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**IN THE MATTER** of the Sale and Supply of Alcohol Act 2012 (The Act)

**AND**

**IN THE MATTER** of an application by **Ragha & Sons Limited** pursuant to section 127 of the Act for the renewal of an off-licence in respect of premises situated at 2C Larsen Street, Ōtara, Auckland 2025 and trading as “Wymondley Discount Liquor”

### **DECISION OF THE AUCKLAND DISTRICT LICENSING COMMITTEE**

Chairperson: Ms Marguerite Delbet  
Members: Ms Glenda Fryer  
Mr Mote Pahulu

**HEARING** at Auckland on Wednesday 2 November 2022 at 9.30am

#### **APPEARANCES**

Mr Kamlesh Patel	Applicant
Ms Mereana Peka	Chair of the Turehou Māori Wardens ki Ōtara Charitable Trust, Objector
Mr Trevor Wilson	Witness for the Objector
Ms Belinda Fowler	Witness for the Objector
Dr Grant Hewison	Counsel for the Objector
Mr Derek Haddy	Auckland Council Alcohol Licensing Inspector

#### **Introduction**

- [1] Before the Auckland District Licensing Committee (the Committee, the DLC) is an application by **Ragha & Sons Limited** (the Applicant) for an off-licence renewal. The application was filed on 19 December 2021.
- [2] The general nature of the business undertaken for the premises, situated at 2C Larsen Street, Ōtara, Auckland 2025 and trading as “Wymondley Discount Liquor”, is as a bottle store.

- [3] On 22 December 2021 the DLC granted a waiver to the Applicant for failing to submit the application within the timeframe required by section 127(2)(b) of the Act.
- [4] The Applicant is a private company with a sole director, Mr Kamlesh Patel. The shareholding is held equally by Kamlesh Patel and Bhanumati Patel. The Applicant is permitted to hold an off-licence pursuant to sections 28(1)(ba) and 32(1)(b) of the Act. The Applicant's right to hold a licence is discussed in more detail in paragraphs [96] to [105].
- [5] The application was duly advertised and attracted one public objection from Turehou Māori Wardens ki Ōtara Charitable Trust (TMW, the Objector). The Objector has greater interest in the application than the public generally because the Trust's wardens cover the Ōtara area as part of their duties. Māori wardens have a long-standing and trusted relationship with Māori communities as well as specific alcohol-related jurisdiction under the Māori Community Development Act 1962.
- [6] The objection relates to:
- (a) the vulnerability of the community to alcohol-related harm; and
  - (b) the suitability of the applicant, who has to demonstrate knowledge of the locality in which the premises are situated and has promoted alcohol irresponsibly.
- [7] The Objector suggests specific conditions to reduce the licensed hours and restrict the way the Applicant sells and advertises alcohol. It requests that:
- (a) closing hours be reduced to 9pm every day;
  - (b) alcohol only be sold in the packaging provided by wholesalers (for example, that no carton packaging of units be broken down and sold in smaller units);
  - (c) there be no sales to persons wearing a school uniform;
  - (d) no RTDs be displayed at the principal entrance to the premises, or within three metres of the front windows of the premises;
  - (e) no stock be stored outside the premises;
  - (f) no sales of single RTDs, RTDs over 500ml, single shots and light spirits under 14% ABV be allowed (this does not include low or non-alcoholic spirit products);
  - (g) external advertising on the premises be limited to the name/brand of the store, with no sandwich boards, flags or similar;
  - (h) no single sales of beer, cider, or RTDs priced at, or less than \$6.00 per unit be allowed;
  - (i) there be no irresponsible promotions of alcohol (such as those, as a minimum, set out in section 237 of the Act), including through any social media channel;
  - (j) alcohol sold remotely be delivered at least 24 hours after the purchase was made, only between 9am to 9pm, Monday to Sunday, only by a person

holding a Manager's Certificate and be subject at the point of delivery to checks on the age and any intoxication of the customer.

### **Reporting agencies' positions**

- [8] The Police reported on the application on 16 May 2022 and supplied a supplementary report on 26 July 2022 with information on alcohol-related harm within 1km of the premises. They do not oppose the application and were not present at the hearing.
- [9] The Medical Officer of Health reported on the application on 5 January 2022 without opposition and was not present at the hearing.
- [10] Inspector Derek Haddy reported on the application on 26 July 2022 without opposition and was present at the hearing.
- [11] In his report, Mr Haddy explains that the premises, a superette and a liquor store, have operated as a family business since 1992, originally as a natural person with the father, then as C.R & B.C Patel Limited, with the father, mother and son. In 2014 and 2017 renewal applications received objections from the local board and the Ōtara Gambling and Alcohol Action Group (OGAAG). Hearings were held and the licence was renewed both times. In 2021 the family altered the company name to Ragha & Sons Limited, with the son Kamlesh Patel as the sole director of the company, and with the shareholding divided equally between Kamlesh and Bhanumati Patel. A new off-licence application was submitted, to which the OGAAG objected. It then withdrew its objection and the DLC granted the licence on the papers.
- [12] The Inspector's report includes copies of the 2014, 2017 and 2021 DLC decisions.
- [13] The Inspector's report contains a response from the Applicant to the Objector's concerns and records that the Applicant would agree to a 10pm closing time if the objection was withdrawn. An email from Dr Hewison states that the Objector was not prepared to withdraw its objection on the basis of the Applicant's response.
- [14] At the beginning of the hearing the agencies' respective positions remained unchanged.

