

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012 Act

AND

IN THE MATTER

of an application by **GAVIN
MICHAEL SWAN**, pursuant to s.224
of the Act for the renewal of a
Manager's Certificate.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr L A Cocks
Members: Mr J M Mann
Mr B Pay

HEARING at QUEENSTOWN on 6th July 2022.

APPEARANCES

Mr Gavin Swan - Applicant
Ms Sian Swinney – Chief Licensing Inspector – to assist

RESERVED DECISION OF THE COMMITTEE

Introduction

1. Before the Committee is an application by Mr Gavin Michael Swan for the renewal of a Manager's Certificate. The application was received by the Agency on 23rd June 2021 which was lodged in accordance with s.224(2)(a)(ii).

The Applicant

2. Mr Swan has held a manager's certificate since 2006 and was employed as General Manager of the Azur Luxury Lodge for 14 years up until January 2021. At the time he lodged this renewal application, Mr Swan was employed as Property Manager at Harcourts and a reference from the Harcourts Business Manager, Mr Paul Hibbett, confirmed he is still employed full time in that role.
3. Throughout the application process, Mr Swan has maintained he wishes to retain the manager's certificate qualification as he may go back into hospitality in the future. Mr Swan provided hospitality job advertisements to show that relevant qualifications for many jobs include manager's certificates. He highlighted that the renewal process had taken much longer than normal because of COVID 19 and he wanted to complete the process as the renewal fee had been paid.
4. Mr Swan did not report any criminal convictions and the Police did not oppose the application.
5. Mr Swan obtained the Licence Controller Qualification (LCQ) on 28th May 2015.

The Licensing Inspector

6. The Inspector provided a report on the application with details of communication with Mr Swan regarding the retention of his qualifications and refund if his application was withdrawn. The Inspector advised Mr Swan that his LCQ would not expire if his manager's certificate was not renewed and emphasised to him it would not be an onerous process for him to obtain a new manager's certificate if he returned to the hospitality industry, based on his experience and qualifications held.
7. The Inspector discussed the considerations necessary for a renewal application and highlighted that as Mr Swan is not employed as a duty manager in any licensed premises, he does not meet the criteria at s.224(2)(a)(i). The following case law was provided to support this position:

In the decision Ghai [2007] NZARLA PH 1291-1292/2007, the former Authority was faced with a situation whereby the applicant for a renewal of a manager's certificate was not working at any licensed premises and was subject to visa conditions. The former Authority stated the following at [10] to [14]:

[10] The problem from our perspective, is that there is no differentiation between a General Manager's Certificate used at an off-licence, and one that is used in an on-licence. In our view it is imperative that Mr Ghai has the support of an employer and that that employer is prepared to trust the management of the licensed premises to Mr Ghai.

[11] We believe that at this time it would be inappropriate if not illegal to grant the renewal of the certificate. We accept that Mr Ghai may at any time, reapply for a certificate. Provided he has the support of an employer in the industry, then with his Licence Controller Qualification, there may be no opposition to such an application provided he has an offer of employment. Any such application would depend on what type of premises are involved, and what support Mr Ghai has, and to some extent what on the job training he has received.

[12] Suitability cannot be assessed in a vacuum. It has always been our policy that certificates will not be granted if they are to be used as a bankable resource. Such certificates may not be used as a form of backup to make a person's CV look a little better. Managers' certificates are to be working documents. In our view, it would be quite wrong, (not only because of the work permit situation, but because of Mr Ghai's current employment), to renew the certificate at this time.

[13] We have taken into account the criteria set out in s.126 of the Act. The criteria relates to character and reputation, convictions recorded since the issue of a certificate, the manner in which he has managed licensed premises and matters dealt with in the reports received from the Inspector and the Police.

[14] We therefore propose to decline the application for renewal. In doing so we recognise Mr Ghai's right to reapply at any time should he find future employment in the industry and is supported by an employer. In those circumstances the application for suspension or cancellation becomes redundant.

8. The Inspector submitted that the crux of the issue regarding Mr Swan's renewal application is that he is not currently employed at any licensed premises in any capacity whereby he is able to manage the sale and supply of alcohol pursuant to a licence with the aim of contributing to the reduction of alcohol-related harm as required under s.227(c) of the Act.

9. Three options were provided by the Inspector for the Committee to consider:
 - a. Renew the certificate for a further three years with expiry date of 23rd June 2024;
 - b. Refuse the application noting Mr Swan has not been employed in the hospitality industry for approximately 19 months; or
 - c. Renew the certificate for a truncated period to provide a further period for Mr Swan to return to the hospitality industry.

The Committee's Decision and Reasons

10. S.227 of the Act provides the matters that must be considered for the renewal of a Managers Certificate. Mr Swan achieves the criteria at s.227 (a) (b) and (d), but as raised by the Inspector, not being employed as a duty manager in a licensed premises may not satisfy s.227 (c). Being employed as a duty manager is not explicit in the criteria at s.227, and s.224(2)(a)(ii) suggests that manager certificates can be renewed if the applicant is no longer employed as a manager. However, case law provided by the Inspector shows that the Authority has refused to assess certificates in a 'vacuum' and refused to grant them 'if they are to be used as a bankable resource' as stated above in *Ghai [2007] NZARLA PH 1291-1292/2007*.
11. We also are aware of the decision ***Kerslake (2015) NZARLA 317*** where the Authority held at [11]:

'It is clear from this decision that the Authority expects that applicants for a manager's certificate will be, at the very least, currently employed in the industry and generally be able to indicate the position which they will take up if the certificate is granted.'
12. Considering the reports provided, the submissions made, and the relevant case law, we are not satisfied that Mr Swan's Manager's Certificate should be renewed, and therefore the application is declined.
13. Should Mr Swan wish to return the hospitality industry, based on his experience and qualifications, we would look favourably on an application for a new manager's certificate.
14. As per s.228 (3), the certificate expiry date is 30th September 2022, which gives Mr Swan a further period of opportunity to use his manager's certificate.

DATED at Queenstown this 11th day of July 2022



LA Cocks
Chairman

