

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF an application by **Om Laxminarayan Limited**, known as Raumati South Four Square, for renewal of an Off Licence pursuant to section 127 of the Act in respect of premises situated at 30 Poplar Avenue, Raumati South and known as Raumati South Four Square.

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

Chair: Mr Nigel Wilson

Members: Mrs Jackie Elliott

Mr Martin Halliday

HEARING at Kapiti Coast District Council offices, Paraparaumu, on Wednesday 20 November 2024.

APPEARANCES

For the Applicant:

Ms Letizea Ord – Lawyer for the Applicant

Ms Emily Blincoe – Lawyer for the Applicant

Mr Jitendrakumar Patel – Applicant

Ms Hasmit Dhanji – Sister of the Applicant

Johan Karlsson – Witness for the Applicant

Bruce Mills – in support of the Applicant (Observer)

Reporting Agencies:

Licensing Inspector Antionette Bliss

Nicola Campbell – Medical Officer of Health (Observer)

All those appearing were sworn in.

INTRODUCTION

1. This is a hearing for an application pursuant to section 127 (2) of the Sale and Supply of Alcohol Act 2012 by **Om Laxminarayan Limited**, known as Raumati South Four Square, for renewal of an Off Licence pursuant to section 127 of the Act in respect of premises situated at 30 Poplar Avenue, Raumati South and known as Raumati South Four Square.

THE APPLICATION

NOTE: The Hearing date was pushed out several times to accommodate the applicant's case preparation

2. A copy of the application (15 June 2023) was forwarded to the reporting agencies and the Licensing Inspector. The Licence expired on 26 July 2023 but has remained valid as the application for renewal was filed prior to this date. The applicant had not sought any variation to the conditions of the licence.
3. The application was publically notified and the District Licensing Committee Secretariat did not receive any objections to the application in accordance with section 102 of the Sale and Supply of Alcohol Act 2012.
4. The Licensing Inspector Antionette Bliss reported on the 14 June 2024 application for the renewal of an Off Licence.
5. A copy of the Inspector's Report was circulated to all parties on 23 September 2024.
6. The DLC Chair issued a Minute (August 10 2024) outlining as primary issues of contention being:
7. MINUTE OF THE KAPITI COAST DISTRICT LICENSING COMMITTEE – NOTICE OF DLC HEARING for renewal of OFF089 Om Laxminarayan Limited Off Licence.
8. The Kapiti District Licensing Committee having considered the papers in relation to the application by Om Laxminarayan Limited have determined the Applicant shall have the opportunity to present its application to a hearing of the Kapiti DLC.
9. The applicant states the general nature of the business to be undertaken is that of a grocery; The primary issues of contention are the store hours in which alcohol is on display and for sale; a primary purpose of the business appears to be the sale of alcohol and tobacco

products; the shop's internal signage is devoted largely to the sale of alcohol.

10. The applicant had previously agreed to submit an annual sales revenue statement in the template format provided with the application form, in order to confirm the items included in each sales category. The statement must be certified by a chartered accountant – the DLC finds this sufficiently contentious to warrant the requirement of further explanation. Should the applicant seek confidentiality in respect of the company's turnover and margins, the DLC can make an order under s. 203(5) and (6) of the Act.

11. Primarily at issue for the DLC is the significant portion of the revenue being either alcohol or undefined. The DLC had concerns that the business (a grocery) was substantially a liquor store.

12. Changes implemented in the Sale and Supply of Alcohol Act 2012 were intended to create a robust enforcement regime under which 'will be harder to get and easier to lose' [Miklos v Shen (2015) NZARLA284, quote Hon. Simon Power. Clark J observed in Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd (Lion Liquor), 'There is no presumption that an application for a licence will be granted or that a licence will be renewed.'

13. In her report the Inspector noted that while there was no opposition to the application from the agencies, a few issues had been raised which led her to conclude that the position of ARLA in *Patels Superette 2000 Ltd v Muir* [2019] NZARLA 75 at 228 applies in this case. The Authority commented in *Two Brothers Wholesale Ltd* [2021] NZARLA 32 at [99] *"As we said in Patel's Superette 2000 Limited v Muir, while there is no onus of proof on an applicant, it is for an applicant to put its best foot forward if it expects a DLC to favour the application over significant opposition which is itself supported by evidence."*

14. Further, the Inspector had stated concerns in her report that the applicant was unaware of the requirements of the Act and Regulations in terms of proving how the premises meet the criteria to hold an Off Licence under the Act and the requirements outlined in the regulations.

15. Additionally the DLC considered the Inspectors statement "As the applicant had chosen on this and the previous renewal application to not meet the requirements or show an understanding of the Act and Regulations, I requested that the applicant agree to an undertaking to use a template from this point forward which provides a more detailed breakdown. The applicant declined to agree to the undertaking."

16. Meeting the requirements for a 'grocery store' Even if your actual sales figures fit the definition that the sale of food products is the principal business we then move onto the next step and look at s.33(2) especially 33(2) (iii) and 33(2)(c). For 33(2)(iii) apart from the usual grocery foods I would be looking for a good range of fruit and vegies including frozen vegies, and meat chilled and frozen, and frozen dinners. Essentially, I should be able to buy almost everything I might need for my food supplies for a week from the store. For 33(2)(c) I'd be looking for shopping baskets/trolleys, a 'checkout' area that can handle the checkout of a large basket of purchases and doesn't look like a dairy stuffed with lollies etc....

17. The commentary from Westlaw is below.

Synopsis This section has been inserted to set out what the Authority or licensing committee must apply when determining whether any particular premises sought to be licensed in terms of s 32(1)(f) are "grocery store" premises.

Cross references Sale and Supply of Alcohol Regulations 2013

reg 8 certain food declared to be ready-to-eat prepared food

reg 9 certain food declared not to be ready-to-eat prepared food

reg 10 certain food declared to be snack food

reg 11 certain food declared not to be snack food

18. The Authority reviewed this section in Tricorp Holdings Ltd v Medical Officer of Health [2018] NZARLA 208. It concluded a Queenstown Night 'n' Day store was not a grocery store, notwithstanding it had been licensed as such under the 1989 Act.