### **Relevant legal provisions**

- [15] We must have regard to the sections of the Sale and Supply of Alcohol Act 2012 outlined below to decide on the application.
- [16] Section 4 – Object of the Act – states:
- (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 and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*

[17] Section 131 – Criteria for renewal of licences – states:

- (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), i.e.:*
    - (a) the object of the 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
  - (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 (which outlines the way these reports must be made)*
  - (d) *the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*

[18] Section 106(2) – Considering effects of renewal of licence on amenity and good order of the locality – states:

- (2) *In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the*

*licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):*

- (a) *current, and possible future, noise levels:*
- (b) *current, and possible future, levels of nuisance and vandalism.*

## **Submissions and evidence**

[19] Mr Patel gave evidence first, followed by Ms Peka, Mr Wilson and Ms Fowler. With Mr Patel's agreement, the Committee authorised Dr Hewison to ask him questions related to the evidence given by the Objector and its witnesses after they presented it, as was easier for the flow of the hearing. The Committee, however, advised Dr Hewison that in the future he should pre-circulate all evidence.

[20] For ease of understanding, the Objector's evidence is summarised first.

### **Ms Mereana Peka, Objector**

[21] Ms Peka gave evidence. She is the chair of TMW. She last visited the locality of the premises on 29 October 2022. She drives past the area regularly, occasionally pulls into the carpark near the shop and makes a point of going to the superette regularly.

[22] The liquor store is situated in the Wymondley area, which has an NZ Dep 2018 index of deprivation of 10. She has observed people drinking in public in Wymondley, occasionally singles.

[23] Each month TMW provide 1500 emergency food parcels to family in Ōtara and cannot satisfy the demand. She is aware that many of the families who request food parcels cannot afford to buy food. However, because alcohol is normalised, heavily advertised, cheap and readily available in the community many of these families still buy alcohol.

[24] On several occasions she has witnessed children stealing food from local shops in Ōtara.

[25] Māori wardens are called to help when children and young people are found in the streets and prioritise taking them home safely. On several occasions she has had to return children to houses where adults were partying, drinking and taking drugs. At such times she wonders whether she is helping these children or putting them in greater danger. Sometimes she fears they might be better off on the streets.

[26] There are houses in Wymondley that have parties all the time. These houses are well known for their association with drugs, alcohol and gangs. Families see this happening around them and it becomes normal. Even kids who are going to school talk about the parties. Having liquor stores close-by makes it easy for these houses to access alcohol until very late at night, every night.

[27] She is concerned about the effects of people drinking alcohol in the Firth Crescent playground, where there is a 7pm to 7am alcohol ban. She provided photos from

July 2021 showing large amounts of alcohol-related litter near the playground. Auckland Council was asked to remove the rubbish.

- [28] Ms Peka is very concerned about alcohol-related harm in her community of Ōtara-Papatoetoe, which is frightening and out of control. Alcohol is too accessible and too cheap, and many locals have become reliant on alcohol.
- [29] The liquor store is in the residential community of Wymondley where there should not be a liquor store. However, if it must be there, it should be operating to the highest standards and have the strongest restrictions.

**Mr Trevor Wilson, witness for the Objector**

- [30] Mr Wilson gave evidence. He has a Bachelor of Science and has taught mathematics in high schools for many years. His evidence refers to TMW's request that the premises' licenced hours be reduced to 9:00pm, Monday to Sunday.
- [31] He said that in a recent decision<sup>1</sup>, the Auckland DLC reduced the closing hours of Sahota Ltd trading as Blackpool Liquor Manurewa from 11pm to 10pm. That store is in a suburban setting in Manurewa, similar to Wymondley Discount Liquor's setting. Both areas are residential and have a deprivation index of 9 or 10.
- [32] Sahota Ltd appealed the decision and as a party to the proceedings the Trust was provided the appeal documents, which are now public and comprise a sales trading report from Sahota Ltd.
- [33] The sale records show that for the period from March to May 2022, only 5 to 7% of the total sales occurred between 10pm and 11pm. Sales were also low in the morning, and greatest late afternoon and early evening. Mr Wilson provided a series of graphs to illustrate this point.
- [34] He concluded that should Wymondley Liquor have similar sales to Blackbull Liquor Manurewa, only a small percentage of sales would be taking place between 10pm and 11pm.
- [35] Closing the shop earlier and opening it later would result in less immediate consumption of alcohol.

**Ms Belinda Fowler, witness for the Objector**

- [36] Ms Fowler gave evidence. She is a trainee Māori Warden and works for Communities Against Alcohol Harm (CAAH).
- [37] Ms Fowler visited the locality on 27 October 2023, during which she took photos of alcohol-related litter, graffiti, other vandalism and property damage in several nearby streets and reserves within 500 metres of the premises. She also took photos at the Firth Crescent playground which figures in Ms Peka's evidence.

