

**Decision Number: 048/2021/HCDLC/221**

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

**AND**

**IN THE MATTER** of an application by Nirmal and Varsha Gandhi Limited trading as Waiwhetu Superette pursuant to s.127 of the Act for an Off-Licence Renewal

**BEFORE THE LOWER HUTT DISTRICT LICENSING COMMITTEE**

Chair: Cr Simon Edwards  
Members: Cr Shazly Rasheed, Mr Roger Parton

**HEARING** at the Council Chambers, 2<sup>nd</sup> Floor, 30 Laings Road, Lower Hutt on 15 June 2021

**APPEARANCES**

Mr N Gandhi, Applicant  
Mr S Gandhi, son of Applicant  
Mr D Gallagher, Licensing Inspector, HCC and Reporting Officer  
Mr D Bentley, Environmental Health Manager, Hutt City Council  
Ms A Boston, Senior Public Health Advisor, Regional Public Health  
Ms V Young, Health Protection Officer/ Alcohol Regulatory Officer, Regional Public Health

**DECISION OF THE DISTRICT LICENSING COMMITTEE**

**Decision**

The Lower Hutt District Licensing Committee acting pursuant to the Sale and Supply of Alcohol Act 2012 (the Act) **GRANTS a truncated off-licence renewal** to Nirmal and Varsha Gandhi Limited trading as Waiwhetu Superette, for a period of seventeen (17) months (ie to 1 December 2022) from the date of this decision (1 July 2021), subject to the following conditions:

- (a) A fully compliant second Duty Manager is employed by 1 December 2021, with the Duty Manager Register updated accordingly; and
- (b) 12 months of fully complying sales revenue figures in the prescribed format be included in the next off-licence renewal application.

Failure to comply with either of these conditions by the specified times, will result in the truncated off-licence being revoked.

**Introduction**

- [1] In an application dated 17 December 2019, Nirmal and Varsha Gandhi Limited, trading as Waiwhetu Superette (the applicant) applied for a renewal of its off-licence.
- [2] Nirmal and Varsha Gandhi Limited, trading as Waiwhetu Superette has previously held and successfully renewed its off-licence since 2001.
- [3] The Medical Officer of Health opposed the application under Section 33(2)(a)(ii) of the Act and Regulation 12 of the Sale and Supply of Alcohol Regulations 2013, on the grounds that the sales figures supplied with the application were in the incorrect format. This objection was received by the Hutt City Council (HCC) on 7 February 2020, within the statutory timeframe.
- [4] The Medical Officer of Health submitted an amended objection to the application, on 23 December 2020. This objection was based on Section 33(1) that the shop does not have the look and feel of a grocery store; Section 33(2)(a)(ii) and Regulation 12 that the sales figures supplied with the application were in the incorrect format; and Section 131(1)(a) and Section 105(1)(a) that the application is unlikely to be in harmony with the object of the Sale and Supply of Alcohol Act 2012 as there are existing high levels of health harm in the area. This amended objection was received out of the statutory timeframe.
- [5] Mr Gallagher, the Licensing Inspector, HCC opposed the application based on the incorrect presentation of annual sales figures.
- [6] Given the opposition from the Medical Officer of Health and the Licensing Inspector, the matter proceeded to a hearing.
- [7] The Committee members, except Mr Parton, undertook separate site visits to the store, prior to the hearing.

**Applicant**

- [8] Mr N Gandhi was present at the hearing. He gave evidence in association with his son, Mr S Gandhi.
- [9] Mr N Ghandi confirmed his written statement of evidence and both he and his son read out and elaborated upon it. Mr N Gandhi confirmed no objections had been received to any of his previous renewal applications. He said his point of sales system had not changed since he bought the business in 2001. He advised he had included the same business information with his previous off-licence renewal applications in 2014 and 2107, which had all been granted. He also advised he had recently purchased a new software programme and that he was progressively upgrading and uploading product categories and barcodes. Mr S Gandhi explained that once all the product codes had been inputted. He expected the system to be fully functional by September 2021. He said a full year of the required sales data would be available in September 2022.
- [10] Under cross examination, Mr N Gandhi confirmed that he worked up to 14 hours a day, seven days a week, 52 weeks of the year in the store and that he was the only

direct employee. He also confirmed he was the only person on site who held a current Duty Manager's Certificate. He said he had been advised by the Licensing Inspector at the time of this application that a second Duty Manager was required for his store and must be present when Mr N Gandhi was off site. Mr S Gandhi advised his hours in the store were adhoc and that his mother spent more time working in the store than he did.

