

Decision

19/072/2023

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND
IN THE MATTER

of an application by
AW and BL Mudaliar and Co Limited for
the renewal of an off-licence in respect to
the premises at 57 Moa Street, Piopio,
and known as Piopio Superette

HEARING held on 6 March 2025 at Railway Building 3, Rora Street, Te Kuiti and on 7 March
2025 at the Les Munro Centre, Te Kuiti

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Ms T McIntyre
Members: Mr R Murphy, Mr G Whitaker

APPEARANCES

Mr A Mudaliar - Director, AW and BL Mudaliar and Co Limited
Mrs B Mudaliar - Director, AW and BL Mudaliar and Co Limited
Ms P Mudaliar - In support of the applicant
Ms M Berry - Licensing Inspector (in opposition)
Ms C Grimwood - Senior Labour Inspector, Ministry of Business, Innovation and Employment
(MBIE) - Witness for the Licensing Inspector.
Mrs D Meertens - Medical Officer of Health delegate (to assist)

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The application for the renewal of the off-licence is declined. The off-licence
19/OFF/005/2020 expires on 17 September 2025.

REASONS

Introduction

1. AW and BL Mudaliar and Co Limited has applied to renew the Off-Licence for the premises
located at 57 Moa Street, Piopio, trading as Piopio Superette.
2. The application was opposed by the Licensing Inspector, who initially raised concerns
regarding the store's operating systems, staff training and the licensed hours.

3. As a result, the application was set down for a public hearing before the District Licensing Committee¹. However, on 17 September 2024, the Licensing Inspector reported additional concerns, advising that the Labour Inspector was investigating potential migrant exploitation and that AW and BL Mudaliar and Co Limited was facing proceedings at the Employment Relations Authority (ERA). These matters raised serious questions about the suitability of AW and BL Mudaliar and Co Limited to hold a licence. The hearing was adjourned pending the ERA proceedings. It was later rescheduled and held 6 March 2025 and the 7 March 2025 allocated as a back-up day.
4. The Committee undertook a site visit prior to the hearing on Thursday, 6 March 2025.
5. As a result of discussion arising at the hearing, AW and BL Mudaliar and Co Limited was requested to provide additional information including:
 - i. A dated and updated floor plan of the entire shop, clearly outlining the current boundary of the SAA and accurately depicting all permanent shelving, fridges/chiller units, and the associated floor space, ensuring clarity and correct scale (e.g., accurate length and width of the designated area).
 - ii. An updated Manager's Register. As required in the legislation this must include all movement of managers in the last two-years and be current as to the existing managers status.
 - iii. A clear updated training plan outlining who will be trained, in what subjects and how often (dates are useful) and an updated training register showing recent completed training session of all staff.
 - iv. A letter from the chartered accountant explaining the shortcomings of the financial statement. Specifically, we seek the reasons for missing figures around tobacco, Lotto, food products (Meat / Deli / Beverages / Multi-packs etc), bread and cleaning products. We also request an explanation for the inclusion of handwritten items rather than a fully typed report.
 - v. Insight from the accountant regarding any challenges in providing a more up-to-date and accurate financial statement, specifically for the period 1 Sept 2023 – 31 Aug 2024, if available.
6. This information was received via email on 16 April 2025.

Relevant Law and Approach

7. In deciding whether to renew a licence the licensing committee must have regard to the criteria in s105 and 131 of the Act. Therefore, the committee must consider the following questions within the framework of the purpose and object of the Act:
 - a) Is AW and BL Mudaliar and Co Limited suitable?
 - b) Are the days and hours during which they propose to sell alcohol reasonable?
 - c) Is the design and layout of the premises suitable?
 - d) Does AW and BL Mudaliar and Co Limited propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?