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<sup>1</sup> Sahota Ltd – Blackbull Liquor Manurewa [2022] ADLC 8220069279 – 25 May 2022

- [38] The numerous photos show donut and zigzag tyre marks on the roads, extensive alcohol-related litter including empty beer and RTD vessels, broken glass, nitrous-oxide canisters, graffiti, and a phone booth with several panes of glass missing.
- [39] On 1 November 2022 she visited the Wymondley Liquor Facebook page. She found a photo, posted on 8 January 2020, offering customers who spend \$20 on Somersby cider or Vodka Cruiser the chance to win a “Lazy Boy” chair. She provided a photo of the Facebook page. In her view, this promotion was in breach of section 237 of the Act – irresponsible promotion of alcohol, which states that a person commits an offence if they offer the opportunity to win a prize on the condition that alcohol is bought. Although she understands that the value of the prize has no bearing on whether such promotion may be considered irresponsible, she noted that the cheapest genuine lazy boy chair she found online had a RRP of \$1,399.
- [40] She acknowledged that the photo was posted before the current licensee took over the store but noted that the store was still under the family business at that date.
- [41] She provided a photo of the sign above Wymondley superette, which reads “Wymondley Superette & Liquor” and spans the length of both the superette and the liquor store. She provided a screen shot of the Companies Register, on which the trading names of Ragma & Sons Ltd are recorded as “Wymondley Superette & Wymondley Liquor”. The industry classification code for the company is that of “dairy/superette operation”.
- [42] On 30 October 2022 she purchased a packet of snacks at the superette and saw that the door between the superette and the liquor store was open. She then left the superette and went next door to the liquor store. As she walked in the lobby area an alarm sounded and a man whom she had noticed stocking shelves in the superette came in behind her and asked the young man in the superette to open the gate so both of them could go into the liquor store.
- [43] She saw a fridge with single 330ml, 440 ml and 550ml cans of beer of varying strengths. She bought a 330ml can of NZ Lager for \$2.
- [44] The receipt for both purchases show different trading names but have the same GST number.
- [45] In her view, Wymondley Superette and Wymondley Discount Liquor may operate as a single entity, as the two stores are run by the same company, share a GST number, are physically linked by a sliding door and share staff. She queried how the Applicant has satisfied the Inspector that 85% of the annual revenue from Wymondley Discount Liquor is earned from the sale of alcohol.’
- [46] She noted that according to the previous DLC decisions included in the Inspector’s report, in 2014 a condition was imposed for the premises, stating “There is not to be any sales of single shots or single units of beer, cider or RTDs in less than 445ml packaging with the exception of boutique and handcrafted beer and cider”. The condition was retained in 2017.

- [47] However, it is not clear whether the then licensee always complied with the condition. At the 2017 hearing Mr Selwyn Lilley gave evidence of having purchased a \$440ml can of Lion Brown beer in 2016. A 2019 photo on the premises' Facebook page also shows single 440ml cans of NZ lager and Ranfurly for sale.
- [48] Ms Fowler notes that in the 2020 public notices for the renewal of the licence, and later that year for a new licence for Ragha & Sons Limited, there is no indication that the Applicant wished to vary the licence conditions. Yet in the 2020 decision for the new licence the single sale condition is not included.
- [49] Ms Fowler provided a photo of the exterior of the premises, showing a large sign with young people drinking alcohol, and expressed concerns about its use in a residential area.
- [50] Her conclusion, mirroring Ms Peka's, is that there should not be a liquor store in this location, but that if there has to be one it should operate to the highest standards and have the strongest restrictions.

**Mr Kamlesh Patel, Applicant**

- [51] Mr Patel gave evidence. Wymondley Discount Liquor (WDL) is a family business. The family owns a dairy and the adjacent liquor store, which have been operating for 35 years and 23 years respectively. Mr Patel took over the management of the business from his parents 12 years ago.
- [52] He addressed the conditions proposed by the Objector in paragraph [7]. Referring to the proposed closing time of 9pm, Mr Patel said that the premises' licensed hours have been 8:30am to 11pm for 23 years, during which there have been no issues. In winter the store tends to close at 10pm but stays open until 11pm in the summer. At first Mr Patel said that the premises' licensed hours should remain the same, later he accepted a closing time of 10pm as it seems to be the norm for shops selling alcohol in the area. He would not accept a closing time of 9pm.
- [53] The store sales are about 10% wine, 10% spirits, 40% beer and 40% RTDs. His clientele includes few corporates, and a mix of tradies and locals. Some locals come from East Tamaki over the bridge.
- [54] Mr Patel said that he does not split alcohol cartons. Some individual beverages are grouped together with tape or yellow rings and sold in packs of 4 or 6.
- [55] With regards to not selling alcohol to people in school uniform, he said that any young-looking people are asked for their ID at the gate, even if they are with a guardian or parent.
- [56] Some RTD displays were part of a promotion by Brews. He has now removed the Brews banner from the windows as they prevented him from seeing what was happening outside the store and in the car park. Alcohol company representatives sometimes put promotion sleeves on the bollards in front of his shop when they visit, but he is happy not to have any.