- [11] Mr N Gandhi advised that once his off-licence was renewed, it was intended his wife, Mrs V Gandhi, would begin the process of obtaining her Duty Manager's Certificate. He confirmed that no-one with a Duty Manager's certificate was present in the store when he left to do the restocking purchasing. This could occur every day, between the hours of 5.30pm and 7.30pm, whilst the store was open for business.
- [12] Mr N Gandhi advised he had experienced family troubles occurring in India over the past two years and had not been able to give his store as much attention as in previous years. He believed that accounted for his lack of growth in sales figures and for the look of his store when the Medical Officer of Health representatives visited his store in July 2020. He added that he expected the family issues would be resolved in the coming months and that he was now back to operating his normal business model at his store.
- [13] Mr N Gandhi described his business model as one of constant restocking to maintain freshness of items. He further explained that he regularly (often daily) visited a supermarket between 5.30pm and 7.30pm and often again after his store closed at 9.00pm. He added the store had very little storage space and that he used a manual system of making lists of items needing to be restocked. He said this low overhead way of operating his business enabled him to offer grocery item prices competitive with the nearby supermarket and noted that his prices were not of a premium that would be common in a dairy or convenience store. He described how most shelves were stocked three to four items deep and that the look of his store today was different to the situation in July 2020.
- [14] Mr N Gandhi confirmed that food products were the primary items being sold in his store and that he believed his gross turnover figure was a fair indication of the size of his business. He advised the Committee he was unaware of the turnover figures for other stores in the city, or that his turnover was the lowest of all other grocery or supermarket stores. He added that he believed there was nothing in the legislation which classified a store as a convenience or grocery store, based on turnover. He maintained his store was a grocery store and was therefore eligible to hold an off-licence.
- [15] Mr N Gandhi believed most of his customers undertook "top-up" purchases at his store, rather than a full weekly shop and that several customers would spend between \$50 and \$100 a time. He noted his overall prices were cheaper than the Supervalu in the area. He said the lack of trolleys or shopping baskets was due to the size of the store. He also said that since the ban on single use plastic bags in New Zealand, many shoppers brought their own shopping bags to carry their groceries.

**Reporting Agencies***Medical Officer of Health*

- [16] The Senior Public Health Advisor, Regional Public Health, Ms A Boston, confirmed her written statement of evidence and elaborated upon it. She reiterated the legislative requirements regarding the provision of sales figures in the prescribed format and that if they were not provided correctly, an off-licence could not be granted. She further advised that legislation required each application for a renewal of a licence had to be assessed on its own merits and that the results of previous applications could not be taken into account.
- [17] Ms Boston reiterated the Medical Officer of Health's opposition to the application, adding that in their opinion, the store was classified as a convenience store, not a grocery store and was therefore ineligible to hold an off-licence. She noted they had come to this conclusion despite having to use irregular sales information and had considered the context and placement of the store. This placement included assessing the locality and discovering there were a large number of stores selling groceries in the area, with not all selling alcohol. She added there were similar sized stores to the applicant's store which were classified as convenience stores, and that in her opinion, the area could not support that number of grocery stores.
- [18] With regard to the classification of the applicant's store, Ms Boston advised of the Sale and Supply of Alcohol Act 2012 deliberate action to exclude convenience stores from being eligible to hold an off-licence. She added that due to the types and prices of items for sale in the store, the look and feel of the store and the relatively low turnover of the store, that the Medical Officer of Health's conclusion was the store was a convenience store rather than a grocery store.
- [19] Ms Boston expressed concern at the way alcohol was presented for sale in the store, in cut-down, bulk buy boxes. She considered this enabled items to be sold more cheaply than in other stores and demonstrated unsafe and irresponsible sale practices. She acknowledged the store had lower overheads than other stores, which could lead to lower prices for items being able to be offered.
- [20] Ms Boston advised of the concern that the Medical Officer of Health had, with the harmful consumption of alcohol by the Māori population, and that the Waiwhetu area had a high percentage of resident Māori. She maintained that the applicant's store was located within a residential area with a sub-population of high deprivation. She did acknowledge that the Waiwhetu suburb was not identified in the local Alcohol Plan as being a high-risk area.
- [21] The Health Protection Officer/Alcohol Regulatory Officer, Regional Public Health, Ms V Young, confirmed that if the correct sales figures were supplied with the application, the Medical Officer of Health would withdraw their original opposition to the application. She clarified that because Regional Public Health had already objected to the application, and then the Covid-19 pandemic occurred, the amended objection containing more detailed analysis with additional objections could be accepted, despite it being received ten months out of the statutory timeframe.