¹ Section 202(1) Sale and Supply of Alcohol Act 2012

- e) Does AW and BL Mudaliar and Co Limited have appropriate systems, staff and training to comply with the law?
 - f) Have the Police, Inspector and Medical Officer of Health raised any relevant considerations.
 - g) Will the amenity and good order of the locality be increased by more than a minor extent by the effects of a refusal to renew the licence?
 - h) Has the AW and BL Mudaliar and Co Limited sold, displayed, advertised or promoted alcohol in a responsible manner?
 - i) Does the application comply with the Waitomo District Local Alcohol Policy?
8. The Licensing Committee must have regard to each criterion and then stand back and decide whether renewing the licence will be contrary to the object of the Act.² Justice Clark in the High Court decision *Lion Liquor Retail Limited* stated that there is no presumption that a licence will be renewed and the criteria for renewal should “not to be interpreted in any narrow or exhaustive sense”.³

Is AW and BL Mudaliar and Co Limited suitable?

9. The object of the Act is of paramount importance when determining suitability. Suitability includes whether the licensee ensures that the sale, supply, and consumption of alcohol in its premises will be undertaken safely and responsibly. High Court and the Licensing Authority decisions indicate suitability is a broad concept and that an assessment of suitability will include previous convictions, character, reputation, experience in the hospitality industry, proposals as to how the premises will operate, management ability and personal integrity⁴. In essence, we must consider whether Mr and Mrs Mudaliar are likely to properly carry out the responsibilities associated with the holding of a licence⁵.
10. Mr and Mrs Mudaliar are co-directors of AW and BL Mudaliar and Co Limited, each holding 50% of the company’s shares. Mrs Mudaliar explained that the business is a family-owned operation, established over 22 years ago after the couple immigrated to New Zealand from Fiji. She described it as a vital local service and a community hub in Piopio. She also emphasised her family’s active involvement in the close-knit community and their commitment to running the business responsibly, with a focus on minimising any potential harm from alcohol. Both Mr and Mrs Mudaliar hold current Manager’s Certificates. We heard that Mr Mudaliar is actively involved in the day-to-day operations of the business and works full time on site. While the couple own a home locally, it became apparent that Mrs Mudaliar also spends part of her time in Auckland, where their children have been educated and now live and work. As a result, she is less frequently present at the store (4 to 5 days a week), and their adult children, Priya and Ayush, step in as duty managers only on weekends or as needed to cover staffing gaps. Mrs Mudaliar explained that the past three years, particularly following Covid, had been a challenging trading period. Due to a shortage of suitable staff and financial pressures, the family has had to be more regularly involved on site. There is no

² Re Venus NZ Limited [2015] NZHC 1377, [2015] NZARLA 1315

³ Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited [2018] NZHC 1123

⁴ Nishchay’s Enterprised Limited [2013] NZARLA PH 387 at [53]-[54].

⁵ Re Sheard [1996] NZAR 61

requirement for a director to reside in the same town as the licensed premises, and we are satisfied that Mr Mudaliar maintains a high level of personal presence and availability.

