

Application Number: 036/ON/011/2021.1

IN THE MATTER

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

AND

IN THE MATTER

of an application by **Bula Bure Limited** for renewal of an On-Licence pursuant to s.127 of the Sale and Supply of Alcohol Act 2012 ("Act"), in relation to the premises situated at 149 London Street, Whanganui, trading name of '*Bula Bure The Village*'.

BEFORE THE WHANGANUI DISTRICT LICENSING COMMITTEE

Chairman: Stuart Hylton
Member: Annette Main
Member: Shona Murfitt

HEARING at the Cooks Gardens Event Centre on Thursday 10th November, 2022.

APPEARANCES

Robert Dari	Applicant/Director
Ashleigh Dari	Applicant/Director
Gerry Kevin	Witness for the applicant
Carrie Sutton	Witness for the applicant
Steve Turfrey	Whanganui District Council Chief Alcohol Licensing Inspector – in opposition
V McAdam	Worksafe NZ, witness for the Inspector
A K J Thomson	Senior Constable, NZ Police – in opposition
M Price	Constable, Police Witness
M Macmaster	On behalf of Medical Officer of Health – in opposition

DECISION OF THE COMMITTEE

Application

[1] On the 1 September 2022, Bula Bure Limited, made application to renew their On-licence (restaurant style on-licence) in relation to the premises situated at 149 London Street, Whanganui.

[2] The Applicant Company has two equal Directors/Shareholders – Robert Dari and Ashleigh Dari. This is the first renewal of the licence and the applicant is applying to renew with existing conditions. The premises opening hours are 8.00am to 12.00 midnight.

[3] The premises is by design and physical structure dedicated to being a family restaurant within a child friendly recreational (playground) setting. The restaurant provides table service within its venue with a takeaway option for food only. The premises is themed as being a Fijian Style Village with Fijian cuisine featured.

[4] The inspector notes in his report that over the last years licenced period it is his observation that the premises has in effect operated as an occasional 'function Centre' catering to both the restaurant trade and special function - style events.

[5] The application was published in the prescribed form in the Whanganui Chronicle on 7 September 2022. No public objections or notice of desire to be heard were received during the fifteen working day period ending 28 September 2022.

Statutory Reports in Opposition

[6] The application was sent to the Inspector, Medical Officer of Health and NZ Police for their statutory reports. All three reporting agencies filed reports in **opposition**.

[7] In summary the grounds provided for opposition by the tri-agencies are the same. These being that the applicant is found to be unsuitable to hold an alcohol licence, questioned the manner in which the applicant had sold alcohol during the renewal period and therefore to renew the licence would be in conflict with the object of the Act.

[8] The Inspector in a comprehensive report dated 29 September 2022 detailed his **opposition** which is summarised as –

- That through the period of renewal the applicant had not evidenced their ability to manage the requirements of an alcohol licence and the Inspector had no confidence for a change in this position.
- The Inspector's position was formed by routine and required engagement with the applicant/licensee through the period of the first 12-month duration licence. This was evidenced by Official Information Act requested information from Worksafe New Zealand, New Zealand Police, the NZ Police Application to ARLA, NZ Police Officer Statements, the Inspector's Diary records, and Facebook photos.

- The Inspector lists the applicant's non-compliance with various statutes including the Covid-19 Public Health Response Act 2020 and Sale and Supply of Alcohol Act 2012 "SSAA".
- Obstruction of Worksafe Officers and SSAA compliance agencies.
- The Inspector notes interactions with the applicant are "*obstructive and often inflamed interactions between warranted officers and the licensee that are considered most serious. The universal experience is one of distracting and disconnected behaviours that confuse and obstruct compliance assessment by warranted and authorised officers.*"
- "*In short the behaviours experienced by the monitoring agencies (and as reported in the Annexed documents attached), impress as behaviours best described as adversarial, obstructive and lacking in candour and honesty.*"
- "*It is concluded that the experienced obstructive disengagement will continue into the future, and will most likely include continued non-compliance with the Sale and Supply of Alcohol Act 2012 should a further licenced period be provided.*"
- "*Those matters of alleged obstruction of NZ Police in the execution of an alcohol related inspection are the subject of an application to the Alcohol Regulatory Licensing Authority and are yet to be considered and concluded by the Court.*"

[9] Police in a report dated 6 October 2022, **opposed** the application on the grounds the applicant had not satisfactorily met the object of the Act, suitability requirements, appropriate systems, staff and training to comply with the law and through the manner in which they had sold alcohol, were not suitable to have the licence renewed.