*Licensing Inspector*

- [22] Mr D Gallagher confirmed his statement of evidence and elaborated upon it. He reiterated that case law had ruled that current sales figures in a specific manner must be provided with applications. Upon cross examination, Mr Gallagher confirmed that the sales information provided with the Applicant's 2017 off-licence renewal application did not have itemised sales information and that the information provided was accepted by officers and that the off-licence was renewed without objection at that time.
- [23] Mr Gallagher confirmed Mr N Gandhi had been visited at his store in September 2020, where it had been clearly explained to him the form in which his sales figures must be presented with his off-licence application (revenue statements to be presented based on sales figures and not just purchases). He further confirmed that the original objection received from the Medical Officer of Health had objected to the application only based on the incorrect form the sales data had been provided.

**Licensing Committee Decision and Reasons***Legislation*

- [24] The object of the Act is to ensure that alcohol is sold and supplied safely and responsibly and that any harm caused by the excessive or inappropriate consumption of alcohol is minimised.<sup>1</sup>
- [25] Section 32 of the Act details the kinds of premises for which off-licences may be issued. The relevant section is (1)(f):
- (1)(f) *For premises that (in the opinion of the licensing authority or licensing committee concerned) are a grocery store.*
- [26] Section 33 of the Act sets out the matters to be considered when assessing if a store can be classified as a grocery store.
- (1) *In this section, grocery store means a shop that -*
- (a) *Has the characteristics normally associated with shops of the kind commonly thought of as grocery shops; and*
- (b) *Comprises premises where -*
- (i) *A range of food products and other household items is sold: but*
- (ii) *The principle business carried on is or will be the sale of food products.*
- (2) *In forming for the purposes of this Act an opinion on whether any premises are a grocery store, the licensing authority or a licensing committee -*
- (a) *Must have regard to*
- (i) *The size, layout and appearance of the premises; and*
- (ii) *A statement of the annual sales revenues (or projected annual sales revenues) of the premises, produced in accordance with any regulations in force under this Act prescribing what information such statements must contain and how it must be set out; and*

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<sup>1</sup> Section 4(1) of the Act

- (iii) *The number, range, and kinds of items on sale (or expected to be on sale) on the premises; and*
  - (b) *May have regard to any other matters it thinks relevant; and*
  - (c) *May determine that the premises do not have the characteristics normally associated with a shop of the kind commonly thought of as a grocery shop by virtue of characteristics that the premises and the items on sale there lack or will lack, characteristics that the premises and the items on sale there have or will have, or a combination of both.*
- [27] Section 103 of the Act provides for the Police and Medical Officer of Health to submit an objection to an application under the Act, within 15 working days after receiving a copy of it.
- (3) *The Police and the Medical Officer of Health -*
    - (a) *Must each inquire into the application; and*
    - (b) *If either has any matters in opposition to it, must file with the licensing committee a report on it within 15 working days after receiving the copy of it.*
  - (4) *The licensing committee may assume that, if no report is received from the Police or Medical Officer of Health within 15 working days after sending the copy of the application to them, the Police or Medical Officer of Health does not oppose the application.*
- [28] Section 127 of the Act deals with applications for a renewal of a licence and Section 131 lists the criteria which must be had regard to when deciding on whether to renew a licence, which includes many of the criteria of Section 105, Criteria for Issue of Licences.
- [29] Section 132 of the Act provides for conditions to be able to be placed on a renewal of a licence.
- [30] Section 207 of the Act explains how evidence may be received by a licensing committee. Section 208 of the Act details when omissions relating to the Act requirements, including time prescriptions, can be permitted.
- [31] Regulation 12 of the Sale and Supply of Alcohol Regulations 2013 prescribes the format that all sales revenue must be provided in, when applying for a licence or renewal of a licence.
- (1) *In the case of premises to which subclause (2) applies, the statement of annual sales revenue to which, by virtue of [section 33\(2\)\(a\)\(ii\)](#) of the Act, the licensing authority or a licensing committee must have regard in determining for the purposes of the Act whether any premises are a grocery store must contain –*
    - (a) *a statement of the gross sales revenue of the business being carried on, on the premises for the period of 12 months ending no more than 90 days before the time at which the application for the issue or renewal of an off-licence for the premises is made, –*
      - (i) *excluding GST; and*
      - (ii) *excluding excise duty and excise-equivalent duty on tobacco products; and*