BACKGROUND

19. The Police and Medical Officer of Health did not oppose the application.

20. During an initial site visit by DLC members it was noted that prominent external signage of the Four Square shop was for alcohol including a large banner above the store. It was also a concern that multiple signs and posters and displays were dedicated to alcohol, and could be seen upon entering the store and throughout it.

21. The Licensing Inspectorate also noted in her evidence, page 385, Bullet point 3

The shop's internal signage is devoted largely to the sale of alcohol.

22. The licensing inspector noted in her evidence, page 385 bullet point 4 that the applicant had previously agreed to submit an annual sales statement in the template format provided with the application form (this application), in

order to confirm the items included in each sales category. The statement must be certified by a chartered accountant – the DLC finds this sufficiently contentious to warrant the requirement of further explanation.

23. The required template request had not been complied with and the applicant declined to an undertaking to use the template provided by the Licensing Inspectorate, (which is a standardised template in use by KCDC for compliance purposes and includes a KCDC logo). The DLC felt this was sufficient reason to hold a hearing for the application, Citing incompatibility with the Foodstuffs sales data collection categories which prohibited referral to any of the routine data reports from Foodstuffs to be carried over to the KCDC template, due to differing products in differing categories.

24. However the Inspectorate spoke of examples of other Off-Licence operators in the district under Foodstuffs processes that are able to comply using either point of sale or data and reports originating from the Foodstuffs head office.

HEARING

APPLICANT'S EVIDENCE

25. Legal Counsel for the applicant Ms Emily Blincoe of Ord Legal presented the opening statement.

26. Mr Jitendrakumar Patel and Mrs Chetnaben Patel are the owners of Om Laximinarayan Ltd, trading as Raumati South Four Square. They have owned and operated the business since 2016.

27. Mr Patel's sister Ms Hasmita Dhunji, is not an employee but assists her brother with administrative tasks including Alcohol Licencing. She has submitted a statement and is appearing today.

28. Mr Johan Karlsson, a former colleague of Ms Dhunji is a data analyst who has undertaken an analysis of the sales data. He has also submitted a statement in support of the applicant and is giving evidence today.

29. It is submitted that Raumati South Four Square meets the definition of a grocery store and that the renewal application should be granted. That is because the revised figures for the statutory 12 month period (set out in the statement of Johan Karlsson) show that "food products" is the highest sales category. The accuracy of the revised figures for the 12 month period is corroborated by the subsequent 12 month (Oct 2023 to March 2024) period, as well as the monthly figures for July, August, September and October 2024.

30. The store otherwise meets the requirements in layout, size, appearance and types of items on sale.

31. The store is in a small local family based community. When Mr and Mrs Patel brought the store they surveyed the community on types of products they would like to buy there and made changes to the stock types accordingly.

32. The business was granted a temporary authority in 2016, followed by an off-licence for three years in 2017 and a renewal of the off licence for a further three years in 2020.

33. When the business submitted its renewal application in 2020, this was supported by a Statement of Annual Sales Revenue, prepared by Foodstuffs and signed off by a Chartered Accountant, which showed that the 'other' category was 46.41% of sales while food products was 14.89%. Following revision of the figures, "food products" increased to 36.57% and the 'other' revenue decreased to 24.73%. The licence was granted for another three years without opposition.

34. The application currently before the DLC is the application for a renewal of the Off licence which was filed on 6th July 2023. That application was again accompanied by a Statement of Annual Sales Revenue, prepared by Foodstuffs and signed off by a Chartered Accountant, for the period June 2022 to June 2023. The statement showed the following percentages:

a. Food products 26.62%

b. Convenience foods 15.02%

c. Alcohol 24.25%

d. Tobacco sales excl excise tax 6.55%

e. Other revenue 27.56%

35. In these figures, the "other revenue" is slightly higher than the 'food products' category by just under 1%.

36. The Licencing inspector, Ms Antionette Bliss, raised concerns about the high percentage of sales in the 'other' category. Following discussions and correspondence, Ms Bliss advised she was putting the application on hold for six months *"to produce chartered accounts to enable me to verify you meet the requirements of the Act"*.

37. The applicant then took steps to improve their systems so that sales of food products would be correctly categorised in the 'food products' rather than 'other' category. Following a six month period, the applicant provided a statement of sales revenue for the period October 2023 to March 2024 showing the sales percentages:

a. Food products 40.42%

b. Convenience foods 19.52%

c. Alcohol 21.03%

d. Tobacco sales excl excise tax 5.94%

e. Other revenue 13.09%

38. Ms Blincoe submits that on the basis of these figures, the applicant readily meets the requirement that the principle course of business is the sale of food products. However there is a statutory requirement to focus on the 12 month figures, and for that reason, those figures are then discussed in detail.

39. In her report, the Licencing Inspector has raised concerns about the lack of detail in the statements of annual sales revenue, and has sought a direction from the DLC that the applicant must undertake to use a template form in the future which requires a more detailed breakdown of each category. However the inspector concluded that the principle business is the sale of food products and did not oppose the renewal.

40. In a minute dated 10 August 2024, the DLC directed a hearing of this matter.

41. The opening statement then outlined legislation determining whether premises are a grocery store, referring to section 33(2) of the Act, regulation 6 of the Sale and Supply of Alcohol Regulations 2013, section 5(1) of the Act.

42. An analysis was given of the 12 sales figures for the 12 month period. It is acknowledged that the DLC has a statutory obligation to focus on the figures for the twelve month period. The original 12 month figures, as set out in the statement of annual revenue submitted with the renewal application, do not have “food products” as the highest sales category, because “other revenue” is approximately one per cent higher than “food products” .

43. Many of the sales that have been captured in the “other revenue” are food products. Evidence follows explaining how this has happened and that the DLC can refer to the evidence of Jitendrakumar Patel, Hasmati Dhanji and Johan Karlsson.

44. The ‘non-specific department key’ was used by the store for items that were not in the system and could not be scanned. Some of these items were products from suppliers other than Foodstuffs. This meant that when these items were sold, instead of scanning the item, the store would use the ‘non-specific department key and manually input the price.

45. Even though many of these items are foodstuffs, the Foodstuffs system automatically categorises all sales using the non-specific key into the ‘other’ category. A breakdown of product types for the non-

specific department key was provided by Foodstuffs and totals given for the different categories excluding alcohol.

