain a Manager's Certificate to continue his work in the hospitality industry. He had previously worked in the industry in Christchurch and then spent some time in Australia. He was now back in New Zealand and wanted to establish himself in Motueka. Since arriving back he had worked as the project manager looking after the renovations to the Hotel Motueka. He had now taken responsibility for entertainment and events at the hotel.

[4] Mr Sibbald told the Committee that he had read the submission made by Sergeant Bruning. While Mr Sibbald acknowledged the offences he had been convicted of, they happened 14 years and more ago and he did not consider they should be taken into account. He referred the Committee to the G L Osbourne decision regarding convictions. He also told the Committee that Sergeant Bruning had raised convictions that had been quashed and these should not be considered by the Committee.

[5] He went on to say that the majority of the submission produced by Sergeant Bruning related to newspaper clippings and remarks passed to him by other Police Officers. Mr Sibbald did not agree with all of the accusations made by Sergeant Bruning in his submission about incidents that had occurred at the Hotel Motueka. He did accept that he had made a mistake with the Facebook postings and they had been taken down straight away.

[6] Mr Sibbald told the Committee he had been silly when he was younger but now understood the need to settle down and this was his opportunity to do that.

[7] In response to questions from Sergeant Bruning, Mr Sibbald acknowledged he had carried out security responsibilities on one night due to illness of the person responsible. He indicated since then he had applied for a Certificate of Approval.

The Licensing Inspector

[8] Mr William Liebisch has been a Licensing Inspector with the Tasman District Council for the past four years. In his report he did not oppose the application but supported the position the Police had taken.

[9] Mr Liebisch confirmed that he had spoken with Mr Sibbald and found he had a good understanding of the Sale and Supply of Alcohol Act 2012 particularly relating to his responsibilities as a Manager. He raised with Mr Sibbald the convictions that had been declared in the application. Mr Sibbald confirmed with him those convictions and said he made some bad decisions but it was a long time ago.



[10] Mr Liebisch informed the Committee that character references provided with the application did mention the convictions but state that they believe he has made changes and has the ability to operate as a duty manager.

[11] Mr Liebisch informed the Committee that the applicant had gained six months experience at the Hotel Motueka working as a Project Manager and had helped in the bar under the guidance of a duty manager.

The Police

[12] Sergeant Kyle Bruning is the Alcohol Harm Reduction Officer for the Nelson Bays Police and has the responsibility to report on all applications made under the Sale and Supply of Alcohol Act 2012 for Police.

[13] Sergeant Bruning advised the Committee that Police had considered the application by Mr Sibbald and have entered an opposition to the application. The grounds for opposing the application relate primarily to:

- Section 222(a) – the applicants suitability to be a Manager
- Section 222(b) - any convictions recorded against the applicant
- Section 222(c) - any experience, in particular recent experience that the applicant has had in controlling any premises for which a licence was in force.

[14] In respect to Section 222(a) the Police reviewed the National Intelligence Application and advised the Committee that Mr Sibbald had had been charged but not convicted of 114 dishonesty offences.

[15] Sergeant Bruning brought to the attention of the Committee newspaper articles from 2009 that related to offending in Christchurch and connected to local bars and implicated the applicant. Sergeant Bruning asked the Committee to consider this information to determine the suitability of the applicant.

[16] In relation to section 222[b] the police submitted that the applicant had a number of convictions for dishonesty the most recent was in 2008. While acknowledging the convictions were historic they clearly showed a pattern of dishonesty offending over a period of years.



[17] In relation to section 222(c) Sergeant Bruning asked the Committee to consider a range of incidents where Sergeant Rob Crawford had dealt with the applicant. Those incidents had been conveyed to Sergeant Bruning and included an incident on Christmas Day, an incident involving an intoxicated female in the car park and a time when the applicant, who is not the holder of a Certificate of Approval as a security guard, took that role at the Hotel Motueka. He also told the Committee of a number of Facebook postings that in the view of Police breached section 237 of the Sale and Supply of Alcohol Act 2012.

[18] Given Mr Sibbald was associated with these incidents and was working at the Hotel Motueka at the time, Police believe Mr Sibbald is not a suitable person to hold a managers certificate.

[19] In answer to a question from the applicant, Sergeant Bruning agreed that the offences identified earlier did not involve alcohol related offending and none occurred in a licensed premises. Sergeant Bruning in answer to a further question told the Committee that all his dealings with the applicant were pleasant and he was friendly and very helpful.

