

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

**AND**

**IN THE MATTER** of an application for a Manager's  
Certificate by Joy-Ann Louise  
Smith of 172 Stafford Street,  
Hokitika

**BEFORE THE WESTLAND DISTRICT LICENSING COMMITTEE**

**Chairperson:** Commissioner Richard Simpson

**Members:** Richard Gardiner  
Timothy Teen

**HEARING:** Held at the Westland District Council Chambers, 34 Weld Street,  
Hokitika on Monday 24 September, 2018, commencing at 9.00am.

**APPEARANCES:**

Joy-Ann Louise Smith	Applicant
Janene Fagan	Support Person for the applicant
Wayne Knightbridge	Westland District Licensing Inspector
Acting Senior Sergeant Watson	New Zealand Police

**RESERVED DECISION**

**Introduction:**

1. The application relates to a new Manager's Certificate. Joy-Ann Louise Smith is the applicant who is employed at the Railway Hotel in Hokitika. Ms. Smith was supported at the Hearing by her employer who is Janene Fagan.



2. We are guided by section 222 (Criteria for Manager's Certificates) of the Act in relation to this application.

**Applicant's evidence:**

3. Ms. Smith presented evidence in support of her application. In particular she told us of the two serious convictions that she has faced in the last 5 years relating to the sale of alcohol to a minor and driving with an excess breath alcohol. She told us a little of her personal life including her 16 years in the hospitality industry and her aspirations for the future. Ms. Smith left us with letters of recommendation and support.
4. Janene Fagan spoke positively in support of the applicant and we learned that Ms. Smith has been a "real asset" at the Railway Hotel and has been most helpful in creating a safe environment at the hotel.
5. Cross examination revealed that Ms. Smith has not made an application to any other Licensing Committee on a previous occasion, she acknowledged that the Excess Breath Alcohol level was very high and she explained that a particular strength that she brings to her work is the relationship that she has with her customers.

**The Police:**

6. Acting Senior Sergeant Paul Watson appeared in opposition on behalf of the NZ Police. The Acting Senior Sergeant has concerns as to the suitability of the applicant because of the two convictions recorded against her and that more time was required for Ms. Smith to positively demonstrate her suitability to be a Manager by achieving an adequate offence free period. In support of this stance we were encouraged to consider the decision of the former Liquor Licensing Authority in the case of *G L Osborne* which helpfully indicated that 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 duties on licensed premises, would be appropriate before making a decision to grant an application for a Manager's Certificate.
7. The stance of the police is that the applicant will make an acceptable Manager but that there needs to be a reasonable period of good decision making for certainty and that the guidelines provided in *Osborne* should apply.



**Westland District Licensing Inspector:**

8. Wayne Henry Knightbridge is the Westland District Licensing inspector. He deposed that the applicant had demonstrated a good knowledge of the Act but she was not suitable to hold a certificate because of the convictions recorded against her and that a suitable period of time should elapse before the application is granted so that the applicant can demonstrate a willingness to comply with the requirements of the law relating to the sale of alcohol.
9. As with the police, the Inspector referred us to the *Osborne* case and suggested that the application should wait until at least 15 April 2020, which would be 5 Years after her last offence date.
10. Mr. Knightbridge, during cross examination, indicated that the applicant had "interviewed well" and demonstrated sound knowledge of her responsibilities. The inspector's approach is that *Osborne* should be held in high regard in our consideration of this application.

**Applicant's summing-up:**

11. We gave the applicant the opportunity to sum-up and have a right of reply+
12. Ms. Jones took the opportunity to observe that no-one seems to have a problem with her ability to adequately perform as a Manager and that she was sorry for her actions that have jeopardized her application's success.

**Evaluation and Discussion:**

13. We are required by the Act to consider section 222 in determining an application for a Manager's Certificate. Section 222 states

**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 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.**

14. We can readily understand why the Inspector told us that Joy-Ann Smith interviewed well. We have concluded that she is a confident and competent component of the Hokitika Hospitality Industry. We think that she is suitable.

15. Clearly we must consider the convictions recorded against her. Both convictions are alcohol related and are reflective of poor decision making. A question that must arise for us is that if Ms. Smith makes poor decisions for herself can she be relied upon to make good decisions in relation to other people who are in her hospitality care.