- (iii) *after deduction of all revenue from sales of lotto, Keno, Instant Kiwi, or any other New Zealand lottery promoted by the New Zealand Lotteries Commission; and*
  - (b) *a statement assigning the remainder of that revenue to the following categories:*
    - (i) *the sale of food products:*
    - (ii) *the sale of alcohol:*
    - (iii) *the sale of tobacco:*
    - (iv) *the sale of convenience foods:*
    - (v) *other revenue; and*
  - (c) *a statement from a chartered accountant verifying the figures given as correct according to prepared accounts.*
- (2) *This subclause applies to premises where, as at the time at which an application for the issue or renewal of an off-licence for the premises is made, –*
- (a) *business has been carried on for 12 months or more; and*
  - (b) *the business being carried on has not changed materially for at least 12 months before that time.*

### **Discussion and Findings**

- [32] The Committee accepts the original objection from the Medical Officer of Health was received within the statutory time frame. The Committee finds that objection was based solely on the grounds that the sale figures provided with the application were not in the prescribed form and that if the correctly formatted figures were provided, the objection would be withdrawn.
- [33] The Committee received legal advice regarding the amended objection received from the Medical Officer of Health some 10 months after the statutory 15 working days had lapsed. The Committee finds, that in accordance with Section 103 of the Act, that the amended objection is inadmissible, as it was received well after the statutory timeframe and contained new objections.
- [34] In making this ruling, the Committee was mindful of the judgement of *Paulin vs Scott*,<sup>2</sup> where it was ruled that it may be reasonably acceptable to receive a more detailed objection from the Police (a reporting agency) up to 15 working days after the initial objection was submitted. The Committee felt this ruling would apply to all reporting agencies. It found this allowance would still not apply to the current application.
- [35] In making this ruling, the Committee was also mindful of the Epidemic Preparedness (Sale and Supply of Alcohol Act 2012-Licence Application Inquiries) Immediate Modification Order 2020. This Order provided for an extension of the 15 working days for receipt of an objection, to 30 working days. The Order took effect once the Covid-19 Epidemic Notice was evoked, in April 2020. The Committee noted the 15 working date statutory timeframe for the application ended in February 2020 (some two months prior to government issuing of the Order); that the additional 15 working day allowance would have ended in mid-March 2020 (at least one month prior to

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<sup>2</sup> Paulin vs Scott [2013]NZARLA PH 489, paragraph 7

the government's issuing of the Order). Hence, the Committee finds that the requirements of this Order were not applicable to this application.

[36] Furthermore, in making this ruling, the Committee was mindful of the content of the amended objection, in that it included additional objections not specified in the original objection. In *Sargent vs Kapiti Supermarket Limited*<sup>3</sup>, the judge ruled that the matters of an objection must be fully stated to enable the applicant to respond in a suitable manner.

*(15)(a) If the Police do have matters in opposition to an application, they must state those matters within the 15 working day period. Merely to state that they oppose an application without setting out the matters in opposition is not adequate as this fails to tell an applicant the nature of the case it must answer at the subsequent hearing;*

*(16) After the expiration of the 15 day period and at the hearing before the DLC, the Police were not entitled to alter their original stance.*

[37] Nevertheless, under Section 207 of the Act, the Committee may accept as evidence, any statement, document, information or matter which may assist it in making its decision. The Medical Officer of Health's documentation submitted with its amended objection was viewed as providing information the Committee may otherwise not have had access to and as a consequence, had regard to in the Committee's deliberations.

[38] The Committee then turned its attention to whether the store was eligible to hold an off-licence. It noted the evidence of Mr N Gandhi, who explained that the operation of his business had not changed since his 2014 and 2017 successful applications for a renewal of the off-licence, or indeed since 2001 when he purchased the store.

[39] The Committee determined that the store was a grocery store. It formed this opinion, from evidence presented at the hearing which showed the store had the characteristics normally associated with shops of the kind commonly thought of as grocery shops. They found that the store offered a range of food products and other household items for sale, and that the principle business carried on was the sale of food products. They found that all criteria listed in Section 33(2) of the Act were fulfilled by the store, resulting in the classification of a grocery store being suitable.

[40] The Committee heard from Mr N Gandhi that his last year's gross turnover was \$314,447, with approximately \$19,000 of that (8%) representing alcohol sales. The Committee also had regard to the sales figures provided by the applicant, which although in the incorrect format did provide information showing the types of items sold throughout the year. The Committee finds that these figures contributed to its findings that the sale of food items was the principle business carried out at the store.