- [57] Deliveries are normally made at the back of the store. In COVID times companies tended to leave deliveries at the front door then emailed the store to advise of the delivery. When deliveries are made to the front of the store Mr Patel moves them to the back.
- [58] He does not sell single shots. With regards to not selling light spirits, he said that it was difficult as large wholesalers such as Asahi, DB Brewery and Lion push retailers to sell their RTD range. Should he refuse to sell them, the companies would reduce the rebates they give him at the end of the quarter.
- [59] RTDs are part of the products he sells, and he does not wish to see these sales restricted, however he does not sell single RTDs.
- [60] Mr Patel said at first that all single beers he sells are in vessels of 440ml or over. 440ml beers retail between \$2.50 and \$4, 500ml beers between \$4 and \$8. Some \$750ml bottles retail at \$7. When questioned by Mr Hewison after Ms Fowler gave evidence, he admitted he also sells 330ml beers for \$2.
- [61] He advertises promotions on Facebook and Instagram, for instance at Christmas, but does not advertise specials anymore.
- [62] During COVID when he was not able to trade, he performed remote sales and deliveries. He has not made remote sales since COVID restriction ended, mainly because he is short-staffed, but may consider doing it again in the future.
- [63] Being in business for so long, and for the long run, the company supports the local community. The dairy sponsors the Scorpio rugby league club and the local primary school by providing jackets and tee shirts. Mr Patel said that his family owns the whole block of shops and wants to grow the business. They may build a supermarket.
- [64] With regards to alcohol visibility to children in the community, he commented that Papatoetoe intermediate looks directly into the Dominion Brewery building, that there is a gas station with a liquor store just next door, and that at the local Countdown alcohol is directly next to the fruit and vegetable section. At his store there is a gate preventing people from freely entering the store and helping with staff security. Alcohol from the shop can only be seen when a customer is beyond the entrance gate.
- [65] Under questioning he said that there have been no complaints from residents about the store. Before Covid Māori wardens came to the store from time to time to check on him, which was positive. There have been no issues raised by Māori wardens.
- [66] Dr Hewison asked Mr Patel if he understands the local deprivation index of 10, that there is heightened risks of alcohol related harm in the locality, and that it can result in family harm. Mr Patel said he understands but cannot know what happens in homes behind closed doors and does not believe there is necessarily a difference between alcohol-related family harm in Ōtara-Papatoetoe and Remuera.

- [67] He has not seen people drinking in public in the carpark outside his store and in the nearby playground. He has not observed rubbish in the playground. He is not aware of party houses or drug, alcohol abuse and gang presence in the area. He does not believe that it is his role to observe the store surroundings for indications of alcohol-related harm, and seldom walks around. He accepts that litter, graffiti, cars doing doughnuts and the broken glass of a nearby phone booth are nuisance and vandalism and affect the amenity and good order of the locality, but not to a more than minor extent. Sometimes there are high levels of vandalism, but the council generally cleans up and then the neighbourhood is spotless. He accepts that some of the litter could come from his shop.
- [68] Responding to questions regarding a competition he run on Facebook where a lazy-boy chair could be won, Mr Patel said that that he would likely have discussed the promotion with the brewery who was running it, but not the prize. Either he or a staff member would have taken the photo and put up the post. While he accepts that the promotion was in breach of section 237 of the Act, he said it was run by another entity and not by him directly.
- [69] Mr Patel explained that Ragma & Sons Limited covers the business of both the superette and the liquor store and confirmed they used the same GST number but different bank accounts. When asked if 85% of the sales from Ragma & Sons came from alcohol, he answered it was possible.
- [70] Mr Patel explained that the sliding door between the superette and the liquor store is left open as staff work in both premises. Three or four work duty managers work for the business and there is always a duty manager in the liquor store when a customer is present.
- [71] He does not believe that people confuse the entrances of the two shops. He said that Lotto provided the sign over the shops, and he does not want to remove it.
- [72] Under questioning Mr Patel said he noticed when the licence was issued in 2021, that it did not include the condition restricting specific single sales anymore but decided not to talk to the inspector about it. Asked if he thought he should have, he replied no.
- [73] Mr Patel said he would accept a closing time of 10pm, but not 9pm. He would accept a condition prohibiting the sale of single shots and single vessels under 440ml, but not 445ml. He is prepared not to add any advertising outside the shop and to remove the picture of young people drinking. He is also prepared to accept a condition prohibiting the use of sandwich boards, flags or bollard covers. He is not prepared to accept a price condition, nor conditions specifying that there shall be no irresponsible promotion of alcohol including through social media or restricting the delivery hours of remote sales.
- [74] The committee asked Mr Patel whether he would accept to include in his social responsibility policy that no children in school uniform can be served alcohol, and a condition stating that the social responsibility policy is to be displayed in the store and adhered to at all times. He said he would.

[75] At the end of the hearing the Committee requested Mr Patel to provide the financial accounts of Ragha & Sons Limited and a breakdown of its revenue between alcohol sales and other sales.

### **Inspector Haddy, Auckland Council**

[76] Mr Haddy answered questions from the Objector's counsel and the Committee.

[77] Dr Hewison asked Mr Haddy what he thought of the Lazy Boy chair promotion. Mr Haddy said that had he known at the time that the chair was potentially worth \$1,300, he may have had a meeting with the Applicant and would have adopted a graduated response to the action, maybe by issuing a warning.

[78] Confused about the disappearance of the condition imposed by the DLC in 2014 prohibiting the sale of single shots or single units of beer, cider or RTDs in less than 445ml packaging, the Committee asked Mr Haddy to investigate during the lunch break.

[79] The Inspector was able to establish that:

- (a) The DLC imposed the condition after the hearing in 2014.
- (b) The DLC retained the condition after the hearing in 2017, however the licence was issued without it. This would have been an administrative error.
- (c) When the family altered the company name and structure in 2021, the DLC granted a new licence to Ragha & Sons on the papers. The DLC decision reads: "the premises have held on [sic] off licence since 1995. The purpose of the application is to formally change the entity holding the licence." The report submitted to the DLC did not include the condition, probably because it would have used the latest issued licence as a basis, and therefore the DLC decision did not either. The new licence was issued without it.