The Committee's Decision and Reasons

[20] To a large extent the issues that were raised in opposition to this application by the Police are historical. There are some more recent incidents that occurred from Christmas 2017 that the Police referred to in their evidence.

[21] Sergeant Bruning told the Committee several incidents had been dealt with by Sergeant Crawford who had outlined what had happened when dealing with Mr Sibbald at the Hotel Motueka. The Committee did not have the chance to question Sergeant Crawford as he did not appear at the hearing. The Committee was reliant on newspaper clippings and the evidence of Sergeant Bruning to form an opinion.

[22] Sergeant Bruning opposed the application on three issues as set out in section 222 relating to suitability, previous convictions and experience. The Act states in Section 222:

222 Criteria for manager's certificates

In considering an application for a manager's certificate, the licensing committee or licensing authority, as the case may be, must consider the following matters:

- (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 any 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 required under section 218.*

[23] The issue for the Committee is the applicant's suitability in respect of convictions recorded against him some 10 years and more ago. The actual offences occurred in and prior to 2004. We are required to exercise our discretion in a manner likely to promote the object of the Act set out in section 4 that the sale supply and consumption of alcohol should be undertaken safely and responsibly.

[24] The Authority has held that the meaning of suitability has not changed as a result of the enactment of the Sale and Supply of Alcohol Act 2012. In *Karambayev Ltd* [2013] NZARLA 1214 at paragraph [17]:

There is no statutory definition of 'suitability'. The former authority noted that there is no special statutory meaning for suitability and referred to the definition contained in the Concise Oxford Dictionary, 'well fitted for the purpose, appropriate.'

[25] The Authority further stated in *Re Jays LLA 994/94*, 15 July 1994 that:

'differing aspects of suitability will be given different weight by decisionmakers under the Act. Among them are experience in the hospitality industry, management ability and personal integrity.'

[26] In *Re Waymouth LLA 1075/91*, 28 June 1991, it was held at [11] that it is the Authority, not the Police who decides the suitability of an applicant.

[27] In the guideline decision of G.L. Osborne LLA 2388/95 the Authority stated:

"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." The committee must consider all the criteria and requirements before the Manager's Certificate can be issued. In all situations it has been reported that the authority usually regard time as running from the date of conviction, rather than the date of offending."

[28] In an application for a general manager's certificate concerning A H B Fraser-Tytler LLA Decision PH281/03, the Authority reflected on its approach expressed in Osborne. It has now concluded that it is unable to identify any logic in why time should run from the date of the conviction. The issue should be the period of time for which an applicant has been free of trouble. On this basis the time of the offending is the appropriate starting point rather than the time of conviction, which may be some considerable time later.



[29] As well as raising issues related to convictions and suitability of the applicant the Police raised experience in the industry as a further point of opposition to this application. We are reminded that generally it is considered that six months experience in New Zealand has been used as a guide but legislation does not stipulate this is a requirement. It is suggested that lack of experience in the conduct of licensed premises is not necessarily fatal to an application and we refer to Re Johnston LLA 722/96, 23 April 1996 where the former Authority said at [1]:

'Although neither of the applicants has previous experience or training in the hospitality industry they are both industrious and demonstrated to us that they know where to turn for appropriate skills and advice.'

[30] We have been presented with evidence that shows Mr Sibbald has a number of convictions relating to offences dating back some 14 and more years. Even though this showed a pattern of offending the Committee is inclined to accept the applicant's submission that he has, as he stated, grown up in the last few years. Evidence has also shown that Mr Sibbald has the knowledge to hold a manager's certificate. He has attained the LCQ, and during an interview with the Licensing Inspector, demonstrated he has a good understanding of the Sale and Supply of Alcohol Act 2012 particularly relating to the responsibilities of a Manager. Mr Sibbald made a good impression in the witness box, and displayed a good understanding of the object of the Act. He also has previously worked in the hospitality industry and for the last six months has worked at the Hotel Motueka as a project manager but with other responsibilities that included working with the current Bar Manager of the hotel.

[31] Accordingly, the Committee's decision pursuant to S 221(1) of the Act, is that the application for a Managers Certificate may be granted and issued immediately.

DATED at RICHMOND this *4th* day of *July*, 2018



Councillor David Ogilvie
Chairperson