11. Mr and Mrs Mudaliar have a combined 22 years of experience operating an off-licence. Given this, it is our expectation that they would be well-versed in the requirements of the Sale and Supply of Alcohol Act 2012 and comply with them. Through questioning, we were able to confirm that they understood the key responsibilities associated with holding an off-licence. Mr and Mrs Mudaliar were familiar with the licence conditions and were able to recall them for the committee and broadly understood the purpose of the Act. However, a number of licensing requirements were not being met.
12. In particular, unauthorised changes had been made to the Single Alcohol Area (SAA). These changes resulted in alcohol inadvertently being displayed and available for sale outside the designated area. Mr Mudaliar explained that the layout of the SAA was altered for safety reasons. He stated that having two points of egress had allowed easier access to the area behind the till, and relocating the SAA improved control. As part of this change, the freezer was also moved to improve visibility from the counter into the alcohol area.
13. The Licensing Inspector provided photographic evidence from two separate visits to the store (on 4 June 2024 and 2 July 2024) showing boxes of beer stacked on the floor at the entrance to the SAA, which is also outside the approved layout. Mr Mudaliar explained that the beer stacked on the floor was temporary, due to restocking and rotating fridge stock. He maintained that all beer is sold chilled from the fridge and not from the floor. However, this explanation did not satisfactorily account for why beer was observed on the floor during both inspections. We noted that in the 4 June photograph, the fridge was full and the Export 33 boxes appeared to be surplus, suggesting that the floor display was not incidental.
14. Section 112 of the Sale and Supply of Alcohol Act 2012 not only restricts the sale of alcohol to a single designated area in a grocery store, but also prohibits the sale of non-alcohol products from that area. During our site visit, we observed milk bottles in the fridge located within the SAA. Mr Mudaliar suggested that this was an oversight due to the early nature of the site visit. He said the milk was for the coffee machine and was kept in the fridge overnight.
15. Section 112 exists to ensure that alcohol is contained within a clearly defined and confined area. This reduces the visibility and promotion of alcohol throughout the store, helping to prevent the normalisation of alcohol and limiting unintentional exposure, particularly for children and young people. Separating alcohol from everyday grocery items such as bread, milk, and baby products reinforces the message that alcohol is not just another household item. This approach supports the Act's overarching goal of reducing alcohol-related harm. While each of these issues of non compliance with section 112 is concerning on its own, taken together they indicate a broader lack of understanding of the licensing requirements.

Employment breaches

16. The decisions of the South Waikato District Licensing Committee and the Authority

concerning the bottle store trading as Thirsty Liquor Tokoroa in *Two Brothers Wholesale Ltd v Medical Officer of Health*, Waikato District Health Board are relevant to this matter.⁶ In essence, the Authority confirmed that the Committee is entitled to have regard to any breaches of employment legislation when deciding whether the company is suitable to continue to hold an off-licence. Judge Kelly stated in *Two Brothers* that “the employment breaches are such that both the appellant’s suitability 105(1)(b) and its systems, staff and training (s 105(1)(j) assume an elevated mantle”.⁷

17. In *Nekita Enterprises Limited*, the Authority stated that breaches of the Minimum Wages Act 1983 by licensees are improper conduct, and the lack of record keeping goes to the matter of suitability.⁸
18. The Senior Labour Inspector, Charlotte Grimwood, gave evidence that on 06 July 2021, a complaint was received by Employment Services from Shubham Tayal, a former employee of AW and BL Mudaliar & Co Limited trading as Piopio Superette. The complaint alleged the following claims:
 - There had been a premium charged by way of wages being paid back to the employer, and that the employer had stipulated the mode of spending wages.
 - That no payment of holiday and leave entitlements were provided on termination, and no provision of holiday and leave entitlements were provided during the employment period.
19. Ms Grimwood was allocated the complaint to investigate further. As an Inspector, she has the jurisdiction to monitor and assess compliance of minimum employment standards under the Minimum Wage Act 1983 (“MWA 1983”), Wages Protection Act 1983 (“WPA 1983”), Employment Relations Act 2000 (“ERA 2000”), and Holidays Act 2003 (“HA 2003”). She conducted telephone interviews and sought supporting evidence from Mr Tayal and the Mudaliars. Ms Grimwood prepared an investigation report on 5 May 2022 and identified the following breaches:
 - The employer had sought unreasonable deductions from employees’ wages by deducting wages for till shortages, in breach of section 5A of the WPA 1983.
 - The employer had sought and received a premium, by requiring an employee to pay back part of their wages, in breach of section 12A of the WPA 1983. In the alternative, this be considered a stipulation as to mode of spending wages, in breach of section 12 of the WPA 1983.
 - The employer did not have compliant employment agreements in breach of sections 65 and 69OJ of the ERA 2000 and section 52 of the HA 2003.
 - The employer did not have sufficient holiday and leave records in breach of section 81 of the HA 2003.
 - The employer did not pay 8% of the employees’ total gross earnings upon termination as final holiday pay in breach of section 23 of the HA 2003.
 - The employer failed to pay employees not less than the employees’ RDP or ADP for an unworked public holiday in breach of sections 49 of the HA 2003. • The employer

⁶ [2021] NZARLA 32, South Waikato District Licensing Committee (SWDLC) 17/OFF/002/2020, 28 January 2021

⁷ *Two Brothers Wholesale Ltd v Medical Officer of Health*, Waikato District Health Board [2021] NZARLA, paragraph 153

⁸ *Nekita Enterprises Limited* [2021] NZARLA 139 - 145

did not pay the employee at least time and a half for working on a public holiday in breach of section 50 of the HA 2003.