### **Objector's closing submissions**

[80] Dr Hewison submitted that the application for renewal should be refused because:

- (a) the locality of the premises is very deprived and vulnerable and therefore the principle of extended suitability applies;
- (b) the Applicant does not meet the threshold of extended suitability because:
  - (i) the director did not demonstrate a knowledge of the locality in which the proposed premises are situated;
  - (ii) the director did not identify any potential problems associated or likely to be associated with those premises; and
  - (iii) the director did not explain how they intend to counter those potential problems.
- (c) the DLC has insufficient information, in accordance with section 32(1)(b), to determine that for the retail premises in question, at least 85% of the annual sales revenue is earned from the sale of alcohol for consumption somewhere else.

- [81] Nonetheless, if the DLC is of a mind to renew the licence, it should do so with the following conditions:
- (a) there is to be no external or external facing advertising of alcohol products;
  - (b) a change in days and hours to open at 10am and close at 10pm, Monday to Sunday;
  - (c) there is not to be any sale of single shots or single units of beer, cider or RTDs in less than 445ml packaging with the exception of boutique and handcrafted beer and cider;
  - (d) the Applicant's host responsibility policy includes the statement that there be no sales to persons wearing school uniforms;
  - (e) the host responsibility policy is to be complied with at all times.

### **Applicant's closing submissions and information provided**

- [82] On 11 November 2022 the Applicant provided the bank account details for the dairy and the liquor store and a letter dated 31 October 2022, from Advance Taxation Services Limited, allocating exactly 90% of the company's sales from April 2021 to March 2022 to liquor, and 10% of the sales for the superette.
- [83] Not satisfied with this information as there is virtually no chance that the sales of each business are an exact percentage of the total, the DLC requested a detailed breakdown of the revenue between liquor sales and superette sales.
- [84] On 30 November 2022 the Applicant provided the accounts of "Ragha & Sons Limited trading as Wymondley Discount Liquor" as of 31 March 2022. These accounts showed the same sales revenue as that mentioned in the letter from Advance Taxation Services.
- [85] On 1 December 2022 the DLC requested again a breakdown of the annual sales revenue of Raga and Sons Limited between the superette and the liquor store. Further, for the liquor store part of the business, it requested a breakdown between alcohol sales and other sales.
- [86] The DLC asked for information to understand how the rent amount in the accounts provided is paid to the landlord. It asked for a breakdown of the amount, with copies of a sample of invoices and/or receipts from the landlord.
- [87] The DLC asked for a breakdown of the total salary figure of in the accounts, and a sample of five payslips for the employees of the business during the financial year ending 31 March 2022.
- [88] On 9 December 2022 the DLC received six examples of payslips and one example of a yearly taxable earnings summary. These documents are from Ragha & Sons Limited and do not mention the Wymondley Superette and Wymondley Liquor.
- [89] On 13 December 2022, the DLC received information from Vijay Naidu, Newton Law, who wrote that he was instructed by the Applicant to provide information to the DLC. Mr Naidu provided a financial report from "POS 1 - Wymondley Liquor" from 1

December 2021 to 30 November 2022 breaking down sales between alcoholic and non-alcoholic items and showing that alcohol sales amounted to 95.37% of the total sales. He also provided copies of the leases for the superette and the liquor store and extracts from the two bank accounts showing the monthly rent payments for each part of the business.

[90] Mr Naidu made the following submissions on behalf of the Applicant:

- (a) Ragha & Sons Limited operates two separate independent businesses, Wymondley Superette and Wymondley Discount Liquor, under the same company.
- (b) The businesses operate from adjoining but separate premises.
- (c) The businesses operate separate bank accounts into which each of the business's sales revenue is received and from which business expenses are paid. They pay separate rents for the premises they occupy and pay separate wages for staff who work in the respective businesses.
- (d) The objectors have misconstrued the Applicant's business operations and are wrong in saying that the businesses operate as a single retail premises.
- (e) The fact that the two businesses share the same GST number and the premises are linked by a sliding door is not evidence that they operate as a single retail premises. The GST number is the same because the two businesses are owned by the same company. The small sliding door is behind the counter and is an emergency exit point/safety for the staff. The staff can run into the adjoining premises in the event of an emergency such as armed robbery or holdup.
- (f) Although the two businesses are owned by and are trading under the same company, they operate as separate independent businesses:
  - (i) they have separate bank accounts
  - (ii) the businesses' revenue and expenses are received and paid out from their respective bank accounts
  - (iii) they have separate leases for the premises they operate from and pay separate rents to the landlord
  - (iv) they have their own staff
  - (v) they have their own POS systems
  - (vi) sales from the superette only be put through the superette's POS system at the superette's premises; sales from the liquor store can only be put through the liquor store's POS system at the liquor store's premises.
- (g) The 85% annual sales revenue measure in section 32(1)(b) of the Act applies to the sales revenue of the liquor store rather than annual sales revenue of the superette and liquor store combined, and the Applicant meets the requirements of s32(1)(b) of the Act.

- [91] On 20 December 2022 the Applicant's counsel advised that the information provided on 12 December 2022 was private and confidential and that the Applicant did not wish it shared with the Objector.
- [92] We note that delays were experienced in obtaining this information either because the accountant was not available, or the Applicant requested extensions of the deadlines the DLC set.
- [93] For the avoidance of doubt, the DLC was not provided with:
- (a) a detailed breakdown of Ragha & Sons Limited's revenue between liquor sales and superette sales
  - (b) a breakdown of the rent amount featuring in the accounts of Ragha & Sons Limited; and
  - (c) a breakdown of Ragha & Sons Limited's total salary figure.

