

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

**AND**

**IN THE MATTER** of an application by Clara Tiberto, pursuant to section 219 and 222 of the Act for a NEW Managers Certificate

**BEFORE THE MACKENZIE DISTRICT LICENSING COMMITTEE**

Commissioner: Sharyn Cain  
Member: Cr Dave Jack  
Member: Cr Chris Clarke

**BY WAY OF PUBLIC HEARING**

Mackenzie District Licensing Committee Hearing was held in the Mackenzie District Council Chambers, 53 Main Street, Fairlie, on Wednesday 21 November 2018 at 09.00am

**PRESENT**

Mr Paul Cooper – District Licensing Committee Secretary

**APPEARANCES**

Miss Clara Tiberto – Applicant  
Mrs Sharon Hoogenraad - Chief Licensing Inspector, Timaru District Council  
Constable Rory Chapman – Alcohol Harm Reduction Officer, New Zealand Police

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

**Information**

1. This application is for a NEW Managers Certificate. The criterion found at section 219 and 222 of the Sale and Supply of Alcohol Act 2012 (the Act) applies to this application.
2. The application for a Managers Certificate was received by the Mackenzie District Licensing Committee on 20 August 2018.
3. A Notice of Management Change, dated 19 August 2018, was received by the Mackenzie District Licensing Committee requesting that Clara Tiberto be appointed as a Temporary Manager until such time the Full Managers Certificate was granted. The reason given stated "New Manager". The application was opposed by the Chief Licensing Inspector, and was declined via decision dated 21 August 2018.
4. At a meeting of the Waimate District Licensing Committee held on 11 October 2018 the Commissioner considered the Licensing Inspector's Report dated 08 October 2018, which opposed the application.

5. The Commissioner noted that the New Zealand Police reported on 23 August 2018, and opposed the application.
6. The Commissioner put the application on hold, and requested the Chief Licensing Inspector approach the applicant with a possible solution, that the Managers Certificate application be adjourned until the applicant obtains 6 months experience in the industry, and that on 16 January 2019 (being approx 5 months experience) the applicant be appointed as an Acting Manager for 3 weeks, undertake a further knowledge test, and then the application would be reconvened for a decision.
7. Having reviewed the File note from the Chief Licensing Inspector dated 31 October 2018, and after due consideration, the Commissioner agreed that the application would require a public hearing to determine the outcome of the application. A minute was released by the Commissioner advising a Public Hearing was to be established and requesting availability of the participants.
8. The Commissioner, via a minute dated 8 November 2018, set the Public Hearing date as Wednesday 21 November 2018, commencing at 10:00am, to be held at Mackenzie District Council Chambers, 53 Main Street, Fairlie.
9. Due to the schedule of District Licensing Committee Members the hearing was moved forward to commence at 09:00am, with consent of the applicant via telephone as per the file note from Joy Edmond, Environmental Group Administrator, dated 14 November 2018

#### **The Hearing Evidence and Submissions – In Summary**

##### The Applicant – Miss Clara Tiberto

10. The applicant noted that she commenced work at the Old Mountaineers Cafe Bar on 17 August 2018.
11. The applicant spoke of her experienced in Argentina, where there are limited rules that are hard to enforce. Miss Tiberto gave examples of how she managed a number of circumstances that arose during her time working in Argentina.
12. The applicant noted that her employer, Mr Hobbs, helped her apply for her work visa after she had initially entered New Zealand as a tourist. The work visa is due to expire 9 February 2019, and she hopes to apply for an extension as early as possible. It is her belief that she needs her Managers Certificate to aid in gaining her work visa renewal.
13. The applicant submitted that she currently works 10-12 hour days, and that she is left in sole charge approximately half the time of her shifts.
14. The applicant submitted that her place of employment has two current holders of Managers Certificates, but that her employer's wife did not do duty shifts in the premise.
15. Miss Tiberto stated that her current position includes taking charge of all staff, stock ordering, customer orders, dishes, and anything else required.
16. Miss Tiberto gave examples of how she manages the responsibilities of a duty manager, and submitted that having strict laws to work under actually made the job easier. She commented on her leadership abilities, and her belief that she has the maturity to handle differing situations.

