

Notice of Decision



Decision No. 57/CERT/1703/2022

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by Donette
Simonsen pursuant to s.219 of the
Act for a Manager's Certificate

BEFORE THE Hurunui District Licensing Committee

Chairperson: Councillor M Ward
Members: Councillor P White
Mr David Kidd

HEARING at Amberley from 10am on Friday 8 April 2022.

APPEARANCES

Ms Donette Simonsen – Applicant
Mr Hamish Moir – Witness for the Applicant
Constable Ben Willis – Witness for New Zealand Police
Senior Constable Genevieve Craddock – New Zealand Police – in opposition
Mrs Nicole Hurinui – Licensing Inspector – In support of Police opposition.

DECISION OF THE COMMITTEE

DECISION

1. The application for a new Manager's Certificate is declined.

SUMMARY

2. On 25 January 2022, Donette Simonsen lodged an application with the Hurunui District Licensing Committee for a new Manager's Certificate pursuant to s. 219 of the Sale and Supply of Alcohol Act 2012.
3. The application is opposed by New Zealand Police. The Licensing Inspector is supporting the Police's opposition.

4. The primary concern presented by the Police is the applicant's involvements in incidents spanning from 2017 to 2020, that reflect negatively on the applicant's suitability to hold a Manager's Certificate.
5. For the reasons set out in this decision, we conclude that the new Manager's Certificate should not be granted at this time. The application is declined.
6. The Committee considers a two-year time-elapse appropriate from the date of the last incident. Ms Simonsen may apply again for a new Manager's Certificate any time after 29 January 2023.
7. The Committee encourages Ms Simonsen to demonstrate a respect for and evidence of upholding the law for a consistent period. The Committee believe this and providing unopposed reports from the Police and Licensing Inspector are received, would reflect more positively on demonstrating suitability as a Duty Manager and may support a successful application in the future.

BACKGROUND

8. An application was filed by Donette Simonsen on 25th February 2022 for a new Manager's Certificate.
9. The Police submitted a report in opposition to this application on the grounds of the applicant's suitability to be a manager. Police wished to speak to the applicant about some incidents, but they did not have a response.
10. After speaking to Ms Simonsen on the phone and explanations were given, the Police submitted a supplementary report, stating:

"after speaking with the Police involved and reviewing the incidents, Police submit that the incidents spanning from 2017 to 2020 continue to reflect negatively on her suitability to hold a manager's certificate.

Police submit that they require further exploration and accordingly, recommend that a hearing be convened in respect of her application"
11. The Licensing Inspector submitted a report in support of Police opposition to the application, stating that the issues raised by Police should be considered by the Licensing Committee at a public hearing.
12. Given the opposition by the Police, and support for Police opposition from the Licensing Inspector, the application was required to be heard before the District Licensing Committee by way of public hearing, in accordance with section 202(3) of the Act.
13. A hearing was scheduled for Friday 8 April 2022 at 10.00am, and convened at the Hurunui District Council Chambers, 66 Carters Road, Amberley.

EVIDENCE AND SUBMISSIONS

APPLICANT'S EVIDENCE

14. Ms Simonsen provided a written brief of evidence dated 3 April 2022. She presented the brief orally at the hearing.
15. Ms Simonsen stated that she took it upon herself to apply for the position at the Better Half Kitchen and Bar and was offered the job. She has been working at the Better Half Kitchen and Bar for seven months and has been thoroughly enjoying it.
16. Ms Simonsen continued to say that she treats her position as a supervisor with a lot of respect and responsibility. She has a team underneath her who she admires and look up to what I do, and to learn more possible outcomes and opportunities while working at the Better Half.
17. In relation to the incident at The Plough Hotel, Ms Simonsen said this was a misunderstanding. She stated:

"There was no communication as to what the reason was that I was trespassed until that night when I was confronted by the owner Luke, when I asked why I was trespassed and why they didn't let me know earlier they started to get defensive about the situation. Luke then assaulted me after the confrontation and physically pushed me out of the door and I landed on the pavement with my arms behind my back which left me with no support to stop me from hitting the pavement, which caused the bruises and a head injury. If I knew earlier that I was trespassed with a reason I wouldn't have entered."

18. Ms Simonsen talked about the incident at Winnie Bagoes. She said it occurred when Luke approached her again when she first entered the bar. Ms Simonsen stated:

"He provoked the situation by falsely accusing me of being intoxicated which I was not, I was then asked to leave which I did not refuse and left, I was then stopped outside and told to stay by the bouncer as the police were coming and I was confused as to why because I hadn't had anything to drink during that time. That's when I was given the trespass order. Prior to all this Luke and I didn't get along beforehand because of The Plough situation."

19. Ms Simonsen stated that after her separation with her ex-husband 10 years ago, she turned into a patron on the other side of the bar. She said "I was struggling with depression at the time of these events, I then turned my life around for the better. I am not proud of these incidents that occurred as it has had an impact on my life and my family."
20. Ms Simonsen concluded her evidence by stating that she is a very outgoing person and loves to have conversations with the customers. She feels as if she has settled well into

her role as a supervisor and she wished to challenge herself and to do better for herself by sitting her Duty Manager's certificate in order to gain what she needs.