### **Committee's decision and reasons**

- [94] In making a decision we can only act on the information before us and on the application of the criteria we are required to consider by the Act.
- [95] Before we discuss our views under sections 131 and 105 of the Act, we address the Objector's concerns about whether the Applicant is authorised to hold a liquor licence.

### ***Applicant's ability to hold a liquor licence***

- [96] Section 36 of the Act states that the licensing committee must not direct that an off-licence should be issued for any premises if (in its opinion) they are situated (wholly or partially) within a shop.
- [97] To establish whether the liquor store is a shop within a shop, we have considered the following evidence:
- (a) Ragha and Sons Limited operates both Wymondley Superette and Wymondley Discount Liquor.
  - (b) The accounts provided are for Ragha and Sons Limited trading as Wymondley Discount Liquor. It is not clear whether they cover both businesses or only the liquor business. However, the accountant's letter seems to suggest that they cover both businesses since it arbitrarily allocated the total sales between liquor and superette sales.
  - (c) Both parts of the business use the same GST number.
  - (d) There are separate ANZ bank accounts for the two parts of the business, but under the same prefix number and both with the address of the superette.
  - (e) The premises use distinct point of sale (POS) systems.
  - (f) The block of shops where both premises are situated belong to the same shareholders as Ragha and Sons'. Mr Patel said: "we own the block". The two parts of the business have different addresses and separate leases. The

liquor store is at 2C Larsen Street. The superette is at 2A Wymondley Road. The tenant for both leases is Ragha & Sons Limited.

- (g) The rent for each premises is paid separately from the relevant business bank account. However, the amounts paid do not correspond to the amounts in the leases provided and do not reconcile to the total amount of rent paid in Ragha & Sons Limited's accounts.
- (h) There is a sign above the dairy reading "Wymondley Superette and Liquor". There is another sign next to it reading "Wymondley Discount Liquor". The two shop fronts look different from the street.
- (i) Despite the Applicant's counsel submissions Mr Patel said the two operations share the same staff, which go from one part of the premises to the other to serve customers via a sliding door which is left open (see para [70]). This was also witnessed by Ms Fryer and Ms Fowler. There is one line for staff salaries in the accounts of Ragha and Sons Limited.

[98] In re Midas Liquor Centre<sup>2</sup>, the Liquor Licensing Authority (LLA) considered the issue of a liquor store within a supermarket. It emphasised that the way the public would perceive a difference between the supermarket and the liquor store was key in its determination. At para [30] it wrote: "In our opinion the company has not been able to achieve the physical degree of separation necessary to separate the businesses. We would go further and state that such separation is impossible when the two businesses are located in the same building and have so much in common. In this case the front wall of the building advertises both grocery items and spirits. Both entrances are a few feet from each other."

[99] In Darlington Bottle Shop<sup>3</sup>, the Liquor Licensing Authority considered a similar issue. A bottle store was being operated in conjunction with an adjoining superette in Wellington. Like in the present case, the shops were at the corner of two roads and were linked by a sliding door. The two businesses were operated together and shared staff. Nevertheless, the LLA concluded that the licensed premises were discrete from the superette.

[100] We believe that the sign over the superette stating "Wymondley Superette and Liquor" can lead the public to believe that there is only one shop. However, the physical setting of Ragha & Sons businesses is identical to that of the Darlington bottle shop, which the LLA considered acceptable. There are two different entrances to the shops and the sign immediately above the entrance door of the liquor shop that reads "Wymondley Discount Liquor" has a different look and feel. The liquor store can be closed while the superette remains open. The public must leave one store and go back onto the street to enter the store next door. During a site visit DLC member Glenda Fryer did not feel that the two shops were one and the same, even though she could see into the superette through the open sliding door. The DLC's view is that there is a sufficient physical degree of separation for the public to distinguish between the two stores, and even though the two businesses are

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<sup>2</sup> LLA PH463/2009

<sup>3</sup> [2011] NZLLA PH141 9 March 2011

operated in conjunction with each other, we conclude that Wymondley Liquor is not a shop within a shop.

- [101] We then need to satisfy ourselves that the Applicant can hold an off licence pursuant to section 32(1)(b) of the Act. That section states that an “off-licence may be issued only for retail premises where (in the opinion of the licensing authority or licensing committee concerned) at least 85% of the annual sales revenue is expected to be earned from the sale of alcohol for consumption somewhere else” (my emphasis).
- [102] The report from Wymondley Discount Liquor’s POS from 1 December 2021 to 30 November 2022 shows that alcohol sales represent 95.37% of total sales. We are satisfied that this report shows the annual sales revenue for the premises, in accordance with the wording of section 32. This means that the Applicant can hold a liquor licence pursuant to section 32(1)(b) of the Act.
- [103] We note that in Darlington Bottle Shop, the LLA wrote at paras [6] and [7]: “the evidence established that the two businesses were operated together and often there would be only one person operating both businesses. That person would frequently be in the superette and yet the bottle store would remain open. Generally, that person would be either Mr or Mrs Patel and both hold General Managers’ Certificates. This evidence raised questions of suitability. If the duty manager was in the superette, then that duty manager could not be in the bottle store. Thus, compliance with s.115 of the Act became impossible. Section 115 of the Act requires that a duty manager must be on duty when liquor is being sold or supplied to the public.”
- [104] Section 214 of the Act states the same requirement as section 115 of the old act.
- [105] We do not have the same concern for Wymondley Liquor, because a barrier prevents customers from freely entering the store. A staff member must let them in once a buzzer sounds, which means that there is always a staff member present with customers in the liquor store.

