



PAPAIOEA
PALMERSTON
NORTH
CITY

PALMERSTON NORTH CITY COUNCIL

SUPPLEMENTARY
AGENDA

DISTRICT LICENSING COMMITTEE HEARING

9.00AM, THURSDAY 25 NOVEMBER 2021

CONFERENCE & FUNCTION CENTRE
354 MAIN STREET, PALMERSTON NORTH

MEMBERS

Susan Baty (Chairperson)
Aleisha Rutherford
Rod Titcombe

AGENDA ITEMS, IF NOT ATTACHED, CAN BE VIEWED AT

pncc.govt.nz | Civic Administration Building, 32 The Square
City Library | Ashhurst Community Library | Linton Library

Heather Shotter

Chief Executive | PALMERSTON NORTH CITY COUNCIL

Te Marae o Hine | 32 The Square
Private Bag 11034 | Palmerston North 4442 | New Zealand
pncc.govt.nz

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DISTRICT LICENSING COMMITTEE

PART I

25 November 2021

SUPPLEMENTARY PAPERS

1. Overview of the Proceedings

(Pages 5-8)

Information concerning procedure for hearing of applications made pursuant to the Sale and Supply of Alcohol Act 2021

2. Hearing of application by Hong Jia Limited for an On Licence Renewal with Variation of Conditions in respect of premises known as The Office situated at 522 Main Street, Palmerston North

Parties:

i. Applicant

(Pages 9-23)

Hong Jia Limited for an On Licence Renewal with Variation of Conditions. (Attached)

Palmerston North City Council

(Pages 24-80)

Report, dated 26 February 2021, by the Licensing Inspector. (Attached)

ii. MidCentral Health (no opposition)

(Page 81)

Report, dated 3 December 2019, by the Compliance Officer (for Medical Officer of Health, Palmerston North Public Health Service). (Attached)

- iii. Police (no opposition) (Pages 82-83)
Report dated 27 November 2019 and report dated 17 February 2020, by the Alcohol Harm Prevention Officer. (Attached)
- iv. Objectors (Pages 84-85)
Laura Clifford (Attached)
- v. Any other person given leave by the Chairperson to give evidence
- vi. Right of reply

Information concerning procedure for hearing of applications made pursuant to the Sale and Supply of Alcohol Act 2012

This information is to assist persons participating in the hearing of an application made to the District Licensing Committee under the Sale and Supply of Alcohol Act 2012. The hearing is necessary because the application has been opposed or objections have been made to it.

1. Engagement of Counsel

You can present your own case, but if you wish you can engage legal counsel or any other person to appear on your behalf.

2. Public Hearing

All hearings are public, and the media and members of the public are entitled to be present. This also means that any evidence provided during the process, the Minutes of the hearing and the Decision of the Committee will be published on the Council website and remain publicly available.

However, the Committee may hold any part of the hearing in private and has the power to make an order to protect sensitive information.

3. Committee Conducting the Hearing

The hearing will be conducted by the District Licensing Committee of the Palmerston North City Council. The Committee comprises three members and has the power to consider and determine certain applications received under the Sale and Supply of Alcohol Act 2012.

4. Venue for the Hearing

The Hearing will be held at the Conference & Function Centre, 354 Main Street, Palmerston North.

5. Preparation of Evidence

It would assist the Committee if you prepare a written copy of your evidence. It is not necessary to produce copies of the original objection itself or any report made to the Committee, as the Committee will have been previously supplied with these.

If you wish to present written evidence you have two options:

- a) Pre-circulated Evidence

Your evidence could be pre-circulated in accordance with the procedure detailed in the letter giving you notice of the Hearing. Your pre-circulated written evidence

should be read by yourself or by your representative, unless the Committee decides otherwise. You will not be obliged to elaborate any further unless asked to.

b) Tabled Evidence

Alternatively your evidence can be tabled (ie. presented for the first time) at the Hearing. In this event your evidence must be read in full at the Hearing by yourself or by your representative. You should also have ten (10) copies of your evidence available for distribution by the Committee Administrator, to the Committee, other parties, the Council representative(s) and the media.

6. Evidence

The Committee has the power to require evidence given at the hearing to be on Oath or Affirmation, however, there is no obligation for evidence to be sworn. Any evidence given may be oral or in writing. If evidence is in writing it must, unless pre-circulated, be read at the hearing. The statement read out at the hearing should expand on the points made in the written evidence already submitted.

7. Content of Evidence

Parties may augment or elaborate on points they have already raised in the evidence submitted to support their case.

Where it is considered that there is likely to be excessive repetition, the Chairperson may limit the circumstances in which parties having the same interest may speak or present evidence.

When speaking to the Committee make a good, strong presentation. Keep statements simple, make key points clear, speak clearly and slowly enough to be understood, and try not to repeat statements.

8. Cross-Examination

There is a right of cross-examination for parties. The Committee may also question any party concerning their submissions or evidence.

Cross-examination means being asked questions by other parties. All parties with speaking rights at the hearing will have an opportunity to ask questions of any other party giving evidence.

9. Participants

The following persons have the right to appear and be heard at the hearing, personally, or by counsel, and may call, examine, and cross-examine witnesses:

- ▶ The Applicant
- ▶ The Licensing Inspector, a member of the Police and the Medical Officer of Health - to each of whom a copy of the application has been sent
- ▶ Each Objector, if any

As a party to this hearing, you will need to be present for the complete duration of the hearing. If you do not appear in person by counsel, the matter may be heard and determined in your absence.

10. Conduct of the Hearing

At the start of the hearing, the Chairperson will briefly outline the hearing procedure. The following order of appearance will usually apply:

- a) The applicant presents his or her case and calls witnesses in support of the application.
- b) The Licensing Inspector, member of the Police and the Medical Officer of Health, usually in that order, presents their cases and call witnesses in support if they wish.
- c) Objectors, if any, present their case and call witnesses in support of their objections.
- d) Any other person given leave by the Chairperson of the District Licensing Committee to give evidence. That person must satisfy the Licensing Committee that they have an interest in the hearing, apart from any interest in common with the public, or be a member of the Fire Service authorised to undertake fire safety inspections, or be a person authorised by the City Council. See Section 204(2) of the Sale and Supply of Alcohol Act 2012.
- e) The Applicant has a right of reply.

11. Tikanga Maori

You may speak to your submission in Maori if you wish. If you intend to do so, please contact the Committee Administrator within three (3) days of the date you receive the letter notifying you of the hearing. This is to enable arrangements to be made for a certified interpreter to attend the meeting.

12. Visual Aids

If you wish to use a data projector, video, whiteboard, pin-up board or a similar aid, please contact the Committee Administrator no later than two working days before the hearing so that arrangements can be made.

13. Adjournment

The Committee has the power to adjourn the hearing. If at the time of the adjournment no date or time is set for a resumed hearing then the Applicant will be given at least ten (10) working days' notice of the time and date of the resumed hearing.

14. Decision of the Hearing

After the District Licensing Committee has heard the evidence and submissions, it will usually declare the hearing closed and will leave the Council Chamber to consider its decision.

Parties will be advised in writing of the decision and reasons for it as soon as possible after the decision has been made.

15. Appeal Rights

Any party has a right of appeal to the Alcohol Regulatory and Licensing Authority. Such appeal may be against the whole or any part of the decision. The time within which the right of appeal to the Authority must be exercised is ten (10) working days after the date on which notice of the decision was given to that party. That time may be extended if the licensing authority is satisfied that there was reasonable cause for the appellant failing to give notice within the prescribed time.

Because the appeal process is more involved than the initial hearing, it is suggested that parties consult a solicitor if they wish to appeal.

16. Variation of Procedure

The Committee may, at its sole discretion, vary the procedure set out above if the circumstances indicate that some other procedure would be more appropriate. Any change would comply with the requirements of the Sale and Supply of Alcohol Act 2012 and be advised at the hearing.

17. General

Detailed provisions for procedure are contained in Section 203 of the Sale and Supply of Alcohol Act 2012.

You should not endeavour to contact members of the District Licensing Committee. However, members of the Committee or their agent may contact you to arrange an inspection of any premises affected by the application. In this event, do not discuss the case with them.

APPLICATION FOR RENEWAL OF ON LICENCE

Section 127(2), Sale and Supply of Alcohol Act 2012

#7260

TO: The Secretary
District Licensing Committee
Palmerston North



Application for Renewal of On Licence is made in accordance with the details set out below.

Endorsements: BYO Catering

VARIATION OF CONDITIONS OF LICENCE

Are any changes sought to the present conditions of the licence? Yes No

If Yes, what changes are sought? extension of outside garden area
see attached plan.