46. There is an 'alcohol- department key' within the till. The absence of the 'alcohol department key' from the figures shows that the non-specific department key was not being used for alcohol sales.

47. Mr Karlsson has carried out an analysis of sales figures by department, and provides an estimate. It is counsel's submission, consistent with the statutory requirement that revenue is assigned to the statutory categories 'with as much precision as is reasonably practice in the circumstances'.

48. The accuracy of the 12 month figures is corroborated by the six month figures, which reflect a period where the store's systems had been improved.

49. It was submitted that otherwise considering size, layout and appearance of the premises and the number, range and kinds of items on sale that the premises is a grocery store and photographic evidence was supplied.

50. The store is licensed to sell alcohol from 7am until 9pm and does not seek a variation of hours. So there is no issue of alcohol being sold outside of these hours and a till lock system prevents this.

51. Counsel mentions the licensing inspector is of the view the applicant is not fully aware of its obligations under the Act, and that the incorrect till system is contributing to this. However, this view does not take into account the efforts that the applicant has made to improve the till system.

52. The Licensing Inspector seeks the direction that the store is required to use a template form Statement of Gross Annual Sales Revenue in respect of future applications.

53. The template requires a more detailed breakdown of the components within each of the five statutory categories. Foodstuffs correspondence in evidence confirms that the Foodstuffs system automatically classifies sales data in accordance with the five statutory categories, and that the system is designed to meet the requirements of the Act.

54. Regulation 6 only requires that revenue is assigned to the five statutory categories, so there is no statutory requirement for a more detailed breakdown, which would require complete duplication at point of sale.

55. Counsel for the applicant concludes, for these reasons, it is submitted that the renewal application should be granted.

56. Ms Blincoe called on Mr Johan Karlsson (Expert Witness for the applicant) to give evidence.

57. Mr Karlsson made a presentation of his evidence by PowerPoint outlining; Data of alcohol sales by hour; Peak sales in the afternoons 5pm – 7pm; Sales were relatively low in the mornings.

58. He spoke to data of sales June 2022 – June 2023 and October 2023 – March 2024. Food sales have to be the greater % of sales under the Act. Improved process shows greater % of food June 2022 – June 2023 is the period the committee has to consider.

59. At Page 116 – he explained about the point of sale till layout of department keys, noting alcohol does not have a department key. Page 116 also showed Bulk Foods is a food product although not listed as such and non food product sales should not be entered on this key.

60. Mr Karlsson showed that reclassification of products gave revised totals, essentially saying that much of the food product sales were listed elsewhere. He explained the 'other' revenue category and addressed in Grocery department keys 201 and 215, saying that 'other' revenue analysis is based on Foodstuffs. Showing \$452,000 of sales is made up of the following in the revised breakdown.

\$147k General merchandise

\$247k Non – specific department key

\$57k Tobacco excise free

\$147k General merchandise is made up of toiletries, hardware and newspapers with no suggestion these are food products (ref pages 118 – 138 data from Foodstuffs)

61. The No Specific category – made up of bulk foods etc – value \$39k, leaving \$201,295.98 unexplained. Talking to the shop owners they said it was exclusively food products and convenience foods.

62. Mr Karlsson said there was a department key for alcohol so it could not be part of the \$201k in sales recorded. The shop owners said they only used the key for food products not alcohol. The only way of confirming use of this key, totally \$201k, for alcohol sales is from conversation with the owner. There is no actual evidence.

63. Analysis of total sales, by elimination showed the \$201k part of total sales only left food products and convenience foods.

64. Mr Karlsson relied heavily on the statements of Mr and Mrs Patel to explain usage of the non specific key.

65. Looking at the summary of revisions. From the original data in the licence application showed –

Original % of food products	26.26%
Revision 1.	28.82 %

Revision 2.

36.00%

Suggestion so the more correct categorisation has lead to the increased % of food products. Food up to 40% and alcohol sales down to 21%. He stated the % of alcohol sales had stayed the same at 24% and the % of alcohol sales in the data for the next 6 months showed a decline, down to 21 %.

66. Ms Blincoe called on Ms Hasmita Dhanji, sister of the applicant, who appeared as a witness on behalf of the applicant.
67. Ms Dhanji, is a sister to the applicant. She is neither a director, a shareholder or an employee of the Raumati South Four Square business. She lent her brother and sister in law funds for the initial purchase of the store in 2016. She said this is part of their culture that they help family members.
68. Initially Ms Dhanji did work part time in the store. She now assists with higher level administration tasks including liquor licensing queries from the council which she started being involved in since renewal in 2020, as she has a skill set that matches these tasks and her brother and sister in law are working 14 hours a day.
69. As a Foodstuffs franchisee, with an agreement, the obligation is on Foodstuffs to collate all the sales information which goes directly from the point of sale to Foodstuffs and issue a standard Sales Trend Report- Liquor Sales Assessment signed off by the Foodstuffs Chartered Accountant.
70. The Patels are not able to go into the till system themselves to produce a report because it and the software are the property of Foodstuffs. Other than being able to procure a weekly sales breakdown manually, they are reliant on Foodstuffs.
71. The original 2020 figures showed 46.41% in the 'other' category. The licensing Inspector showed concern about this. At this point Ms Dhunji got involved to assist.
72. "We identified that non-scannable items were sold using the 'other' key. We worked with our own accountant to identify what products had gone into the 'other' category."
73. Additional information was sort from Xero, who gave stock purchased data and the Foodstuffs Business Manager who has enabled access to the required data to compile a revised set of data in a report which clarifies the 'other revenue' category.
74. A meeting was held between the applicant, Ms Dhanji and the Licensing Inspector, Ms Dhanji answered many questions. The inspector was satisfied and the 2020 renewal application licence granted.
75. In terms of the 2023 application the same set of data was supplied by Foodstuffs and submitted with the application. For the period June 2022 – June 2023 it showed 26.62% for food and 27.56% in the 'other' category. This raised concern for the Licensing Inspector. It was agreed the applicant would be given a further six months to collect sales data and submit another report and that

grocery stores were expected to have 40 to 45% in the ' food products' category.