CROSS EXAMINATION

Police's Questions

21. Referring to the the convicted offences in the application form, Senior Constable Craddock asked why did she put a date of 2012 for drink driving? Ms Simonsen answered, "Because I didn't really know what date it was, I didn't look back at my charge." Ms Simonsen said that she did not remember going to the District Court in 2016, but she did go.
22. Senior Constable Craddock stated that the Licence Controller Qualification was obtained on 6 October 2021, and asked Ms Simonsen where did you sit your LCQ. Ms Simonsen said it was done online.
23. Senior Constable Craddock confirmed that Ms Simonsen sat the LCQ in October and has been working at the Better Half for 7 months. She asked whether Ms Simonsen is familiar with SCAB tool? Ms Simonsen replied, "Is that the one for under ages and stuff like that?" Senior Constable Craddock explained the SCAB tool is in regards to the definition of intoxication. Ms Simonsen answered, "S is for slur, speech and stuff." No responses were given for the other three components of the tool.
24. Senior Constable Craddock confirmed Ms Simonsen has been working as a temporary manager, and asked for how long? Ms Simonsen said, "Three months."
25. Senior Constable Craddock stated that the evidence Police will be giving, as being assessed as highly intoxicated and ticking many boxes on the SCAB tool. She continued, "When we talked it about it over the phone, your response was that you wouldn't have been over the limit." Senior Constable Craddock said there is a difference and reminded Ms Simonsen that it's important to know the SCAB tool.
26. Referring to Paragraph 3 of Ms Simonsen's brief of evidence, Senior Constable Craddock noted that Ms Simonsen said she felt provoked, and asked, in which situation? Ms Simonsen confirmed that, "He did not provoke me at The Plough but at Winnies."
27. Senior Constable Craddock asked Ms Simonsen if she is saying that he falsely accused you of being intoxicated? She answered "Yes, that's correct."
28. Senior Constable Craddock said Constable Willis will be giving evidence to say you were showing multiple signs of intoxication outside Winnie Bagoes. When asked if Ms Simonsen is saying he is lying, she responded "yes."
29. Senior Constable Craddock stated Constable Willis will be giving evidence not only on the signs that you were showing but he said you were extremely intoxicated, what do you have to say to that? Ms Simonsen replied, "I wasn't extremely intoxicated. I never even brought a drink. I was sitting out in the beer garden. Senior Constable Craddock said his evidence is that you were shouting and swearing at him and his colleague. Ms Simonsen

replied that "I found it annoying because I wanted to go but they said I wasn't allowed to leave as they had called the police. If I was intoxicated, I wouldn't have been allowed to walk home."

30. Senior Constable Craddock continued that his evidence is that you were close to being arrested. Ms Simonsen replied that she wasn't arrested. "Maybe I was in the wrong, but I will never do it again. I learn by my mistakes, big time."
31. Ms Simonsen then confirmed that she considered the guy at The Plough was lying, not the Police Officer.
32. Senior Constable Craddock said the Constable was saying you were highly intoxicated, and he produced the patron report which shows multiple signs of intoxication. In your evidence you are saying you were not intoxicated. Senior Constable Craddock asked, "Are you still saying you weren't intoxicated?" Ms Simonsen did not answer this question.
33. In relation to The Plough incident, Senior Constable Craddock said her evidence is that the licensee wanted to trespass for your behaviour weeks prior but was unable to do it on that night and held onto it for when you next returned. She continued that her video evidence footage shows him trying to issue that notice on you, but you are not accepting. The licensee told me on the phone that you refused that notice because it was in your old last name. Ms Simonsen did not have any comments, when asked.
34. Referring to the Trespass Notice, EXH GC04, Senior Constable asked Ms Simonsen when her last name changed from Ramsey to Simonsen. Ms Simonsen said, "Two years ago."
35. Senior Constable Craddock said she understands that Ms Simonsen struggled from depression at all of these events in 2017, 2020 and 2021, and asked whether she has undergone anything to assist with this depression? Ms Simonsen gave an account to the Committee about her struggles with her mental health and stated that:

"Yes, I have made mistakes and I have learnt by it. I look at my parents and children I can do better. I want to do better. Just give me a chance, people make mistakes. I am not proud of what I have done. I could have finished it, but I didn't. I am here. I am here for my kids, for my family, for my boss. Just give me a chance. Please."

36. Ms Simonsen confirmed that she did not mention the incident in 2021 in her brief. No explanation was provided.
37. Senior Constable Craddock referred to EXH GC11 and noted that "At the start of the statement, you wrote that you looked out the window and Bae and Shayla had stopped and were calling you names. You walked out there and slapped her across the face." Senior Constable Craddock asked "Why did you leave store and approach the car?" Ms Simonsen replied, "Because she is abusive to me and what she has done to my daughter."
38. Senior Constable Craddock asked, "If that's how you react to that, how can we be satisfied that you would react in a professional manner if a patron was abusive to you?" Ms

Simonsen stated, "I would never do that. I have been down that situation and I have done training. I would never do that."

39. Senior Constable Craddock referred to the late evidence from Mr Tim Koh. She asked that with Mr Koh being head chef, how often would he see you interact with customers? Ms Simonsen said, "Probably during the days, nights, and weekends. We have another chef out the back as well."
40. Senior Constable Craddock said people do make mistakes and do things in their past. But there are a number of incidents and not all incidents were at one particular time. Ms Simonsen confirmed that for two of the incidents, she was under the influence of alcohol.
41. Senior Constable Craddock asked Ms Simonsen, "When reading the evidence, can you see why I opposed your manager's certificate?" Ms Simonsen replied, "I can see, yes."
42. No further questions.

Licensing Inspector's Questions

43. The Licensing Inspector asked, "How do you assess intoxication at the premises if you don't know what SCAB means?" Ms Simonsen answered that "I got overwhelmed before about SCAB. It's called slur, coordination, body language. I pretty much know it; I know what to do. But when I get asked it goes over my head." The Licensing Inspector confirmed the acronym stands for Speech, Coordination, Appearance and Behaviour.
44. The Licensing Inspector asked how many of the SCAB do you need to be assessed as intoxicated? Ms Simonsen said, "three or four, or all of them." The Licensing Inspector confirmed that you need two or more signs to be considered intoxicated.
45. Referring to EXH GC06, the Licensing Inspector asked Ms Simonsen, "Based on this Police intoxication assessment, do you consider yourself to be highly intoxicated at the time?" Ms Simonsen replied "I will have to say yes, if they wrote that down."
46. The Licensing Inspector asked whether Ms Simonsen considers someone that was considered intoxicated on all four SCAB criteria as suitable? Ms Simonsen replied "Yes, cause they learn from their mistakes."
47. When asked what sort of things she does as a duty manager, Ms Simonsen responded, "I make sure the people that come in have got ID, check out the people and make sure they are not intoxicated. I make sure everything, do the right thing and go by the book."
48. The Licensing Inspector gave Ms Simonsen a scenario. She said "you are the duty manager, it's busy. There was a table getting rowdy with attitude. How would you handle this?" Ms Simonsen answered "I would go over there in a polite manner, ask them to keep the noise down a fraction. Say there is no more alcohol and offer them water." The Licensing Inspector further asked "If they didn't listen to you and keep doing, and it got a little bit out of hand. How would you deal with this and how would you feel?" Ms Simonsen said "I would turn down the music and go to them quietly and ask them to

leave. I would see my manager as well, hopefully get them out nicely. Otherwise, I would ring the Police.”