- The employer failed to provide employees with an alternative holiday where a public holiday had been worked on what would be considered an otherwise working day (“OWD”), in breach of section 56 of the HA 2003.
- The employer failed to provide employees with sick leave entitlement after 6 continuous months of employment, in breach of section 65 of the HA 2003.

20. An Investigation Hearing was held with the Employment Relations Authority (ERA) on 21 and 22 August 2024. The ERA issued its decision on 15 October 2024⁹. The ERA found 21 individual breaches. These were reduced to three representative breaches as follows:

- Two breaches of the Wages Protection Act
- Two breaches of the ERA 2000
- Six breaches of the Holidays Act

21. AW and BL Mudaliar and Co Limited was ordered to pay \$16,000 in penalties, and costs were also awarded to four employees. At the time of the hearing, we understood \$14,443.23 had been paid (\$10,000 of penalties, \$3000 to an individual involved and \$1443 in outstanding arrears). Penalties of a further \$18,000 which included \$6000 of legal costs remained.

22. The Committee acknowledges that Mr and Mrs Mudaliar provided some context regarding the Employment Relations Authority (ERA) determination. They expressed that they did not feel the matters were fairly considered by the ERA and indicated their intention to challenge or appeal the findings. They were particularly clear in asserting that the money given to Mr Tayal was a loan intended to assist him and that the money paid to them was loan repayments. Authority member Eleanor Robinson acknowledged that she didn't believe the evidence showed that no loans were made to Mr Tayal while he worked at Piopio Superette.¹⁰ We note their views and the importance they place on providing their perspective.

23. However, it is not the role of the District Licensing Committee to rehear or reassess the facts and evidence considered by the ERA, nor to make any determinations about the correctness of that decision. That process sits outside our jurisdiction. Our role is to consider the application before us in light of the statutory criteria set out in the Sale and Supply of Alcohol Act 2012, including whether the applicant is a suitable person to hold a licence. In doing so, we must have regard to any relevant findings or information that is before us, including publicly available decisions from regulatory bodies. While we accept that the applicants do not agree with the ERA's conclusions, we are required to take into account the fact that formal findings were made.

24. For completeness we note the comments of Authority Member Eleanor Robinson, who stated “having considered the evidence, I do not find that the breaches were intentional in the sense of having been taken in order to deprive employees of monies to which they were legally entitled, although that had been the effect in some cases”.¹¹

⁹ [2024] NZERA 616 3177249

¹⁰ [2024] NZERA 616 3177249 at 102

¹¹ [2024] NZERA 616 3177249

25. At the hearing, the Medical Officer of Health submitted that there have also been breaches of other laws including the Food Act 2014, and the Smokefree Environments and Regulated Products Act 1990 in 2021 when AW and BL Mudaliar and Co Limited failed a tobacco Controlled Purchased Operation (CPO). Neither Mr or Mrs Mudaliar were aware of the failed CPO.
26. In her submissions, Mrs Mudaliar explained that in the 22 years AW and BL Mudaliar and Co Limited has operated, there have not been any alcohol related harm incidents or issues linked to the store. There have been no failed Control Purchase Operations. She submitted that staff are trained regularly, and incidents are recorded in the incident book. Despite the errors that occurred in paying Holiday Pay, Mrs Mudaliar continues to use manual systems instead of more reliable electronic systems available such as MYOB.
27. While Mr and Mrs Mudaliar have longstanding experience in the industry and have presented as committed community members, we cannot overlook the cumulative weight of concerns. These include the repeated issues with compliance, particularly relating to the Single Alcohol Area, and the ongoing difficulties in providing clear and accurate sales data raise concerns about the robustness of their systems and understanding of licensing obligations.
28. Additionally, while we respect that the applicants dispute aspects of the Employment Relations Authority findings, those findings are formally on the record and must be taken into account as part of our assessment. Suitability is a forward-looking test. In weighing all of these matters together, we are not confident that the applicant currently demonstrates the level of reliability and compliance expected of a licensee. On the basis of the evidence presented, including regulatory findings and our own observations, we are not satisfied that the company is suitable to continue to hold an off-licence at this time.