DETAILS OF APPLICANT

Full legal name or names to be on licence:

Hong Jia Ltd

Postal address: (for service of documents)

522 Main St

Palmerston North

Contact person: Martin Wang Tel: 7(2)(a) Privacy

Email: 7(2)(a) Privacy

DETAILS OF PREMISES

Trading name:

The office Bar

Physical address:

522 Main St, Palmerston North

Current Licence Number 39/ON/005/2017 Expiry Date 08 | 12 | 2019

DATE MONTH YEAR

DETAILS OF MANAGER/S

Full legal name: (including any middle names, aliases and/or maiden name that you may be known by)

YANG (MARTIN) WANG

Manager's certificate number: 39/CERT/228/2014 Manager's certificate expiry date: 23/09/2020

Drivers licence number: 7(2)(a) Privacy Passport number:

Full legal name: (including any middle names, aliases and/or maiden name that you may be known by)

HAILIN (MIKE) WANG

Manager's certificate number: 39/CERT/028/2017 Manager's certificate expiry date: 30/03/2021

Drivers licence number: 7(2)(a) Privacy Passport number:

Full legal name: (including any middle names, aliases and/or maiden name that you may be known by)

ZACKARY PAUL HORNBY

Manager's certificate number: 39/CERT/074/2019 Manager's certificate expiry date: 03/10/2020

Drivers licence number: 7(2)(a) Privacy Passport number:

Full legal name: (including any middle names, aliases and/or maiden name that you may be known by)

DANWEI (IRENE) LIU

Manager's certificate number: 39/CERT/026/2016 Manager's certificate expiry date: 8/3/2020²³

Drivers licence number: 7(2)(a) Privacy Passport number:

Full legal name: (including any middle names, aliases and/or maiden name that you may be known by)

CHASE DEXTER BEALS

Manager's certificate number: 39/CERT/073/2019 Manager's certificate expiry date: 03/10/2020²³

Drivers licence number: 7(2)(a) Privacy Passport number:

Full legal name: (including any middle names, aliases and/or maiden name that you may be known by)

Manager's certificate number: Manager's certificate expiry date:

Drivers licence number: Passport number:

CONDITIONS

Food intended to be available for purchase: *(describe type and range)*

Garlic bread, chicken wings, Spring rolls,
Burgers, steaks, Pork Ribs, (Menu attached)

Non-alcoholic beverages intended to be available for purchase: *(describe type and range)*

Coke, juices, Red bull, soft drinks on tap

Low-alcohol beverages intended to be available for purchase: *(describe type and range)*

Heineken Light Beer, Low-alcohol cocktail

To what extent, and where, drinking water is intended to be freely available to patrons: *(describe)*

Free water & glass always available on the bar
Water displayed on the Bar.

If no access to mains water supply, potability of water intended to be available: *(describe)*

Bar staff always able to supply free water.
mains water on tap

Steps intended to be taken to provide help with and information about transport options from the premises:
(describe type and range)

We have transport option sign on the wall all the time.
We also love to call a taxi for anyone needs.

Steps proposed to be taken to prevent the sale and supply of alcohol to prohibited people: *(describe)*

see attached

Any other steps the applicant proposes to promote the responsible consumption of alcohol: *(describe)*

see attached

Other systems (including training systems), and staff in place (or to be in place) for compliance with the Act: *(describe)*

see attached.

The Office Palmerston North Renewal Application 2019 – attached answers to questions:

Steps taken to prevent Sale and Supply of alcohol to prohibited people.

Minors, anyone appearing to be under 25 or anyone behaving in an immature manner will be asked to provide an 18+ Card, a Kiwi Access Card, a NZ driver's License, or a passport that will be checked for validity and ownership and date of birth to prove that the potential patron is over 18.

Intoxicated people, all patrons are assessed for intoxication or influence level upon entering the establishment either by Duty Manager or certificated crowd controller. All patrons asking to be sold alcohol will be briefly assessed before any sales are completed.

Patrons purchasing strong alcohol drinks (eg Long Island Iced Tea, or Yeager Bombs) will be more closely monitored

The SCAB model is used as promoted by the Health Promotion agency.

Further steps to promote responsible consumption:

Patrons are encouraged to not drink too quickly, Any patrons observed drinking at an unusually fast rate will be advised to slow down, drink water, switch to lower alcohol drinks.

Other Systems in place

On busy nights (Thursday Friday Saturday) One staff member is assigned a "Detective role". The detective is not expected to provide service or cleaning but is tasked with circulating and engaging with customers and assessing any potential issues or intoxication.

The office holds a staff meeting before every busy shift (Thursday Friday Saturday) to discuss risk elevating issues such as international sporting fixtures or local events. Further weekly staff meetings are held to discuss business and licensing issues in particular the identification of levels of influence (SCVAB model) and how to avoid intoxication as well as the ongoing importance of being vigilant about age of purchase and ID checking procedures.

We have engaged HINCE Hospitality Ltd. To provide onsite training for bar managers.

Resources used in training include: HNZ guide to checking ID, HNZ intoxication what to watch for and place of safety, SCAB model, The manager's Guide, The HPA Date of Birth card, Sample ID cards,....

Dated at Palmerston North this

^{12/3}
7 day of

Nov

2019

DATE

MONTH

YEAR

Applicant's signature

[Handwritten signature]

Please note:

1. This form must be accompanied by the prescribed fee.
2. Within 10 working days after filing this application with the District Licensing Committee, the applicant must give public notice of it in form 7. The notice must be given in compliance with regulation 36, 37, or 38 of the Sale and Supply of Alcohol Regulations 2013 (whichever applies to this application).
3. Except in the case of a conveyance, within 10 working days after filing this application with the District Licensing Committee, the applicant must ensure that notice of this application in form 7 is attached in a conspicuous place on or adjacent to the site to which this application relates (unless the Secretary of the District Licensing Committee agrees that it is impracticable or unreasonable to do so).

**Renewal of Licence
Building Evacuation Scheme Declaration**

To: The Secretary
District Licensing Committee
PALMERSTON NORTH

**Please contact Fire and Emergency New Zealand for a
letter regarding the current status of your premises**

Application for renewal of (ON, OFF or CLUB) Licence Number: 39/ ON/005/2017

Premises Name: The office Bar

Premises Address: 522 Main St, PN

**A false declaration will result in Fire and Emergency New Zealand opposing the
renewal of your licence**

I HEREBY STATE THAT (Tick which option applies)

Either:

The building in which the premises are situated has a current evacuation scheme for public safety which meets the requirements of Section 75 of the Fire and Emergency New Zealand Act 2017.

Or:

The building, by reason of its current use, does not require such a scheme, or the building is exempt from having to meet the requirements for such a scheme.

Or:

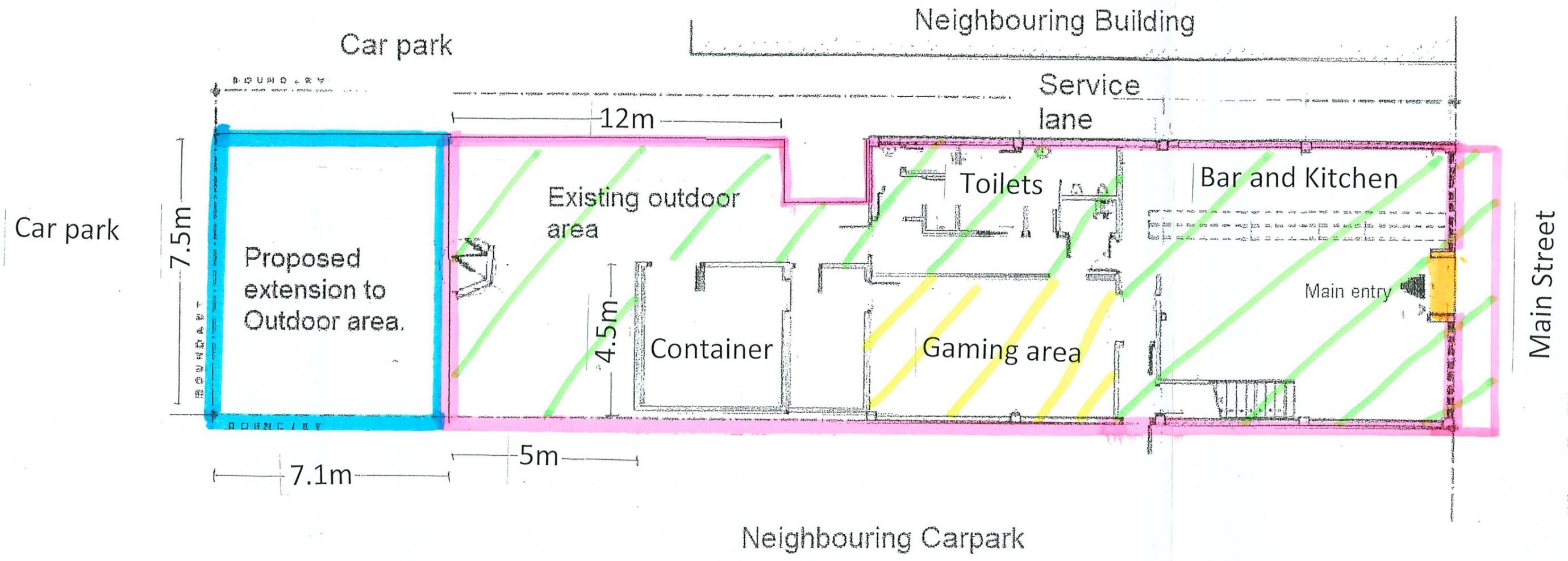
Draft scheme currently before Fire and Emergency New Zealand for approval.


Licensee Signature

Yang Wang
Print Name

6/11/2019
Date

"The Office"



Ground Floor.