49. Referring to the incident at The Plough in 2017, the Licensing Inspector asked, “How do you think you acted towards the duty manager?” Ms Simonsen stated, “Not good at the time”. The Licensing Inspector further asked, “Given your response to the manager, how do you think he felt?” Ms Simonsen responded, “Not very good at all, he was just doing his job.”
50. Referring to the incident at Z Petrol Station in 2021, the Licensing Inspector noted that Ms Simonsen’s daughter, in her statement, said you felt threatened. The Licensing Inspector asked “Why didn’t you tell Police at the time?” Ms Simonsen explained that, “The Police weren’t called, they came to my home at night to arrest me for assault.”
51. No further questions.

District Licensing Committee’s Questions

52. Councillor White said to Ms Simonsen that she has worked at the Better Half Kitchen and Bar for 7 months and been a temporary manager for 3 months. Councillor White asked whether she had any experience in the sale and supply of alcohol prior to working there. Ms Simonsen replied, “No I haven’t, only in the supermarkets.”
53. Councillor White asked her to define the terms ‘influenced’ and ‘intoxicated’ as she understands them? Ms Simonsen responded that, “Under the influence - having a little bit too much, slurred speech and falling over. Intoxication is more or less the same thing, a bit worse than that.”
54. Councillor White noted the application only disclosed one conviction and asked why? Ms Simonsen answered that, “I forgot to be honest, I didn’t mean to do that.”
55. Councillor White noted that Ms Simonsen’s trespass notices from Winnie Bagoes and The Plough are now expired and asked whether she is currently trespassed from any licensed premises. Ms Simonsen stated, “No, not that she is aware of anyway.”
56. Chairperson Ward explained that “In considering an application for a manager’s certificate, we need to consider suitability.” He referred to the incident at the Z Petrol Station in 2021, in which you slapped a lady, and asked whether she considers that it is an appropriate response? Ms Simonsen said, “It was not very good behaviour on my own accord.”
57. Chairperson Ward asked, “What assurance can you give that this sort of behaviour will not happen again in a bar manager role when responding to an altercation?” Ms Simonsen responded:

“It will never happen again, I have learnt my lesson honestly, big time. I apologise for that. I am wanting to turn my life around. This job has given me an opportunity. They were the worse mistakes of my life. I’ve got to be a mum and I have people that look

up to me and say that Donnie has had a past and wants to move forward. I just want to do my best."

MR HAMISH MOIR'S EVIDENCE – WITNESS FOR THE APPLICANT

58. Mr Hamish Moir appeared at the hearing as a witness for the applicant. Mr Moir provided a reference letter, dated 3 April 2022, as part of the exchange of evidence.
59. Mr Moir stated that Ms Simonsen has been employed at the Better Half Kitchen and Bar since August 2021 and he is here today to support her and explain why he believes she should be eligible for a duty managers certificate.
60. Mr Moir said he cannot comment on the incidents that have occurred in the past, and it does not reflect positively for her application on paper. He said that his letter of support which he will be reading to the Committee explains what he has seen in Ms Simonsen and what he has experienced.
61. Mr Moir explained that Ms Simonsen has been a real asset to his business since she started. She is someone that the younger staff look up to and a great fit. She brings good life experience and old-fashioned hospitality to his business. He considers that, "I am a good judge of character, and I wouldn't have supported her application for a manager's certificate if I didn't believe she wasn't up to it."
62. Referring to his letter of support, Mr Moir explained that in terms of staff management Ms Simonsen has been:
- Training and supervising other front of house staff members.
 - Organising and assisting the running of staff members.
 - Supporting the front of house team members and boosting morale during tough times.
 - Implementing and communicating any changes to daily operations.
 - Ensuring staff adapt to any management changes and reporting back to myself.
63. Mr Moir stated that, "It has been a really tough time for hospitality, a lot of changes and mandates being put in place." He said he is so thankful to have Ms Simonsen to help me enforce things, like checking vaccine passes. Ms Simonsen has always been there at the front checking vaccine passes. She has really helped keep the team together and support everyone during that time.
64. For event and group management, Mr Moir explained that he leans on Ms Simonsen a lot. Mr Moir said that she has been:
- Organising and taking care of large group bookings to ensure a smooth and successful outcome.
 - Contacting and communicating with bookings to advise of any covid requirements from the guests.
 - On the spot problem solving.

- Dealing with a resolving any conflict or issues.

65. Mr Moir stated he wants to say that, "I think it has been really tough for Ms Simonsen to come and sit up here and get examined and I feel for her. I do not believe it was the best reflection of Ms Simonsen for her to put a compelling case forward as to why she should be a duty manager. When Ms Simonsen is on the job at the Better Half, she is confident, she is happy, she is a vibrant person and shows great hospitality. We have given her a lot of responsibility and I trust her in her role as a temporary manager. I trust her with opening and closing procedures, including handling cash in the tills. It takes a lot of trust as a business owner."
66. Mr Moir said, "She has a real knack for dealing with customers and considers that you cannot teach that from a book, it comes from life experience."
67. Mr Moir said, "If there was ever any intoxication or act of violence, I know that Ms Simonsen would do the right thing and I trust her judgement."
68. Mr Moir stated that, "We have gone over a lot of training and the SCAB tool many times." He considers that Ms Simonsen knows it but was nervous and not being able to think clearly.
69. Mr Moir noted that younger staff often call on Ms Simonsen to deal with situations, including something simple like a steak being overcooked, or being overcharged or someone not being happy. "She is a real asset when I am not there to deal with those situations."
70. To summarise, Mr Moir said, "Ms Simonsen has taken on a challenging role headfirst and she has progressed really quickly in the business. We have all been really stoked with Ms Simonsen's performance, that's why she was asked to take on the role of a duty manager. I am really proud of how Ms Simonsen has grown and how her skills are evolving."
71. It would seem out of character to be violent, even though there has been an incident in the past. I have witnessed Ms Simonsen dealing with a customer becoming influenced. After a few big bottles of beer, Ms Simonsen asked him, "Are you driving home?" She told him "That's it, you are not having anymore."
72. In general, I think Ms Simonsen really wants the opportunity to prove herself and take that next step and get her manager's certificate. I have not witnessed Ms Simonsen going out and getting intoxicated or putting herself in these situations. Having read the reports, I don't believe that is Ms Simonsen's current lifestyle. She really values her job and I would like to see her have the opportunity to prove herself and show how good she is.