[10] The Medical Officer of Health in a report dated 7 October, **opposed** the application on the grounds of suitability – "*We are aware that the applicant has a history of adversarial and obstructive dealings with compliance staff – sometimes seeming designed to thwart or avoid legislative provisions that they do not agree with. This in itself is a concern, as it would seem confidence in a licensee upholding the law of the land and the conditions of their licence...*".

[11] Further the Medical Officer of Health **opposed** the application on s.105(j) grounds i.e. appropriate systems staff, and training to comply with the law, referencing a request from the applicant for training records, incident logs and signage that had not been supplied as was a follow-up request for a meeting with the applicant.

[12] The District Licensing Committee "Committee", issued a Direction Notice dated 10 October 2022, setting the matter down for hearing and instructing disclosure of evidence no later than 27 October 2022.

Hearing General

[13] Prior to the hearing the Committee requested disclosure of evidence by all parties to proceedings. This was complied with by the tri-agencies but not the applicant who turned up to the hearing with their evidence undisclosed.

[14] The Committee also notes the applicant was late to the hearing.

[15] The Committee further notes that at the hearing there was a fair amount of oral evidence presented by the applicant, a lot of which was unrelated to Sale and Supply of Alcohol Act matters. The Committee allowed this to be presented in order to accommodate the applicant who was unrepresented and unfamiliar with SSAA hearing proceedings.

Applicant's Evidence

[16] The applicant's evidence could be summarised as –

- (a) Robert Dari is one of the applicant's two directors and 50% shareholder of the business with his wife Ashley. The Committee heard that the premises was currently closed as they were locked out by the landlord amid disputed lease arrangements.
- (b) Ashley Dari advised she and her husband had lost two businesses over the last year, Robert had suddenly lost his brother, they had been burgled after just starting, were currently locked out of the business by the landlord and had received a lot of personal attack over the last eleven months through social media over their stance on Covid vaccination.
- (c) Robert spoke about the background to their 'Bula Bure' business stating that it was a love of cooking and hospitality for Pacifica people that lead to the business taking a lease on the premises as a place to sell authentic Fijian food where people could come and congregate 'village' style with plenty of room and facilities for the whole family.
- (d) He soon realised there were greater overheads to their previous food cart and was "advised alcohol would be a good option to go with the food".
- (e) Robert advised that the process to seek a licence was huge for him with cultural and knowledge gaps however the Inspector was 'very helpful to me'. He completed his manager's course and obtained the necessary certificate and licence to start operating.
- (f) Robert acknowledged he was learning as he went with the Inspector advising him of matters of non-compliance which he would address immediately when told. He stated "I have never owned a restaurant

before. I know how to cook. I have been to bars but I have no idea what's the laws and rules really."

- (g) Robert stated the first year had been so tough starting with being robbed, then winter followed which was not good for business and then Covid affected their summer trading resulting in them making no money.
- (h) Robert spoke at length about the effects of Covid on their business and his and his wife's views on vaccination, the effect his wife's anti-vaccination stand had on her other businesses failing.
- (i) Robert felt that during the Covid restriction period he was unfairly visited by the Inspector together with Police in a manner that was 'un-respectful' (sic) causing him to lose customers and money. Mr Dari made the point his family were exempt from wearing masks due to the effects mask wearing would have on their autistic son.
- (j) Robert said they tried to continue operating during covid to keep the business going and provide a safe place for their customers to come. He said he was given conflicting advice by Police, Inspector and Worksafe around the rules which made it hard for him to survive. Eventually we had to close and let the staff go.
- (k) Robert made the point they tried to work within the laws of Covid rather than go against the advice as the tri-agencies were saying.
- (l) With regards the visits by Police on the nights of Friday 15 and Saturday 16 July 2022, Robert said he was on duty on the Saturday night event involving a band, it had not attracted the crowd he had hoped for, and he was closing up when Police arrived.
- (m) Robert advised that during the time of the licence they 'hadn't had any drunkards. We have not had any incident".
- (n) Ashley Dari spoke to the Anzac Day licensing issue and the meeting with Police and Inspector which ended up without the requirement to obtain a special licence. She said "once again this was a learning curve for us". She said she had made the application, paid the money and told there would be a hearing only to be advised in the end a special licence was not required. "That's when I started to really discover that we had been targeted".
- (o) Ashley talked about Worksafe coming to see her about Covid matters and mask wearing. Ashley said her and Robert were told "they had to comply with the narrative, or close". Ashley said she took offense to this.
- (p) Ashley said they came up different strategies to try and still be safe, but also serve the community and run a business. However, in her view they received conflicting advice from the agencies as to what

they were allowed to do. Ashley said they weren't just trying to find 'loopholes' but trying to save their business and family.