76. The applicant improved systems over that period and achieved a recorded increase in 'food products' category. A subsequent report dated 14 June 2024 showed that the 'other' category was down to 13.09% (\$135,510.28) and 'food products' was up to 40.42%. This report was submitted to the inspector.
77. The Inspector made further enquiries about use of the 'other' category and was given access to speak with Foodstuffs directly. It was clarified that use of this key was accounted in \$40,478.41 in non-scanning sales and \$95,031 in scanning product that did not include alcohol. This \$135k total of sales using the 'other' key has been further broken down in a further report from Foodstuffs and provided in evidence.
78. However the "non-specific department key" was used by her brother and sister in law when an item could not be scanned. They would click on 'department key', and then click, for example , on bakery or bulk foods, or whatever type of item it was. In the Foodstuffs system though, all of the 'department key' items would go into the 'other' category.
79. In conclusion, Ms Dhanji appreciates the committee will want a breakdown of the 'other' category for the 12 month period June 2022 to June 2023 as this is the statutory period that must be considered. They obtained the raw data from Foodstuffs from the twelve month period and provided it to Johan Karlsson who has done an analysis of these figures. Ms Dhanjis' statement included copies of correspondence relating to the application before the DLC.

CROSS EXAMINATION OF THE APPLICANT

Cross examination by Licensing Inspector

80. The Licensing Inspector asked Mr Karlsson if he was aware the data he previously provided had to be signed off by a chartered accountant who could verify the principle businesses is food? His response was that he could provide the data and the figures used had been signed off by a chartered accountant.
81. The Licensing Inspector asked for further details around 'Non Specific' items? He responded – Non Foodstuffs items without a barcode.
82. The Licensing Inspector asked -Are you aware Foodstuffs can provide a system of barcoding such items? He responded - There is no print out of Non-Specific. The Licensing Inspector asked - What is the process when items are unable to be scanned? He responded Sales are recorded using the 'Other' department key then subcategories. The Licensing Inspector asked – Is this a

good process? He responded It is not optimum for sure but is a better practice.

Cross Examination by Committee members

83. Referring to page 384 bullet point 5 of the hearing pack, 'It was noted that alcohol products have valid barcodes, are set up in the till system and do not have any issues with non- scannable barcodes'. Committee member Ms Elliott asked Mr Karlsson; Are you referring to all alcohol products including those sourced from independent brewers and other independent sources? He responded – referring to the 'All products key' – No alcohol sales show under this key
84. Referring to the table on page 365, is the line item Non- Foodstuffs items that can not be scanned on the till, items that did not scan properly. Ms Elliott asked - They could be food or convenience, Could they also be alcohol? He responded – Yes it could be hypothetically but there is nothing to show it is. They have never had to use 'Other Key'? Alcohol key.

Evidence of the applicant witness Hasmita Dhanji

85. Ms Dhanji gave evidence on behalf of her brother, Mr Patel. Noting first, in response to a question from the Chair that there was significantly more alcohol related signage in and outside the premises previously but that it had since been removed.
86. Ms Dhanji spoke of a trend from recent data of alcohol sales trending down and that use of the non- specific key was 2.4% in 2024.
87. Ms Dhanji has collaborated with Foodstuffs and Mr Patel is now getting monthly reports on 5 categories including alcohol from Foodstuffs, they felt this would significantly improve ease of reporting.
88. The Chair asked for comment on a request to Foodstuffs for access to realtime data which would assist them further in alcohol information to be able to comply with the requested template. She responded Foodstuffs say they can't comply with the template form.
89. Committee member Martin Halliday asked What are the ages of the two staff working 30 hours per week? She responded 35 and 32.
90. He asked if they were over the age of 18, would either be able to train for a Duty Managers certificate? She responded No training, it will be informal as we go.
91. Cr Halliday asked What is your process for receiving non- foodstuffs supplied stock into the premises before getting it onto the shelf for sale? She responded there is a separate system to capture foodstuffs including alcohol. They can be entered into a Foodstuffs system and is then entered into the Foodstuffs category system.

92. He asked How many staff are allowed to use the Cheeky Charlie tools to quickly barcode items not barcoded? She responded Mr and Mrs Patel are there to do that.
93. Committee member Ms Elliott asked if all staff have access to the Foodstuffs 0800 help desk while at work in the store? The answer was no.
94. Committee member Jackie Elliott asked Ms Dhanji How long the current staff have worked there and where they are along the process of in-house training on Foodstuffs procedures. Ms Dhanji responded they were also family members employed there since 2024, and that neither had undertaken any formal training programme with regard to the sale of supply of alcohol. She said Halpesh Patel was booked into an online Foodstuffs training programme, and staff were both well aware of the alcohol sales rule.
95. Ms Elliott asked the applicant about the lines of sight from the new counter position into the alcohol display area and standup refrigerators, noting that the CCTV screen was till halfway across the store mounted up high. Ms Dhanji responded that they had good lines of sight and kept shelving low between the counter and alcohol display area and had access to CCTV camera screens within the store.
96. Committee member Mr Halliday asked Do you purchase any alcohol products from outside of the Foodstuffs supply? She responded Yes we do and use the same process as barcoding. Most of the alcohol purchased is from Foodstuffs with a small percentage of non-Foodstuffs.
97. He asked Ms Dhanji Is your stocktake system computerised or manually recorded and are there discrepancies of bought and sold stock? She responded there is no system to check, but we have security cameras and there is no evidence of shoplifting. He asked Does your stocktake system show discrepancies between units in verses sales of units out? She responded there is No system.
98. Ms Elliott asked How are alcohol sales by part- time staff completed when a manager is not in the store? She responded There is always a licensed person present, Mr or Mrs Patel.
Ms Elliott asked How many till machines and eftpos machines are in operation at any given time and is there a service agreement in place for them? She responded two tills and two eftpos machines and there is a service agreement in place. Ms Elliott asked Under the franchise agreement, is it possible and allowable to instal other till machines? She responded no.
99. Ms Elliott asked what hours of the day are two staff dedicated to working at the front counter? She responded 7 am to 9 pm 7 days a week.
Ms Elliott asked Are the till machines supplied by Foodstuffs as part of the franchise agreement? She responded Yes.