CROSS EXAMINATION

Police's Questions

73. Senior Constable Craddock asked, "Do you intend to continue to be Ms Simonsen's employee?" Mr Moir said, "For the time being." She further asked, "What do you mean for the time being?" Mr Moir said, "The business is up for sale. Tim Koh and a few other

members of staff will be taking on the business. Nothing is formally signed, so he could not comment further.”

74. Senior Constable Craddock asked what training was provided to Ms Simonsen? Mr Moir said, “All staff are put through ServeWise training online. It runs through the sale and supply of alcohol act and gives them training on the job.”
75. When asked whether three months as a temporary manager is sufficient time to be training staff, Mr Moir said, “Yes, it’s not rocket science. Donette has a lot of life experience and how to deal with people. There is a lot that younger staff can learn from her.”
76. Mr Moir confirmed that the Better Half Kitchen and Bar currently have two Duty Managers, and Donette as a Temporary Manager.
77. Senior Constable Craddock asked, “Are you confident that Ms Simonsen knows how to assess people using the intoxication assessment rather than just drink driving?” Mr Moir answered that, “It’s tough to answer the question, we aren’t an establishment that gets incidences of people getting intoxicated as we are a restaurant. I cannot honestly say that I have seen Donette deal with an intoxicated person because we haven’t had an intoxicated person at our premises for a long time. I consider that she knows the difference between intoxication and influence and what steps to take.”
78. Mr Moir confirmed that Ms Simonsen works 28 to 30 hours per week at the Better Half Kitchen and Bar. When asked how many hours she works in the role of a temporary manager, Mr Moir said “We tend to share the role around. If I cannot be there, or if I am working in the kitchen, then Donette may spend at least half to two thirds of that time as a temporary manager.”
79. Senior Constable confirmed that Mr Moir had read all the Police disclosure and asked how much Ms Simonsen had told him? Mr Moir indicated he was aware that she was charged for drink driving, “That’s why we put that on the application.” He continued, “I think I was told about one of the incidents at either The Plough or Winnie Bagoes and the falling out or bad relationship with the owner. I wasn’t aware of all the incidents, and I don’t think we would have regarded them as convictions.” When asked, Mr Moir confirmed he helped Ms Simonsen complete her application and statement, and said “They are her words.”
80. No further questions.

Licensing Inspector’s Questions

81. The Licensing Inspector asked Mr Moir, “Would you have appointed Ms Simonsen as a Temporary Manager if you had known about these incidents beforehand?” Mr Moir answered, “It is a tough question, I would have looked at the DLC and the application and would have thought it does not look good for Donette on paper. We might have put in more work to get this one over the line. But the fact that I am here today, and I am still

confident in Donette and her performance. If I didn't think Donette was up to it, then I wouldn't be here today supporting her."

82. No further questions.

District Licensing Committee's Questions

83. Councillor Pauline White asked whether he knew Ms Simonsen prior to employing her. Mr Moir said he didn't know her but did his homework. She was referred to him by some customers from the Better Half Kitchen and Bar.

84. Councillor Pauline White talked about the training criterion of s. 222 of the Act and asked him to elaborate about what training and mentoring has been provided. Mr Moir said, "We do day-to-day training. There is always things that we have to navigate and discuss together. The role requires daily updates and communication around different rules and regulations around covid-19. We use a daily checklist at the beginning of each day and the end of the shift. Ms Simonsen refers to the Manager's Handbook often."

85. Mr David Kidd asked for examples of the training and mentoring that Ms Simonsen provides to other staff members. Mr Moir said that, "It's been a challenging time that we have had to turn customers away because they do not have a vaccine pass. Ms Simonsen has made it so much easier for the business by giving confidence to the younger staff by explaining the rules and providing support to deal with tricky situations and making light of the situation. I think this is a good reflection on her ability to be there and support the team."

POLICE EVIDENCE

CONSTABLE BEN WILLIS' EVIDENCE - WITNESS FOR THE POLICE

86. Senior Constable Genevieve Craddock requested permission from the Chairperson that her witness, Constable Ben Willis, presents his evidence first. The Chair allowed this request.

87. Constable Ben Willis provided a written brief of evidence, dated 25 March 2022, which he read at the hearing.

88. Senior Constable Genevieve Craddock confirmed for the record that her witness, Ben Willis, is a Police Constable stationed at Rangiora in the Waimakariri District.

89. Constable Willis said that on 8 March 2020, he was working late shift with Constable Stewart. He stated:

"We were called by Police Comms to Winnie Bagoes in Rangiora after receiving reports of an intoxicated female patron assaulting the manager of the bar by grabbing her throat. On arrival the intoxicated patron, a female by the name of Donette Simonsen had already been trespassed from the bar. I told Simonsen that she had been trespassed and she needed to leave. She didn't leave and started shouting and swearing at my colleague and I. I can't recall exactly what she was saying, she

was extremely intoxicated. After asking her to leave for about 3 or 4 minutes she eventually started walking off down the road. She was stumbling all over the road while shouting and swearing at us. I recall being very, very close to arresting her for disorderly behaviour as I didn't see any other way of resolving the situation."