- (q) Ashley told the Committee she felt attacked by the agencies. She said the agencies should be saying "Hey look, let's sit down and work this out. We're on the same team here guys". But there was none of that. "It was all attack Ashley Dari. Attack."
- (r) With regards to the night visits by the Police on the 15 and 16 July 2022, Ashley queried Police timeframes on the documentation that varied from 20 minutes past twelve on the Sunday morning to 28 minutes past. She said it was a very targeted visit in which she asked Police for two minutes to talk several times and told Police "I'm the owner don't talk to them. I'm the owner talk to me". Ashley said Police came in "with judgement, aggression and lack of understanding, and closed ears," and said it's all on the footage.
- (s) Ashley said when Police started leaving, she walked after them as they all got in the car and said, "Please sir, please talk to me. I'm asking you please? Can you please just don't walk away from me, I'm the owner?...Please, can you hear me, because I'm going to explain the situation. What it looks isn't how it is."
- (t) Ashley stated that not once did she stop them entering the premises. In terms of vehicles parked outside Ashley said many had taken taxi's or obtained rides home and that there were no jugs of beer/handles on the tables as they don't even have tap beer.

[17] Under examination Ashley Dari advised that on the Saturday evening fundraiser the band finished around 11.30pm but was unable to answer why the transactional information she produced from the till for that night showed no transactions between 7.00pm and 11.00pm.

[18] Under further examination around what type of licensed premises Bula Bure was and wants to be, both company directors gave unclear answers apart from wanting to serve the Fijian community with food and alcohol and provide alcohol at events. In answer to a question around whether the hours of 8.00am to 12.00pm were used extensively Robert advised they opened and closed at varying times to meet the need of the patrons and the various planned events.

[19] Carrie Sutton spoke in support of the applicant explaining her involvement in Bula Bure.

[20] Gerry Kevin, supporting the applicant, produced a document headed "Proclamation – Proclamation of Oranga Tonutanga O Te Ora 2022" – proclaiming the Living Act of Living Life, Act of giving and receiving Life and dated 16 February 2022. The document is to the NZ Crown Company, Agents from Ngati Mahuika Hapu. The Committee received and noted it.

Police Evidence

[21] Senior Constable Thomson called Constable Matthew Price to give evidence. Constable Price stated -

(a) He was present on the morning of Sunday, 17 July 2022 when Police visited Bula Bure and referred to his notes as showing it was 00:28hrs when they arrived,

(b) He was working 'swing shift' which was rostered nightshift over the weekend with a focus on the Central Business District including visiting licensed premises especially around closing times on Friday and Saturday nights,

(c) Constable Price stated when they were there the lights were on inside to a certain extent and he could see 20-30 people inside with open vessels of beer and stuff on the table. Police were approached by 'Gerry' at the door who said you're not coming in, you need a search warrant, and do you have a search warrant? None of the Police present had ever been refused entry before.

(d) Under questioning, Constable Price said *"when we got declined entry Sergeant Allison took over and was asking to speak to the manager, or whoever was in charge. Ashley just kept saying, I'm the owner, you can talk to me."* Constable Price was adamant there was obstruction to Police gaining entry inside despite asking numerous times. He advised when Gerry was at the door, Police said - *"You're blocking us entry, we need to come in and check the premises."* He said, *"I'm not blocking you."* He was standing right in front of the door. *"You are blocking us. You need to move so we can go in."* He just refused. He was physically obstructing the door with his body."

(e) Under cross examination from the applicant, Constable Price said the briefing of the swing shift on that night was along the lines of *"we were going to go do the checks in town, and that Bula Bure has got a function on so they will be open."* He said this was the first time he had heard about Bula Bure or the applicants. He said Police had mistakenly gone to Bula Bure the night before in error thinking the event was then. He further advised that they would have visited approximately five licensed premises that night.