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<sup>3</sup> *Sargent vs Kapiti Supermarket Limited* [2015] NZARLA PH 194, paragraph 15



- [41] Individual members of the Committee, except Mr Parton, undertook site visits prior to the hearing. They separately determined that the store was of a good size (larger than a typical dairy) and was well laid out to display a wide variety of items for sale. They noted the shelves were reasonably stocked (given Mr N Gandhi's explanation he re-stocked shelves every day and did not hold large stores given the lack of space at the back of the store). The Committee acknowledged Mr N Gandhi's explanation that that situation differed from the Medical Officer of Health's representative's visit in July 2020, where photographic evidence showed empty shelves, due to his offshore family issues taking up much of his time.
- [42] The Committee gave little weight to the argument from the Medical Officer of Health that because the gross turnover of the store was "low", that meant the store must be a convenience store. The Committee agrees with Mr N and Mr S Gandhi when they stated there was no provision in the legislation that turnover should be a factor when determining the classification of a store.
- [43] Furthermore, the Committee gave little weight to the argument from the Medical Officer of Health that Mr N Gandhi's practice of bulk buying alcohol, cutting the boxes down and displaying the beer for sale in "6-packs" for a cheaper price than offered in other establishments in the vicinity, was irresponsible, unsafe and not in accordance with the purpose of the Act. The Committee heard from Mr N Gandhi that he was able to offer "6-pack" portions of beer for a cheaper price than other stores, as he had lower overheads. In his written right of reply, Mr N Gandhi stated that the Licensing Inspector had advised this practice was permissible.
- [44] The Committee then turned its attention to the presentation of the sales revenue figures. It accepts that Mr N Gandhi did not present these in the prescribed form, as detailed in Regulation 12 to the Act. The Committee heard that Mr N Gandhi had recently (in the past month) installed a new operating system, whereby sales items will be categorised at point of sale. He advised the Committee he was progressively inputting barcodes and allocating categories and that he expected the new system to be fully operational by September 2021.
- [45] The Committee was pleased to hear of this advancement in recording sales for the store. They were mindful Mr N Gandhi had been requested to provide complying figures (and had not) when he applied for this renewal of the off-licence in December 2019. The Licensing Inspector had confirmed this. By granting a truncated off-licence, the Committee has provided Mr N Gandhi an opportunity to fully install and make operational, the new point of sale system, which would enable him to present updated annual sales revenue figures in the prescribed form, in September 2022.
- [46] The Committee was concerned that Mr N Gandhi had not employed a second Duty Manager for the store, despite repeated requests from the Licensing Inspectors. It noted that under section 105(1)(j) of the Act, an applicant needed to have appropriate systems, staff and training to comply with the law. The Committee finds that with Mr N Gandhi absent from the operating store between the hours of 5.30pm and 7.30pm most days, there was no Duty Manager on site when the store was open for business, which did not meet this requirement. The

Committee further finds that Mr N Gandhi was erroneous in his belief that he could repeatedly appoint an Acting or Temporary Duty Manager to “stand-in” when he was absent from the store.

- [47] Mr N Gandhi provided the Committee with an assurance that his wife, Mrs V Gandhi, would commence her training for a Duty Manager certificate, as soon as his off-licence was renewed. By granting a truncated off-licence, the Committee has provided Mr N Gandhi an opportunity to fulfil this assurance. From evidence and statements provided under oath by Mr N Gandhi at the hearing, the Committee was satisfied Mr N Gandhi now fully understood his obligations under the Act.
- [48] The Committee then turned its attention to section 131 of the Act, Criteria for Renewal. This section lists several items which a licensing committee must have regard to.
- (1)(a) the matters set out in paragraphs (a) to (g), (j) and (k) of section 105(1)*
- [49] The Committee has already determined that the applicant’s practice of selling alcohol was in accordance with the object of the Act. The Committee finds that the applicant has proven his suitability, albeit not employing a second Duty Manager, as recorded by the Licensing Inspector’s evidence (section 5).
- [50] During the course of the hearing, Ms Boston advised the Waiwhetu area had a high percentage of Māori and that the area had a sub-population of high deprivation, resulting, in her opinion, in the area being susceptible to harm from alcohol consumption. The Committee was presented with evidence that showed the Māori population of Waiwhetu was only marginally higher than the overall Māori population statistics for the city. This could be explained by the applicant’s proposition that the establishment of the Waiwhetu marae in the 1960’s had led to many people of Māori descent coming to live in the area, and that many families had remained since that time. The Committee finds that the Māori population of the Waiwhetu suburb is not overly high in comparison to the rest of the city. The Committee noted that the Waiwhetu suburb was not identified in the local Alcohol Plan as being a high-risk area and that the renewing of an off-licence would not be contrary to this Plan.
- [51] The Committee finds that the applicant complies with the requirements covering the hours during which alcohol can be purchased. The Committee have already found that the design and layout of the premises aids in the conclusion already reached that the store is a grocery store.
- [52] The Committee was presented with evidence that the applicant engages in the sale of goods other than alcohol and have placed a condition on the renewal that correct sales revenue figures be provided for the next renewal of the off-licence application by 1 December 2022.
- [53] The Committee finds the applicant does not engage in services other than the sale of food, household items and alcohol.