-  Restricted Area.
-  Principal Entrance.
-  Licensed Premises
-  Proposed Extension
-  Supervised Area

BC 56873

"The Office"

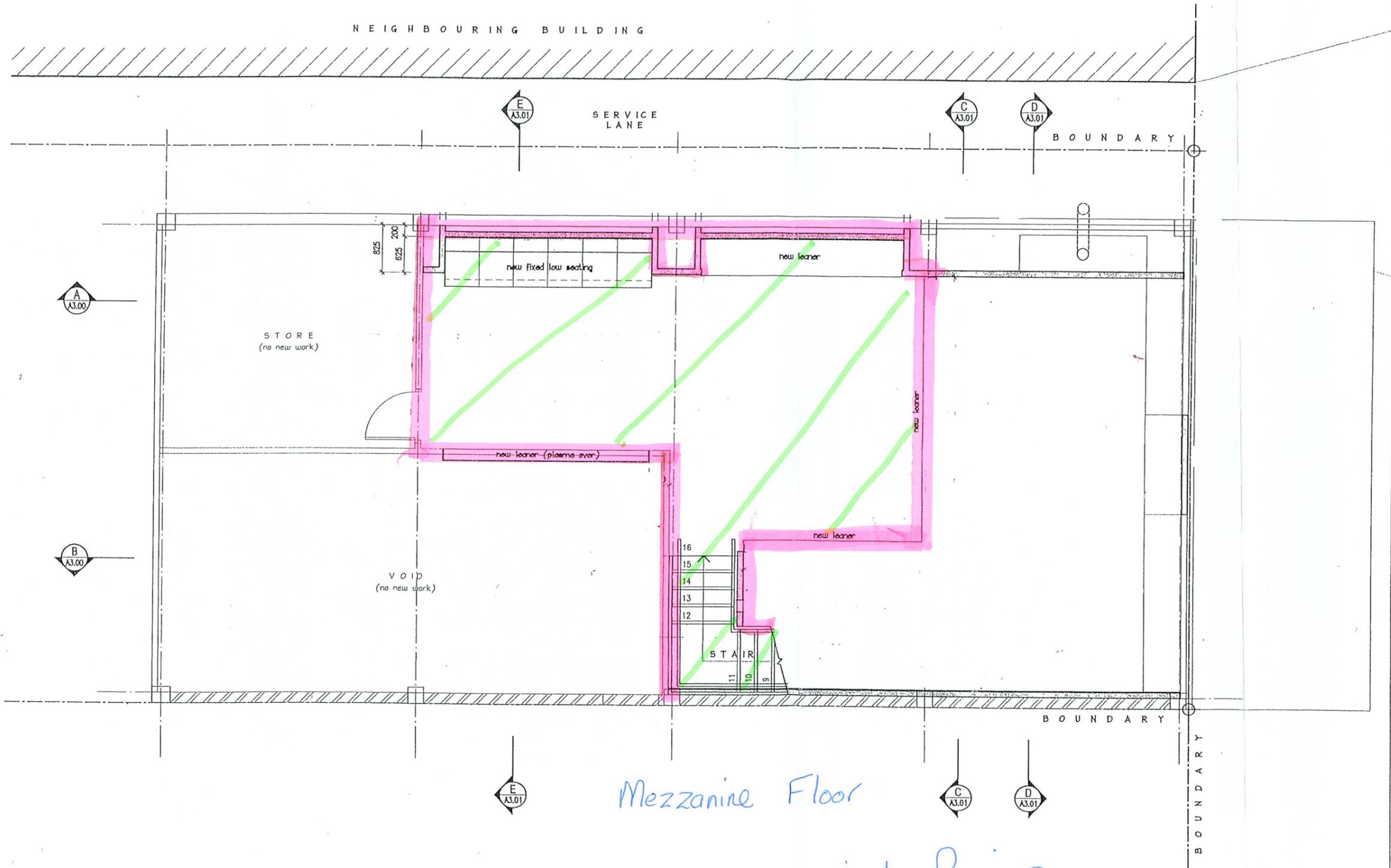
56873

NOTE:

1. Do not scale off this drawing. Use figured dimensions only.
2. Contractor to verify all details and dimensions on site before commencing work.
3. Contractor to report any apparent discrepancy to the Architect for interpretation prior to affected work proceeding.

LEGEND

- Existing walls to remain
- New timber framed walls
- New sheet veneer
- New door / window. Refer A5.00



Mezzanine Floor

● Licensed Premises
 // Supervised Area

RECEIVED
 06 OCT 2005

Issued HDT
 28 SEP 2005

Drawing Status:
 BUILDING CONSENT



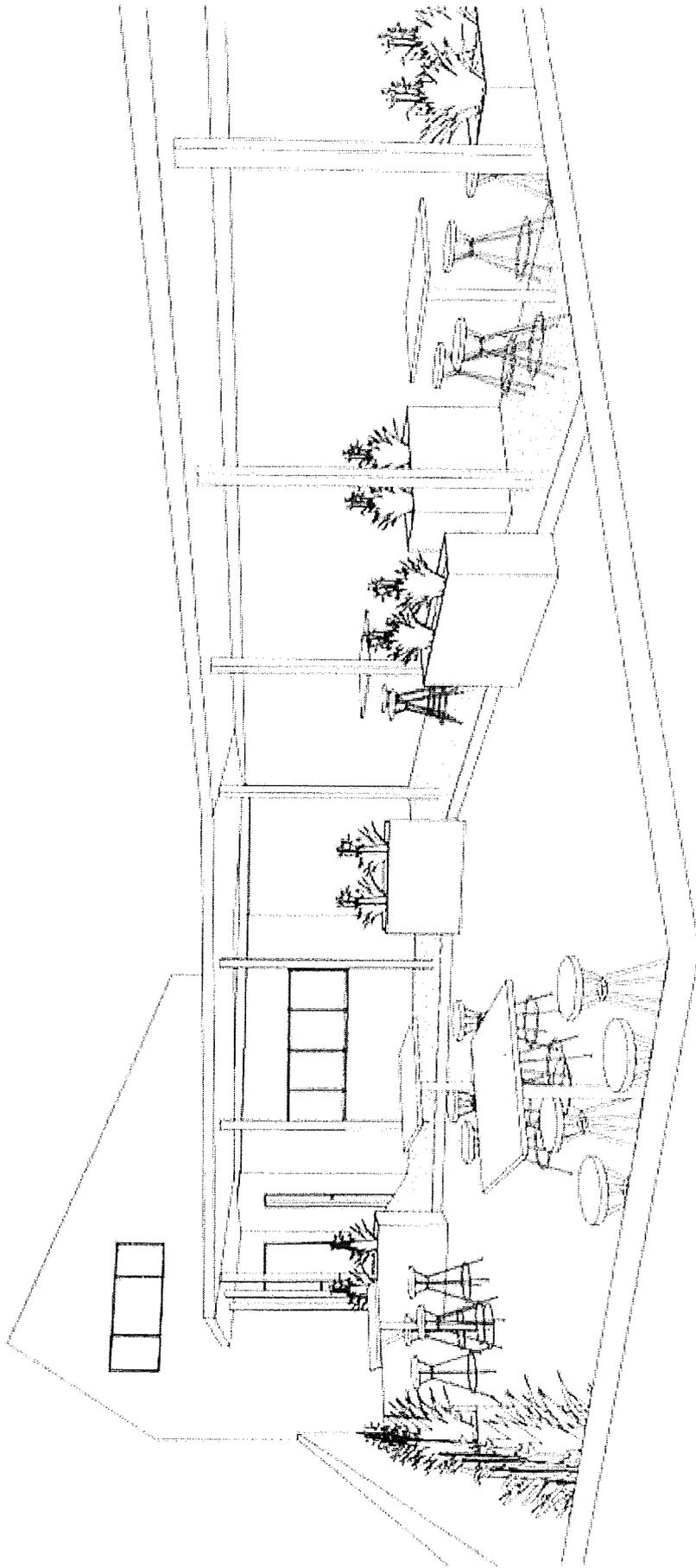
DEANO'S BAR REFURBISHMENT
 514 Main Street, Palmerston North
 for WD Holdings Deanos Limited

MEZZANINE
 PROPOSED

Job No. 5046	Drawn J.N
Scale 1:50	Original Size A2
Drawing No.	Revision No.
A1.06	R0

PO Box 6435 24 Blair Street
 Wellington • New Zealand
 Tel (04) 385 2621 • Fax (04) 385 2629

HUNT DAVIES TENNENT

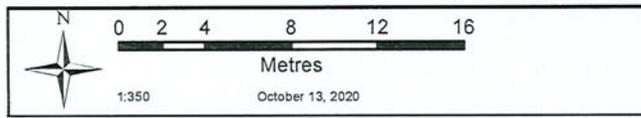


VIEW FROM BACK OF FENCE

The Office Bar, 522 Main Street, Palmerston North



The Office Bar, 522 Main Street, Palmerston North



PNCC Maps
Disclaimer: Copyright and disclaimers apply. See www.pncc.govt.nz for details.

Proposed New Area.
Existing licensed Premises.