Is the Piopio Superette a grocery store?

29. The Licensing Inspector submits that the sales data provided in the application does not meet the requirements of Section 33 of the Act and section 12 of the Regulations.
30. Section 12 states that
 - (1) In the case of premises to which subclause (2) applies, the statement of annual sales revenue to which, by virtue of section 33(2)(a)(ii) of the Act, the licensing authority or a licensing committee must have regard in determining for the purposes of the Act whether any premises are a grocery store must contain—*
 - (a) a statement of the gross sales revenue of the business being carried on on the premises for the period of 12 months ending no more than 90 days before the time at which the application for the issue or renewal of an off-licence for the premises is made,—*
 - (i) excluding GST; and*
 - (ii) excluding excise duty and excise-equivalent duty on tobacco products; and*
 - (iii) after deduction of all revenue from sales of lotto, Keno, Instant Kiwi, or any other New Zealand lottery promoted by the New Zealand Lotteries Commission; and*
 - (b) a statement assigning the remainder of that revenue to the following categories:*
 - (i) the sale of food products:*

- (ii) *the sale of alcohol:*
- (iii) *the sale of tobacco:*
- (iv) *the sale of convenience foods:*
- (v) *other revenue; and*

(c) a statement from a chartered accountant verifying the figures given as correct according to prepared accounts.

31. The initial sales data submitted with the application on 19 September 2023 (referred to as the "grouped sales report") lacked an adequate breakdown of product categories. A revised version, prepared by chartered accountant Dinesh Raniga and dated 13 August 2024, was provided at the request of the Licensing Inspector. However, this version also appeared incomplete, as it did not include Lotto sales or figures for excise duty on tobacco products. According to the revised statement, food products accounted for only 33.96% of total sales.
32. Under section 32(1)(b) of the Act, a supermarket or grocery store can hold an off-licence only if its principal business is the sale of food products. If food comprises less than 50% of total sales, or if alcohol is a significant or equal portion, the business is unlikely to qualify. In her report, Ms Berry notes that while the premises displays some characteristics of a grocery store, it also shares many features typical of a convenience store or dairy. She describes the store as having the general appearance and feel of a dairy, citing the prominent display of packaged confectionery and heated pies.
33. This is not the first time concerns have been raised regarding the accuracy of the sales revenue figures provided to support the grocery designation. Ms Berry states that two previous inspectors have had to request the sales information in the correct format. This marks the third occasion that AW and BL Mudaliar and Co Limited have failed to provide this information accurately as part of their licence renewal application.
34. Following the hearing, the Committee sought the following information from AW and BL Mudaliar and Co Limited:
 - A letter from the chartered accountant explaining the shortcomings of the financial statement. Specifically, the reasons for missing figures around tobacco, Lotto, food products (Meat / Deli / Beverages / Multi-packs etc), bread and cleaning products.
 - Insight from the accountant regarding any challenges in providing a more up-to-date and accurate financial statement, specifically for the period 1 Sept 2023 – 31 Aug 2024, if available.
35. An updated statement of gross annual sales was provided by the accountant, dated 15 April 2025. We note that this statement still omits excise duty on tobacco products. Additionally, there is no category accounting for non-alcoholic beverages other than milk in containers of one litre or more, nor for multi-packs of chips, crisps, or similar potato-based snack products. While we cannot be certain from our recollections of the site visit whether multi-packs were available for sale, we did observe the presence of non-alcoholic beverages in one-litre or larger volumes, which we would expect to be reflected in the sales breakdown. According to this statement, food products account for 43% of total sales — still below the 50% threshold. This remains a significant concern for us. We are required to weigh the reported sales data against our own observations and take into account the ongoing inaccuracies in the financial