16. Both the Acting Senior Sergeant and the Inspector have referred us to the consideration of the stand-down period in *Osborne*. It is difficult to ignore established case-law particularly when we consider the object of the Act

#### **4 Object**

**(1) The object of this Act is that—**

**(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and**

**(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.**

**(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—**

**(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and**

**(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).**



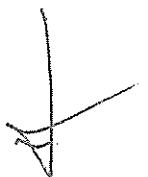
17. There is no escaping the point that when a manager is managing the sale and supply of alcohol that the object of the Act is a paramount consideration for a manager and so we have a lot of sympathy with the concept of the five-year period applying in this case.
18. We have had the privilege of meeting and interviewing Joy-Ann Smith at the hearing and we were impressed. It is probably not very often that a local employer is able to have the services of a keen young person who wants to be a manager and take the associated responsibility within the accommodation and hospitality industry. We can certainly understand why Janene Fagan would choose to support the application.
19. However, we are left with the need to consider *Osborne*. The penultimate paragraph of *Osborne* is important it says,

**In our view, two relatively recent offences both involving alcohol should not lightly be put aside when considering this application. The convictions for theft remain. The fact that those offences arose from employment on licensed premises tends to aggravate their seriousness. Thus, whether we apply a five-year clear period from the dishonesty convictions, or a two-year "guideline" from the date of the most recent driving offence involving alcohol, the result is the same.**

Earlier in the decision, the Authority stated.

**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.**

20. We have reviewed *Osborne* in relation to this application and we have come to the conclusion that Joy-Ann Smith is no Mr. Osborne; she is not a thief and she is not a liar. We are choosing to adopt *Osborne* as a guide rather than a rule. We are also cognizant of the fact that the certificate is issued for a restricted 12 month period which is an appropriate period for the police and Inspector to monitor the applicant if



necessary. We are also aware that the police are monitoring the Railway Hotel for other reasons and this should be a good opportunity to observe Ms. Smith in her working environment. We will, at the time of the first renewal, have the opportunity to renew for a lesser period than three years. The renewal process and time lines prescribed by the Act gives us control over events for the future.

21. We are satisfied that Joy-Ann Smith is a suitable candidate for a Manager's Certificate; she is confident, knowledgeable and motivated.
22. Yes, there are convictions. We take some heart from the contriteness of the applicant and that is a mitigating issue in terms of her suitability.
23. The applicant has the experience necessary to hold a Manager's Certificate and she has the enthusiastic support of her employer.
24. It is a matter of record that the applicant has a License Controller Qualification.
25. Both Section 220 reports (from the police and the Inspector) take the line that the convictions are too recent and that there needs to be an adequate period without offence before a determination on the application is made to grant it. As the Authority stated in *Osborne* it did not wish to fetter itself with a particular stand-down period; likewise, we do not wish to be fettered ourselves and it is within our domain to proceed with the application in accordance with the criteria in the Act. We have readily come to the view that the applicant has disclosed everything, and has clearly taken responsibility for her actions and shown her remorse to us during the hearing and in her written statement where she said "I am extremely disappointed in myself and forever sorry for my actions and since then have been doing everything I can do to prevent this from happening again". The applicant has backed it up with a nearly 3½ year period of no record of offences. In our view a substantial period of time has passed for two isolated offences. It has also allows us to see that there is no pattern of offending. Additionally, it is common ground with the Inspector and the police that the convictions are not able to be interpreted as a pattern of offending.

**The Committee's Decision:**

25. The Committee is satisfied as to those matters provided for in s.222 of the Act.

**Conclusion:**

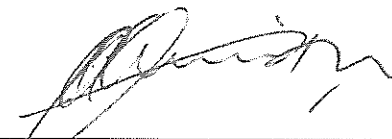
The application by is granted pursuant to s.226 (1) of the Act as Decision Number 190-2017 and the Committee directs that a Manager's Certificate is to be issued to Joy-Ann Louise Smith at the expiry of ten (10) working days from the date of this decision; that period of time is the time provided under s.155(1) of the Act for the lodging of a notice of appeal.

**Conditions**

Subject to the requirements of the Act relating to fees, and to the provisions of the Act relating to the suspension and cancellation of managers' certificates, this certificate continues in force –

- (a) either -
  - (i) until the close of the period for which it was last renewed; or;
  - (ii) if it has never been renewed, until the close of period of 12 months after the day it was issued; but
- (b) if an application for the renewal of the certificate is duly made before the certificate would otherwise expire, either –
  - (i) until the close of the period of 3 years after the period for which it was last renewed; or
  - (ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

Dated at Hokitika this 26<sup>th</sup> day of September, 2018



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Chairperson, Westland District Licensing Committee