The Office

AVAILABLE ALL DAY



Snacks

CHEESE GARLIC BREAD 7.00

ONE KILO FRIED WINGS 15.00

BEER BATTERED STEAK FRIES 7.00
beer battered fries | aioli | tomato sauce

WEDGES 13.00
seasoned wedges | melted cheese | bacon | sour cream | sweet chilli sauce

BEEF CHILLI BEAN NACHOS 12.00

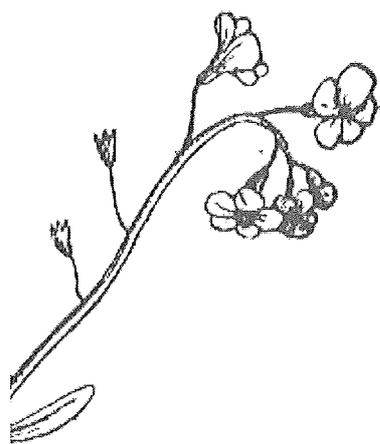
SPRING ROLL WITH TOMATO SAUCE 12PC 6.00

BROCCOLI CHEESE BITES WITH AIOLI SAUCE 6PC 7.00

CHICKEN NUGGETS WITH TOMATO SAUCE 12PC 8.00



Salad	STEAK SALAD (GF)	18.00
	<i>grilled sirloin steak fresh garden salad walnut tasty cheese radish kumara crisps</i>	
	CHICKEN SALAD (GF)	18.00
	<i>grilled chicken breast brie roasted cashew garden salad kumara crisps</i>	
Burger	STEAK BURGER	18.00
	<i>grilled sirloin onion jam cheese lettuce tomato chips</i>	
	FISH BURGER	15.00
	<i>battered fish fillet creamy tartare cheese lettuce tomato chips</i>	
	CHICKEN BACON CRANBERRY BURGER	18.00
	<i>crispy fried chicken breast bacon cranberry sauce cheese lettuce tomato red onion mayo chips</i>	
Main	BATTERED FISH AND CHIPS	12.00
	<i>beer battered fries tomato sauce aioli lemon</i>	
	CHICKEN SCHNITZEL	18.00
	<i>crumbed chicken schnitzel almonds garden salad beer battered fries</i>	
	HONEY SOY WINGS	20.00
	<i>honey soy chicken wings beer battered fries garden salad tomato sauce</i>	
	RUMP STEAK	15.00
	<i>300g rump cooked to your liking chips tomato sauce egg salad</i>	
	PORK RIBS	24.00
	<i>smokey bbq marinade, slow cooked so they're tender and full of flavour wedges sweet chilli sauce</i>	
	SIRLOIN STEAK	18.00
	<i>300g sirloin cooked to your liking chips tomato sauce egg salad</i>	



The Office

LUNCH AND DINNER ONLY

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PUBLIC NOTICE
RENEWAL OF ON LICENCE
(AND VARIATION OF
CONDITIONS OF ON
LICENCE)

Section 101, Sale and Supply
of Alcohol Act 2012

Hong Jia Ltd, 522 Main Street,
Palmerston North has made
application to the District
Licensing Committee at
Palmerston North for the
renewal and variation of
conditions of an On Licence in
respect of the premises
situated at 522 Main Street,
Palmerston North known as
The Office Bar.

The general nature of the
business conducted under the
licence is Tavern.

The days on which and the
hours during which alcohol is
sold under the licence are 8am
to 3am (the following day)
Monday to Sunday.

The applicant seeks to vary the
following condition, extension
of outside garden area.

The application may be
inspected during ordinary
office hours at the office of the
Palmerston North District
Licensing Committee at the
Customer Service Centre,
Civic Administration Building,
Ground Floor, The Square,
Palmerston North.

Any person who is entitled to
object and who wishes to
object to the issue of the
licence may, not later than 15
working days after the date of
the publication of the first
notice file a notice in writing of
the objection with the
Secretary of the District
Licensing Committee at
Palmerston North City Council,
Private Bag 11034, Palmerston
North.

No objection to the renewal of a
licence may be made in
relation to a matter other than a
matter specified in section 131
of the Sale and Supply of
Alcohol Act 2012.

This is the first publication of
this notice.

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PUBLIC NOTICE
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(AND VARIATION OF
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of the Sale and Supply of
Alcohol Act 2012.

This is the second publication
of this notice. This notice was
first published on 11.11.2019



Sale and Supply of Alcohol Act 2012 Inspector's Report

pncc.govt.nz
info@pncc.govt.nz

Te Marae o Hine
The Square
Private Bag 11034
Palmerston North 4442
New Zealand

26 February 2021

<u>Application Type</u>	On Licence Renewal with Variation of Conditions
<u>Section of Act</u>	Section 131 Sale and Supply of Alcohol Act 2012
<u>Date Application Received</u>	7 November 2019
<u>Applicant</u>	Hong Jia Limited
<u>Postal Address</u>	522 Main Street, Palmerston North
<u>Physical Address</u>	522 Main Street, Palmerston North
<u>Premises Trading Name</u>	The Office Bar

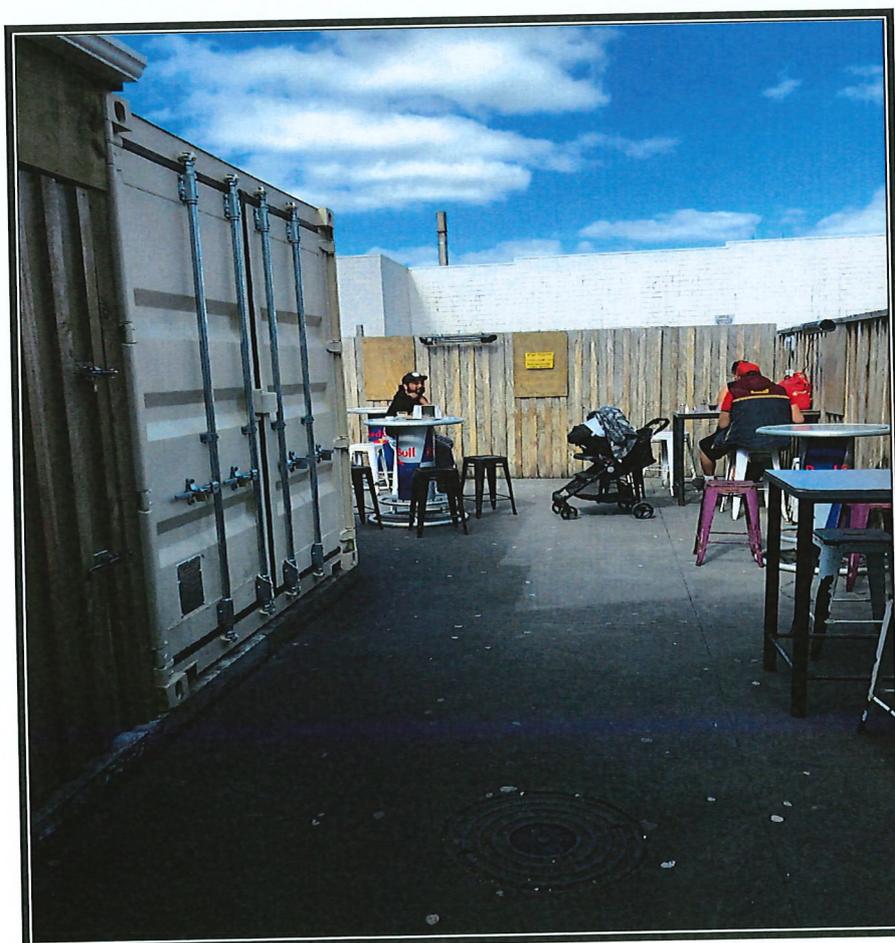
Premises Description/Background

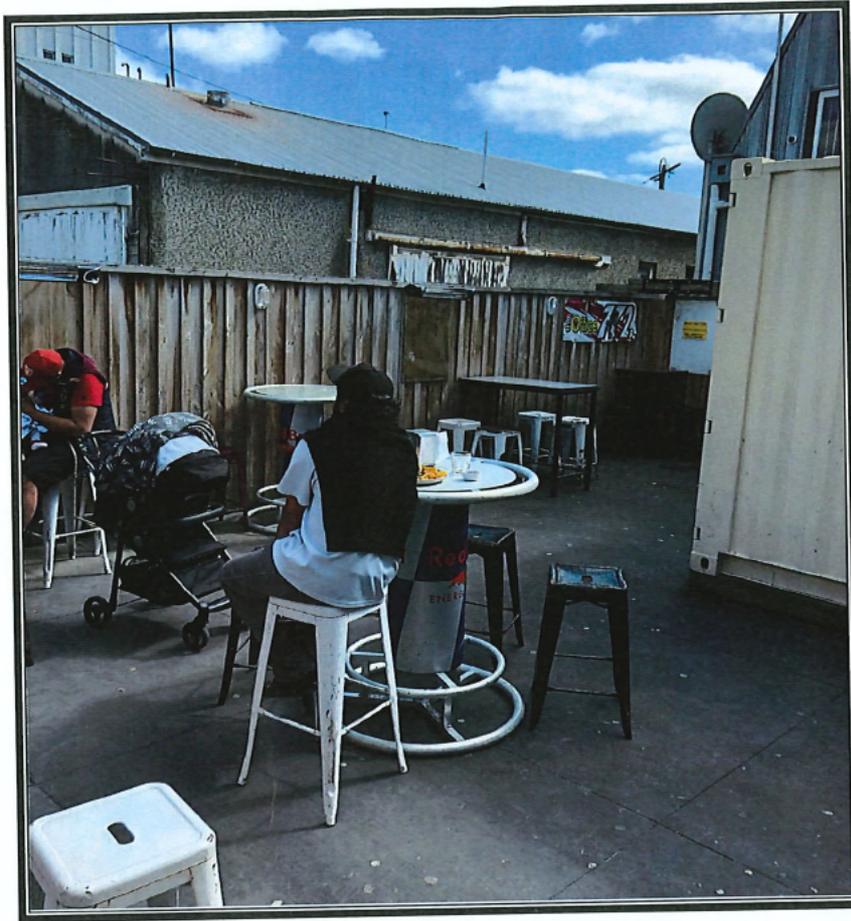
1. The applicant has operated and held a licence for the premises since 8 December 2015.
2. The applicant has applied to renew the licence and vary the conditions of the licence. The applicant wishes to increase the outdoor area at the rear of the premises as per the *attached* plan.
3. On 8 February 2018 the applicant applied to vary the conditions of the licence to increase the outdoor area at the rear of the premises. The application was heard by the District Licensing Committee on 11 July 2018. The application was declined on 19 July 2018, a copy of the decision is *attached*.
4. The general nature of the business is that of a tavern with gaming machines. The entrance on Main Street is designated as the principal entrance.
5. The Lion Foundation has 18 gaming machines operating at the premises.
6. *Attached* is a floor plan showing the layout of the premises including the principal entrance.
7. The premises is situated within the Palmerston North City Council Alcohol Control area.
8. The required statement regarding an evacuation scheme is *attached*.

