

Decision No: QLDLC 0290/2023

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012  
(the Act).

**AND**

**IN THE MATTER**

of an application **by PAUL JOHN DUFFY**  
pursuant to s.219 of the Act for a Managers  
Certificate.

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr LA Cocks

Members: Mrs NJ Vryenhoek

Mr P Jones

**HEARING** at Queenstown on the 31<sup>st</sup> day of May 2023

**APPEARANCES**

Mr PJ Duffy - the Applicant

Ms K Burns - Queenstown Lakes Licensing Inspector – to assist

Mr JO Leverett – Alcohol Licensing Inspector, Auckland Council - in opposition

**DECISION OF THE DISTRICT LICENSING COMMITTEE**

**The Application**

1. Before the Committee is an application by Paul John Duffy for a Managers Certificate. The application was received on 30<sup>th</sup> November 2022. Mr Duffy owns and operates remote wine sales operation 'Boulder Bay Wine Company Limited', which was granted an off-licence endorsed under s.40 of the Act by the Queenstown Lakes District Licensing Committee (QLDLC) on the 10<sup>th</sup> November 2022.
2. The applicant advised that although he does not have direct experience in the hospitality industry, he does have experience as vineyard owner responsible for off-site sales via the Boulder Bay website. Mr Duffy was previously granted a Managers Certificate by the Auckland DLC on 8<sup>th</sup> November 2017, but he did not renew it and it expired on 8<sup>th</sup> November 2018.

3. Mr Duffy attempted to explain his actions/inactions getting applications for renewal of an off-licence and a new Managers Certificate processed in Auckland, that led to Mr Leverett's frustration and opposition to this application. Mr Duffy acknowledged he was unaware of the lapse of his Managers Certificate and due to selling and buying several residential properties, changes had to keep being made to the applications. There was also difficulty communicating with the Auckland Council during Covid lockdowns.
4. With regard to whether the applicant will reside and operate his business from Queenstown, Mr Duffy emphasised strongly to us that while retaining an apartment in Auckland, he was making the Arrowtown residence at 4 Taramea Lane, Millbrook (comprising 4 bedrooms, 4.5 bathrooms, 5 living areas and 1 large office) their principal home.
5. Mr Duffy obtained the Licence Controller Qualification (LCQ) on 26<sup>th</sup> July 2017, and there is no opposition to the application from the Police.

### The Inspector

6. The Queenstown Lakes District Council (QLDC) licensing Inspector provided a very comprehensive report detailing the applicant's history and the application process to date. In 2011 Mr Duffy, along with his brother, opened a vineyard trading as 'Boulder Bay' on Moturoa Island in the Bay of Islands. On 26<sup>th</sup> October 2017 he was granted a s.40 endorsed off-licence by the Auckland DLC for a central Auckland premises where the applicant was living at the time. This off-licence was renewed for three years in 2018 with no issues. As noted in paragraph 2 above, the applicant's Managers Certificate also expired in 2018, as no application for renewal was made.
7. The applicant submitted a renewal application for the off-licence to the Auckland DLC on 11<sup>th</sup> October 2021 after receiving a reminder from Mr Leverett. He was also reminded on 27<sup>th</sup> October 2021 that he needed to apply for a new Managers Certificate. The Inspector listed shortfalls with the applications and apparent disregard for the process as advised by Mr Leverett, which culminated in Mr Duffy being directed to cease sales of alcohol through his website on 7<sup>th</sup> October 2022. On 10<sup>th</sup> October 2022 Mr Duffy withdrew his application to the Auckland Council for renewal of the off-licence and on 6<sup>th</sup> March 2023 withdrew his application for a new Managers Certificate.
8. The Inspector reported Mr Duffy applied to the QLDC on 13<sup>th</sup> October 2022 for a s.40 off-licence for premises at 4 Taramea Lane, Millbrook, Arrowtown. Although there were some relatively common mistakes with the application which were sorted promptly, the off-licence was approved by the QLDLC on 10<sup>th</sup> November 2022. The applicant did not disclose any information relating to the Auckland applications.
9. The Inspector had a meeting with Mr Duffy on 16<sup>th</sup> March 2023 to discuss this application and matters raised by Mr Leverett. He acknowledged he had made mistakes and overlooked elements of the legislation in the past but had improved his understanding of the Act. Mr Duffy passed the knowledge test component of his Managers Certificate application with Auckland Council, and the equivalent test with the QLDLC on 14<sup>th</sup> March 2023 (at second attempt).