90. Constable Willis stated that he submitted a patron report to alcohol licensing because she had been in a licensed premises. He recorded Ms Simonsen as showing the following signs:

Under speech she was:

- Nonsensical
- Had difficulty forming words
- Was slurring her speech
- Was unintelligible

Under coordination she was:

- Stumbling
- Walking into objects
- Weaving

Under appearance she had:

- Bloodshot eyes
- Glazed eyes

Under behaviour she was:

- Using serious inappropriate language
- Aggressive
- Rude

CROSS-EXAMINATION

Applicant's Questions

91. Ms Simonsen said that, "His statement says that she 'apparently grabbed the manager around throat'. I do not recall doing that as I was not in the bar. Do you have any photos or footage of me doing that?" Constable Ben Willis noted that as part of the investigation, he spoke to the bar manager and door staff. They both gave the same account. Going forward the manager had work to do, so we had plans for her to make a statement in the future. He left his card. We never received the footage, and the bar manager did not make contact to provide a statement. The matter was filed, and no further action was taken.

Licensing Inspector's Questions

92. The Licensing Inspector referred to the comment that Police were close to arrest, and asked how close? Constable Willis said, "The only reason she was not arrested was purely the area we work in. If it had of been town, there would have been no doubt. The only reason that we did not arrest her was that it was a busy weekend night and we had limited

staff available. We gave her absolutely every opportunity to go home, and she eventually went home.”

93. The Licensing Inspector referred to the intoxication assessment from Ms Simonsen and asked, “How intoxicated was she?” Constable Willis answered that, “It was right up there. He said he can only recall a couple of other cases in the public that have been there.”
94. No further questions.

SENIOR CONSTABLE GENEVIEVE CRADDOCK’S EVIDENCE

95. Senior Constable Genevieve Craddock provided a written brief of evidence dated Thursday 31 March 2022. Twelve exhibits were submitted by Police to support the brief of evidence, together with written submissions. Senior Constable Craddock presented her evidence orally at the hearing.
96. Senior Constable Craddock stated that an application for a new manager’s certificate was received by Police on 1st February 2022 (EXH GC01). Question 1(b) of the application, being have you been convicted of any offence (including traffic but not parking), Ms Simonsen ticked yes and wrote Drink Driving with a date of conviction of 2012 (Feb).
97. Senior Constable Craddock searched her conviction history in the Police National Intelligence Application and did not see a drink driving conviction for 2012. She did, however, see two convictions for drink driving. One from 2013 and one from 2016. The conviction and traffic history were produced as EXH GC02.
98. She continued, that Police records show there were a few incidents involving Ms Simonsen (previous last name Ramsey) that reflect negatively on her suitability. Senior Constable Craddock stated she has concentrated on the last five years and started from 2017.

Incident at The Plough Hotel – 10 March 2017

99. Senior Constable Craddock stated that on 10 March 2017, Ms Simonsen was served with a trespass notice by Police at her home address. The trespass notice was from The Plough Hotel in Rangiora for months from 11/03/2017. It related to a time she had been at The Plough Hotel a few weeks prior and had been abusive to staff when influenced from alcohol. The trespass notice was not served on her at the time, so the notice was held until she returned to the hotel.
100. She continued, on 10 March 2017, Ms Simonsen went into The Plough and one of the licensees recognised her. He approached her to serve the trespass notice on her, but she would not accept it. Ms Simonsen argued that the notice was for a Donette Ramsey, her previous last name.
101. Senior Constable Craddock provided footage from The Plough Hotel which shows Ms Simonsen refusing to have the trespass notice (EXH GC03).

102. Senior Constable Craddock described that the footage clearly shows Ms Simonsen speaking with the licensee. She places the trespass notice on the table picking it up again then slamming it onto the table and waving her hands around. The licensee picks up the notice and Ms Simonsen tries to grab it from him. She then waves her finger at him as he starts to clear a table of glassware. She then tries to grab the notice from him again and points her finger at him again. As the licensee walks away from her, she appears to be arguing and then she walks out of view from the camera.
103. Senior Constable Craddock said she spoke with the licensee over the phone about the incident. "He told me that other footage which he can no longer find shows her following him around and members of the public trying to help him as she was causing issues. He told me she had to be escorted out of the premises after refusing to leave. As she was being escorted out, she tripped down some steps and fell so he called an ambulance and Police as she hit her face on the ground."
104. Further, she stated that, "I spoke to the officer who served the trespass notice, Constable Shuurman. He says that Ms Simonsen had rang Police to complain about being assaulted by the licensee. She claimed she had been pushed down the step. Constable Shuurman reviewed the footage at The Plough Hotel and saw the footage of her causing issues inside. He said there was no footage from outside where she claims she was pushed so no complaint was taken."
105. Senior Constable Craddock produced a copy of the trespass notice and incident report from The Plough Hotel as EXH GC04 and EXH GC05.

Incident at Winnie Bagoes Rangiora – 7 March 2020

106. Senior Constable Craddock said that on 7 March 2020, Ms Simonsen had been trespassed from Winnie Bagoes in Rangiora.
107. She continued, Ms Simonsen allegedly got into an argument with the duty manager and grabbed the duty manager around the throat.
108. One of the attending officers, Constable Ben Willis assessed her as intoxicated and submitted a patron report to her office.
109. Senior Constable Craddock produced the intoxication assessment and trespass notice as EXH GC06 and EXH GC07.

Incident at Z Petrol Station Rangiora – 21 January 2021

110. Senior Constable Craddock stated that on 29 January 2021, Ms Simonsen was arrested for assaulting a female outside Z Petrol Station in Rangiora.
111. A copy of the redacted statements from this incident from Shayla and Ben McNicoll taken by Constable Wilkinson were produced as EXH GC08 and EXH GC09.

