

Application	19/062/2018
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u>	
<u>IN THE MATTER</u>	of an application by Arlene Teresa Paki for for a manager's certificate pursuant to section 219 of the Act

HEARING at the Waitomo District Council on 6 June 2019

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Mr J Gower, Mrs J McFarlane

APPEARANCES

Miss A Paki - Applicant
Mr K Tutty - Licensing Inspector
Senior Constable T Schraft - Police

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The application for a renewal of a manager's certificate is declined.

REASONS

1. This application by Miss Paki for a manager's certificate was received on 5 November 2018. Miss Paki has worked at Piopio Cosmopolitan Club since May 2018 on a casual basis.
2. The application is not opposed by the Licensing Inspector or Police. However, Miss Paki states in the application that she has some convictions, therefore the licensing committee considered that it was appropriate to decide the application at a public hearing (s 202(1)).
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. Miss Paki holds the required qualification and has sufficient experience. Prior to starting work at Piopio Cosmopolitan Club, she worked as a casual bar person at the Te Awamutu Sports Bar for two years. She is currently working 15 to 20 hours per month. These hours would increase if she held a manager's certificate. Miss Paki has attended in-house training at Piopio Cosmopolitan Club and the Club Champs training in November 2018.
5. Miss Paki explained that she has good people skills and can maintain good levels of behaviour in the bar and has the respect of customers. When the licensing committee questioned Miss Paki, she was able to confidently explain the object of the Act, the responsibilities of a duty manager and how to use the SCAB Intoxication Assessment Tool to assist in determining if a person is intoxicated. Miss Paki correctly explained that an intoxicated person can only remain on the premises in a safe area while transport home is being organised. Miss Paki is familiar with the premises incident book and correctly identified acceptable forms of identification.
6. Overall Miss Paki has a good understanding of the conditions of the club licence and off-licence for Piopio Cosmopolitan Club, however the licensing committee notes that she will need to work on being able to recite all of the conditions with accuracy.
7. The Licensing Inspector noted in his report that he had interviewed Miss Paki and was satisfied she had an excellent understanding of the requirements and responsibilities of a manager.
8. Having regard to all of the evidence we have heard, the licensing committee is satisfied that Miss Paki has appropriate training, qualifications and experience to hold a manager's certificate. The only issue of concern is the convictions and whether they impact on her suitability to hold a manager's certificate.

Is Miss Paki suitable to be a manager given the convictions?

9. Miss Paki states in the application that she has some convictions, including Assault and Theft in 2016 and driving offences in 1996 and before 1996. The Police report lists three convictions on 6 October 2016 including Common Assault, Theft and Assaults with Intent that all relate to an incident on 27 August 2015. In addition, there are seven convictions between 1992 and 1997 related to non-compliant driving, excess blood alcohol and obstructing Police.
10. Miss Paki explained that in February 2015 she found her partner in bed with a female and this led to an altercation. In August 2015 Miss Paki discovered that the relationship had continued and there was another altercation, during which, Miss Paki took some of the female's belongings and threw them away. Miss Paki completed her community work in 2016 and moved away from Te Awamutu. She is no longer involved in the relationship, which was dysfunctional and violent. Miss Paki states that she has not been in trouble with the Police since 2015 and now has a more mature attitude and this is also related to becoming a mother. Miss Paki would like to continue working in the hospitality industry and will be able to get more shifts if she has a manager's certificate.
11. Senior Constable Schraft gave evidence that the three convictions on 6 October 2016 actually relate to two incidents. None of the offences relate to drugs or alcohol. Miss Paki plead guilty to the three charges. The charge of Assaults with Intent to Injure (manually) relates to the incident on 7 February

2015. The NZ Police Summary of Facts states that Miss Paki went to her partner's address and found her partner with the victim. She then left the address and returned some time later and saw the victim walking along the footpath. Miss Paki confronted the victim, threw her to the ground and kicked her about the head a number of times. As a result of the assault, the victim sought medical attention at Waikato Hospital the following day and was kept in hospital overnight for observation due to bruising and swelling to her head. Miss Paki was convicted of Assaults with Intent to Injure on 6 October 2016 and sentenced to 150 hours community work.

12. The Common Assault and Theft charges relate to an incident on 27 August 2015. The NZ Police Summary of Facts state that on 27 August 2015 accessed her partners Facebook account and started communicating with the victim by pretending to be her partner. She then arranged for someone to pick up the victim and drive her to a designated location. While the victim was waiting in the car alone, she confronted her, tipping out the contents of the bag, and then punched her in the head several times. Miss Paki stole a number of items out of the bag, including cash, and threw the cell phone in the river. Miss Paki was convicted of Common Assault on 6 October 2016 and sentenced to 150 hours community work and six months supervision. Miss Paki was convicted of Theft on 6 October 2016 and was sentenced to pay a fine of \$110.00.
13. After hearing this new evidence Mr Tutty stated that he was concerned to hear the details of the offending. He recommended that the licensing committee apply a five-year stand down period to August 2020, due to the fact that there is more than one conviction of a serious nature.
14. 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).
15. 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.
16. 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.

17. The licensing committee considers that the seven convictions between 1992 and 1997 (non-compliant driving, excess blood alcohol and obstructing Police) should be disregarded because they occurred well over five years ago. However, the three convictions on 6 October 2016 directly affect this manager's certificate application and indicate that Miss Paki has not demonstrated the high standard of behaviour expected of a person who wishes to hold a manager's certificate. Miss Paki has three convictions over a six-month period in 2016 involving Assault and Theft, which indicates a concerning pattern of offending. The licensing committee is particularly concerned that Miss Paki was less than honest in her explanation of the incidents. She downplayed the assault offences and described them as a 'scuffle' and an 'altercation' that was more like a fight that both parties were involved in. However, the NZ Police Summary of Facts shows that both assaults were pre-meditated and were initiated by Miss Paki. In addition, both assaults were directed to the head of the victim, which had the potential to result in serious harm or death. The fact that the victim was hospitalised for injuries to her head shows the seriousness of the assault. Therefore, we must be guided by the five-year "stand-down period" recommended in the *Osborn* and *Manson* decisions.
18. We accept the recommendation of the Licensing Inspector Mr Tutty, that the five-year stand-down period should run from 27 August 2015, which is the date of the most recent offence. This stand down period will give Miss Paki the opportunity to establish an incident free period. Miss Paki will need to demonstrate that she is a responsible and honest person who can be trusted to uphold the law at all times, on and off-duty, in the capacity as a certificated duty manager.
19. Despite these serious concerns about suitability, the licensing committee has formed the view that Miss Paki has all of the necessary qualities to be a good duty manager. Miss Paki has taken steps to remove herself from any situation that may lead to any further convictions. She values her job and wants to continue to work in the hospitality industry, therefore she is motivated to comply with the law. We suggest that Miss Paki continues to gain experience working on licensed premises and attends all training opportunities offered to her by her employer. In August 2020, Miss Paki could consider applying again for a manager's certificate, if there have been no further convictions by this time.

Dated this 28th day of June 2019



Sara Grayson
Commissioner