(f) In answer to a question from Robert Dari around why he hadn't come and talked to him as duty manager, Constable Price said - *"You weren't even there until we were leaving... We didn't have a chance... Ashley was telling us she was the owner."*

(g) Under questioning from the Inspector about the attitude of the applicants during the visit, Constable Price advised *"Robert was very friendly and good to deal with, and Ashley was a bit more difficult and confrontational."*

[22] Senior Constable Thomson told the Committee that the applicant had *'got no history'* and when he checked the Police system and found no calls for the applicant's

premises *'for any drunk fights or anything like that.'* He advised there were roughly ten incident reports in his evidence around non-alcohol (Covid 19) complaints incidents relating to Bula Bure, that Police responded to.

[23] Senior Constable Thomson explained that as alcohol harm reduction officer he often instructed Police swing shifts doing premise inspections on Friday and Saturday night to also visit premises holding 'special' licensed events which may be high risk due to high numbers or type of entertainment etc.

[24] In answer to a question from the applicant about why Police visited their premise so late both nights i.e. after closing times, Senior Constable Thomson advised that often this was a time when people that have had a few too many are playing up or wanting to drive home intoxicated after drink up time. He also advised that quite often the best laid plans change as Police have to respond to other emergencies or a particular premises they are visiting has a number of issues to sort out.

[25] Again, in answer to a question, Senior Constable Thomson said he had never been refused entry into a licensed premises and in speaking to a Police colleague in Wellington, they had never been refused entry into a licensed premises in 30 years.

[26] Senior Constable Thomson then confirmed with the Inspector, that Police had lodged an application with ARLA against the applicant for refusal to allow entry on the Saturday night incident in question. That matter has yet to be heard. He also confirmed to the Inspector that Police could enter a licensed premises 'at any reasonable time' and did not require a warrant.

Inspector's Evidence

[27] Chief Alcohol Licensing Inspector Mr Turfrey called Vanessa McAdam, WorkSafe NZ Health and Safety Inspector, to give evidence. Vanessa McAdam stated

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- (a) Her first meeting with the applicant was during Covid when Worksafe were required to visit premises to ensure they were complying with the Health and Protection Orders that were in place. It was usually complaint driven responses that required a visit and a discussion with the person who is in charge to establish the situation and discuss understandings around compliance.
- (b) The first interaction was in January 2022 which involved a robust discussion with Ashley around the regulations and how they should be applied onsite. Vanessa McAdam said it was understandable people were confused with requirements as they were forever changing, and it was Worksafe's intention that first meetings were about education.
- (c) Vanessa McAdam advised the second visit was in relation to several complaints that Bula Bure were going to reopen as a Club. When she and another colleague visited, they were approached by a lady who refused to identify herself, who said, 'We're not going to talk to you. You need to talk to Robert.' She saw Ashley and asked, "Can I talk

to you in regard to what it is that you're intending to do?" She said, "No, you need to talk to Robert." I knew that she was a director of the company, so she legally could talk on behalf of the company, but she just again refused.

- (d) Vanessa McAdam said the other lady pretty much said, "We're not going to talk to you. If you come inside no-one is going to talk to you, so don't even bother." I did find that confrontational, and I made the decision that it was not worth getting into an argument for. She had not experienced this before in her twelve years in the job.
- (e) Vanessa McAdam further advised that during this second visit Ashley pulled out her camera and said, "I'm going to record you," and started recording the discussions that they were having. This behaviour was also a first for Vanessa.
- (f) In reply to a question from the Police, Vanessa McAdam confirmed Worksafe requested information from Bula Bure Limited after her second visit. She said *"when we were refused entry, or refused to discuss anything, we sent a registered letter off to the Bula Bure Limited, addressed to Robert asking him to contact us so that we could discuss what was happening and we've had no response. No phone calls. Just got no response."* Worksafe had a courier company signed received receipt to say that it was delivered and received.

[28] The Inspectors report and filed evidence was taken as read.