9. A photo of the exterior of the premises taken from Main Street is shown below:



10. Photos of the existing smoking area at the rear of the premises are shown below:





The Applicant

- 11. The applicant is a private company incorporated under the Companies Act 1993 on 7 August 2014, company record number 5419365.
- 12. The company director is:
 Yang Wang (Martin)
- 13. The company shareholders are:
 Guoxun Chen 99 Shares
 Yang Wang (Martin) 1 Share
- 14. Yang Wang (Martin) is responsible for the day to day running of the premises.
- 15. At the time the application was lodged the applicant supplied the following names, manager's certificate numbers and expiry dates for the certificated managers employed at the premises:

Manager's Name	Certificate No.	Expiry Date
7(2)(a) Privacy		

16. I have received applications for the renewal of Yang Wang (Martin) and Chase Beals manager's certificates since the application for the renewal and variation of the On Licence was received. These are addressed on page 16 and 17 of my report.
17. No application for the renewal of **7(2)(a) Privacy** certificate was received, this is addressed in paragraph 55 of this report.

Site Location

18. The premises is located within an Inner Business Zone under the Palmerston North City District Plan. A tavern is a Permitted Activity within an Inner Business Zone.

The use and operation of the building as a tavern meets with the requirements of the Resource Management Act 1991.

Noise from any activity within the Inner Business Zone must not exceed the following limits at any point within any other site within the Inner Business Zone:

At any time	70 dB LAeq(15mins)
Daily 11.00pm to 7.00am the following day	90 dBA Lmax

Surrounding uses/activities

19. The premises is within a 100m radius of the following uses/activities:

Work and Income
Retail Shops
Commercial Businesses
Hotel Accommodation

20. The premises is within a 100m radius of the following licensed premises:

Indian Flavour Restaurant	8.00 am to 1.00 am the following day
The Cobb	8.00 am to 2.00 am the following day
The Daily	8.00 am to 3.00 am the following day

21. A map is *attached* showing the area surrounding the premises.

Notification

22. The application was notified in the Manawatu Standard on the following dates:

11 November 2019
18 November 2019

23. Notice of the application was attached in a conspicuous place on the building to which the application relates as required under Section 101 (a) of the Sale and Supply of Alcohol Act 2012.

Objections

24. At 5.00 pm on 3 December 2019 three objections were received by the office of the District Licensing Committee with regard to the application:

a. Laura Clifford is objecting on the Amenity and Good Order of the area due to damage to her vehicle while parked outside of The Office Bar.

b.

7(2)(a) Privacy

c.

25. Objection letters are *attached* to this application, marked **A to C** under the Public Objection tab.

Section 102 of the Sale and Supply of Alcohol Act 2012 states:

Objections to applications

(1) A person may object to the grant of a licence only if he or she has a greater interest in the application for the licence than the public generally.

(2) An objection must be in writing and filed with the licensing committee within 15 working days after the first publication of the public notice of the making of the application.

(3) No objection may be made in relation to a matter other than a matter specified in section 105.

(4) This subsection applies to an application—

(a) for a licence for premises that is of the same kind as the licence currently in force for those premises; and

(b) in which the conditions sought are the same as apply to that licence.

(4A) In the case of an application to which subsection (4) applies, the ground for an objection may not relate to any matter other than the suitability of the applicant.

(5) The secretary of the licensing committee concerned must give a copy of every objection to the applicant.

Section 131 of the Sale and Supply of Alcohol Act 2012 states:

Criteria for renewal

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

(a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):

(b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:

(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:

(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

(2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

Section 105 of the Sale and Supply of Alcohol Act 2012 states:

Criteria for issue of licences

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

(a) the object of this Act:

(b) the suitability of the applicant:

(c) any relevant local alcohol policy:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(e) the design and layout of any proposed premises:

(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:

(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:

(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:

(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—

(i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but

(ii) it is nevertheless desirable not to issue any further licences:

(j) whether the applicant has appropriate systems, staff, and training to comply with the law:

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.

(2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

26. Since receiving the application for the Renewal and Variation of Conditions I have had meetings and phone calls with the objectors and the applicant to see if the issues could be resolved without the need for a public hearing, but this has been unsuccessful.

STATUTORY CRITERIA

The object of the Act

27. The premises is classified as a high risk premises and is inspected three times a year.
28. Inspections by the Licensing Inspector have been undertaken on the following dates and times:

Date	Time	Results
14 December 2017	11.25 pm	Advised the duty manager to display the hours of trade clearly and to complete manager notifications.
13 April 2018	11.25 pm	Spoke to the duty manager regarding wheelie bins blocking the fire exit in outside area. Noted speakers operating in the outside area.
30 August 2018	10.00 pm	Advised the duty manager to keep the managers register updated.
15 December 2018	10.25 pm	No reported issues.

23 May 2019	9.36 pm	Advised the Licensee to keep the manager notifications updated. Spoke to the Licensee who was also the duty manager regarding three males that were intoxicated, advised him to ask the males to leave.
25 July 2019	10.55 pm	Spoke to the Licensee regarding using security who do not hold the required qualification under the PSPPI Act 2012. Also discussed the use of Acting managers.
16 November 2019	2.40 am	No low alcohol in the fridge, was advised it was in the storage container out the back of the premises. Advised the duty manager to keep the managers register updated.
13 June 2020	1.05 am	Advised the duty manager to keep the managers register updated.
16 October 2020	11.40 pm	Spoke to Chase regarding using unqualified security staff.

29. On 14 December 2017, 16 November 2018 and 16 October 2020 the Licensing Inspectors, the New Zealand Police and Public Health carried out Combined Agency Controlled Purchase Operations (CPO) of licensed premises in Palmerston North.

The purpose of the operation was to establish how diligent licensees, managers and staff are in requesting identification (where appropriate) prior to selling alcohol.

Underage volunteers attempted to purchase alcohol from the applicant's premises but were unsuccessful, no sale having been made, the staff member having refused to sell alcohol to the minor without ID.

30. The applicant has a current Host Responsibility Policy displayed in the premises.

The days and hours during which alcohol may be sold or supplied pursuant to the licence

31. Monday to Sunday 8.00 am to 3.00 am the following day

Designation of the premises

32. The gaming area is designated as restricted with the remainder of the premises being supervised, this being consistent with the premises operating as a tavern with gaming machines.

The design and layout of the premises

33. The premises has a medium sized area on the ground floor which has the bar situated along the outside wall with the kitchen situated at the front of the premises. There is an outside smoking area across the front of the premises which has caused issues in the past but these appear to be resolved when they agreed to close it from 10.00 pm. There is a gaming area and toilet area as you head towards

the rear of the premises to a medium size outdoor area. There is a small area on a mezzanine floor with tables, chairs and lounge suites.

34. The premises has good lighting throughout and security cameras operating which allows the premises to be monitored. At the meeting held on 21 July 2020, see *attached* text notes **marked H**, the applicant advised that due to faults with his CCTV equipment he is having this upgraded.

35. Water is freely available within the premises.

Amenity and good order

36. The following areas have been considered with respect to the amenity and good order of the locality and the effect of the licensed premises:

Noise levels

37. Palmerston North City Council has the following noise complaints recorded since the licence was last renewed:

17 August 2017	10.36 pm	7(2)(a) Privacy	Reasonable Level, Decibel reading 71db.
14 September 2017	11.55 pm	Loud Stereo and people noise.	Direction issued. Decibel reading 72db.
3 December 2017	1.32 am	The owner is being non-compliant and is refusing to give his details.	Direction issued. Decibel reading 70db.
28 January 2018	1.50 pm	Guests at The Cobb are complaining about the noise.	Guard advised noise wasn't excessive at 67.5db but could be louder if assessed from closer to the street.
2 February 2018	00.25 am	Loud stereo and bass noise coming from The Office.	Patrol did not get to site until 01.12am and no noise was found.
9 February 2018	11.48 pm	Patrol arrived at The Cobb and was advised that the music had been turned down 10 minutes before he arrived. Two guests had cancelled their reservation due to the noise.	Not Excessive highest reading was 68.5db.
24 February 2018	11.54 pm	7(2)(a) Privacy	Average reading 76db. Patrol also assessed with the manager from The Office and he also saw it was 76db with all the readings over 70db. Patrol on site from 00.26 am to 00.41 am.

25 February 2018	1.15 am	Loud, heavy bass coming from The Office.	Average reading 78.5db with the highest at 85db advised them for a second time to lower the level. Patrol on site from 02.10 am to 02.24 am.
20 March 2018	1.19 am	Loud music coming from The Office, caller is staying at The Cobb.	60db was the highest reading so noise was not excessive. Patrol on site from 01.31 am to 01.32 am.
23 March 2018	11.40 pm	Loud bass and stereo noise coming from The Office. The Cobb have received a number of complaints from guests regarding the noise.	Guard advised Decibel reading 66.6db so not excessive. Guard spoke to the manager at The Cobb who advised that the noise level had gone down since the complaint was made. Guard on site from 00.36 am to 00.47 am.
24 June 2018	12.32 am	Reasonable level 69DB Patrol onsite 1.06 to 1.16.	Assessed down alleyway between Office and Cobb. Average 69D. The reading went up to 71DB a few times but it wasn't the mean result.
6 September 2018	10.50 pm	Reasonable level 60DB. Patrol onsite 23.25 to 23.28.	Jayden has phoned to advise that he has assessed noise and reading is 60DB so not excessive. He advised limit is 70 in case caller phones back.