10. The Inspector highlighted s.215(1)(c) which makes it clear that s.40 endorsed off-licences are exempt from the requirement to have a manager on duty at all times when alcohol is being sold or supplied to the public. She also questioned the role a physical licensed premises plays in the processing of remote sales in today's increasingly online, cloud-based world. Remote purchases of alcohol are now made almost exclusively through websites with in-built portals and delivery by couriers, requiring very little (if any) manual input from the seller, which is how the applicant operates his off-licence (remote sales).
11. To satisfy the criteria under s.219(2) for a certificate in the Queenstown region, Mr Duffy explained that he intends to spend 6-8 months per year in Queenstown at the licensed premises, and the remainder in Auckland where he also owns a residence. The Inspector questioned whether we would consider web sales of alcohol during periods when the applicant is not at the licensed premises lawful? She considered it would seem somewhat unreasonable to expect an individual that owns multiple properties to have to obtain a licence for each residence, simply to legitimise remote sales that arguably do not take place on any physical premises.
12. The Inspector concluded that unlike the behaviour reported by Mr Leverett, the applicant has not exhibited any behaviour in his interactions with the QLDC staff that would raise doubts about his suitability to hold a Managers Certificate.

#### Mr Leverett

13. Mr Leverett attended the hearing by video link and told us he is an Alcohol Licensing Inspector appointed by the Auckland Council and was involved processing applications by Mr Duffy for a Managers Certificate and renewal of an off-licence (remote sales). He provided extensive details of his interactions with Mr Duffy and his numerous failures to respond and provide correct information on time to enable the applications to be processed. Mr Leverett considered the lack of care and attention to the applications showed a disregard for the necessary process, requirements and obligations.
14. On 10<sup>th</sup> October 2022 after Mr Duffy withdrew the off-licence renewal applications in Auckland due to addresses changing, Mr Leverett informed Mr Duffy that due to the multitude of issues, any further applications would likely be opposed. Immediately following this Mr Duffy applied to the QLDC for a remote seller off-licence which led Mr Leverett to suggest that Mr Duffy had subverted the licensing process by abandoning one failed application in Auckland and applying elsewhere, demonstrating contempt for the licensing process. Mr Leverett also doubted Mr Duffy's intention to reside and operate his business from Queenstown.
15. Mr Leverett concluded that he did not consider Mr Duffy a suitable person to hold a Managers Certificate because:
  - a. his applications were the lowest level he had come across;
  - b. he demonstrated an inadequate understanding of the role and responsibilities of a duty manager and licensee;

- c. he made false declarations, misled, and placed a lot of time and work on two Territorial Authorities (TAs) in pursuit of both a licence and certificate; and
- d. he sought to take advantage of the distance between the TAs and thus demonstrated contempt for the licensing process.

In view of this, Mr Leverett believed this application for a Managers Certificate should be declined.

### Decision

16. The applicant has completed the relevant training, has adequate experience and has passed the knowledge test, however his suitability to hold a Manager's Certificate has been questioned by Mr Leverett due to his behaviour and actions when he applied for an off-licence (remote sales) in Auckland.
17. The Police do not oppose the application and the Inspector reported the applicant has not exhibited any behaviour that would raise doubts as to his suitability to hold a Managers Certificate.
18. We acknowledge the extensive evidence provided by Mr Leverett regarding the inactions and behaviour of Mr Duffy which were obviously extremely unhelpful and disruptive for the Auckland Council licensing Inspectors. However, as advised by the Inspector, there have been no issues with Mr Duffy's behaviour or respect for the licensing process in Queenstown and he has assured us there will be no repeat of what happened in Auckland. He also assured us the business would be operated from his principal home in Arrowtown.
19. Should there be any repeat of the behaviour reported by Mr Leverett or there is evidence that the applicant is not residing primarily in Arrowtown, it may impact the criteria of suitability when processing future applications to renew the off-licence (remote sales) under s.131 of the Act, and the Managers Certificate under s. 227 of the Act.
20. We have also taken into consideration the type of operation (ie. remote sales of alcohol via website and delivery by courier) which requires very little manual involvement by the applicant. Further, as per s.215(1)(c) of the Act, a manager is not required to be *on duty* at all times when alcohol is being sold or supplied to the public.
21. Accordingly, the Committee rules pursuant to S 222 of the Act, that the above application for a new Managers Certificates is approved on the condition:

*'That the applicant signs an undertaking to only use the certificate while operating his remote sales business known as 'Boulder Bay Wines.'*

**DATED** at Queenstown this 21<sup>st</sup> day of June 2023.



LA Cocks  
Commissioner  
Queenstown Lakes District Licensing Committee