100. Ms Elliott asked When was the front counter moved from the right hand side of the door to the left hand side? She responded During the Covid lockdowns. Ms Elliott asked Were the CCTV components, screens moved at the same time. She responded, yes, to the alcohol area. Ms Elliott asked Is there a split screen at the counter? She responded Yes.
101. Mr Halliday asked Do staff at the counter rely on eye-line of sight or the split screens to monitor the alcohol sales area? She responded Both, there are four staff on at busy times.
102. The Chair asked, How are produce items and bulk foods weighed and priced for sale? She responded they are pre- packaged or repackaged and bar coded.
103. The Licensing Inspector Ms Bliss asked Ms Dhanji if the new revised figures were signed off by a chartered accountant. She responded no. Ms Bliss asked Ms Dhanji, Regarding training of staff, When do you inform Foodstuffs that staff will require training? She responded Mr and Mrs Patel are training staff, once ready Foodstuffs do online training and a site exam.
104. Ms Bliss asked Ms Dhanji, why nothing was recorded in the incident register? She responded, Mr Patel has consistently said there has been nothing to register. Ms Bliss asked Ms Dhanji about the lemonade bottle by the till used to scan instead of a product. She responded, Mr Patel says it is used for \$2 lolly bags.

EVIDENCE IN CHIEF FROM REPORTING OFFICERS

Evidence in Chief from Licensing Inspector

The licensing Inspector referred to her written opening statement.

105. The Inspector has four years experience in Kapiti. She reported on the 14th June 2024 application from Om Laximarayan Limited, received on the 15th of July 2023, for renewal of an off-licence to sell alcohol for consumption elsewhere, from the premises known as Raumati South Foodmarket. The report was circulated to all parties on 23 September 2024, along with this submission. The District Licensing Committee Chair issued a minute, dated 10th August 2024, outlining the following primary issues of concern.

- Store hours in which which alcohol is on display and for sale.
- Primary purpose of the business appears to be the sale of alcohol and tobacco products.
- The shop's internal signage is devoted largely to the sale of alcohol.

- The applicant had previously agreed to submit an annual sales revenue statement in the template format provided with the application form, in order to confirm items included in each sales category. The statement must be certified by a Chartered Accountant – the DLC finds this sufficiently contentious to warrant the requirement of further explanation.

106. The changes implemented in the Sale and Supply of Alcohol Act 2012 (the Act) were intended to create a robust enforcement regime under which 'licences will be hard to get and easy to lose'. As Clarke J observed in *Medical Officer of a health (Wellington Region) v. Lion Liquor Retail Limited (Lion Liquor)* There is no presumption that an application for a licence will be granted or that a licence will be renewed.'

107. It was noted that although no other agencies had opposed the application a few issues have been raised, leading the inspector to conclude that the position of the Alcohol Regulatory and Licensing Authority (the authority) in *Patels Superette 2000 Ltd v Muir* [2019] NZARLA 75 at 228 applies in this case. That is:

"Where reporting agencies oppose an application, the applicant must provide sufficient evidence to respond to and rebut such opposition. While there is no onus of proof on the applicant, it does have an evidential burden and that is [up to] an applicant to put its best foot forward if it expects the DLC to favour the applicant over significant opposition which is in itself supported by evidence".

108. Concerns over hours are that the premises licensed hours are 7 am – 9 pm daily.

109. Section 4. of the Schedule of Kapiti Coast District Council Control of Alcohol in Public Places Bylaw 2018 defines the public places located in or adjacent to the urban areas of Raumati South and Raumati, as alcohol free zone every day from 9.00 pm to 6.00pm the following day. Upon enquiring about the increase of alcohol sales recorded, Ms Dhanji was not able to answer this question. While harm is not linked specifically to any premises, the committee is requested to ask for data on alcohol related community harm from NZ Police and the Ministry of Health.

110. The Inspector has concerns about annual sales data. That the applicant appears not to be aware of the requirements of the Act and Regulations, the inspector requested future use of a template which provides a more detailed breakdown, The applicant declined to agree to the undertaking.

111. The inspector asks the committee to instruct the applicant to commence using the template for the reasons stated in her report of 6th July 2024. Noting it will be forwarded to all off licensed Four Square stores in the district and made available on the KCDC website for wider implementation.

112. The Inspector wants the applicant to agree to an additional condition around single sales to their licence if granted. The comment was made by the

legal counsel for the applicant, that the applicant was already complying and had no issue with that condition being added.

113. The Licensing Inspector noted in her evidence, page 385 bullet point 4 that the applicant had previously agreed to submit an annual sales statement in the template format provided with the application form (this application), in order to confirm the items included in each sales category certified by a chartered accountant.

114. The required template request had not been complied with and the applicant declined an undertaking to use the template provided by the Licensing Inspectorate, (which is a standardised template in use by KCDC for compliance purposes and includes a KCDC logo). Citing incompatibility with the Foodstuffs sales data collection categories which prohibited referral to any of the routine data reports from Foodstuffs to be carried over to the KCDC template, due to differing products in differing categories.

115. However the Inspectorate spoke of examples of other Off-Licence operators in the district under Foodstuffs processes that are able to comply using either point of sale or data and reports originating from the Foodstuffs head office.

116. Ms Bliss noted the presence of an incident register in the correct place at the point of sale, however it had never been written in. There was no staff training register available.

CROSS EXAMINATION OF LICENSING INSPECTOR

117. Committee member Ms Jackie Elliott asked if the inspector considered it unusual that there were no incidents recorded in the incident book in eight years? She responded she would like to see more records in the book, for example alcohol issues in the area.

118. Ms Elliott asked, referring to page 385 of the hearing pack. We're there any bullet points that continue to cause her concern? She responded the applicant needs to satisfactorily show the principle purpose is food, so a template needs to be used.

RE EXAMINATION

Re examination of the applicants expert witness

119. The Chair asked Mr Karlsson if he could be confident that 'Not scanned' does not include alcohol? He responded Foodstuffs data indicates the key was not used for alcohol. Liquor, non- specific in alcohol key. The Chair

asked if the September data was typical? He responded the raw numbers show a significant alteration of trend.

Re examination of the applicant

120. The Chair asked the applicant if there were any remote sales and deliveries from the store, He responded none, then mentioned that some elderly residents regularly phone in orders for delivery and these are packed and delivered, sometimes including alcohol.