reporting. We note that Piopio Superette has held an off-licence for approximately 20 years and on the last two renewals the District Licensing Committee has determined that the premises was a grocery store. During the site visit, it was our observation that there was a wide range of food stuffs available and within types of products there was choice e.g., two different brands. We also observed a supermarket trolley and baskets near the entrance to the store. While the availability of fresh fruit, vegetables and meat was limited, there were frozen substitutes, and it was our view that a person could purchase all the products needed to make a reasonable meal. While the first impressions on entering the store is that there is a large amount of convenience food, the size and layout of the shop does have the feel of a small grocery store.

36. However, the concern remains regarding AW and BL Mudaliar and Co Limited's ability to comply with the requirements. We acknowledge that these shortcomings may reflect either a failure by AW and BL Mudaliar and Co Limited to supply complete and accurate information, or a failure by the accountant to present it appropriately. Regardless of the cause, the result is a lack of reliable evidence demonstrating that the principal business is the sale of food products, as required under section 32 of the Sale and Supply of Alcohol Act 2012.

Does the application comply with the Waitomo Local Alcohol Policy

37. The Licensing Inspector confirms that the application complies with the Waitomo District Local Alcohol Policy in place.

Are AW and BL Mudaliar and Co Limited's days and hours reasonable?

38. The applicant proposes to operate from Monday to Sunday, 7.00am to 10.00pm.
39. The proposed days are consistent with a grocery store premises. However, the Licensing Inspector has raised concern that the hours are too long for the practical number of duty managers available to staff the store during this time. Ms Berry reiterated this at the hearing and we noted that the Mudaliar's were somewhat reluctant to reduce their hours citing the need for seasonal flexibility. In their closing submissions, however, AW and BL Mudaliar and Co Limited have indicated they would be willing to consider a reduction. The Licensing Inspector had initially suggested 7.00am to 9.00pm.
40. This willingness demonstrates a willingness to respond to concerns raised during the hearing. However we observe that his moderation of the hours has been reactive rather than proactive. Based on our findings regarding the applicant's suitability, we do not need to make a conclusive determination regarding the appropriate hours.

Is the design and layout of the premises suitable?

41. As outlined in paragraphs 12 – 14, AW and BL Mudaliar and Co Limited has admitted they have altered the SSA in January 2024 without applying for a variation. They did not understand this was required.
42. In the further information provided after the hearing, AW and BL Mudaliar and Co Limited provided an updated floor plan dated 15 April 2025 showing the correct SAA.
43. The premises is a small grocery store with shelving, chillers and floor standing chest freezers. The SAA is located away from the main aisles and principal entrance. It is not visible from the

main entrance nor the checkout counter. The licensing committee is satisfied that the single alcohol area is not in a prohibited area and the location adequately limits the exposure of shoppers to displays of alcohol.

44. In summary, we are satisfied that the premises has a suitable design and layout to meet the requirements of the Act. It is well appointed and able to be monitored effectively by the staff of the premises and 16 CCTV cameras.

Does AW and BL Mudaliar and Co Limited have appropriate systems, staff and training to comply with the law?

