

IN THE MATTER                      of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER                      of an application by **ALLANAH KATHERINE DAVIS**,  
pursuant to Section 219 of the Act for a Manager's  
Certificate

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman:                      Mr D.E. Fellows.  
Members:                      Councilor K. Price.  
   Mr J. Cocking.

HEARING at Napier War Memorial Centre on Wednesday 24th October 2018.

#### APPEARANCES

Ms A.K.Davis.	Applicant.
Mr D.P.Halstead.	In support of applicant.
Constable D.P. Power.	NZ Police – in opposition.
Sergeant R.Wylie.	NZ Police to assist.
Mr D.L. Waugh.	District Licensing Inspector- to assist.

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

##### **Introduction**

1. This is an application by Allannah Katherine Davis for a Manager's Certificate.
2. The application, lodged by Ms Davis on the 23rd July 2018, received opposition from the police in an e-mail dated 27th July 2018, on the grounds that Ms Davis had failed to disclose recent convictions.

##### **The Hearing**

3. Police Constable David Power stated that he is an Alcohol Harm Prevention Constable in Hawkes Bay, and his duties include the processing and vetting of all alcohol licence applications.
4. Following the receipt of the application, Constable Power stated that he completed the relevant checks which confirmed that Ms Davis had 5 convictions recorded against her, the most recent recorded on 30th January 2018.

5. Constable Power produced the Criminal and Traffic History for Ms Davis which listed convictions with the following results:

Offence 11/4/2009.	False statement.	result 15/04/2009	Fine \$250
Offence 15/5/2014.	Breach of community work.	result 10/09/2014	Fine \$600
Offence 17/9/2017.	Receives property (under \$500).	result 30/01/2018	Convicted and discharged To come up for sentence If called upon-30/01/2018 6 months.
Offence 17/9/2017.	Failure to answer bail.	result 30/01/2018	Convicted and discharged.
Offence 25/9/2017.	Failure to answer bail.	result 30/01/2018.	Convicted and discharged

He concluded by stating that as Ms Davis had ticked the no conviction box on the application form for such recent convictions it indicated she was not a suitable person to hold a Manager's Certificate.

6. Clarification was sought and given on the 3 latest convictions. All related to the receipt of stolen property offence, which were dairy products valued at \$40, and her failure to respond to court appearances.
7. Upon questions from Sgt. Wylie, Constable Power stated that whilst the offences were over a 10 year period, they indicated a pattern of deceit, and that the receipt of stolen property was more than just a minor offence.
8. Mr Waugh's report was thorough and conclusive and was presented in the papers of evidence before the hearing. He reported that Ms Davis was employed at the East Pier Hotel and had a sound knowledge of the Act in relation to managerial responsibilities. Her training, experience and her licence controller qualification met the requirements of the Act. He further stated that had it not been for the applicants' failure to disclose her convictions, he would have recommended that the certificate should be issued.
9. Ms Davis gave evidence and answered questions in respect of her convictions. She stated that the false statement conviction 10 years ago, whilst she was 17 years old, was during a relationship with an abusive partner, and which eventually led to her withdrawing allegations made about him, but under duress. She concluded that she was under the impression that this conviction was null and void under the 7 year rule.
10. She stated that the breach of community work conviction occurred whilst she was pregnant and unable to attend work, and misunderstood the request that she stayed away from working.
11. In relation to the three recent convictions she stated that she was unaware that they had been recorded against her as she thought she was discharged as no fine was imposed. The offence related to her purchasing \$40 of dairy products and juices from a flatmate for her young children. She had no use for the protein products so she advertised them for sale 'on line' which led to her arrest.

12. She stated that she failed to attend court on the first occasion as she had the wrong date for attendance. The next occasion she failed to show was due to babysitter problems and arrived at court 10 minutes late.
13. Ms Davis said that on the final court appearance on 30 January the outcome was she was to come up for sentence if called upon for the next six months. She stated that as she was not called she assumed the charges were dropped and therefore there was no conviction.
14. Sgt. Wylie asked if Ms Davis had completed the application form herself and received a negative reply. He followed by asking if she had informed the person completing the form of her convictions and she stated that, when Vanessa had phoned her with the question re convictions, she had said 'no'. She also had read the completed application and signed it.
15. Mr David Halstead stated he is the co-owner and general manager of the East Pier Hotel and has been in the hospitality industry for over 30 years. He stated that whilst disappointed to learn of her convictions following the application, her good work ethic encouraged him to question the conviction. He stated, in depth, the reasons and outcome of the events surrounding the convictions, albeit without investigation, and only from Ms Davis's accounts, but was satisfied with the explanations.
16. He gave her a glowing recommendation, and stated he truly believed she had worked incredibly hard to live an honest and law abiding life and to provide for her two small children as best she can under difficult circumstances.
17. In confirmation of her abilities and honesty, he stated that since August she has been working fulltime, often as Temporary Manager, she has become an integral member of the hospitality team, well-liked by staff, management and customers, and has been in a position of responsibility that includes cash handling, stock control and requisitioning.
18. He further stated that Allanah was responsible for the quieter day shifts where often only one person was on bar duty. He stated that should she not receive her Certificate it was unlikely she would be able to continue her employment there, as the company could not continue to have two people in that position. He concluded by requesting that, if the Certificate not issued, any stand-down period could be kept to an absolute minimum.
19. Ms Davis had nothing to say in summing up however, Sgt. Wylie requested a final summation from the Police representative, which was allowed.
20. Sgt. Wylie indicated that whilst the convictions were not serious, the receiving of stolen goods could be considered more than a minor offence and that the much referenced Osbourne decision was relevant in this instance, with a 2 year period free of any convictions, before a Managers Certificate could be considered.