#### Cross Examination of Applicant

17. On questioning regarding how she has confronted difficult situations, Miss Tiberto gave a relevant example that had recently occurred.
18. Security back up, when in sole charge, is via the Chef.
19. Miss Tiberto acknowledged that Mr Hobbs is away from the premises a lot, and that she frequently works as sole charge. Her employment is for 5-6 days per week, with 10-12 hour shifts, and approximately 6 hours per shift she can be in sole charge.
20. There are 9 staff, with 5 working in the bar area. 6 are permanent staff, 3 are new, and most are long term employees over a number of years.
21. The Old Mountaineers Cafe is a family friendly Restaurant, with 100% tourists. During summertime it is a lot busier in the bar area, and busier at night. Customers are mostly 25-60 age group, and the work load is split approximately 50/50 between bar and restaurant over the summer months.

#### Chief Licensing Inspector – Sharon Hoogenraad

22. Report taken as read, and no additional commentary.

#### Cross Examination of Chief Licensing Inspector

23. The Inspector submitted that it was her belief that the 6 month New Zealand experience was appropriate, and that it was supported by the Sale and Supply of Alcohol Act 2012. The Inspector also acknowledged that there was a necessity to provide consistency within the District Licensing area.
24. Cr Clarke presented a number of case laws with contrary outcomes to the one provided by the Inspector in her brief of evidence. Upon questioning of her knowledge of the case laws presented it was ascertained that the Inspector was unfamiliar with those specific cases, and as such no further questioning was taken on the matter.

#### New Zealand Police – Constable Rory Chapman

25. Report taken as read, and no additional commentary.

#### Cross Examination Of New Zealand Police

26. No questions were asked.

#### **RELEVANT SECTIONS 219 AND 222 ADDRESSED**

27. **Section 219** – The committee is satisfied that the application was submitted in accordance with this section of the Act.
28. **Section 222** –
  - a) **Suitability of Applicant** – None of the reporting agencies raised any issues as to the suitability of the applicant. The committee is satisfied with the suitability of the applicant.



- b) **Any convictions recorded against the applicant** - None of the reporting agencies raised any issues regarding convictions. The committee is satisfied that the applicant has no convictions recorded against them.
- c) **Experience** – The Chief Licencing Inspector and the New Zealand Police opposed the application on the grounds that the applicant had very little New Zealand experience controlling a premise or which a license was in force.
- d) **Relevant training** – The applicant has completed the appropriate training, and the committee is satisfied that the applicant holds the prescribed qualification required under s.218 of the Sale and Supply of Alcohol Act 2012.
- e) **Reports** – The only pertinent matters raised in the reports are as per s.222 c) as noted above.

#### **DECISION OF COMMITTEE**

- 29. The Committee have considered the matters provided for in s.219 and s.222, and have also taken in to consideration all reports and evidence provided. The Committee notes that based on the evidence of the applicant, it appears that a previous determination by the District Licensing Committee has been breached in that the applicant has continued to be appointed as a temporary manager without acceptable reason.
- 30. It is recommended that this application is adjourned based on the evidence received, with the following recommendations
  - That the applicant shall be granted permission of the Mackenzie District Licensing Committee to be appointed as an Acting Manager for a six week period commencing 8 December 2018.
  - That the applicant shall not be able to be assigned as the Acting Manager after 8pm in the evening for the duration of the six week period.
  - That the application decision shall be reconvened on the 24 January 2019, and being no further reports of breeches or opposition, it shall be determined on the papers.
- 31. We refer any party who wishes to appeal this decision, or part of this decision, to sections 154 through to 158 of the Act. This decision does not have any effect until 10 working days from the date of the decision.

**Dated at Timaru this 26<sup>th</sup> day of November 2018**

  
Sharyn Cain  
Commissioner  
Mackenzie District Licensing Committee