[29] Under questioning the Inspector stated –

- (a) That despite assurances from the applicant that there was a current training programme for staff, requests to sight or be given copies have not been complied with.
- (b) Section 267(3)(a) and (b) requests for till tape/eftpos registers, duty managers details, security staff details, security footage etc had not been complied with. This related to the incident on the 18 July 2022 with the request made on 28 July 2022.
- (c) That he had tried to work with the applicant, but it was difficult at times. *"I have to say it was somewhat confrontational"*. His first approach is primarily education and support with problems dealt with through a graduated response model.
- (d) That under s. 295 duties of tri-agencies to collaborate, they often strategized where they were going to target education and enforcement resources.
- (e) That he had raised his concerns with how the premises had been running with the applicant prior to renewal phase and mentioned to the applicant that in his view these concerns would necessitate the

District licensing Committee considering the matter by way of hearing.

- (f) During this time, he had found Robert Dari incredibly approachable and tried to guide him through incidents. Robert remedied matters quite fast, *“to the best of his abilities”*.
- (g) In answer to a question from Ashley that Robert struggled with the complexities of the Act and obligations as a licensee and manager, the Inspector stated - *“I think the licences were typically complex for him to understand”*.

Medical Officer of Health’s Evidence

[30] Mr MacMaster highlighted sections of his report mentioning he had not received a response to a request to meet the applicant at the premises in order for him to undertake a full assessment into the renewal application and report accordingly. The request to interview was via email as was a request for training records. There was no response to either.

[31] Mr MacMaster questioned the applicant’s suitability based on a history of adversarial and obstructive dealings with compliance staff, sometimes seeming designed to thwart or avoid legislative provisions that they do not agree with. This questioned confidence in the applicant upholding the law under the Act.

[32] Mr MacMaster quoted comments made by *Kelly in Two Brothers Wholesale Limited [2021] NZARLA 32*, paragraphs [157] and [158] where the Authority said renewal of a licence was not presumptive and that Parliament had envisaged renewals being declined when decision-makers consider the grant of the application will be contrary to the object of the Act.

[33] Under questioning Mr MacMaster said he agreed that Covid had affected this business in an adversarial manner, however other businesses had not operated with the same level of resistance.

Summing Up

Applicant

[34] Ashley Dari noted incidents that had caused post-traumatic stress disorder for both directors, and this was the reason for not answering emails, phone calls etc as it was hard facing people. Abusive phone calls and posts had also caused her a quite a lot of anxiety.

[35] Robert Dari asked for teaching from people present to show him how to do it right. He said they had evidence to show Ashley did not refuse Police entry and apologised for behaviours and being late today.

Medical Officer of Health

[36] Mr MacMaster reiterated the Medical Officer of Health's view that he has no confidence the applicant can comply with the law and provisions of the licence.

Inspector

[37] The Inspector reiterated his concerns around the applicant's suitability and referred to the decision of *Nishchay Enterprises Limited*, ([2013] NZARLA PH 837, paragraph [53]) ... The Authority noted: "*The applicant sought to establish suitability by adopting a narrow assessment of the meaning of that term (Suitability)*". This approach was criticised in *New Zealand Police v Casino Bar No. 3 Limited*, (CIV 2012-485-1491; [2013] NZ HC 44). In that matter the High Court rejected the proposition that it was the manner in which the business would be operated as the determinate factor. *But rather, suitability is a broad concept and the assessment of it includes the character and reputation of the applicant, its previous operation of the premises, its proposals as to how the premises will operate, its honesty, ... and other matters*".

[38] The Inspector said there is no onus on the applicant to prove they are suitable or that the licence should be renewed, just as there's no onus of proof on the reporting-agencies either, as the purpose of this DLC hearing is to "evaluate".

[39] The Inspector said the wording of s105(1)(j) of the Act in this context was important i.e. "whether the applicant has appropriate systems, appropriate staff, appropriate training ... to comply with the law". The Inspector said it does not say "to comply with the Act." It directs those of us informing the evaluative process - to consider the ability of the applicant to comply with the law. And it is this consideration that links directly back to the assessment as to suitability.

[40] It was the Inspectors submission that in terms of matters of law evidenced during the hearing there was a gap relating to the applicant's suitability and they are:

- Non-Compliance with Covid-19 Public Health Response (Protection Framework) Order 2021.
- Non-compliance with Covid-19 Public Health Response Act 2020.
- Non-compliance with Section 68 - COVID-19 Public Health Response (Protection Framework) Order 2021 – A business or service must have systems and processes in place to prevent food and drink from being served for consumption on the premises.
- Obstruction of Worksafe Officers (s 27).
- Possible breach of the conditions of licence – hours for sale and supply.
- Obstruction of Police - Breach Sale and Supply of Alcohol Act 2012 - s 267 Powers of entry on licensed premises.
- Not complying with the Inspector's s267(3) (a) direction requiring the production of any licence, or any book, notice, record, list, or other document that is required by this Act to be kept and examine and make copies of it; and (b) require the licensee or manager to provide any information or assistance reasonably required by a constable or an inspector relating to any matter within the duties of the licensee or manager.

