

Application	19/011/2022
<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 Raylene Monica Wi for a Manager's Certificate pursuant to section 219 of the Act

HEARING via AVL (Zoom) on 18 August 2022

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Ms T McIntyre
Members: Mr R Murphy, Cllr R Johnson

APPEARANCES

Ms Raylene Wi - Applicant
Licensing Inspector - Mr M Hayman

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The application for a manager's certificate is granted. The manager's certificate may issue immediately.
2. The manager's certificate shall continue in force until the close of the period of the day 12 months after the day it is issued.

REASONS

1. This application for a manager's certificate was filed on 28 March 2022.

2. The Police and Licensing Inspector do not oppose the application. However, the committee notes that Raylene Monica Wi has had two convictions with one being a Drink driving offence in 2009 and the other a theft offence in 2019. As this reflects poorly on her suitability, 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 criteria (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?
 - e) Have the Inspector and Police raised any relevant matters in their reports?
4. Ms Wi has worked at The Muster, a tavern located in town centre area of Te Kuiti , for over 12 months on a full time basis. She has completed the Manager's Training Course and is the holder of the Licence Controllers Qualification. The Licensing Inspector, Mrs Norris, interviewed Ms Wi and concluded that her knowledge and understanding of the Act and a manager's responsibilities were adequate.
5. However, the Licensing Committee must decide whether Ms Wi is a suitable person to hold a manager's certificate having regard to her convictions.

Is Ms Wi a suitable person to hold a manager's certificate given her past convictions?

3. Ms Wi is 42 years old and is a New Zealand citizen. She has worked at The Muster bar for just over 12 months but has some hospitality experience from her role as a cook at the Dinsdale Tavern and Jugs in Hamilton. She has resided in Te Kuiti for the past five years and has a family of four adult children. Ms Wi explained that she works primarily behind the bar but is often required to prepare bar snacks in the adjacent kitchen and is sometimes responsible for the pokie machines and closing up the bar at the end of the evening. She works the evening shift 5-6 day week, typically from Wednesday to Sunday 5.00pm to closing. Ms Wi said closing time varied but was typically 10.00-10.30pm. She works alongside a certified duty manager who provides on the job training. When questioned Ms Wi was able to confidently explain the SCAB tool and gave examples of dealing with intoxicated people.
4. In her submission, Ms Wi told the committee that she loved her job and the close-knit environment of The Muster in which staff and customers are made to feel like family. She obtained the LCQ in 2014 but has recently decided she wants to move up a level in her life and is ready for a new opportunity. Ms Wi explained the circumstances surrounding her conviction in 2019. She had just started a new job and was working a week without pay as a trial. She had just come of a work and income benefit and was in arrears with some of her bills in particular her power bill. Ms Wi explained that, on 9 July 2019, in a state of desperation she took \$350 from the till. Her employer noticed the missing money that night and identified Ms Wi taking it on CCYV footage. The Police were called, and this resulted in a conviction in October 2019. Ms Wi was ordered to repay the \$350.00 and was trespassed from the premises for a period of 2 years. Ms Wi explained she was in a bad place at the

time and expressed remorse for her poor decision and actions. In her application Ms Wi also declared a drink driving conviction from 2009.

5. The Licensing Inspector, Mr Hayman, tabled a copy of Ms Wi's criminal and traffic history (Evidence 1) obtained from the Police at the request of Licensing Inspector Mr Chand, and a supporting letter from Police, dated 15th August 2022, outlining further information regarding Ms Wi's offending (Evidence 2). This information was circulated to all parties and the Committee adjourned for 15 minutes to allow the Committee and Ms Wi an opportunity to read and digest the information.
6. The Criminal and Traffic History revealed a further 2 convictions that Ms Wi had not disclosed. These included a conviction for driving while suspended in 2016 and wilful damage in 2015. This reflects poorly on Ms Wi's honesty and raised concerns for the Committee. When asked why she did not declare these additional convictions, Ms Wi said she had forgotten about them. She explained that in 2016 she lost her licence due to accumulating more than a 100 demerit points and drove again for family reasons. The wilful damage conviction related to an incident where she broke a window.
7. When a person fills out an application for a manager's certificate, a statutory declaration is made. In this case, Ms Wi was dishonest when she answered the question relating to criminal convictions. In the *Rowson* [1995] NZLLA 1375 decision, where the applicant disclosed only one of six convictions in his application when asked "Has the applicant been convicted of any offence". The Licensing Authority stated that:

... as has been recorded in many decisions refusing applications for General Manager's Certificates, in our view an applicant's failure to honestly answer the question regarding previous convictions weighs heavily against an individual applicant being considered suitable to hold a General Manager's Certificate.