45. The original application listed three duty managers: Mr and Mrs Mudaliar, and their daughter Priya Mudaliar. However, Priya works full-time as a lawyer and resides in Auckland. In our view, she would only be available to assist on weekends or as an emergency backup.
46. The Licensing Inspector raised concerns about the adequacy of staffing, noting that three duty managers may not be sufficient, particularly given Priya's limited availability. Ms Berry also highlighted the high number of acting and temporary managers, suggesting this pointed to insufficient permanent staff to run the premises. Mr Mudaliar explained that staff are often initially hired without a Manager's Certificate, and are therefore appointed as acting or temporary managers until they gain six months of experience and become eligible to apply for certification.
47. Following the hearing, an updated Duty Manager Register was provided, which included two additional duty managers: Paras and Ayush Mudaliar.
48. Ms Berry noted that during her inspection of the premises, the staff member present was unable to locate the Manager's Register. At the hearing, we observed that the register was incomplete, with several omissions and date errors. While this may appear to be an administrative oversight, it raises broader concerns about attention to detail and the adequacy of systems in place to ensure compliance.
49. During cross-examination, Mrs Mudaliar explained that staff training is carried out at induction and then every six months for new staff, with annual refreshers for more experienced team members. She stated that the training is based on the Manager's Guide, the licence conditions, and the Host Responsibility Policy. However, the training materials provided at the hearing appeared to be generic, containing content irrelevant to a grocery store—for example, references to the need to provide low-alcohol beverage options. Additionally, key topics such as the SCAB tool were missing. The training records presented were duplicated, with entries split between two documents, raising questions about accuracy. We were left questioning whether, on the balance of evidence, staff had received adequate or consistent training over the past three years.
50. An updated training plan was provided after the hearing. However, we consider such a plan to be a basic requirement, particularly for experienced operators. It should have been complete and fit for purpose at the time of application. Our concerns are compounded by the fact that this is the third time AW and BL Mudaliar and Co Limited has appeared before the District Licensing Committee for a hearing. On each occasion, inadequate staffing, systems, and

training have been raised as issues. As noted in the Waitomo District Licensing Committee decision dated 2 July 2019¹²:

In his report, the Licensing Inspector Mr Norris, states that he inspected the premises on 23 October 2018. A sign was displayed stating “Avinesh Mudliar” (actual spelling used) was the manager on duty. However, Mr Mudaliar was not on the premises. The only person on the premises was a staff member who did not hold a manager’s certificate. There was no signage saying that alcohol sales had been suspended.

When Mr Norris questioned Mr Mudaliar, one the company directors, on 13 November 2018, he advised that he had not had any training since sitting the Bridging Test in 2016 and he was not familiar with the SCAB Intoxication Assessment Tool. Mr Mudaliar was not able to produce a manager’s register.

At the hearing Mr Norris reiterated his concerns regarding a lack of staff, systems and training. This was not the first time that a manager had not been on duty when the premises was open for the sale of alcohol. A public hearing was held in October 2015 to consider the renewal of the off-licence, due to concerns about a manager not being on the premises at all times alcohol was for sale and the fact that a manager’s register had not been maintained. Therefore, the company does not seem to be managing its responsibilities under the Act very well.

51. Furthermore, at the previous licence renewal hearing, the Committee also found deficiencies in the training records and Manager’s Register¹³. As a result, updated documentation was required to be provided after that hearing.

Mrs Mudaliar, director of AW & BL Mudaliar & Co Limited, gave evidence that the company has been operating for the past 16 years and there has been “on the job training”, however it has not been documented. Mr and Mrs Mudaliar have now put a file together with relevant information about the Act and it also contains an up to date manager’s register.

52. While the Committee is now satisfied that AW and BL Mudaliar and Co Limited has appropriate systems, staff, and training in place to meet its legal obligations, it is important to acknowledge that these were not in place at the time of application despite being appropriate at the last renewal. The evidence also suggests a recurring pattern of slippage resulting in non-compliance in these areas.

Will the amenity and good order of the locality be reduced to more than a minor extent by the effects of the issue of licence? Is the amenity and good order of the locality already so badly affected by the effects of the existing licenses that it is unlikely to be reduced further by the effects of the issue of the licence or is it desirable not to issue any further licenses?