- Possible Breach s 237 Irresponsible promotion of alcohol – Facebook promotion for alcohol as a prize.

[41] The Inspector concluded the applicant's ability to engage with the monitoring agencies through the period of their last licence has impressed as being at best strained. He concluded that it is likely that breaches of licence conditions, and breaches of the Sale and Supply of Alcohol Act 2012 (and other Acts of Parliament) have occurred and that the often confusing and seemingly irrational presentations provided by the applicant have been a deliberate and often repeated technique designed to distract and obstruct warranted officers in their enquiries to provide surety related to compliance.

[42] The Inspector finds that on balance the applicant is 'Not Suitable'. Further and more importantly; in regard to s4(1)(a) of the Act which requires: "the sale, supply, and consumption of alcohol to be undertaken safely and responsibly" he stated the applicant has been irresponsible in their practice and therefore concludes that they have been unable to meet the object of the Act, and therefore unable to meet the object of the Act into the future.

Additional Evidence Submitted after the Hearing

[43] During the hearing the Committee heard, in relation to the Police visit of Bula Bure in the early hours of 17 July 2022, about a video taken by the applicant, the till receipts and photos Police took. The Committee agreed to receive these things, post hearing, to consider as part of the evidence.

[44] Post hearing the Committee received and considered –

- Video clips from the applicant showing Police's visit on the early morning of July 2022
- Hourly sales and journal history from sales at Bula Bure over the 16 and 17 July 2022
- Photos taken from the Police from outside the premises of persons inside the premises

Committee's Decision and Reasons

[45] In considering this renewal application the Committee had regard to the criteria under s.131/105 of the Act i.e.

Section 131

(1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

- (a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*
- (b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*
- (c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*
- (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*

Section 105

- (a) the object of this Act:*
- (b) the suitability of the applicant:*
- (c) any relevant local alcohol policy:*
- (d) the days on which and the hours during which the applicant proposes to sell alcohol:*
- (e) the design and layout of any proposed premises:*
- (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
- (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
- (j) whether the applicant has appropriate systems, staff, and training to comply with the law;*
- (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).*

Matters dealt with within the Tri-Agency Reports

[46] The Committee noted that all tri-agencies were united in their opposition to the renewal application with all giving evidence of levels of obstruction and non-compliance with the agencies statutory requirements to enquire into applications, undertake surveillance operations of licensees and generally enforce the Act. All agencies, and witnesses, found the level of obstruction by the applicant as unprecedented in their professional experience.

[47] As indicated by the Alcohol Regulatory Licensing Authority from time to time, the reporting agencies have a key role to provide surveillance and enforcement services to ensure the object of the Act is being adhered to in our communities. As a decision-making body, we rely on their professional reports to inform ourselves of the relevant facts of an application. When all three reporting agencies are united in their opposition and recommendations, we must consider their concerns very carefully.

[48] At the hearing a lot was made of the event/police visit on the early morning of 17 July 2022 and whether Bula Bure was operating outside the conditions of its licence (hours), whether Police were denied access inside or whether Police were being unnecessarily forceful or targeted towards Bula Bure. To a lesser degree this was also the case with the Anzac Day service special licence episode.

[49] The Committee have looked at the footage, photographs and supporting documentation. We also acknowledge there is an application by Police before ARLA in relation to the obstruction of Police during the site visit.

[50] The Committee finds that the evidence around non-compliance with licence conditions as 'murky' and inconclusive. What we are more certain about is had the Police been allowed to enter the premises to undertake an inspection, as they are entitled to under s.267 of the Act, these compliance matters would have been more evident to all.

[51] Looking at all the evidence surrounding the Police visit, we were left with the clear impression that Police were prevented from their right to enter the premises. To assert the opposite is nonsense otherwise the inspection would have taken place. The Police were acting reasonably and were clearly met with people who were unaware of the Police's rights in this situation and focused on not allowing the Police access to the licensed premises for whatever reason. We note this included a director for the applicant.