112. She continued, Constable Wilkinson took a notebook statement from Chloe, an independent witness who worked at the Z Petrol Station where the assault took place. This statement was produced as EXH GC10.
113. Senior Constable Craddock said in the statement, Chloe said she saw Ms Simonsen go over to a van and hit the girl who was in the front seat.
114. Constable Wilkinson arrested Ms Simonsen and took a notebook statement from her. This was produced as EXH GC11.
115. In her statement, Ms Simonsen said she was being called names, so she walked out and slapped the female across the face. Further, she said she did it to protect her daughter regarding an incident in Lincoln a year prior.
116. Senior Constable Craddock referred then back to the application for a new Manager's Certificate by Ms Simonsen on 1 February 2022. After reading the incidents of the Police National Intelligence Application, she tried to get hold of Ms Simonsen by phone a couple of times with no response, so she opposed the application.
117. On the same day, Senior Constable Craddock emailed Ms Simonsen to advise her that she was reporting on her application and due to some incidents that Police had dealt with, and she would like to speak with her. Further, Senior Constable Craddock advised that she had opposed her certificate until such time she could speak to her, and she also left a message on her phone.
118. On the same day, Senior Constable Craddock stated that she had a response email from Ms Simonsen to say she was at work, and she would contact her on her days off.
119. At some stage, Senior Constable and Ms Simonsen spoke over the phone and discussed the incidents in 2017, 2020 and 2021.
120. Senior Constable Craddock said, "She gave me some reasons into the incidents without going into too much detail. She came across confident and enthusiastic and she assured me the incidents were in the past and she would not act in that way again."
121. Senior Constable Craddock stated that her biggest concern in her discussion with her was when she said she was concerned that Ms Simonsen was assessed as highly intoxicated in 2020, with most boxes ticked in the assessment.
122. Senior Constable Craddock said Ms Simonsen's response to me was that she wouldn't have been over the drink driving limit. She had to explain to Ms Simonsen that an intoxication assessment is separate to drink driving limits and gave the example that an alcoholic could blow four times over the legal limit but not show any signs of intoxication.
123. On 24 February 2022, Senior Constable Craddock received an email from Ms Simonsen asking how long it would be until she got her manager's licence. The email correspondence was produced as EXH GC12.

124. Senior Constable Craddock said that after her initial opposition report and speaking with Ms Simonsen, she contacted attending Police officers which took some time in between shift work and other abstractions such as the Wellington protests.
125. She concluded her evidence by stating, "Based on the incidents and further information received I submitted a supplementary report suggesting the matter go to hearing and continued my opposition under section 222(a) the applicant's suitability to be a manager."

CROSS EXAMINATION

Licensing Inspector's Questions

126. The Licensing Inspector asked, "Based on her experience, what does it look like when an applicant does not disclose all criminal convictions?" Senior Constable Craddock answered, "It does look deceiving, as most people remember going to court and being convicted. When I asked Ms Simonsen she explained that she forgot. On the face of it, when I looked at the application it does look deceiving especially when there were two convictions in 2013 and 2016."
127. The Licensing Inspector asked for further information about Senior Constable Craddock's conversation with Ms Simonsen about intoxication and drink driving. Senior Constable Craddock said, "I tried to explain that intoxication is different to drink driving. An explanation was given that a regular drinker, an alcoholic for example, may go to the bottle store twice in one day but because they are not showing signs of intoxication legally they can be sold alcohol. But if they were stopped while driving, they could possibly blow four times over the legal limit. They are quite different and you have to take that approach while dealing with patrons."

District Licensing Committee's Questions

128. Councillor White asked what Police enquiry was completed when the temporary manager notification was received. Senior Constable Craddock explained that, "Notifications are received to a generic inbox and generally our administrator would look at those. Around the time that this application was received, I had fourteen working days to report. There were abstractions at the time, as noted in my evidence so I wasn't given the opportunity to report. With these incidents, I would have opposed the temporary."
129. Referring to paragraph 47 of her brief of evidence, Chairperson Ward asked, "Whether Ms Simonsen gave her any information as to what exactly had changed and that her actions would not be the same going forward?" Senior Constable Craddock said, "She explained that they were in the past and asked for an explanation of why I was looking into that. I explained the process, that not only at work but outside of work you need to be suitable. She assured me that she would act in that way again. We did not go into too much detail but she came across very confident at the time."

LICENSING INSPECTOR'S SUBMISSIONS

130. Council's Licensing Inspector, Mrs Nicole Hurinui, provided a written submission on Friday 1 April 2022 to the parties as part of the exchange of evidence.
131. Mrs Hurinui stated that has been working for Hurunui District Council for four years and has been a Licensing Inspector since 2020.
132. Firstly, she said she wanted to read her report and highlight some points.
133. The Licensing Inspector said Ms Simonsen works at the Better Half Kitchen and Bar as a Front of House Supervisor, since August 2021. She currently works there approximately 30 hours a week.
134. Ms Simonsen's previous experience has been at Countdown Rangiora at the checkout and lotto counter before applying for this position.
135. The Licensing Inspector said Ms Simonsen was able to describe situations where she has had to use her skills and knowledge including situations when monitoring customers alcohol limits and asking questions. For example, "Do you need a ride home", "Have you had a bite to eat."
136. Ms Simonsen has had situations where she has had to refuse customers because they haven't provided the right form of identification to enter the premises.
137. The Licensing Inspector read her submission during the hearing.
138. She stated that Ms Simonsen lodged an application for a manager's certificate on 25 January 2022. A Notice of Management Change form was received from the Better Half Kitchen and Bar on 28 January 2022, appointing Donette Simonsen as a Temporary Manager, in accordance with s. 231 of the Act.
139. The Licensing Inspector interviewed Ms Simonsen on 1 February 2022 at Hurunui District Council. Based on the interview, the Licensing Inspector considers that Ms Simonsen was able to describe situations where she has had to use her skills and knowledge. The Licensing Inspector stated that these did not raise concerns that she was unsuitable to undertake the role of a duty manager at this interview.
140. The Licensing Inspector said that attached to her application was a letter of support from her employer, Mr Hamish Moir. He indicated that, 'She has been a real asset to our team.' The Licensing Inspector continued that when she later spoke with Mr Moir he confirmed:
- "Donny is a great asset to our team, great customer service, on point with checking I.D. and vaccination passports, can't fault her at all."*
141. The Licensing Inspector said she has read the Police's opposition report and Police evidence and is aware of the incidents from 2017 to 2020. Police believe this continues

to reflect on her suitability to hold a manager's certificate. The Licensing Inspector stated that she supports the Police opposition to this application.