121. Committee Member Ms Elliott asked the applicant if the two staff could read and write in English? He responded that they could read and write competently, although were still learning to speak it well.

CLOSING SUBMISSIONS.

Closing Submission of the Licensing Inspector

122. In her closing submission the Licensing Inspector explained that regulations require that the principle business is a grocery store and data submitted must be signed off by a chartered accountant.

123. Honesty and reliability of the applicant are paramount. However the inspectorate recommends use of the template be required as a condition. She also requests a delivery condition and and single sale condition be required and applied to the licence.

124. The Inspector has spoken a number of times with Jayson Salco, Business Partner, Foodstuffs North Island and Titiana Valdez, Regulatory Specialist, Foodstuffs who have both stated 'the business owner is choosing not to set up their till systems correctly. Further, the use of the 'other' function key should be for rare occurrences such as a scan not working while the shop is busy with customers.

125. Titiana Valdes, Regulatory Specialist at Foodstuffs confirmed that each Four Square business owner is able to contact the Foodstuffs customer support team at any time and they are there to assist with the programming of their till systems, should they have purchased product from outside of Foodstuffs. When asked how long this help would take, she replied, Not long, there is a large support team available.

126. Further, in following the process Foodstuffs have outlined, the applicant would be able to submit chartered- accountant sales figures that clearly reflect the business operation and, if coded correctly 'food' would show as the principle purpose of the business. The 'other' revenue category should comprise of those items listed on the Statement of Annual Sales Revenue Grocery Store template (as provided)

127. The Inspector recommends the DLC make contact with the Foodstuffs representatives to seek clarification around the correct till system procedures when business owners are purchasing food and other items from suppliers outside Foodstuffs. This could either be via telephone or requesting their attendance at the hearing.

128. The Inspector confirms from the information provided by the applicant she is not able to tell if alcohol has been purchased from outside of Foodstuffs, noting it appears that a large number of other food related products have been.

129. DLC commends the Licensing Inspector for an excellent report which provided significant detail and context relating to issues raised by the DLC

Closing submission of the applicant

130. In response to the submission/statement of the Licensing Inspector, dated 6th November 2024, Ms Dhanji responds, on behalf of the applicant.

131. The applicant has not applied for a variation of the existing hours and days for the sale of liquor. The premises are currently licensed to sell alcohol between the hours of 7.00am to 9.00pm. The business has traded with those hours in respect of alcohol sales since 2016. The operating hours of the premises are 7.00am to 8.00pm in winter and 7.00am – 8.30pm in summer.

132. The premises does not advertise that alcohol is for sale on the outside of the building or inside the premises. Alcohol placement is all at the rear of the store behind food products in the designated alcohol area.

133. The percentage of alcohol sales increased in the 12 month period for the sales figures provided with this application. However figures in the six month period between 1 October 2023 and 31 March 2024 show alcohol sales reduced to 21.03%

134. The business is aware of the legislative requirements in order to obtain a renewal of the Off-Licence for the sale of liquor. Evidence has been submitted which establishes the sale of food products is the primary and main purpose of the business and line with other Four Square stores operated by Foodstuffs.

135. The applicant accepted the inspector did provide the use of a template for the use of the business going forward which provides a more detailed breakdown. 'I did not decline to agree to undertake this task going forward. If the information was kept by Foodstuffs in a format which could be accessed in accordance with the template the business would be more than willing to provide it.'

136. The applicant – 'As best I understand the position from discussions with Foodstuffs including their accountant and lawyer, the system simply does not

break down sales in the manner required by the template. So rather than declining to undertake the task, I was simply trying to explain currently it is not possible. We are happy to work with Foodstuffs on a feasible approach to meet the requirements.'

137. The applicant reiterated there is not an unwillingness by the business to complete this template, simply an inability to do it currently. If it is the case that there is a legal requirement to complete the template going forward then Foodstuffs will need to alter its system to provide information to its franchise owners so this can be achieved.

138. The 'other' revenue for the last six months following the period of 1 October 2023 and 31 March 2024 shows there is less reliance by the business on the 'non- specific department key'. 'My brother and his wife have instigated further procedures to continue to reduce the use of this key.'

139. The Cheeky Charlie system to correctly enter Foodstuffs goods into the store is now fully implemented. Non Foodstuffs goods entering the store are coded using a different system provided by Foodstuffs.

140. Figures from Foodstuffs for a September 2024 show use of the 'other' key has decreased to 2% of gross sales. All employed at the store have focussed on continuing to reduce the use of that particular key.

141. The applicant said she had asked Foodstuffs to provide monthly reports so she can assist her brother in monitoring this situation on a month by month basis. I.e: use of the 'non- specific department key'. Previous weekly sales reports showed gross sales not specific key use.

142. The applicant said in the past year they have implemented a series of changes to enhance their processes and ensure they meet Council expectations in respect of a liquor licence. These include:

- (a) A review of the 12 month sales data when Ms Bliss identified the high usage of the 'other ' department key we immediately improved our item categorisation. The aim was to reduce reliance of this key.
- (b) Recent data of use of the 'other' department key is down from 16.06% in the original 12 months to 2.4% in October 2024.

143. In other matters, it was stated the data does not support the contention alcohol is in any way the major or primary revenue stream of the business.

144. The applicant stated "I will provide the DLC with photographs of the layout of the store showing the majority of the store displays are targeted at food products and other grocery items. My brother and sister- in- law and myself are dedicated to maintain Raumati South Four Square as a food centred store. We are happy to take the necessary steps to demonstrate compliance."

CONCLUSION

145. After hearing all the evidence and having the opportunity to ask technical questions about the sales and data collection systems in place and subsequent reporting available to the applicant by Foodstuffs, the committee were of the view that alcohol sales could easily be being recorded under the use of indiscriminate keys on the point of sales till.

146. The committee determined, that despite considerable data provided and despite some very thorough answers to questions, ultimately there was a lack of proof that alcohol had not or never been purchased using indiscriminate keys. The onus of proof is on the applicant, however there was a clear lack of proof with all parties relying heavily on word of mouth evidence that alcohol was not sold and rung up on the till as within the food or other categories.