- [54] The Committee finds that the applicant is in the process of installing an appropriate point-of-sales system and will be employing a second Duty Manager. The Committee has placed conditions on the renewal such that these must occur by specified dates, otherwise the renewal is revoked.
- [55] The Committee has dealt with the matter raised in the Medical Officer of Health's original objection and taken cognisance of matters raised in the amended objection.
- [56] Therefore, the applicant complies with the requirements of Section 131 (1)(a) of the Act.
- [57] Section 131 (1)(b) of the Act states:
- (1)(b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*
- [58] The Committee heard from Ms Boston, who confirmed that the volumes of alcohol sold by the store were small, compared to other establishments in the vicinity. She believed that if the store's off-licence was not renewed there may be a difference to overall alcohol harm in the area and that it may help people reconsider how they purchased their alcohol. The Committee is not of a mind to agree with Ms Boston. The Committee finds that the small volumes of alcohol sold, along with alcohol being the least well stocked item in the store, as evidenced by the site visit by Committee members, would result in very little effect, certainly a less than minor effect, on the amenity and good order of the locality, should the renewal be refused.
- [59] Therefore, the Committee finds the applicant complies with Section 131 (1)(b) of the Act.
- [60] Section 131 (1)(c) of the Act states:
- (1)(c) any matters dealt with in any report from the Police, and inspector, or a Medical Officer of Health made by virtue of section 129:*
- [61] The Committee finds that the only matters for consideration from the reports from the Licensing Inspector and the Medical Officer of Health were the lack of correctly presented sales figures and the lack of a second Duty Manger on site. The Committee has dealt with these accordingly.
- [62] Section 131 (1)(d) of the Act states:
- (1)(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*
- [63] The Committee reads from the Licensing Inspector's report, that all signs as required by the Act were displayed. The Committee further reads that the displaying of alcohol in cut down bulk-buy boxes was not contrary to the requirements of the Act and that advice received from the Licensing Inspector

regarding selling of alcoholic items was being adhered to by the applicant. The Licensing Inspector's report confirmed that the operation of the premise had been subject to the Tri-Agencies monitoring process and had been found to operate in accordance with the requirements of the Act. This included the sale, display, advertising and promoting of alcohol, with the exception of the unavailability of a second Duty Manager.

- [64] The Committee finds that the applicant complies with the requirements of Section 131 (1)(d) of the Act.
- [65] Overall, the Committee was impressed with the amount of information presented to the hearing. The Committee would like to especially commend the applicant on his written right of reply which went into a great amount of detail. It also assisted the Committee in reaching its decision.
- [66] After weighing up all of the information before the Committee and having due consideration to the matters of the relevant sections of the Act, the Committee finds it can support granting an application for a renewal of the off-licence for the applicant, subject to conditions. The Committee notes that in fulfilling one of those conditions, the Medical Officer of Health's objection to the application will be withdrawn.

### **Conclusion**

- [67] The Lower Hutt District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **GRANTS** a truncated off-licence to Nirmal and Varsha Gandhi Limited trading as Waiwhetu Superette, for a period of seventeen (17) months (ie to 1 December 2022) from the date of this decision (1 July 2021), subject to the following conditions:
- (a) A fully compliant second Duty Manager is employed by 1 December 2021, with the Duty Manager Register updated accordingly; and
  - (b) 12 months of fully complying sales revenue figures in the prescribed format be included in the next off-licence renewal application.

Failure to comply with either of these requirements by the specified times, will result in the truncated off-licence being revoked.

DATED at Lower Hutt this 1<sup>st</sup> day of July 2021.

Signed

Cr Simon Edwards  
Chair, Lower Hutt District Licensing Committee