

Decision No. GREYDLC007/2019

**IN THE MATTER**

of Sale and Supply of Alcohol Act 2012  
(the Act)

**AND**

**IN THE MATTER**

of an application by **EDEN MARIE HACKETT** in respect of a renewal of Managers Certificate to manage licensed premises.

**BEFORE THE GREY DISTRICT LICENSING COMMITTEE**

Chairperson: Mr Alan O'Connell  
Members: Mrs Rachel Van der Geest  
Mr John Magee

**HEARING** at Greymouth on Thursday 31 January 2019 at 3.25pm

Decision written by Mr O'Connell on behalf of the Committee

**APPEARANCES**

Mr John Canning,	Licensing Inspector - in opposition
Acting Senior Sergeant Brent Cook	NZ Police – in opposition
Ms Eden Marie Hackett	Applicant in person
Ms Jessica Salt	Character Witness for Applicant

**RESERVED DECISION OF THE GREY DISTRICT LICENSING COMMITTEE**

[1] The application by Eden Marie Hackett for a renewal of manager's certificate (55/CERT/101/2018) to manage licenced premises is approved for one year.

**BACKGROUND**

- [2] On 26 November 2018, Ms Hackett applied for a renewal of her manager's certificate which would allow her to be a certificated manager of licensed premises known as Countdown Greymouth.
- [3] Ms Hackett currently works for Countdown Greymouth and works one night a week as Duty Manager.

- [4] Under Section 222 (a) & (b) of the SSAA 2012 Police opposed the grant of the Managers Certificate. The Police opposed the application on the basis that Ms Hackett was not suitable to hold a Manager's Certificate as she was arrested and charged on 11 March 2018 with common assault within licensed premises and whilst under the influence of alcohol.
- [5] Ms Hackett was eligible for the Police Diversion Scheme and was dismissed without conviction upon completion of her diversion requirements.
- [6] As a result of information received from the Police the Licensing Inspector interviewed the applicant on 28 November 2018 and the subject of an incident of assault was discussed during the interview.
- [7] The Licensing Inspector Mr John Canning has asked in his brief to the Hearing that should the decision be that Ms Hackett retain her Manager's Certificate he would recommend that it not be renewed for a three year period but for one year.
- [8] Given the opposition to the Application, a hearing was convened before the full District Licensing Committee.

## **POSITION OF THE PARTIES**

### **Applicant**

- [9] Ms Hackett attended the Hearing with her store manager Ms Jessica Salt, in support and provided two written character references, one which was read out by Countdown store manager Ms Jessica Salt and the other was presented after the Hearing (from Ms Glenys Mills, Service & Admin Manager of Countdown Greymouth)
- [10] Ms Hackett spoke to the Committee and outlined the circumstances that lead to her conviction of assault. She explained that she had been drinking for a number of hours and had had two beers and two vodka drinks. She had been approached, felt threatened and this is what lead to her assaulting another female.
- [11] She did not know until the Police arrived the following weekend that she was being charged.

- [12] Under questioning she does not think she was intoxicated but rather influenced and described her understanding of an intoxicated person as slurring words, unsteady on their feet, and she claims she was not.
- [13] She did however accept full responsibility for the assault and completed her diversion requirements which led to her conviction being dismissed.
- [14] The Committee heard from Ms Jessica Salt who read out a statement in support of Ms Hackett. Although only having known Ms Hackett for a few months she stated that in the time that she had known her Ms Hackett displayed consistent behaviour, that she is a very calm, collected, soft spoken and professional staff member and felt the incident was completely out of character.
- [15] It was clear to the Committee that Ms Salt regarded Ms Hackett as being a responsible employee, that she had informed management of her conviction. Ms Salt advised the Committee that it was not crucial to the store if Ms Hackett should lose her Manager's Certificate as they have six other staff members with their Manager's Certificate. She advised that Ms Hackett's pay rate would drop if she does lose her Manager's Certificate.
- [16] The Licensing Inspector Mr Canning advised that Ms Hackett interviewed well, and showed good knowledge of licensing obligations. Mr Canning read out his brief and also reiterated his recommendation of a one year renewal.
- [17] Acting Senior Sergeant Brent Cook representing the Police read out his statement.
- [18] When questioned by the Committee he advised that the Police had no objection to a shortened term of one year renewal.

### **RELEVANT LAW**

- [19] Section 222 of the Sale and Supply of Alcohol Act 2012 (the Act) provides five considerations the Committee must make, when deciding whether to grant an application for a manager's certificate. Those are as follows:
- 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 licenced premises;

d. Any relevant training, particularly recent training, and evidence that the applicant has attained the prescribed qualification;

e. Any matters dealt with by the reports from the Inspector and Police

[20] It is noted from Section 222 of the Act, that all criteria must be considered.

[21] In terms of Section 222 of the Act, the first criteria to which the DLC must have regards is "the applicant's suitability to be a manager."

[22] The Act requires consideration of "any convictions recorded against the applicant" (Sale and Supply of Alcohol Act 2012 s. 222(b)). An identical requirement was found in the earlier Sale of Liquor Act 1989 (s 121). For that reason, previous case law under the earlier statutory scheme will provide guidance as to how that consideration must be applied under the current law.

[23] The Inspector has suggested rather than the usual three year renewal period that rather Ms Hackett's Certificate is renewed for one year. When questioned by the Committee Senior Sergeant Cook said that Police had no objection to the same being applied.

[24] The approach in Osborne to stand down periods has been followed in many decisions of the Authority over the years.

[25] However the former Authority amended its view in regards to when the time of the stand down period should start to run, and in Pompey [2004] NZLLA 623, the Authority determined that "the correct assessment of time is from the date of offending."

[26] In a more recent decision of McKay[2014] NZARLA PH 238 ARLA ruled:  
 "In regard to previous convictions the guideline decision of G L Osborne NZLLA 2388/95 is relevant. In that case, the Authority said that where a single alcohol related conviction had been incurred such as driving with excess breath alcohol, the Authority expected a stand down period of two years to occur before an application for a General Managers Certificate would be considered. In the case of more serious offending a five year stand down period is usually sought."

[27] Accordingly, the Authority has provided strong guidelines to the Committee as to the approach to be taken with convictions and in previous decisions this has been taken into consideration, however, each case must still be considered on its own merits and facts.

[28] In Ms Hackett's case her offending was her first, she completed the Police Diversion Scheme and this has been dismissed without conviction.

- [29] The Committee consider there are a number of factors that argued for a reduced period of stand down, those included:
- a. The supporting references, supporting the application
  - b. No evidence of offending since.
  - c. The applicant had completed a diversion scheme resulting in no conviction.
  - d. The Reporting Agencies agreed to a lesser renewal period.
  - e. Demonstrating to the committee a good understanding of licensing obligations.
- [30] The Committee believes that a reduced renewal for M Hackett to prove she is a suitable person to hold the Manager's Certificate is acceptable in this case.
- [31] The result must be, therefore, that the application for a Manager's Certificate is approved subject to one year renewal instead of the standard three year renewal.
- [32] For the above reasons, the unanimous decision of the Committee is to grant the application for a renewal of the Manager's Certificate for a one year period.

### CONCLUSION

- [33] That the application for a renewal of a manager's certificate is granted and may issue immediately for one year.

DATED at GREYMOUTH this 07 day of February 2019

  
Alan T O'Connell  
Chairperson/Commissioner  
Grey District Licensing Committee



On behalf of:  
Mrs Rachel Van der Geest  
Mr John Magee