147. There appeared to be a level of reluctance on the part of the applicant to comply explicitly with the requirements of the Sale and Supply of Alcohol Act (2012] in that although there was an incident register placed at the till, it had not been used at all in 8 years. The committee found that at the face of it, the probability of no incidents occurring in 8 years was highly unlikely. There was no staff training register available to the inspector.

148. The practice of using an empty lemonade bottle with a \$2.00 barcode attached to scan, indicated a lack of disclosure with till use, although this may be found to be an efficient way to quickly scan small lolly bags, it is felt, if the method is openly used in this example, can it not be used to falsely scan other items.

149. The committee were concerned that the two staff, who were family members who had immigrated to work in the family store for just under two years, may not be proficient enough in reading and writing the english language to understand the till, and that a system had been devised and taught to them, whereby scanning items at point of sale was made easier and faster for them. This may be by utilising the keypad, with its departments as a pattern of colours and positions denoting which keys to use for which items, and that when in doubt, use the 'other ' key. The temptation to just use the 'other' key would be greater in the rush of a busy period. While this could explain the extraordinary percentage of sales under the 'other' category, the same practice could be utilised to disguise alcohol sales as non – alcohol sales for reporting and Licencing purposes.

150. The committee were also concerned that despite being employed in the store for two years, and currently both working thirty hours a week they had only been offered or signed employment contracts, in accordance with New Zealand labour legislation in the last year. However the committee notes employment conditions are not a concern that can be considered under the delegations of a District Licensing Committee.

151. The committee does note, however that the staff have undergone and completed Duty Manager certification since the hearing and this is to the credit of the applicant.

152. The committee were concerned about the proximity of the bus stop to the store, especially one where college and primary school students wait for and get off the bus daily with many students purchasing food and beverages for their day, in the morning .

153. The committee notes concerns raised by the local college principles of incidents of intoxicated students or students drinking and sharing alcoholic beverages during college time, or seen on or off college premises intoxicated during week days.

154. The Committee is aware of the role we play and responsibility we have to impose mitigation to reduce community and amenity harm and harm to tamariki and realise the benefits if they do not have access to purchase or illegally acquire alcohol supplies while waiting for the bus in the mornings and that the interior security mesh door to stop access to the alcohol display area is available to mitigate this.

155. The committee have noted considerable concern with the level of alcohol beverage and branding signage inside and outside the premises in the past and have noticed a distinct reduction in signage over the time of the hearing.

156. The Committee notes the store opening hours, being 7am – 9pm 7 days a week, and the alcohol free zone bylaw hours of 9pm – 6am and that there would be a small crossover into alcohol free zone bylaw hours when a customer purchases alcohol at closing time and leaves the store.

157. Ms Dhanji maintains the store is often voluntarily closed by staff earlier at 8pm or 8.30pm. However this is voluntary only and not enforced as an undertaking so the eventuality of people consuming alcohol purchased at closing time, in public areas outside of the premises remains a real possibility at all times.

158. The Committee wishes to note that no deprivation statistics for the area in which the premises is located has been supplied for when we consider the application under section 106 of the Act. Considering effects of issue or renewal of license on amenity and good order of locality.

159. The Committee has had the opportunity to consider lengthy and useful evidence presentations about the correct and incorrect use of the different keys on the point of sale tills, and the other stock control receiving, auditing and systems in practice.

160. The committee would like to note that 'we' are not experts in this field, and so we rely on the evidence of experts. As such the evidence of the Licensing Inspector regarding discussions with the Foodstuffs Regulatory and

Business management personnel is given much weight, and in particular the following excerpt from the Inspector's closing submission - 'The Inspector has spoken a number of times with Jayson Salco, Business Partner, Foodstuffs North Island and Titiana Valdez, Regulatory Specialist, Foodstuffs who have both stated 'the business owner is choosing not to set up their till systems correctly.' Further, the use of the 'other' function key should be for rare occurrences such as a scan not working while the shop is busy with customers.'

161. This has been noted and compared with the admission from multiple witnesses of the applicant, there is no evidence of Alcohol sales not being entered on the till system as anything but alcohol except word of mouth – As in the statement by Mr Karlsson - there was a department key for alcohol so it could not be part of the \$201k in sales recorded. The shop owners said they only used the key for food products not alcohol. The only way of confirming use of this key, totally \$201k, for alcohol sales is from conversation with the owner. There is no actual evidence.

162. Additionally, the presence of second or third sets of Annual Sales Summary Reports, without being signed off by a Chartered Accountant, as required by legislation must be considered in the decision.

163. The Committee considers the agreement with Foodstuffs to provide weekly breakdowns of the five required product categories to be a useful tool in remediation of the practices and reporting that have resulted in concerns being raised to the Committee by the Licensing Inspectorate, and that probationary test period is needed to confirm there is no longer a problem with accuracy in the reporting in using the Foodstuffs systems.

164. The Committee notes concerns raised by the Licensing Inspector that the owner appears not to understand his obligations under the Sale and Supply Of Alcohol Act (2012) and Regulations. Having seen the evidence it appears the handing over of managing alcohol compliance issues to his sister from 2020, as stated by Ms Dhanji, may not assist Mr (and Mrs) Patel in increasing their knowledge and their understanding of their obligations under the requirements of the Act and Regulations, in fact it could be counterproductive in the long run, and that as the holder of an Off-Licence, and present as a Duty Manger on the premises during opening hours when alcohol is being sold, there is an expectation the licence holder has the highest level of understanding of their obligations.

165. Meeting the requirements for a 'grocery store' even if your actual sales figures fit the definition that the sale of food products is the principal business we then move onto the next step and look at s.33(2) especially 33(2) (iii) and 33(2)(c). For 33(2)(iii) apart from the usual grocery foods I would be looking for a good range of fruit and vegies including frozen vegies, and meat chilled and frozen, and frozen dinners. Essentially, I should be able to buy almost everything I might need for my food supplies for a week from the store. For 33(2)(c) I'd be looking for shopping baskets/trolleys, a 'checkout' area that

can handle the checkout of a large basket of purchases and doesn't look like a dairy.

FINDINGS

166. In determining this application consideration was given to sections of the Sale and Supply of Alcohol Act 2012. The committee considered reference to sections 4, 43, 59, 78, 106, 109, 116, 117, 132, 295 of the Act.