### ***Off-licence renewal***

- [106] ARLA has established that our role as decision-makers is an evaluative one, requiring us to make a merits-based determination on the application.<sup>4</sup>
- [107] The High Court and the Authority have established that the process of considering applications is done in two-steps. First, to evaluate the application and evidence against the criteria in section 131(1), which refer to section 105. Second, to stand back and consider whether granting the application is consistent with, and will achieve, the object of the Act, which is the criterion in sections 105 (1)(a) and 4 of the Act.
- [108] We address the criteria we are required to consider in that two-part process.

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<sup>4</sup> Christchurch Medical Officer of Health v J & G Vaudrey Limited, at [54] – [56]



## **Section 105(1)(b) Suitability of the Applicant**

- [109] None of the reporting agencies have raised issues relating to suitability. The inspector noted that the Applicant's shareholders have been operating in the area for years. Mr Patel said that he took over the management of the premises 12 years ago and has never received complaints from the Applicant.
- [110] The Objector submitted that the locality of the premises is very deprived and vulnerable, therefore, the principle of extended suitability applies. The Applicant does not meet the threshold of extended suitability because it did not demonstrate a knowledge of the locality, did not identify potential problems likely to be associated with its premises; nor did it explain how it intends to counter those potential problems.
- [111] In *Re Nishchay's Enterprises Ltd*<sup>5</sup>, the Authority said at [53]: "... suitability is a broad concept and the assessment of it includes the character and reputation of the Applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters." And at [58]: "Traditionally, [the test of suitability] has been interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence, this includes whether or not liquor abuse issues are likely to arise. Thus it includes the object of the Act as set out in s 4".
- [112] In *Re R S Dhillon*<sup>6</sup>, ARLA affirmed that, aside from the core issues, suitability includes the applicant demonstrating knowledge of the local environment and having a plan to minimise harm based on that knowledge. At [49], it wrote: "The fact that the applicant seemed to have no knowledge of the locality or the potential problems associated with it goes to its lack of suitability. If the applicant had indicated some knowledge of the environment in which it proposes to set up a bottle store, then it follows that it would have discussed the measures necessary to assist in the minimisation of harm caused by excessive or inappropriate consumption of alcohol purchased at its premises".
- [113] In addition, the Authority established that the difficulty of demonstrating suitability increases with the vulnerability of the area. In *Shady Lady Lighting v Lower Hutt Liquormart*<sup>7</sup>, it wrote at [127]: "The vulnerability of the area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol related harm".
- [114] Although the Applicant has been operating for a long time, it is well established that a licence is a privilege and not a right and that there should be no presumption that a licence will be renewed.
- [115] There is no doubt that the area is highly deprived, having the highest NZ Dep 2018 deprivation index of 10.

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<sup>5</sup> [2013] NZARLA PH 837

<sup>6</sup> [2013] NZARLA PH 920

<sup>7</sup> [2018] NZARLA 198-199

- [116] Being a Māori warden Ms Peka visits the area regularly. We found some of her statements powerful, in particular: "...families still buy alcohol even when they are taking emergency food parcels"; and "on a number of occasions I have had to return children to houses where the adults are partying (drinking and taking drugs). At such times, I wonder whether I am helping these children by bringing them home or putting them in greater danger. Sometimes I fear they might be safer/better off on the streets".
- [117] Ms Peka and Ms Fowler provided numerous photos demonstrating there is a large amount of alcohol-related litter, vandalism and property damage in the locality.
- [118] In contrast, we found Mr Patel's denial of these facts condemnatory. Having been in the industry for at least 12 years he did not seem to know there is established evidence that deprivation and alcohol-related harm are linked. He works in the area but has not noticed any instance of alcohol-related harm. He seems to find normal that sometimes there is copious litter and that it has to get cleaned up by the council. Further, he does not believe that it is his role to observe the store surroundings for indications of alcohol-related harm, and seldom walks around the neighbourhood. In our view he did not demonstrate appropriate knowledge of the locality, nor concern for the part he has to play to minimise alcohol-related harm.
- [119] Compounding this finding, Mr Patel refused to agree to the single sale condition that was imposed by the DLC in 2014, restricting the sale of single shots or single units of beer, cider or RTDs in less than 445ml packaging. He only reluctantly accepted its reinstatement for vessels less than 440ml. This is significant, as a limit of 440ml would allow him to continue to sell single vessels of 440ml beers retailing as low as \$2.50. In our view his position means that he disregards the fact that cheap single vessels demonstrably contribute to alcohol-related harm, especially in deprived communities, and that he has a role to play in minimising harm.
- [120] Mr Patel did not take responsibility for the 2010 Facebook post advertising the competition for a Lazy Boy chair. We can accept that he may not have known specifically that it may have been a breach of section 237 of the Act. However, he did not accept the condition proposed by the Objector prohibiting irresponsible promotions of alcohol, even after the Inspector said that the promotion may have resulted in a warning. Again, Mr Patel does not seem to take his obligations under the Act seriously.
- [121] Furthermore, he chose not to mention to the inspector that he had noticed the condition had been dropped in error. We conclude that he thought it was advantageous to him not to, without any regard to the increased alcohol-related harm it would cause. This attitude does not align with his submission that he cares for the community.
- [122] Despite our repeated requests we were not provided with the financial information we asked. We believe that we were only provided with the information Mr Patel and his counsel thought was supporting their submissions. While we found the information sufficient to establish that the Applicant is not a shop within a shop, we find that deliberately ignoring our requests is contemptuous.

