

**WHANGAREI DISTRICT LICENSING COMMITTEE****Applicant****JANET DAWN POPE****Decision Number: NZDLCWD/02/093 [2017]****IN THE MATTER OF** the Sale and Supply of Alcohol Act 2012 (the Act)**AND****IN THE MATTER** of an application pursuant to Section 219 of the Sale and Supply of Alcohol Act 2012 for a Managers Certificate by Janet Dawn Pope**BEFORE:**

Chairperson: A Court

Members: P Dimery and L Andrewes

**HEARING:**

At Whangarei Chambers 10:00am 4 December 2017

**APPEARANCES**

Janet Pope - Helena Bay Café Limited (Applicant)

Mike Henehan – Licensing Inspector

Tamsin Sutherland – Licensing Inspector

Sergeant Howard Clement – Alcohol harm Prevention Officer Whangarei/Kaipara



## Introduction

- (1) We have before us an application by Janet Dawn Pope for a Managers Certificate.
- (2) Concurrently the applicant has filed application for the issue of an On-Licence pursuant to Section 100 of the Act. This matter is the subject of a separate decision (NZDLCWD/092/MC 2017) refers.
- (3) The application was filed with the Whangarei District Licensing Agency on the 3<sup>rd</sup> day of August 2017. Accordingly the Sale and Supply of Alcohol Act 2012 (the Act) applies.
- (4) The inspector has filed a report in support of the application.
- (5) The application has been opposed by the New Zealand Police on the grounds that the applicant cannot satisfy Section 222(c) of the Act. The premise of the Police opposition is that the test of whether the applicant has any experience, in particular recent experience in controlling any premise for which a licence is in force cannot be satisfied and that this is fatal to the application.

## Evidence and Submissions

### Licensing Inspector

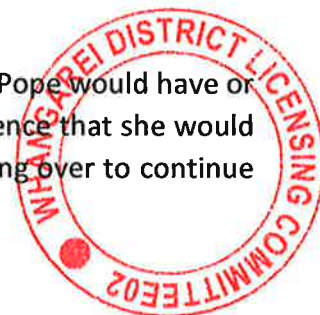
- (6) Licensing Inspector Mike Henehan presented a verbal submission in support of his written report. Mr Henehan referred to Clause 20 of the Whangarei District Licensing Policy, acknowledging that whilst the policy could no longer be legally relied upon as a statutory document, it nevertheless had wide public support and provided a good policy on which historically applications of this nature had been assessed. In the seven years this policy had been in force no incidents had occurred in any of the small businesses granted licenses under Clause 20.
- (7) In summary of Clause 20: This section provides discretion where applicants on taking over or opening new licensed premises can be granted licences in certain circumstances. Specifically where:
  - The applicant has made application for an On-Licence in relation to a café/restaurant operation which is low risk
  - The businesses are a small family operation (sole operator or 2 partners)
  - The applicant has experience in managing successful businesses or other ventures either in New Zealand or overseas
  - The applicant is in all other aspects suitable to hold a licence having gained the LCQ etc.
- (8) Mr Henehan stated that the applicants premise Helena Bay Café was low risk servicing predominantly tourists and locals. The applicant had excellent business skills which

were easily transferrable to the suitability test of the Act and in his view having interviewed Mrs Pope and assessing many applicants over the years Mrs Pope was 'at the top of the list' in his opinion in regard to ability and skill.

- (9) Under examination it established that the Whangarei Liquor Licensing Policy had been substantially informed by submissions from the Police and Clause 20 was well known and understood. It had been used on many occasions and had to the best of the inspector's knowledge never been an issue on any application. He could not explain why this particular application had drawn an adverse report from the Police. He reiterated that he considered Mrs Pope to be of the highest integrity and he held no concerns regarding the administration of the licence if issued.
- (10) Under cross examination the Police raised concern that the applicant should have been aware or been advised that she was required to have a minimum of three months experience and that this should have been conveyed to her by the inspector. The Inspectors response was that he had covered this with the applicant during the application process, however there are multiple way to achieve compliance and this is only one of them. Clause 20 also applied to this scenario and this was the avenue chosen by the applicant and this was a perfectly acceptable solution.
- (11) Under examination by the committee it was established that:
- The Act does not specify three or six months experience is required. This has been reflected in various decisions of the Authority and best practice but Section 222 specifically gives the Licensing Committee or the Authority leave to consider experience as one of many determinant factors and that it should not be considered in isolation to the other assessment criteria.
  - The first standard for consideration of a Managers Certificate is prescribed by the Sale and Supply of Alcohol Regulations 2013: A licensing committee must not issue a Managers Certificate on or after the commencement of this section unless the Manager holds the prescribed qualification being a qualification prescribed by regulation under this Act or the successful completion of a course of training.
  - The prescribed qualification pursuant to Part 4 is Unit Standards 4646 and 16705 issued by an industry training organisation recognized under the Industry Training and Apprenticeships Act 1992

### Police

- (12) Sergeant Clement spoke in support of his submission stating Mrs Pope would have or should have known when purchasing the business with due diligence that she would require a certified manager to operate the business she was taking over to continue selling alcohol.