## Decision and Reasons

21. We must have regard to the matters set out in section 222 of the Act when considering any application for a Manager's Certificate. These 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 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.*
22. The applicant's suitability to be a duty manager is under question due to the failure to disclose recent convictions, and the nature of those convictions against her.
23. We emphasize from the outset that the ability to continue Ms Davis employment, and any inconvenience or staff problems that the employer would encounter, is not a matter that we may give concern to, nor influence our deliberation in coming to our decision.
24. The Inspector's report gives full and satisfactory details of Ms Davis's experience, training and qualifications required to hold a Manager's Certificate. Consequently, the applicant's suitability based around matters of honesty are our major concerns.
25. We consider the conviction for giving a false statement, may well have been made under duress. Considered with her age and situation at the time, and the 10 year time lapse, we give it scant regard.
26. The breach of community work was alleged by Ms Davis to have been at a time when she was pregnant and was advised to stop work. The penalty fine of \$600 intimates that the breach was of a more than minor nature, however the offence occurred some 4 ½ years ago, which somewhat softens our attitude to the matter.
27. The offences surrounding and following the conviction of receiving property have been answered by Ms Davis as a series of unfortunate mishaps. We believe the original offence was born out of ignorance of the situation and naivety, rather than any criminal intent; however, failure to attend court appearances shows a lack of preparation and could indicate a somewhat frivolous attitude to the judicial system.
28. Notwithstanding the failure to attend court, we can understand her belief that the January Court Hearing decision of *"To come up for sentence if called upon - 30/01/18 - 6 months"* indicated that she was clear of conviction after the six month period at the end of July.
29. Whether this leads to Ms Davis giving the advice that she had no conviction and the "no" box should be ticked on the application form, or whether this was a deliberate act of dishonesty is open to conjecture.

30. The evidence from Mr Halstead, an experienced manager with 30 years in the industry, was compelling. Following his initial concern in respect of the offences, and after understanding Ms Davis explanation, which he stated "*has been very upfront and forthright during the whole process*" he has offered his full support to her. This has manifested in his giving full time employment to Ms Davis along with a position involving cash handling, stock taking and other responsible duties, that require honesty and integrity.

31. In considering our decision we again referred to **GL Osbourne LLA PH 2388/95**, where the Liquor Licensing Authority (LLA) referred to the High Court decision in relation to an On-licence in **DT Hayford v Christchurch District Licensing Agency**, accepting that

*"...any decision on an applicant's lack of suitability to hold either a licence or a Manager's Certificate is not indefinite."*

32. The LLA also stated in the **GL Osbourne** decision;

*"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."*

and further:

*"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 s121(1)(b) [equivalent to s222(b) in the Sale and Supply of Alcohol Act 2012,our insertion] In these and similar cases we frequently indicate that a minimum of two years from the date of conviction may result in subsequent 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 offending."*

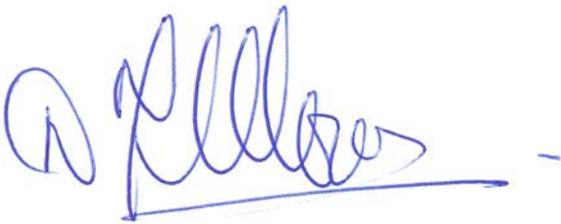
33. We are satisfied that the applicant meets the training, experience and qualifications required for the granting of a Manager's Certificate. In respect of the convictions, we are aware that the stand down periods in **GL Osbourne** are merely a guideline and not a rule, and we take cognizance of the Police views in respect of the offending and that they consider them serious enough to warrant a stand down period of two years.

34. We are not convinced that the applicant has been deliberately dishonest, but failure to disclose convictions shows a lack of understanding of the judicial system. Under normal circumstances we would require a stand down period prior to any re-application for a Manager's Certificate. In this instance we consider the receiving offence was borne out of naivety, and we do not place as much emphasis on this indiscretion as the Police. Coupled with the strong endorsement from the employer's belief in Ms Davis's honesty and ability, we shall therefore authorize the

issue of a conditional Manager's Certificate.

35. The certificate shall be endorsed for the use only at the East Pier Hotel. The renewal application will be required before 12 months from the date of issue, and providing acceptable reports from the Police, the Inspector and the East Pier management are received at that time, the endorsement will be removed.
36. We further make a strong recommendation that an application for a Manager's Certificate should be completed by the applicant, and not completed by another member of an employer's staff.
37. The endorsed Manager's Certificate 30/CERT/3715/2018 may issue after 10 working days from the date of this decision, providing no appeal is filed.

Dated at Napier City Council this 30th day of October 2018.

A handwritten signature in blue ink, appearing to read 'A. P. ...', with a horizontal line underneath.

Chairman  
Napier District Licensing Committee.