[123] Some of the submissions made by the Applicant's accountant and counsel did not make sense. The allocation of the company's sales provided by the accountant was arbitrary (see para [82]), and when we requested the information again, it was not provided. We could not reconcile the rent amounts with the leases provided. These findings go against the Applicant's suitability as well as its systems.

[124] Mr Naidu's email of 13 December 2022 contradicts some of Mr Patel's evidence at the hearing, at paragraphs [90](e) and (f)(iv). Mr Patel said at the hearing that the sliding door allows staff to move from one side of the business to the other, and staff are shared between the two businesses. He never mentioned that it was there as an emergency exit for staff and for security reasons.

[125] We find that these omissions and misrepresentations squarely go against the Applicant's suitability.

[126] The absence of concerns with the Applicant's suitability from the reporting agencies bears weight in our decision, However, on balance, the Applicant's lack of understanding of and concern for the wellbeing of the deprived community in which it operates, its lack of commitment to minimise alcohol-related harm, the refusal to provide information and the lack of transparency and coherence of the information provided outweighs the position of the agencies.

[127] We conclude that the Applicant is not suitable to hold a liquor licence.

#### **Section 105(1)(c) Relevant Local Alcohol Policy**

[128] There is no Local Alcohol Policy.

#### **Section 105(1)(d) Days and hours of operation of the licence**

[129] The Applicant's has accepted to change its licenced hours from 8:30am to 11.00pm, to 8.30am to 10.00pm.

#### **Section 105(1)(e) Design and layout of the premises**

[130] The design and layout of the premises were discussed earlier in this decision, and we have concluded that they are not cause for concern.

#### **Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law**

[131] The issues we identified with the information that we were provided at paragraphs [123] leave us in doubt as to whether overall the Applicant has appropriate systems. We believe however that the Applicant seems to have appropriate staff and training.

**Section 131(1)(b) Whether (in our 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, and section 106(2)**

- [132] The inspector mentions in his report that there are 18 licensed premises in a 2 km radius of the premises, illustrating the well-known issue of licence proliferation in the area of Ōtara-Papatoetoe.
- [133] He wrote: “I have observed beggars, persons under the influence of substance abuse, graffiti and damage in parts of Otara, particularly around the main square in Bairds Road. However, I have not witnessed any of this around the premises in question. If any off-licence consumables are abandoned in the area, I cannot say they are attributable to this premises. [...] Due to the general area of Otara having a large number of existing off licences the renewal of this licence leads me to believe that the amenity and good order of the locality would not likely be increased, by more than a minor extent, by the effects of a refusal to renew the licence.”
- [134] We find the statistics the Police provided sobering: between 1 July 2021 and 30 June 2022, the Police recorded 71 calls for service related to family and alcohol harm within 1 km of the premises, including 50 for family harm.
- [135] We also have before us the evidence of family issues, litter and vandalism provided by the Objector and her witnesses. Ms Peka said: “the harm alcohol has on my community is frightening and out of control”.
- [136] Section 106(2) requires us to have regard to current and possible future noise levels, and levels of nuisance and vandalism to decide whether the amenity and good order of the locality will be increased by more than a minor extent if the licence is refused.
- [137] Not renewing the licence will decrease the availability of alcohol, and therefore decrease the incidence of family harm, nuisance and vandalism. It will suppress the availability of cheap single vessels selling for as little as \$2.50, which Mr Patel seems intent on continuing to sell. We also note that Mr Patel was not prepared to accept the price condition (no single sales under \$6) proposed by the Objector.
- [138] We could reduce alcohol availability by imposing additional conditions on the licence.
- [139] However, the evidence we have before us, considered in conjunction with our finding that the Applicant is not suitable, leads us to conclude that in our opinion refusing to renew the licence will increase amenity and good order to more than a minor extent.

**Sections 105(1)(f) and (g)**

- [140] The Applicant is not engaged in goods and services other than those relating to the principal activity of the business.

**Section 105(1)(k) and sections 131(1)(c) and (d)**

- [141] We have considered the supplementary report of the Police under the amenity and good order criteria. No other relevant evidence was placed before us under these sections.

### **Section 105(1)(a) Object of the Act**

[142] The object of the Act implies that a person who has the privilege of holding a licence must ensure that the sale and supply of alcohol is undertaken safely and responsibly and that the harm caused by the excessive or inappropriate consumption of alcohol is minimised.

[143] In considering the object of the Act, we must look to the definition of harm, which is “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”.

[144] Having found that the Applicant is not suitable, that the amenity and good order of the locality will increase to more than a minor extent if the licence is not issued, and having doubts as to whether the Applicant has appropriate systems, we can only conclude that the application does not meet the object of the Act.

### **Conclusion**

[145] The application is declined.

[146] In accordance with section 135(2) of the Act, the licence will expire three months after the date of this decision.

[147] We refer any party who wishes to appeal this decision or part of this decision to sections 154 to 158 of the Act.

**Dated** at Auckland this 17<sup>th</sup> day of February 2023



MARGUERITE DELBET  
Chairperson  
**Auckland District Licensing Committee**

On behalf of Members:

- Ms Glenda Fryer
- Mr Mote Pahulu