- (13) The view of the Police is that she should hire a certified manager for at least three months and get the required experience in her own right.
- (14) Whether Whangarei Liquor Policy complies with the Act is moot the criteria for a managers certificate is prescribed by Section 222. Mrs Pope does not have any experience therefore she does not comply with the criteria.
- (15) Under cross examination Sergeant Clement was asked by the Licensing Inspector why he never opposed the application for the Burger Bank or other applications of a similar nature. Sergeant Clement could not recall the applications.
- (16) Under examination by the committee Sergeant Clement was asked about any matters arising in the Helena Bay area from alcohol related harm. He responded that he never went there so he didn't know.

### **Mrs Pope**

- (17) Mrs Pope explained how she intended to operate the business this is captured in the following bullet points;
- The business is new and not making any money yet. I considered hiring a qualified manager but it would be a short term contract for three months only and as I have 4 staff already there would be nothing for the manager to do and I would have to fund this out of my own pocket.
  - Sarah King who works in the gallery used to work in the café and has an expired certificate. If required she would be happy to reapply for her certificate and act in a supervisory capacity if that was what was required.
  - However my interest is not in running a pub or tavern. My interest is in the sale of food with a wine or beer as a complement to that.
  - I will only sell alcohol with food.
  - All sales to be by the glass only.
  - I am only working 9-5 but wish to apply for the extended hours so I can offer the premises for hire for special events such as weddings or birthdays.
  - There are a total of 40 seats in the café with 5 full time staff so we can actively manage and provide a quality service.
- (18) Under examination Mrs Pope discussed her previous job which was for an actuary in Auckland. It was a high stress environment with a significant staff and employment related matters. She has had vast experience in managing staff and people and could easily answer the test scenario put to her by the committee.
- (19) Mrs Pope said she did not intend to open after 5pm at this time. This may be revisited after Easter but it was too soon to tell.



### Concluding Statements

In concluding statements both the Licensing Inspector and the Police were asked if their views had changed during the course of the hearing. Both confirmed that they had not.

### Section 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 applicants 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:
- (e) Any matters dealt with in any report made under section 220.

### Reasons for the Decision:

In accordance with Section 221 (1) and based on the information supplied to us we have considered the matters to which I must have regard under Section 222 of the Act.

- (a) No matters have been raised to suggest that the applicant is not suitable to hold a Managers Certificate.
- (b) No convictions have been recorded against the applicant.
- (c) The applicant has no experience managing licensed premises. This is not necessarily fatal to an application as it is only one of the assessment criteria required to be considered by the committee. In this regard the committee had regard to:
  - The applicant has previously worked in a high stress job that was highly accountable and involved tense employment related mediation. She has an excellent employment record which demonstrates her ability to easily transition her skills to the Sale and Supply of Alcohol Act 2012.
  - The inspector has provided a positive report advising that he holds the applicant in high regard and of the highest integrity and recommends that the committee grant the application as applied for.
  - The premises are low risk.
  - The licence will issue for a probationary period of one year which will give the applicant the opportunity to establish industry experience in a controlled and low risk environment.
  - The licensing Inspector will undertake a site visit(s) during this time to ensure ongoing compliance with the conditions of the licence.





- The pricing of alcohol is at the high end, this helps to act as a deterrent to high volume consumption. Coupled with the requirement to purchase food the risk of alcohol related harm is low.
  - The applicant has presented as an exemplary licensee and there are no issues with regard to her proposed management of the licence
  - The only alcohol to be sold will be wine or beer. This will be as an accompaniment to food and will not be sold as individual items.
- (d) In accordance with section 218 of the Act, applicants for a Managers Certificate must hold a prescribed qualification, which pursuant to regulation 23 of the Sale and Supply of Alcohol Regulations is the Licence Controller Qualification issued by the Hospitality Standards Institute. The applicant has obtained the requisite qualification.
- (e) There are no matters, in any report, made under Section 220 that are required to be considered.

### DECISION

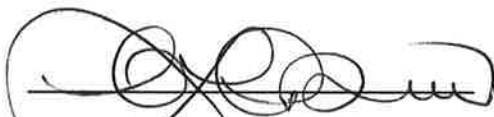
Pursuant to Section 221 of the Sale and Supply of Alcohol Act 2012. The Whangarei District Licensing Committee grants an endorsed application by **Janet Dawn Pope** for a Managers Certificate.

In accordance with the provisions of Section 223(1)(b) this certificate will issue for a period of twelve months.

The Manager's Certificate may only be used at the applicants' current place of work (Helena Bay Café).

The certificate may issue immediately to the applicant.

**DATED** at **Kerikeri** this 6<sup>th</sup> day of December 2017



A.L. Court

Commissioner/Chairperson

Whangarei District Licensing Committee