116 Particular discretionary conditions, and other compulsory conditions: off-licences

(1) The licensing authority or licensing committee concerned may issue an off-licence subject to conditions of any or all of the following kinds:

(a) conditions prescribing steps to be taken by the licensee to ensure that the provisions of this Act relating to the sale of alcohol to prohibited persons are observed:

(b) conditions prescribing the people or kinds of person to whom alcohol may be sold or supplied:

(c) in the case of premises where (in the opinion of the authority or committee) the principal business carried on is not the manufacture or sale of alcohol, conditions relating to the kind or kinds of alcohol that may be sold or delivered on or from the premises.

(2) The licensing authority or licensing committee concerned must ensure that every off-licence it issues is issued subject to conditions—

(a) stating the days on which and the hours during which alcohol may be sold or delivered; and

(b) if there are in force regulations under this Act empowering the authority or committee to determine for premises of different kinds different levels of licensing fee prescribed by the regulations, stating the fees payable for the licensing of the premises concerned; and

(c) stating (directly or by description) a place or places on the premises at which drinking water is to be freely available to customers, while alcohol is being supplied free or sold, as a sample, on the premises.

(3) In deciding the conditions under subsection (2)(a) subject to which a licence is to be issued, the licensing authority or licensing committee concerned may have regard to the site of the premises in relation to neighbouring land use.

(4) Subsection (1)(b) is subject to the Human Rights Act 1993.

Section 116(2)(c): amended, on 2 August 2024, by section 8 of the Sale and Supply of Alcohol (Winery Cellar Door Tasting) Amendment Act 2024 (2024 No 29).

Section 117 Other discretionary conditions

(1) The licensing authority or licensing committee concerned may issue any licence subject to any reasonable conditions not inconsistent with this Act.

(2) The generality of subsection (1) is not limited or affected by any other provision of this Act.

The Committee noted the acknowledgment by the applicant that section 117(i) gives broad powers to impose reasonable conditions

The Committee is of the view section 117 allows for the imposition of the additional condition as it is deemed to meet the criteria of a reasonable condition.

The Committee considered Section 132 Imposition of conditions on renewal

(1) When renewing a licence of any kind, the licensing authority or the licensing committee concerned—

(a) may impose any conditions subject to which it may issue a licence of that kind; and

(b) must impose any conditions subject to which it must issue a licence of that kind; and

(c) may, whether consequentially or not, vary or cancel any conditions applying to the licence before its renewal (whether they are conditions subject to which the licence was issued or conditions imposed on some earlier renewal).

(2) A condition imposed—

(a) has the same effect as it would if it were a condition subject to which the licence was issued; and (in particular) a failure or refusal to comply with it has the same effect, and may result in the same consequences, as a failure or refusal to comply with a condition subject to which the licence was issued; and

(b) may be varied under section 120 as if it were a condition subject to which the licence was issued.

(3) Subsection (1) applies to all renewals of licences, whether they were issued under this Act or a former licensing Act.

DECISION:

167. In the matter of an application pursuant to section 127 (2) of the Sale and Supply of Alcohol Act 2012 by **Om Laxminarayan Limited** for the renewal of an OFF Licence for premises situated at 30 Poplar

Avenue, Raumati South, and known as the Raumati South Four Square, the Committee considered the evidence, written and presented of the Applicant, Applicant's witnesses, Applicant's Counsel Ms Emily Blincoe, and the reporting agencies. The Committee considered the application in reference to Sections 4, 43, 59, 78, 106, 109, 116, and 117, 132, and 295 of the Act.

DECISION

The District Licensing Committee Chairperson, acting pursuant to the Sale and Supply of Alcohol Act 2012, approves the application by **Om Laxminarayan Limited** for the renewal of the Off Licence for premises situated at 30 Poplar Avenue, Raumati South, and known as the Raumati South Four Square.

This licence will issue for the period of 10 months from the date of this decision (13 October 2025) and is subject to standard conditions and the addition of the following discretionary conditions and undertakings:

Conditions

- A properly appointed Certificated, or Acting or Temporary, Manager must be on duty, at or nearby the point of sale, at all times when the premises are open for the sale and supply of alcohol.
- That the applicant adopt and implement the KCDC Statement of Gross Annual Sales Revenue: Grocery Store – Existing Business Declaration template as requested by the Licensing Inspectorate.
- No single sales of beer, except for craft beer, in containers of 500mls or less in volume.
- All deliveries of alcohol must be signed for by a person aged 18 years or older. Signs of intoxication on the part of the recipient would result in non-delivery.
- Alcohol may only be sold on the following days within the following hours: Monday to Friday 9.00am – 9.00pm, Saturday and Sunday 7.00am – 9.00pm
 - That a drop down mesh door be secured across the alcohol sales area indicated in the floor plan from store opening until 9am each weekday morning.
- That all internal alcohol signage, advertising, branding and free standing floor displays of alcohol products be sited inside the designated alcohol sales area, and that external signage be limited to the sign above the verandah.
- No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day.
- The Licensee must ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition of sales to intoxicated persons.

Undertakings

As part of a commitment to responsible alcohol sales, the licensee agrees that:

- Beer in containers of 500mls or less in volume will not be sold in quantities of less than four bottles/cans (except for craft beer). Excessive discount will not be applied to the four pack.
- Alcohol is considered a restricted good. We are unable to leave restricted goods unattended at an address, and if there is no one aged 18 years or older to receive the delivery, we will not leave it. Alcohol purchases must be received by someone who is aged 18 years or older. In order to take the delivery, valid and current identification must be shown to the person/s delivering the goods. If the deliverer considers the person receiving the delivery to be intoxicated, the alcohol will not be delivered.

This identification must include the following:

- Full name
 - Date of Birth
 - Photo
 - Signature
- When we engage a courier company to make our deliveries, we will only use a company that can provide sufficient reassurance that their drivers will always adhere to the requirement to obtain a signature and proof of ID showing that the recipient is over 18 years of age. A signed written agreement between the courier and applicant will be provided to the tri-agencies.

DATED at Paraparaumu on 13 October 2025.



Nigel Wilson

Chairperson

Kapiti Coast District Licensing Committee