Levels of nuisance and vandalism

38. I have received reports of patrons from The Office Bar using The Cobb carpark and causing nuisance and vandalism. While conducting night inspections I have also observed patrons coming out of The Office and congregating in The Cobb carpark.

(2)(a) Privacy
7(2)(a) Privacy Martin advised me that the carpark is not his problem. This is incorrect as there is recent, case law where this issue was considered and it was noted by the Authority that "The Act does not simply concern itself with how a licensee operates the internal premises but is concerned with the impact that a licensed premises may have on the locality and on the community more generally" — [264]. "Similarly, a licensee cannot seek to absolve itself of those matters because they happen outside the premises" — [265]. Further, "There is no requirement on the community to work

together to try to reduce [alcohol related harm associated with a premises] for the licensee” — [267]¹.

7(2)(a) Privacy

39

7(2)(a) Privacy

40. The street is monitored by Palmerston North City Council CCTV and the surrounding area is well lit.

Whether the applicant has appropriate systems, staff and training

The applicant has provided the following information:

Staff training and development

41. HINCE Hospitality Limited provides onsite training for bar managers.

Monitoring systems for minors and intoxication

42. Signage regarding ID checking, minors and intoxication are displayed within the premises.
43. Weekly staff meetings are held to discuss identifying levels of intoxication and the ongoing importance of being vigilant about age of purchase and ID checking procedures.

Suitability of the Applicant

44. I have had in excess of eight meetings with Martin, his staff and Police since the licence was last renewed to address reported issues and complaints as listed below:
45. On **2 February 2018** it came to my attention that a stock car team was advertising on its Facebook page that *The Office has undergone a major revamp on the outdoor area to allow for more people and they have fitted in a 2nd bar to keep everyone hydrated.*

I visited the premises to find that the outdoor area at the rear of the premises had doubled in size from what was granted by the District Licensing Committee on 16 February 2017 and that an outdoor bar had been installed. I advised the duty manager that the extended area was not licensed and could not be used until such time as it was licensed.

¹ *Sogi Trading Ltd v Licensing Inspector Auckland Council* [2020] NZARLA 96

The applicant lodged an application for the variation of conditions of the licence which was heard at a public hearing on 11 July 2018. On July 2018 the DLC declined the application as per the *attached* decision **marked A**.

- 46.** On **17 January 2019** I received an email from Acting Sergeant Michael Linton (Police) reporting an incident at The Office at 2.45 am. On 17 January 2019 at 11.50 am Michael Linton (Police) and I met with Hailin (Mike) Wang the duty manager, see *attached* text notes **marked B**.
- 47.** On **25 February 2019** at 1.30 pm Acting Sergeant Clint Whitehead (Police) and I met with Martin to discuss a complaint that was received regarding the Amenity and Good order around The Office, see *attached* txt notes **marked C**.
- 48.** On **28 May 2019** at 11.00 am Sergeant Chris Day (Police) and I met with Martin to discuss an increase in reported incidents in and around the front smoking area. Due to the increase in people congregating on the street and interacting with patrons in this area, Chris Day asked Martin to consider closing the front area from around 11pm. Martin did not want to close the area down as people would not be attracted to his bar if there was no one sitting there. Martin suggested installing roll down blinds to solve the problem and Chris agreed with a trial period to be put in place. See *attached* text notes and email **marked D** from Police following up from the meeting and photos of the roll down blinds which Martin sent to Chris Day and myself on 21/06/2019.

49 **7(2)(a) Privacy**

- 50.** On **15 January 2020** at 10.30 am Sergeant Peter West (Police) and I met with Martin to discuss a number of issues in and around the premises. Due to people still congregating on the street Martin was asked by Peter to close the front smoking area from 10.00 pm on Thursday, Friday and Saturday nights in a four-week trial commencing 16 January 2020. Martin agreed to a trial period and we would meet again in February to discuss, see *attached* text notes **marked F**.
- 51.** On **14 February 2020** at 9.30am Sergeant Peter West (Police) and I met with Martin and his manager Chase Beale regarding the trial closure of the front smoking area. Police noted a big improvement in the number of incidents during the trial period and it was agreed that they would continue to close the area off from 10.00pm, see *attached* text notes **marked G**.
- 52.** On **21 July 2020** at 1.30 pm Sergeant Peter West (Police) and I met with Martin and his manager Chase Beale regarding Police not being able to view CCTV, assaults at the bar and in the alley way beside the premises, see *attached* text notes **marked H**.
- 53.** Since the licence was last renewed, I have had alleged reports of minors gaining access to the premises, random attacks in and outside the bar, drink spiking and overcrowding issues which I have investigated and have not been able to confirm. Incidents around the premises have also been reported in the Manawatu Standard and in Safe City Reports.

54. I have advised the Licensee and duty managers on many occasions of the need to complete Section 231 Notices when either appointing or terminating staff and of the need to keep the managers register updated, as noted in my text notes and at inspections on page 7 and 8 of this report.
55. Despite this, I understand that [REDACTED] **7(2)(a) Privacy** is no longer working at the premises. To date I have not received from the Licensee a Section 231 Notice terminating [REDACTED] **7(2)(a) Privacy** as required under the Act.

Section 231 of the Sale and Supply of Alcohol Act 2012 states:

Notice of appointment, etc, of manager, temporary manager, or acting manager

- (1) A licensee must give notice, in accordance with subsection (2), of the appointment, or the cancellation or termination of the appointment, of any manager, temporary manager, or acting manager.*
- (2) Notice is given in accordance with this subsection if the notice is given within 2 working days after the appointment, or the cancellation or termination of the appointment, to—*
 - (a) the licensing committee with which the application for the licence was filed; and*
 - (b) the constable in charge of the police station nearest to—*
 - (i) the premises, where the licence is in force for any premises; or*
 - (ii) the office of the licensing committee with which the application was filed, where the licence is in force for a conveyance.*
- (3) It is not necessary to comply with subsection (1) in respect of the appointment of a temporary manager or an acting manager for any period not exceeding 48 consecutive hours.*
- (4) The licensing committee may, within 5 working days after receiving a notice of the appointment of any temporary manager or acting manager, notify the licensee that it does not approve the appointment, in which case it must give a copy of the notice to the constable referred to in subsection (2)(b).*
- (5) On receiving notice under subsection (4), the licensee must terminate the appointment with effect from a date not later than 5 working days after the date of the notice.*

56. The presence of an appointed duty manager is a requirement of the Sale and Supply of Alcohol Act 2012 at any licensed premises, and that manager is the person responsible for the premises compliance with the Act and the licence conditions. Failure to have appropriate systems in place to comply with the requirements of s231 could ultimately lead to unauthorised sale and supply of alcohol and alcohol-related harm, in breach of the Act.

Breaches of s231 should be regarded seriously. They can comprise an offence against the Act under s258(1)(c).

As noted in the Alcohol Regulatory and Licensing Authority decision *Miklos v Le Box Auckland Limited*, s231 is critical to the operation of the Act and disregard for it is not to be treated lightly².

Any matters in reports

57. On 27 November 2019, Sergeant Peter West, Alcohol Harm Reduction Officer for Palmerston North Police oppose the application. A copy of the report is *attached*.

On 17 February 2020, Sergeant Peter West, Alcohol Harm Reduction Officer for Palmerston North Police sent an email withdrawing the previous opposition. A copy of the report is *attached*.

58. Chris Hill, for the Medical Officer of Health has no opposition to the application. A copy of the report is *attached*.

Improvements to mitigate reported problems in and around the premises

59. The District Licensing Committee can impose conditions as it sees fit. To mitigate reported problems in and around the area I am asking the District Licensing Committee to consider my recommendations.

Section 132 of the Sale and Supply of Alcohol Act 2012 states:

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

² *Miklos v Le Box Auckland Ltd* [2017] NZARLA 89

(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.

RECOMMENDATION - ON LICENCE RENEWAL AND VARIATION OF CONDITIONS

One option available to the District Licensing Committee is to decline both the application for renewal and the variation of conditions.

Should the District Licensing Committee decide to grant the application to renew the licence and approve the variation, in light of ongoing issues in and around the premises, I recommend the following conditions be placed on the licence:

- a. The licence be renewed for a period of 12 months.
- b. The front smoking area be removed from the licenced area from 10.00 pm to 3.00 am the following day, Monday to Sunday.
- c. A dedicated security person who holds the Crowd Controller Qualification to be in place at all times in the extended outside area from 10.00 pm to 3.00 am. It is best practice in busy bars to have dedicated security staff to monitor patron's behaviour in problem areas.
- d. Reduction of Licensing Hours from 3.00 am to 2.00 am.

I also recommend the following points also be addressed within a timeframe defined by the District Licensing Committee, perhaps 3 to 4 months would be sufficient:

- e. A permanent gate put in place between The Office and Ryan James building that can be closed off between 10.00 pm and 3.00 am the following day.
- f. The barbed wire must not be reinstated around the top of the fence in the outside area at the rear of the premises.
- g. Engage a Noise Management Consultant to put together a noise management plan to help mitigate any potential noise issues from the outside speakers and people noise in the extended outside area.

- h. The Police and Inspectors be given the opportunity to view the upgraded CCTV footage to ensure it is clear and covers all internal and external areas.

The latter two would address noise and good order concerns raised by objectors.

Should the District Licensing Committee decide to grant the application to renew the licence and decline the variation, in light of ongoing issues in and around the premises, I would recommend that all or some of the recommendations listed above be considered.

