

01C/CERT/03/2024

IN THE MATTER of the Sale and Supply of Alcohol
Act 2012 (“the Act”)

AND

IN THE MATTER of an application by **Diane Marie
Dyer** pursuant to s.224 of the Act
for the renewal of a Manager’s
Certificate

HEARING BEFORE THE FAR NORTH DISTRICT LICENSING COMMITTEE

Members: Mr John Thorne (Chairperson)
Ms Ann Court (Member)
Mr Graeme Wright (Member)

HEARING at **Paihia 22 November 2024**

APPEARANCES

Ms Diane Marie Dyer (applicant)
Mr Hamish Moore – employer in support of the applicant
Mr Steve Ericksen – Far North District Alcohol Licensing Inspector – to assist
Sergeant Michelle Row- Police Alcohol Harm Prevention Officer - to assist

ORAL DECISION OF THE COMMITTEE

INTRODUCTION

1. This is an application by Diane Marie Dyer seeking the renewal of her manager’s certificate that was due for expiry on the 30 July 2024.
2. The applicant is currently employed at Paihia Four Square. She obtained the required LCQ in 2007 and her present managers certificate in 2014.
3. The Police reported no matters of opposition but pointed out a drink drive conviction following apprehension on the 27 August 2022. No Section 285 application was made to the licensing authority seeking suspension of the Certificate. The breath alcohol level was 491mcg per litre of breath. The legal level limit is 250mcg.
4. The Licensing Inspector reported on the application and while not opposing the renewal of the Certificate, pointed out that the applicant had failed to declare the conviction on the application form.

5. By directional minute the matter down for hearing to enquire into the DIC conviction and failure to disclose the same.

EVIDENCE OF THE APPLICANT

6. Ms. Dyer did not have a prepared brief of evidence but told us she began employment at Paihia Four Square some 3 years ago. Before that was employed in a similar position at the Countdown Supermarket in Waitangi. She has held her present Certificate for 10 years without blemish and was familiar with controlled purchase operations. None had been failed. She was supported at the hearing by her employer, store owner operator, Mr Hamish Moore.
7. The applicant then told the committee about the drink drive apprehension and resultant conviction in August 2022. She had attended a private 65th birthday celebration at the Paihia RSA Club. She had consumed alcohol and had intended to take the courtesy van home. However, it was not available, so she made the unwise decision to drive herself home. She was stopped at a Police alcohol checkpoint and blew an evidential level of 491mcg alcohol per litre of breath. There were no associated aggravating features such as a traffic accident.
8. Ms Dyer told her employer about the drink drive charge at the first opportunity, attended court and plead guilty. She was fined \$500 and disqualified from driving for 6 months. She was ashamed and embarrassed. She thought there might have been some fallout consequence, but as time went by none happened.
9. At certificate renewal time 2 years after the drink drive matter, the applicant submitted her renewal application to the council. She ticked "no" to question 4 on the form which relates to disclosure of criminal convictions. Ms Dyer told us that she believed her drink drive conviction was not a criminal conviction. She had forgotten about it so did not declare it.

WITNESS FOR THE APPLICANT

10. Mr Hamish Moore is the owner operator of the Paihia Four Square grocery store which holds an off licence. He provided the committee a written reference in support of the applicant and supported her throughout the hearing. His reference and what he told us leaves us in no doubt that the applicant is a highly valued and responsible member of his team. She has his full confidence to carry out the functions of Duty Manager. He confirmed that Ms Dyer informed him of the drink drive matter when it happened and that there would have been no intention by her to mislead by ticking "No" instead of "Yes" on the application form.
11. Mr Moore confirmed the stores exemplary record in controlled purchase and compliance checks by the authorities.

THE POLICE

12. Sergeant Michelle Row is the Alcohol Harm Prevention Officer for The Far North. She confirmed in her report that the applicants conviction and the breath alcohol recording of 491mcg per litre of breath. The legal limit for driving is 250mcg.
13. The Sergeant told us that the Agencies were looking at clarifying the wording on the application form relating to declaration of criminal convictions. The applicant is not the first to state they thought a drink drive conviction was not a criminal conviction.
14. The Sergeant said no application was made to the Authority for the suspension of Ms. Dyers managers certificate.

THE INSPECTOR

15. Steve Ericksen is the reporting licensing Inspector. His report was taken as read. His concerns were the drink drive conviction and the failure to disclose it at renewal time. There were no other concerns.
16. He reported that the non-disclosure explanation by the applicant was that she had "forgotten". This is slightly at variance to the explanation previously that a drink drive conviction was not considered a criminal conviction.

THE LAW

Section 227 Criteria for manager's certificate renewal

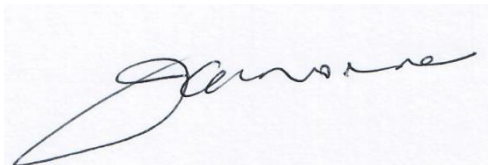
In considering an application for the renewal of a manager's certificate, the licensing committee or licensing authority concerned must have regard to the following matters:

- (a) the applicant's suitability to be a manager:
- (b) any convictions recorded against the applicant since the certificate was issued or last renewed:
- (c) the manner in which the manager has managed the sale and supply of alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol-related harm:
- (d) any matters dealt with in any report made under [section 225](#).

REASONS FOR THE DECISION

17. The applicant Diane Dyer is clearly a highly valued employee of the Paihia Four Square who has the full support of her employer. She has operated as the duty manager without blemish.
18. She informed her employer straight away following the drink drive apprehension. We were impressed that her employer supported her throughout the hearing.
19. We believe the drink drive matter was a one off. It was a costly experience, and she was remorseful. It was over 2 years ago.
20. We accept that there is sometimes a misunderstanding by applicants whether a drink drive conviction is classed as a criminal conviction. We hasten to add that clearly it is. We give Ms Dyer the benefit of doubt in this regard.
21. We believe that a truncated period of renewal would be disproportionate under the circumstances.
22. Managers Certificate number **01/CERT/245/2014** issued to **Diane Marie Dyer shall renew for 3 years** with an expiry date of 30 July 2027.

DATED at Kerikeri this 28th day of November 2024



John Thorne
Chairperson/Commissioner
Far North District Licensing Committee