142. The Licensing Inspector reinforced, when undertaking the role of a duty manager on licensed premises, the manager is responsible for compliance with and enforcement of the:

- Provisions of the Act
- Conditions of the licence
- Conduct of the premises, with the aim of ensuring the safe and responsible sale and supply of alcohol and minimising alcohol-related harm.

143. The Licensing Inspector stated that Alcohol Regulatory and Licensing Authority (the Authority) has indicated the role that managers of licensed premises play in ensuring that the object of the Act is met, should not be underestimated.

144. She continued, the Authority held in the DeeJay Enterprises Decision [Re Millward LLA PH531/97, PH532/97]:

“Little but a licensee's or manager's character and suitability may stand in between upholding the law and turning a blind eye. Self-imposed standards in accordance with the law must be set by licensees and holders of General Manager's Certificates who control and manage licensed premises.”

145. The Licensing Inspector stated that the term suitability is defined in the Oxford Dictionary as – “the quality of being right or appropriate for a particular person, purpose or situation” and “the fact of being acceptable or right for something or someone.”

146. In reference to s. 222(a) of the Act, the applicant's suitability to be a manager, the Licensing Inspector stated that:

“The matters include assessment of the applicant's character and suitability. The matters to consider include a range of issues including criminal convictions. The Licensing Inspector understands from the Police evidence that Ms Simonsen was intoxicated at the time of the incidents brought to the Committee's attention.”

147. In reference to s. 222 of the Act, any matters dealt with in any report made under s. 220, the Licensing Inspector stated that the matters include assessment of issues raised in the reports from the Police and/or Licensing Inspector.

148. The Licensing Inspector stated that Police opposed this application on the basis that they are aware of the incidents from 2017 to 2020. Police believe this reflects on her suitability to hold a manager's certificate.

149. The Licensing Inspector said that she supports the Police opposition.

150. The Licensing Inspector concluded her submission by stating, "Based on the Police evidence, the Licensing Inspector believes Ms Simonsen is unsuitable to hold a manager's certificate therefore the application for a new manager's certificate should be declined."

151. There were no questions for the Licensing Inspector.

CLOSING SUBMISSIONS

Applicant's Submissions

152. Ms Simonsen said that, "I know I have done things in my past, but I am going to look forward and do my right for my manager's licence, if there is any change that she will get it. I will not let anyone down."

Police's Submissions

153. Senior Constable Craddock said that the Committee must have regard to the criteria set out in s. 222 of the Act.

154. She continued, given the volume of incidents involving the applicant, Police still have concerns that she will not comply with the object of the Act.

155. Police evidence clearly outlines the concerns over her suitability. Specifically two drink driving convictions, two trespass notices, intoxication and behaviour that nearly led to her arrest in 2020 and being charged in 2021.

156. The incident in 2021 Police believe could have been avoided if she had remained within the store. This incident reflects poorly on her character.

157. Police submit that based on the evidence today, there are still concerns about her suitability. The applicant has said she is going to change but Police feel that there hasn't been enough time in that role and enough time since the incident in 2021 to check that suitability.

Licensing Inspector's Submissions

158. The Licensing Inspector said when she interviewed Ms Simonsen, she was very nice and cooperative. She answered things right and did a good job, but obviously it comes down to suitability.

159. She continued, "What you do in your personal life and professional life is actually relevant and given her response to a duty manager, the evidence does not give me confidence that if there is an issue on the job, that the situation will be de-escalated."

160. Based on Police evidence, the Licensing Inspector believes Ms Simonsen is unsuitable to hold a Manager's Certificate.

Applicant's Right of Reply

161. Ms Simonsen concluded by saying, "I would really, really love to be a manager. I know I have done things in the past and I know that I say it will not happen again, and it will not happen again. I've gone passed that and I'd really like the change to be a manager."

ANALYSIS

162. Section 222 of the Sale and Supply of Alcohol Act 2012 sets out the criteria for manager's certificates. It reads:

222 Criteria for manager's certificates

In considering an application 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.*

163. We will proceed to consider this application based on the above criteria.

Suitability of the applicant

164. The incidents that occurred on 10 March 2017, 7 March 2020 and 29 January 2021 were raised in terms of s. 222(e) of the Act. Further, the Committee views that these incidents are directly relevant under s. 222(a) as to the applicant's suitability to be a manager.

165. When considering the issue of suitability, the test stated in the second to last paragraph of *Re Sheard* High Court Christchurch, AP119/95 per Holland J is useful:

"The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence."

166. When considering the incidents of 10 March 2017, 7 March 2020 and 29 January 2021 against that test, we are of the opinion that having consumed too much alcohol, a loss of temper or both, Ms Simonsen has dealt with the situations in which she found herself in such a way that indicated that at the time she was not likely to carry out properly the responsibilities that go with the holding of a manager's certificate.

167. On that basis, we consider that Ms Simonsen has failed the suitability test.

168. We have read the case law [Re Millward LLA PH531/97, PH532/97] referenced by both Police and the Licensing Inspector in their submissions. The Committee considers this decision to be relevant to this application. We are concerned that the standards that we have evidenced regarding Ms Simonsen's understanding of and conduct with alcohol and intoxication, may stand in between upholding the law and turning a blind eye.

169. The Licensing Inspector's closing statement resonates with the Committee. We will repeat it here to emphasise our concern:

"What you do in your personal life and professional life is actually relevant and given her response to a duty manager, the evidence does not give me confidence that if there is an issue on the job that the situation will be de-escalated."

170. Notwithstanding Ms Simonsen's historical criminal convictions for drink-driving, and the incidents involving trespass notices, intoxication, disorder and negative behaviour; we recognise that Ms Simonsen has plead to the Committee that she has changed and learned from her mistakes. The Committee support Ms Simonsen's intentions to work on ways to make herself better.

171. Therefore, the Committee think it fitting for Ms Simonsen to seek further training and mentoring within the industry, and work on ways to demonstrate a respect for and compliance with the law.