[52] The Committee also finds that the non-response to requests for inspections, meetings, and information by the other agencies, including Worksafe, were reasonable lawful requests which we would expect any licensed premises to comply with. To ignore such requests casts real doubt over the suitability of the licensee as it prohibits the agencies from doing their statutory job.

General Observations

[53] In many respects, this is a tragic circumstance that the applicant finds themselves in with a combination of sale of alcohol inexperience, effects of Covid, distrust of authorities, personal mental health issues and influence from outsiders, all contributing to some poor decisions and failing business results during the renewal period. Unfortunately, some of these poor decisions reflect negatively against key criteria matters we must consider with this renewal application.

[54] The Committee noted during the hearing a level of disorganisation from the applicant in terms of how they presented and also their thinking in relation to their business and licence. The applicant failed to disclose any evidence prior to the hearing as instructed and turned up to the hearing late.

[55] The hearing gave the Committee a good understanding of the applicant, their views on matters, and how they had transpired to be in the position they were. What the Committee did not get a good sense of however, was what sort of licensed premises the applicant wanted to run for the next three years, including how. It seemed the licenced premises had been run on many different levels during the past year, catering for varying types of patrons and situations. We understand Covid caused some of this diverse activity, but not all.

[56] We heard from the applicant that Covid 19 matters greatly affected their ability to operate the licence and therefore the business. Whilst this is undoubtedly true to some extent, they are not alone in the industry in this matter and in our view this is no excuse for the demonstrated behaviour towards the various authorities.

[57] We were left with the sense that the applicant was very inexperienced and naïve in both business and Sale and Supply of Alcohol Act matters with no clear business plan and conflicting ideas around how the licence would be operated, if renewed. Indeed, we heard from the Inspector that the premises was operating more as a function centre at times than a family restaurant. Robert stated at the beginning of the hearing that he wanted to share his Fijian food with others but *'had no intention of selling alcohol'*.

[58] To say the Committee was left with concerns whether the applicant could either run the business successfully, or more importantly in the context of the application before us, in accordance with the Act and licence conditions, would be an understatement. We did not get a sense from the applicant that they either had a clear idea how they wanted to operate the licensed premises or how to go about this within the Sale and Supply of Alcohol framework.

[59] After considering all the evidence before it the Committee assesses the renewal application against key criteria matters. Section 105/131 matters not 'in play' were determined as s.105 (c), (d), (e), (f), (g) and s.131 (1)(b).

Renewal Application Criteria Assessment

The suitability of the applicant:

[60] All three agencies have questioned the suitability of the applicant due to several factors including -

- Non-Compliance with Covid-19 requirements
- Obstruction of Worksafe Officers (s 27).
- Failing to allow Police entry into the premises to undertake their lawful inspection
- Possible breach of the conditions of licence – hours for sale and supply.

- Not complying with the Inspector's, Medical Officer of Health's and Polices requests for information, records, and meetings etc

[61] Additionally, agencies have raised concerns about the level of knowledge and expertise the applicant has around the Sale and Supply of Alcohol Act and also their general attitude towards officers acting within a statutory compliance framework.

[62] In *N.B.T Ltd [2005] NZLLA 584-585*, the Authority commented on attitude towards the agencies - *"the great majority of all inspectors, and health professionals, and members of the Police who have appeared before us have been totally professional. We rely on them to monitor and enforce the Act. Without their assistance, there would be no point in having a licensing system. Those who seek to indirectly undermine and intimidate the reporting agencies need to understand that they are unlikely to receive any sympathy in this forum."*

[63] Further in *Nishays's Liquor Centre [2013] NZARLA 837* the Authority said in para 53 - *"Suitability is a broad concept and the assessment of it includes the character and reputation of the application, the previous operation of the premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also includes any matters raised in reports under s33 of the Act (now s105) and those reports may raise issues pertaining to the object of the Act as set out in s4. Thus, whether or not the grant of the licence will result in the reduction or increase in liquor abuse is relevant."* And went on in *Sheard [1996] 1 NZLAR 751* to say - *"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."*

[64] The Committee found the two directors somewhat conflicting in character and responses to how the premises should be operated.

[65] Robert, being of Fijian decent, was more accommodating towards officials although he admitted he struggled somewhat with some of the New Zealand culture, including knowledge and understanding of the Sale and Supply of Alcohol Act and business concepts generally. We found Robert the driving force behind Bula Bure, the concept of providing a meeting place for Fijian and Pacifica people.