53. Section 105(1)(h) and (i) require us to consider whether the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of the licence. Section 5 of the Act defines “amenity and good order of the locality” as the

¹² Waitomo DLC 19/048/2018 [13-15]

¹³ Waitomo DLC 19/048/2018 [17]

extent to which, and ways in which, the locality in which the premises concerned are situated is pleasant and agreeable.

54. There have been no reports, from the Police or members of the public living in this community, of any nuisance, vandalism or noise problems associated with this premises in the past three years. The licensing committee is satisfied that renewing the off-licence will not reduce the amenity and good order of the locality by more than a minor extent. The licensing committee is also satisfied that alcohol is sold, displayed and promoted in a responsible manner and in accordance with the requirements of the Act.

Object of the Act

55. Having assessed the relevant criteria under sections 105 and 131 of the Sale and Supply of Alcohol Act 2012, we now turn to the overarching consideration: whether granting this renewal be consistent with the object of the Act, that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and that harm from the excessive or inappropriate consumption of alcohol should be minimised
56. While there have been no reported incidents of alcohol-related harm associated with this premises, the Committee is not convinced this reflects robust systems or a strong culture of compliance. Rather, this may be more attributable to good fortune than good management.
57. Significant deficiencies have been identified in relation to the adequacy of systems, staff, and training and record keeping. A consistent theme throughout the evidence has been the poor maintenance of records—whether training logs, the Manager’s Register, or employment-related documentation. As noted in *Linwood Food Bar*¹⁴, if a licensee cannot get the small things right, it raises concern about their ability to manage the larger responsibilities that come with holding a licence.
58. These issues are not one-off or minor. Instead, they reflect a recurring pattern of non-compliance and reactive improvements that arise only when external concerns are raised. Taken together, this undermines our confidence in the applicant’s ability to safely and responsibly manage the sale and supply of alcohol.

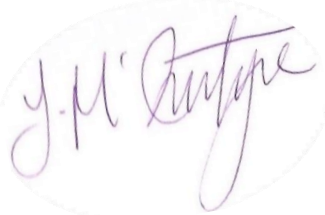
Conclusion

59. While we acknowledge the willingness of AW and BL Mudaliar and Co Limited to make changes and their expressed commitment to improve, this is tempered by the reality that many of these efforts were prompted by the scrutiny of the current process. We agree with the reporting agencies that the applicant’s approach has been largely reactive rather than proactively aligned with the object of the Act.
60. We recognise that the Mudaliars have long-standing ties to their community and a genuine desire to support their family through the operation of their business. However, our duty is to apply the law and prioritise the minimisation of alcohol-related harm. Based on the evidence before us, we find that AW and BL Mudaliar and Co Limited does not meet all the requirements under sections 105 and 131—most notably in the area of suitability.

¹⁴ Re *Linwood Food Bar Ltd*, [2014] NZARLA PH 511

61. There appears to be systemic issues and the applicant has also failed to comply with several key licence conditions, including the requirement to maintain a single alcohol area and the provision of sales data. While these matters may be correctable, they are compounded by more serious concerns, including the determination by ERA. When considered alongside the precedent in *Two Brothers*, this determination alone raises significant questions about suitability.
62. This is now the third time AW and BL Mudaliar and Co Limited has appeared before the District Licensing Committee, and largely for the same or similar issues. This repeated pattern of non-compliance shows that the applicant has not understood or accepted what is expected under the licensing rules. Taken together, we are not confident in their ability to consistently operate within the law.
63. This decision does not permanently preclude AW and BL Mudaliar and Co Limited from obtaining an off-licence in the future. Should they demonstrate a sustained and genuine commitment to meeting the Act's requirements, future applications may be viewed in a different light.
64. Accordingly, the application for the renewal of the off-licence is declined. The Licensing Committee gives three months' notice before the off-licence will expire. This is the maximum that can be granted under section 135(2).

Dated this 17th day of June 2025



Tegan McIntyre
Commissioner
Waitomo District Licensing Committee