172. The Authority confirmed, in *Doherty v Police* [2016] NZARLA 50, that in the absence of a criminal conviction, it is appropriate for a DLC to indicate to the applicant how long should elapse before a further application could be entertained. Because there have been a series of negative incidents involving alcohol, a loss of temper, or both, we consider a two-year time-period appropriate from the date of the last incident.

173. Accordingly, Ms Simonsen can reapply for a manager's certificate in the future, on or after 29 January 2023. Of course, for such an application to be successful, Ms Simonsen must reach the criteria set out in s. 222 of the Act. However, her suitability will not be affected by the incidents on 10 March 2017, 7 March 2020 and 29 January 2021.

Any convictions recorded against the applicant

174. Ms Simonsen has two criminal convictions recorded; they are:

- **25 August 2013:** Breath alcohol level over 400 Mcgs per litre of breath (Blood/Breath = 584). Ms Simonsen was convicted and sentenced to disqualification from driving for 6 months and a \$460 fine.
- **28 May 2016:** Breath alcohol level over 400 Mcgs per litre of breath (Blood/Breath = 603). Ms Simonsen was convicted and sentenced to disqualification from driving for 8 months, 80 hours of community work and a zero-alcohol licence.

175. Ms Simonsen disclosed only one of her convictions. Question 1 (b) of the application form asks "have you been convicted of any offence (including traffic but not parking). Ms Simonsen answered:

- **Nature of Offence:** Drink Driving
- **Date of Conviction:** 2012 (Feb)
- **Penalty Suffered:** 3-month loss of licence

176. It is long established in case law that stand down periods for reapplying for a manager's certificate should be applied by a District Licensing Committee decision in situations where the applicant has a history of criminal convictions. In G L Osborne [1995] NZLLA 2388, stand down periods have been outlined as:

- *Five years 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; or*
- *Two years free if an isolated alcohol or driving conviction with no pattern of offending.*

177. Because Ms Simonsen's criminal convictions for drink-driving span more than five years, the stand-down periods stated in the Osbourne decision no longer apply. However, a time-period has been imposed under the Committee's suitability of the applicant analysis for the applicant's involvement in incidents, which did not result in a criminal conviction.

178. While the Committee supports Ms Simonsen's intentions to work on ways to make herself better, their concern relates to Ms Simonsen's convictions and the evidenced pattern of negative behaviour linked to alcohol and intoxication, as outlined in the previous criterion. This is considered unfavourable towards the granting of a manager's certificate.

179. The Committee are also concerned that not all the applicant's criminal convictions were disclosed at the time of application. This unfortunately reveals a deceitful nature.

180. Currently, the Committee questions Ms Simonsen's character and suitability for a role that requires compliance with and implementation of the law.

Relevant experience and training

181. The Committee are of the opinion that Ms Simonsen's on the job training and support in relation to the sale and supply of alcohol is limited.

182. The Committee considers that Ms Simonsen's primary role at the Better Half Kitchen and Bar is working as a front of house staff member.

183. No documented evidence of duty manager training was provided with her application. However the applicant's employer and witness, Mr Moir did confirm in his evidence that Ms Simonsen has completed the Servewise online training course. We were not satisfied that Ms Simonsen demonstrated her knowledge, training, and experience well at the hearing.

184. Based on the evidence heard, we are not satisfied that Ms Simonsen has the appropriate experience and sufficient training in the management of the sale and supply of alcohol. We consider this is a prohibiting factor in the issuing of a Manager's Certificate at this time.

Any matters dealt with in any report from the reporting agencies

185. Police raised concerns about the incidents that occurred on 10 March 2017, 7 March 2020 and 29 January 2021. The Committee acknowledges that these incidents are not considered criminal convictions. However, they show a pattern of behaviour linked to alcohol and intoxication that is incompatible with the s. 222(a) criterion. On that basis, the Committee has considered these matters under the heading 'suitability of the applicant' above.

CONCLUSION

186. The Committee is unable to be satisfied that the criteria set out in s. 222 of the Act has been met and has determined that a new Manager's Certificate should not be granted to Donette Simonsen at this time.

187. The Committee acknowledges that Ms Simonsen genuinely wants to move on from her past and make better decisions. However, they consider Ms Simonsen has demonstrated a pattern of behavioural incidences with links to alcohol and intoxication. These negative behaviours do not show good character of the applicant and do not give the Committee confidence that Ms Simonsen is a suitable person to hold a Manager's Certificate at this time.

188. Based on *Doherty v Police* [2016] NZARLA 50, the Committee considers a two-year time-elapse appropriate from the date of the last incident. Ms Simonsen may apply again for a new Manager's Certificate any time after 29 January 2023. Of course, for such an application to be successful, the applicant must meet the criteria as set out in s. 222 of the Act. However, Ms Simonsen's suitability will not be affected by the incidents of 10 March 2017, 7 March 2020 and 29 January 2021.

189. The Committee encourages Ms Simonsen to demonstrate a respect for and evidence of upholding the law for a consistent period. The Committee believe this and providing unopposed reports from the Police and Licensing Inspector are received, would reflect more positively on demonstrating suitability as a Duty Manager and may support a successful application in the future.

190. For reasons outlined in this decision, the Hurunui District Licensing Committee has determined that a new Manager's Certificate should not be granted to Donette Simonsen at this time. The application is declined.

DATED at Amberley this 11th day of July 2022



Chairperson
Hurunui District Licensing Committee



Note for Parties to the Hearing:

191. Section 154 of the Sale and Supply Alcohol Act 2012 states: Any party to any proceedings before a licensing committee who is dissatisfied with the decision, or any part of the decision may appeal to the licensing authority against the decision, or any part of the decision.

192. Any appeal made under section 154 of the Act must be made to the Alcohol Regulatory and Licensing Authority (ARLA) within 10 working days from the date of the decision.

The notice of appeal must:

- a. be in writing; and*
- b. specify the grounds of appeal in sufficient detail to fully inform the licensing authority and other parties of the issues in the appeal; and*
- c. be sent to the secretary of the licensing authority; and*
- d. be accompanied by the prescribed fee.*