

Matamata-Piako District Licensing Committee

APPLICATION 163.2022.330.2

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

AND

IN THE MATTER of an application by **Dawn Lynette Henderson** for the renewal of a manager's certificate pursuant to section 224 of the Sale and Supply of Alcohol Act 2012

HEARING at the Matamata-Piako District Council Chambers in Te Aroha on 22 May 2023.

MATAMATA-PIAKO DISTRICT LICENSING COMMITTEE

Chairperson: Ms Sue Whiting

Members: Mr Ross Murphy
Mr Alan Sciascia

APPEARANCES

Mr Kenneth Ranger - Licensing Inspector - to assist

Sergeant Ryan Johnston - NZ Police - in opposition

Mrs Dawn Lynette Henderson (Mrs Henderson) - Applicant



DECISION OF THE MATAMATA-PIAKO DISTRICT LICENSING COMMITTEE

1. The application for a renewal of a Manager's Certificate is granted.
2. The Manager's Certificate may be issued immediately. The Manager's Certificate is renewed for a further period of *twelve months* or if an application for the renewal of the certificate is made, until the application is determined.

REASONS

1. This application for the renewal of a Manager's Certificate was filed on 27 March 2023. It is noted that the original certificate is in the name of Dawn Lynette Holmes, however since she married, her name is Dawn Lynette Henderson.
2. The Police oppose the application on the grounds that Dawn Lynette Holmes (Mrs Henderson) was convicted of excess blood alcohol in the Morrinsville District Court on 19 April 2023, with the offence being committed on 25 February 2023.
3. The licensing committee considered it appropriate to decide the application at a public hearing where Mrs Henderson's suitability to hold a Manager's Certificate could be assessed (section 202(1)).

4. In considering an application for the renewal of a Manager's Certificate we must consider the following questions (s227):
 - 4.1 Is the applicant suitable to be a manager?
 - 4.2 Have any convictions been recorded against the applicant since the certificate was issued or last renewed?
 - 4.3 How has the applicant managed the sale and supply of alcohol with the aim of contributing to the reduction of alcohol-related harm?
 - 4.4 Have the Inspector and Police raised any relevant matters in their reports?
5. We must decide whether Mrs Henderson is a suitable person to hold a Manager's Certificate having regard to the alcohol related conviction.

Is Mrs Henderson a suitable person to hold a Manager's Certificate given the recent alcohol related conviction?

6. Mrs Henderson is 64 years old. She completed the Licence Controller Qualification in 2016 and was granted a Manager's Certificate from the Matamata-Piako District Licensing Committee on 30 May 2022, so this is her first renewal. Mrs Henderson has been a duty manager at the Matamata RSA for more than a year, working around 30 hours a week. Previously, she worked in hospitality for a few years on a casual and part-time basis.
7. Mrs Henderson explained to us she loves her job and she also had a supporting reference with her application from the club secretary/manager saying she was a vital member of the team and the renewal was wholeheartedly supported.
8. The Committee believes Mrs Henderson has undertaken her duties as a responsible manager in the hospitality industry in the past. This was supported in closing submissions by the Inspector, Mr Ranger.

No concerns were raised about the way she has managed the sale and supply of alcohol with the aim of contributing to the reduction of alcohol-related harm. We are satisfied that Mrs Henderson has a sound understanding of the requirements and obligations of a duty manager. However, we do have a concern about the recent alcohol- related conviction.
9. In her evidence and cross-examination Mrs Henderson outlined the events surrounding her conviction. She had worked the whole day which included a funeral at the club and it was very busy. She left work at about 6.00 pm and went to her husband's house. From there she drove to the Matamata Club, had a few wines then left her car there and walked to Trac's Sports Bar with friends. It was a very busy night for the town, being an important race-day in the racing calendar for Matamata.
10. Mrs Henderson further explained she had not eaten since breakfast. With her friends at Trac's Sports Bar she had at least a bottle of wine up to about 11.30pm. In leaving Trac's Sports Bar her friend fell so she rang for the local taxi because he was bleeding, but the taxi would have taken too long and he fell again so she felt like she wanted to help him. She then got her car, even though she knew she was not supposed to. She stopped as soon as she saw

the police lights. Mrs Henderson said she managed to do the first blow but not the second due to laughing. Subsequently, the blood test was more than three times over the legal limit.

11. Her car was removed immediately, she was allowed to go and pick up her car the next day. When the blood tests came back police officers came to take her car keys and told her she is not allowed to drive for 28 days. Another 28 days was imposed by the Judge, in addition to a \$500 fine, a pink license and zero tolerance for two years. Mrs Henderson admitted this was a very poor decision. She said the biggest mistake was not eating and then drinking. When asked if she would still have driven if she had eaten Mrs Henderson said no, this was just a one off and she doesn't even let her customer's drive.
12. The Committee questioned the level of the penalty as it seemed very light when Ms Henderson was three times the legal limit. The fine was \$500 and disqualification was 28 days. The committee felt the court may have given leniency for some good reason. The police were unable to qualify this. We also note an application for suspension or cancellation of her Manager's Certificate was not sent to the Alcohol and Regulatory Licensing Authority following conviction.

Should the Manager's Certificate be granted?

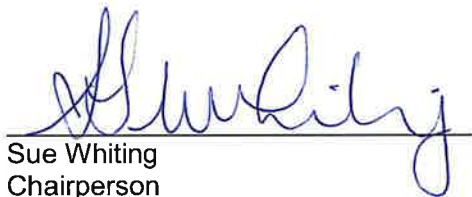
13. In making a decision we have considered all the criteria set out in section 227 of the Act. In this case, the concerns relate particularly to Mrs Henderson's suitability to hold a certificate having regard to her very recent conviction.
14. We have carefully considered Mrs Henderson's off-duty conduct of driving while under the influence of alcohol and subsequent conviction. While this reflects on her suitability, this is balanced against her explanations of the incident and her attitude to it, her track record with the management of the RSA and the reference of her current employer. We also have the Inspector's advice that Mrs Henderson has managed the Matamata RSA competently and had the police not opposed she would have received her renewed certificate by now.
15. 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. Of importance in Mrs Henderson's situation, a 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. Mrs Henderson is experienced and apart from this incident we were not presented with evidence suggesting she does not properly carry out the responsibilities of a duty manager.
16. In coming to its decision, we are mindful of the decision Hesp 2014 (2014)NZARLA PH10 which states: *"the authority is prepared to allow Mr Hesp the benefit of the doubt and grant the application for renewal of the certificate. However, the renewal term should be for a truncated period. This is to remind Mr Hesp that the way he conducts himself as a Manager must be exemplary."*

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It also takes into account the nature of the Police's concerns and ensures Mr Hesp's conduct will remain under scrutiny for the next year."

17. Given Mrs Henderson's record and honesty, the Inspector's comments, and taking into account the level of the penalty, including no ARLA action was taken by the police, the renewal of Mrs Henderson's Manager's Certificate will be granted for a truncated period of 12 months, rather than the normal three year period. This will remind Mrs Henderson that the way she conducts herself must be exemplary. This shortened renewal period gives the reporting agencies another opportunity to assess Mrs Henderson's suitability to hold a Manager's Certificate over the next 12 months until the next renewal application is filed.

Dated at Te Aroha this 6th day of June 2023



Sue Whiting
Chairperson
Matamata-Piako District Licensing Committee