6. Having a conviction does not mean an application for a certificate will be declined. The Alcohol Regulatory and Licensing Authority has used the decision of G L Osbourne LLA 2388/95 since 1995 in terms of how to deal with previous convictions. In that decision the 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 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 or blood alcohol conviction or a single driving offence disclosing no pattern of offending. In these and similar cases we frequently indicate that a minimum of two years from the date of the conviction may result in a subsequent favourable consideration providing suitable reports from both the Police and Licensing Inspector are received."

8. 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”.

9. The Licensing Committee considers theft of property as a less serious conviction in terms of the Osborne decision. Ms Wi has established a 3-year period free of any convictions and therefore based on the Licensing Authority guidelines in the *Osborne* and *Manson* decisions, the 2019 conviction does not weigh against her suitability to hold a manager’s certificate.
7. With regard to the issue of not disclosing other criminal convictions, it was clear her explanations that Ms Wi has had a tumultuous past. It is accepted that she did not intentionally set out to mislead the Committee. She declared her most recent conviction and her most relevant conviction (alcohol related). The Committee also gave weight to the fact that Ms Wi had been transparent with her employer about the conviction.

Should the manager’s certificate be granted?

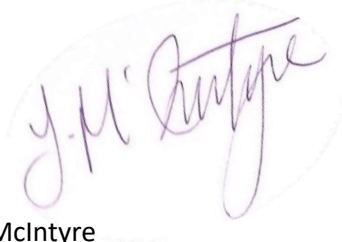
8. In making its decision the Committee has considered all the criteria set out in section 222 of the Act. In this case the concerns relate particularly to Ms Wi’s suitability to hold a certificate having regard to a 2019 conviction and non-disclosure of other historic convictions.
9. The Committee has carefully considered Ms Wi’s conduct. While this reflects on her suitability, this is balanced against her open explanations of the incidents, her track record with The Muster Bar and the supporting letter from Police reiterating they have no objection to the application on that basis of the type of offences and the time lapsed when reviewing the application. They also note that any granting of the application ensures a 12-month period of review.
10. Ms Wi comes across as a sincere person who has turned over a fresh leaf and who now seeks a better way of life and to be a better role model for her children. She is well on her way having maintained a clean record for the past 3 years, is financially stable, solid employment and support from her employer.
11. 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 duty manager must take steps to run the premises in a manner that minimises harm caused by excessive or inappropriate consumption of alcohol. 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. Ms Wi answered questions about the responsibilities of a duty manager at the hearing and was able to explain the SCAB Intoxication Assessment Tool and was able to give examples of how she has successfully managed a patron who was intoxicated and aggressive. Ms Wi has good training and sufficient experience and there is nothing to suggest that she would not carry out the responsibilities of a duty manager properly.
13. The Committee notes that Ms Wi is sometimes called upon to work in the kitchen and explained to her the case law pertaining to this and the committees concerns that she would not be able to adequately carry out her duties as a duty manager if she were in the kitchen,

especially during busy evening shifts. Ms Wi advised that there were other staff who could prepare bar snacks and that there would be no need to her to be in the kitchen for any sustained amount of time. Ms Wi gave an undertaking that when she is working as the duty manager, she will not work as a cook. On the basis of the undertaking given, the Committee is satisfied.

14. Finally, the Committee notes that the District Court gave Ms Wi the benefit of not imposing an extra penalty in regard to the October 2019 conviction and instead gave a probationary period 'to come up for sentence if called upon within 9 months'. The Committee views the issue of a new Manager's Certificate in a similar way; the first year being a probationary period. Should anything occur within that time resulting concerns from Police or the Licensing Inspector, it will be an issue at renewal.
15. Therefore, the application for a manager's certificate is granted.

Dated this 18 day of August 2022



Tegan McIntyre
Commissioner
Waitomo District Licensing Committee