The shorter renewal period would give the applicant time to implement improvements and for the reporting agencies to monitor the premises. Truncated renewal periods have been used in the past where there have been issues in and around premises. I would like to draw your attention to paragraph (38) of the of Hospitality Leases Limited decision and paragraph (22) (ii) and (iii) of Judd v A Highlander Enterprises Limited which are both relevant to this current application before the District Licensing Committee.

¹Hospitality Leases Limited (2007) NZLLA 41 (18 January 2007)

Judd v A Highlander Enterprises Limited (2015) NZARLA 331 (23 June 2015)

7(2)(a) Privacy

7(2)(a) Privacy

RENEWAL OF 7(2)(a) Privacy MANAGER'S CERTIFICATE

On 2 October 2020, I received an application from 7(2)(a) Privacy to renew his managers certificate. On 20 October 2020 I received the Police report opposing his managers certificate due to two recent incidents. 7(2)(a) Privacy is also the head of security at the premises and holds the Security Guard Qualification. An application for the cancellation of 7(2)(a) Privacy manager's certificate is currently before the Alcohol Regulatory & Licensing Authority raising questions as to his suitability to hold a manager's certificate.

Recommendation - Manager's Certificate Renewal

I ask the District Licensing Committee to adjourn the renewal of the managers certificate application until the Alcohol Regulatory Licensing Authority have dealt with the application.



Lynne Kroll
LICENSING INSPECTOR

COPY

PALMERSTON NORTH
DISTRICT LICENSING COMMITTEE

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

AND

IN THE MATTER of an application by
Hong Jia Limited for a Variation to
Condition of Licence in respect of
premises known as The Office Bar
situated at 522 Main Street,
Palmerston North

HEARING COMMITTEE:

Ms Susan Baty (Chair), Mr Tangi
Utikere and Mr Rod Titcombe

PLACE OF HEARING:

Council Chamber
First Floor, Civic Administration
Building
32 The Square
PALMERSTON NORTH

DATE OF HEARING:

11 July 2018

DATE OF DECISION:

19 July 2018

APPEARANCES:

Applicant, Mr Martin Wang
Representative for the Applicant, Mr
Chris Hince

Objector, Mr Ricky Quirk
Counsel for the Objector, Mr Peter
Brosnahan

Palmerston North City Council:
Licensing Inspector, Mrs Lynne Kroll

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AB 4/11

DECISION OF THE DISTRICT LICENSING COMMITTEE

THE APPLICATION

- [1] Hong Jia Limited submitted an application to vary the conditions of an existing Licence which expires on 8 December 2019. The Applicant wishes to extend the licensed premises area to include a newly constructed outside area. All other conditions of the Licence (39/ON/005/2017) remain the same.
- [2] The application was notified in the Manawatu Guardian on 15 February 2018 and 22 February 2018. A notice was placed at the principal entrance to the premises. One objection was received in response to the notice.
- [3] The Police submitted a Report (dated 12 February 2018) indicating that they had no opposition to the Application. The MidCentral Public Health Service Medical Officer of Health's Report (dated 23 February 2018) also indicated no opposition. The Licensing Inspector's Report (dated 13 April 2018) sought that the Application be heard by way of a public hearing, due to the objection that had been received.
- [4] The Palmerston North District Licensing Committee ("DLC") set this matter down for a Hearing on 11 July 2018.

THE LAW

- [5] The relevant legislation is the Sale and Supply of Alcohol Act 2012 ("the Act"). While the DLC has full delegation to determine the outcome of the Application which has been lodged pursuant to s 120, the criteria for which this Application must be considered against is outlined in s 105 of the Act.

EVIDENCE

The Hearing

The Applicant

- [6] The Applicant was represented by Mr Chris Hince, who provided written submissions to the DLC which covered the following:

RP
JB

- [7] Hong Jia Ltd had made an application for a Variation of its Licence situated at 522 Main Street, Palmerston North known as 'The Office'. The variation was to increase the footprint of the licensed area, by extending the garden bar area, due to increasing demand and anticipated business growth. He stated that the projected population growth of Palmerston North city had influenced his decision to expand his business and that Mr Wang had invested time and money in paving a gravel car park and installing wooden fencing to secure and enclose the area. He had also constructed an additional new bar service area.
- [8] While the construction of a covered deck area within the garden bar was underway, Mr Wang was aware that the extended area could not be used until such time as it was licensed, and that a temporary metal link fence was currently installed to prevent customer access to the area.
- [9] Mr Wang was also aware that the structure enclosing the bar service area had been built, but that it had not yet been consented. He understood that consent would be required before it could be used in any way. For this reason he had engaged local architect Mr Keith Webby to work with Council on this aspect of the application. A statement from Mr Webby was provided to the DLC to indicate that that work was currently being undertaken.
- [10] After the Public Notice of the Variation Application, one objection was lodged by Mr R Quirk, licensee of the neighbouring Cobb Hotel, relating to concerns about noise emanating from the extended Garden Bar and the disturbance that may cause to Hotel guests.
- [11] The Applicant drew the DLC's attention to S 105(2)¹ which states:
- The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*
- [12] The Applicant submitted that the noise concerns identified by Mr Quirk had been heard and that they would be addressed via physical attenuation means.
- [13] Mr Wang had owned The Office for a number of years and had not had any noise issues until 12 months ago. Since that time his premises had been the subject of 10 noise complaints, with 6 emanating from The Cobb. Of the 10 complaints, 6 complaints were found to be unsubstantiated, the noise levels were deemed as being at a "Reasonable Level" or "Not Excessive". The remaining complaints had been measured and returned dB readings of 70, 72, 76 and 78.5.

¹ Sale and Supply of Alcohol Act 2012.

Handwritten initials and signature in the bottom right corner of the page.

- [14] The Applicant confirmed that The Office and The Cobb are located in the Inner Business District and the relevant Noise restrictions in the District Plan were 70dB LAeq (15 mins) at any time of the day, and from 11.00pm to 7.00am the following day, 90dBA L max.
- [15] The Applicant also identified that the Council readings were taken using a Norsonic Type 2 meter for immediate sampling purposes only. As such, they believed that the readings above 70dBA were indicative only but that Mr Wang nonetheless takes noise matters seriously and undertakes to address the noise concerns raised in a number of ways.
- [16] Mr Wang undertook to line the high solid wooden fence surrounding the garden bar area with noise attenuating material, and presented a sample of the material that may be used to the Hearing. This material had been chosen for its non-reflective properties and its aesthetic look and feel.
- [17] Using the Architect's drawings he also indicated that it was proposed to have a roof set at an angle so as to reflect any noise down and towards the carpark adjacent to the bar. It would be constructed of appropriate material which had an average acoustic reduction of 24dB.
- [18] As Mr Quirk had also identified that he was proactively adding noise attenuating glass, the actions by both licensees would be likely to adequately address any noise concerns.
- [19] In addition, Mr Wang had created a Noise Control Plan, which would be implemented upon the completion and approval of the extended bar area. He would also buy and install a Type 2 Noise Meter and Calibration Unit. The Plan would also include a Noise Assessment and Complaint Process to proactively assess noise emanation and deal with any complaints about noise.
- [20] Mr Hince also identified that Mr Wang was a professional licensee with many years' experience and that no objections to the variation had been received from the Police, Medical Officer of Health or the Council. Mr Wang accepts his legal responsibilities and understands that the good order of the CBD must be maintained.
- [21] The position of the Applicant was that the proposed measures to be undertaken would ensure that close neighbours in the Inner Business District were not unduly disturbed.

- [22] Under questioning from the DLC, the Applicant was able to confirm that the proposed new garden area extension was approximately the same size as the existing outdoor area that was approved by the DLC in 2016. He was also able to confirm that while the potential noise reduction for one of the mitigation measures was potentially 24dB, Mr Wang was seeking to create an ambient environment from the resultant shell that would be formed. Mr Wang was not seeking the area to be a party area, but would look to hold some summer events. He accepted that it would be very difficult to know the precise nature of the noise attenuation without physically putting in place the measures, but was trying to indicate that he was trying to be proactive.
- [23] In relation to the bar area that had been constructed without a Building Consent, the Applicant confirmed that it was not being used and that Mr Wang understood that its use would require a Building Consent to be issued. Mr Wang accepted that what he had done was wrong, but that Mr Webby had been engaged to deal with the Building Consent process and that an application for such had not been currently lodged with the Council.
- [24] In response to questioning from Counsel for the Objector, Mr Brosnahan, Mr Hince advised that Mr Wang had planned to discuss licensing requirements with the Licensing Inspector once the building construction had been completed. While no factual matrices had been presented to give confidence that noise would be reduced, Mr Hince reiterated the Applicant's intention to be proactive around noise reduction measures. Mr Hince also acknowledged that Mr Wang had understood the nature of Mr Quirk's concerns about noise.

Licensing Inspector – Lynne Kroll

- [25] Mrs Kroll confirmed the contents of her written report (dated 13 April 2018), and also tabled a recent Noise Complaint that had been received by the Council on 24 June in respect of noise emanating from The Office. As the details of the complainant were contained in the Noise Complaint, the Chairperson subsequently suppressed the identifying details of the complainant and directed the non-publication of those details for reasons of personal privacy.
- [26] Mrs Kroll outlined the process undertaken when a noise complaint is lodged with the Council.
- [27] She also described that her attention had been drawn to a Facebook post advertising use of the new area as part of a Stockcar Team Champs event earlier in the year. As a result she went to The Office and saw that external construction had taken place. She advised the Duty Manager that the event could not take place in the extended area as the area was not licensed. She also spoke with a Council Building Officer who visited the site to determine whether a Building Consent would be required for work proposed and already undertaken.