[66] The Inspector in his evidence said it was *'difficult at times'* to deal with the applicant and went on to say *'it was confrontational'*. The Inspector said *'I have always found Robert to be incredibly approachable'* and that *'in fairness to Robert, English not being his first language, I think he struggled with the complexities of the Act and requirements that were made of him as a duty manager and as a licensee.'* The Committee came away from the hearing agreeing with these sentiments.

[67] On the other hand, the Committee found Mrs Dari more experienced in terms of business matters and during Covid restricted times she was endeavouring to keep the business afloat with innovative solutions. However, we did find her distrust of officials and contention that she and their business were constantly being victimised and unfairly singled out, rather disconcerting and to a degree self-fulfilling. This thinking certainly did the business no favours and is largely the reason the three reporting agencies were forced to report in opposition to the renewal.

[68] Whilst the applicant explained to some degree why these attitudes existed, we did not hear any real self-evaluative response or remorse for the actions which might lead us to think the non-compliance attitude towards the monitoring and compliance agencies would change any time soon.

[69] Certainly, the overriding attitude displayed towards the reporting agencies as expressed within their reports and evidence, shows a character of the applicant that this Committee believes is not suitable from a licensee with responsibilities under the Act. All three agencies contended that the displayed behaviours were the worse encountered in all their professional careers. We found this evidence united and condemning.

[70] The Inspector in his report noted *“the applicant has through the period of the last licence not evidenced their ability to manage the requirements of an alcohol licence and given I have no confidence for a change in this position. I therefore cannot conclude that they are suitable to hold an On Licence into the future.”*

[71] Therefore, on the criteria of suitability, we found the applicant wanting.

Systems, staff and training

[72] The Authority in *Cotton Club [2013] NZARLA 1192* said – “[79] *There is an expectation on the applicant to outline systems, staff and training and bring evidence of it*”, and in *Lyger Investments Ltd [2018] NZARLA 299* in paragraph [112], the authority indicated that it expected evidence of systems, staff and training to be provided at renewal, and further in *“L & H Graces Place Ltd v Robert Abbott et al [2018] NZARLA 273”* – paragraph [93] the authority said - *“An applicant must outline what systems, staff and training it intends to provide if it can satisfy the DLC that it can comply with the law...”*.

[73] It was clear at the hearing that the applicant did not provide, nor could they answer in much detail questions around systems, staff and training. Whether this was due to the failed (not in operation) state of the business or lack of knowledge, we can't be sure. What we are very sure about however, is that both the Police and Inspector sought formal written evidence of Bula Bure's systems and staff training records. These were not supplied preventing the agencies from making any statutory assessment of this requirement.

[74] The Inspector in his final submission rightly pointed out that the s.105(1)(j) requirement around systems, staff etc is to comply with the law, not the Act. Within this wider context the Committee notes the applicants disregard to certain requests from Worksafe NZ in response to Covid 19 compliance matters that casts further doubt over the applicant's ability to conduct a licensed premises in compliance with all applicable laws, including the Sale and Supply of Alcohol Act.

[75] Whilst we heard the applicants' reasons for disengagement with the agencies being financial and emotional stress, the widespread and prolonged non-compliance is unacceptable for anyone in this industry.

Last Matter - Object of the Act

[76] Lastly, the Committee is required to consider the application in light of the object of the Act. That is having regard to the criteria in s.131/105, and having balanced the evidence before it, the Committee is required to consider whether the grant of the licence was consistent with the Act's object of minimising alcohol-related harm.

(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)

[77] Our findings with regards to the applicant's lack of suitability and inability to provide sufficient systems, staff records etc to comply with the law, are inextricably linked to whether the application is consistent with the object of minimising alcohol-related harm. Therefore, on balance and considering the evidence mentioned above, the Committee is not confident the applicant can meet the object of the Act.

Conclusion

[78] For the reasons stated above, the application by Bula Bure Limited for renewal of On-licence in relation to the premises situated at 149 London Street, Whanganui, **is declined.**

[79] The Committee orders that the licence shall expire 14 days from the date of this decision.

[80] The appeal provisions under s.154 and 155 of the Act apply to any party to proceedings who is dissatisfied with the decision or any part of the decision.

DATED at Whanganui this the 16th day of January 2023.



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Chairman – Stuart Hylton