- [28] In response to questions, Mrs Kroll identified that noise complaint issues were not matters of concern for the Licensing Inspector, but were for another regulatory area of the Council. She also confirmed that the number of noise complaints listed in her report were not out of the ordinary for licensed premises.
- [29] In response to cross-examination from Mr Brosnahan, Mrs Kroll accepted that the combination of noise, non-compliance with building construction, and the failure to provide information to Council officers would place the Applicant at the top level of on-going complaints. She also confirmed that she would not expect this level of complaints from others in the city.
- [30] The Inspector also confirmed that not all of the complaints listed in her Report were justified.

The Objector – Mr Ricky Quirk

- [31] Mr **7(2)(a) Privacy** in presenting his *Brief of Evidence* identified himself as a Director of George Hospitality Group Ltd, which was the licensee in respect of The Cobb Hotel which is located next door to the Applicant's premises.
- [32] George Hospitality Group had been operating The Cobb Hotel since September 2015 and had 15 rooms that could accommodate up to 40 people. It also operated 3 bars and has approval for 270 patrons.
- [33] The Cobb has a high occupancy rate, particularly at the weekends where it would average 75-80% occupancy. While The Office had been operating since the George Group had taken over The Cobb, there had been no noise problems until mid to late last year when The Office's operation seemed to change significantly. This change involved greater use of DJs and the use of outside speakers which resulted in a significant increase in noise levels.
- [34] Mr Quirk had made contact with Mr Wang to point out his noise concerns, which would result in the volume being reduced for a short period of time before being returned to the original volume. As on-going attempts to reduce noise levels failed, he had resorted to formally complaining to the Council.
- [35] Mr Quirk believed that the situation had become so bad that a number of guests had left the accommodation, and provided samples of Facebook comments to support this position.
- [36] He reconfirmed that his objection was not a commercial one, but was about guests having a peaceful night's sleep and was solely related to the noise issues as he had no objection to The Office having an increased licensed area.

- [37] He submitted that some form of restriction on the garden bar's operation after 11.00pm may be appropriate.
- [38] Mr Quirk was asked to elaborate on the measures that were going to be taken in relation to The Cobb to try and mitigate the noise issues. In response he confirmed that financial provision to increase the level of glazing to the accommodation rooms that faced The Office had been approved and plans were underway to complete that work. Mr Quirk had spoken with Mr Wang in October 2017 and as no progress had been made to mitigate the noise level he identified that he would need to deal with matters more formally.
- [39] The Office's additional building had been constructed on the boundary with the objector and he understood that there was a requirement to obtain a Resource Consent due to its positioning; and that no application had been made by Hong Jia Ltd to remedy that non-compliance.
- [40] Mr Quirk explained that since taking over The Cobb he had changed the nature of the premises; there were no longer any DJs or live music on site. The Cobb was trading poorly when he took it over and there had been minimal noise coming from his own internal operations downstairs at that time.
- [41] Counsel for the objector, Mr Brosnahan, confirmed that the objection was based on the performance of The Office historically; over the previous 18 months. He accepted that the George Group could not seek restrictions that were less than those contained in the District Plan for licensing purposes, but that the underlying problem was that the Applicant had a history of non-compliance. Such non-compliance had extended to DLC matters, Building Consents and Resource Consents.
- [42] It was Mr Brosnahan's contention that the only reason that a Team Stockcar Champs function did not occur in the extended area earlier in the year was due to intervention from the regulatory arm of the Council.
- [43] He submitted that of significant concern was that there was no expert witness nor evidence about what specifically was going to happen that was presented to the DLC. Mr Brosnahan identified that on-going non-compliance had been brought to the attention of the Applicant in February and that he had not even got past stage one to date.
- [44] As such, counsel did not believe the DLC could have confidence in the Applicant's ability to be complaint and that it would be premature to consider the Variation Application. He believed the application should be declined, and the Applicant invited to come back to the DLC with a compliant operation with certainty about a reduction in noise levels. He submitted that the DLC needed to make its decision based on empirical evidence and that no information was before the DLC to ensure that noise could be kept to a serious level.

- [45] Mr Brosnahan confirmed that the primary position of the Objector was for the Application to be declined, with the fall-back position being one of restrictions on use of the extended area after 11.00-11.30pm.

Right of Reply – Mr Hince

- [46] In exercising his Right of Reply, Mr Hince reiterated that Mr Wang and Mr Quirk both took ownership of their properties at the same time and that there had been no miraculous change in Mr Wang's operations over that period.
- [47] It was also apparent that the alleged matters of non-compliance did not constitute a strict breach as the nature of the Council's noise testing equipment did not allow for that to be recorded.
- [48] Mr Hince identified that there were two issues of concerns. Firstly, the issue of building compliance, and that the Applicant accepts that the building works require Building Consent, and that that is the reason why Mr Webby had been engaged.
- [49] The second matter related to compliance with noise levels. He reiterated that 4 out of 11 complaints were justified to a small level, but the Applicant planned on implementing a Noise Control Plan so that those issues could be treated proactively.
- [50] Mr Hince also said that the Applicant was amiable to a discussion with the objector around some limitations on the use of the proposed area after 11.00pm-12.00am on some nights but that those discussions had not been fully undertaken. Mr Hince further identified that the formulation of a Noise Control Plan was also an attempt to build a relationship with The Cobb and that there had been no change in the style of The Office's operation since Mr Wang had taken over.

FINDINGS

- [51] The DLC is aware that there is a sole objection to the Variation Application for Premises known as The Office situated at 522 Main Street. This objection originates from Mr Quirk, the licensee of The Cobb Hotel which is geographically the closest licensed premise to the Applicant.
- [52] With the consent of Mr Wang and Mr Quirk, the DLC also undertook a site visit of both The Office and The Cobb on 11 July, which it has found to be extremely worthwhile.

- [53] The objector's sole concern relates to the noise that would potentially emanate from The Office, and based on current levels, the impact that would have on his ability to provide suitable accommodation for his guests. We accept that Mr Quirk's motivation is not competitive in nature as he has expressed support for the proposed extension of the licensed area, albeit conditional on noise level restrictions.
- [54] While this Application is made under s 120, the relevant criteria for which we must have regard to is outlined in s 105. After considering all of the evidence placed before us, we make some observations and conclusions in that respect.
- [55] The DLC must have regard to "whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence".²
- [56] In forming an opinion on the specific consideration outlined in s 105(1)(h), the DLC is guided by s 106 which directs that we must have regard to "current and possible future noise levels"³
- [57] It must then follow that the issues concerning noise is something the DLC must consider as it relates to the amenity and good order of the local area; which is a permissible consideration under s 105(1)(h).
- [58] It is important for us to note that what has been provided to the DLC is evidence relating to noise complaints over recent months. While we understand that the Applicant submits that the noise breaches are not strict breaches due to the monitoring equipment that the Council used on each of those occasions, nonetheless the breaches are noted in the Licensing Inspector's Report. While Mrs Kroll believes that the responsibility for noise complaints lie with another part of the Council, the position of the DLC is that noise issues fall within the scope of environmental factors, and those factors are the statutory responsibility of the Licensing Inspector in relation to all matters before the DLC.
- [59] Therefore, we must rely on the Inspector's Report for Regulatory considerations, and it is clear that there is a schedule of complaints that relate to noise over a relatively short period of time.
- [60] While the noise levels may at times comply with the Operative District Plan, the Act does not specify that the noise levels must be in accordance with the District Plan. Therefore, it is important for the DLC to make a context-dependent assessment based on the evidence that it has before it.

² S 105(1)(h) of the Act.

³ S 106(1)(a)(i) of the Act.

- [61] It is also apparent to us that the noise is an issue for concern, and this is accepted by the proposals that the Applicant has put forward; including the provision of a Noise Complaints Plan. Decibel readings are important from a noise complaints point of view, but the fact that they exist, relate to the consideration of the good order and amenity of the area, regardless of the level. The fact is that the doubling of the outdoor area potentially gives rise to those levels being intensified.
- [62] In light of that, the Applicant has submitted some proposed mitigation measures to attenuate the noise. Reference has been made to the engagement of local architect, Mr Webby, and some documents have been tabled at the hearing.
- [63] Upon analysis of what has been placed before us, there is nothing to indicate the proposed measures would mitigate the concerns to an acceptable level. There has been no opportunity to receive and examine in a robust manner any expert evidence to indicate any of the proposed measures will provide certainty around levels of noise attenuation for the proposed area.
- [64] It is important for us to also note that in reaching this view, we have considered the noise emanating from The Office's premises in its entirety, not where specific speakers may be currently located.
- [65] The second consideration that has assisted us in reaching a determination is the non-compliant nature of the Applicant. The Applicant is not new to the game, and has plenty of experience with licensed premises.
- [66] Hong Jia Ltd had gone ahead and built additional buildings without the required approvals. During the hearing it was confirmed that no Consent Application(s) had been lodged.
- [67] In our view, Hong Jia Ltd had the intent to operate the new proposed outdoor area, and it was only when the Licensing Inspector became involved that it was not used for the purposes of selling or supplying alcohol. This is not representative of conduct or behaviour that we would expect from a licensed premises. This blatant disregard for compliance leaves us with a limited level of confidence around the Applicant's immediate ability to comply with conditions that might otherwise be imposed.
- [68] While concerns around Resource Management Act considerations have been expressed by Mr Brosnahan, it is not our intention to delve into that, as those matters proceed under a different, yet parallel, process.

