

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 an On-Licence
Renewal with Variation of Conditions
in respect of premises known as The
Office situated at 522 Main Street,
Palmerston North

HEARING COMMITTEE:

Ms Susan Baty (Chair), Mrs Aleisha
Rutherford and Mr Rod Titcombe

PLACE OF HEARING:

Seminar Room
Conference & Function Centre
354 Main Street
PALMERSTON NORTH

DATE OF HEARING:

25 November 2021

DATE OF DECISION:

16 December 2021

APPEARANCES:

Applicant:
Mr Martin Wang

Representative for the Applicant:
Mr Chris Hince

Counsel for the Applicant:
Mr Alyn Higgins

Palmerston North City Council
Licensing Inspector:
Mrs Lynne Kroll

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DECISION OF THE DISTRICT LICENSING COMMITTEE

THE APPLICATION

- [1] Hong Jia Limited submitted an Application for an On-Licence Renewal with Variation of Conditions on 7 November 2019 ("the Application"). The variation relates to a desire to increase the outdoor area at the rear of the premises. The existing On-Licence has an expiry date of 8 December 2019.
- [2] The Application was notified in the Manawatu Standard on 11 November and 18 November 2019. A notice was placed at the principal entrance to the premises. Three public objections were received, two of which were subsequently withdrawn.
- [3] The Medical Officer of Health, Palmerston North Public Health Service, MidCentral Health submitted a report (dated 3 December 2019) indicating that they had no opposition to the Application.
- [4] The Alcohol Harm Prevention Officer, New Zealand Police ("the Police") submitted a Report (dated 27 November 2019) indicating that they opposed the Application. The Police submitted a subsequent Report (dated 17 February 2020) indicating that they were withdrawing their previous opposition.
- [5] The Licensing Inspector's written Report (dated 26 February 2021) did not oppose the Application but recommended that several conditions be considered should the On-Licence and/or Variation of Conditions be granted.
- [6] The Palmerston North District Licensing Committee ("DLC") set this matter down for a Hearing on 25 November 2021.

THE LAW

- [7] 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 127 the criteria for which this Application must be considered against is outlined in s 105 of the Act.

EVIDENCE

The Hearing

The Applicant

- [8] At the commencement of the hearing, the DLC ordered that there be no publication of any personal information referred to in this hearing, whether in the proceedings or in the documents, except for the names of the Parties. This order was made for reasons of privacy.
- [9] The Applicant provided a written Brief of Evidence to the DLC. It was represented by Mr Christopher Hince ("the Applicant's Representative") and Mr Alyn Higgins, Legal Counsel ("the Applicant's Counsel"). The Applicant's Representative read the Applicant's Brief to the hearing and directed the DLC's attention to his attached photographs which related to the external area and fencing of the premises.
- [10] When questioned by the DLC, the Applicant's Representative and the Applicant confirmed a number of aspects relative to the Application. In relation to the training that on-site employees received at The Office, the DLC drew the Applicant's Representative's attention to the statement in the submission that all employees were trained to monitor purchases and consumption, and asked how the Applicant was able to become so intoxicated after drinking on the premises to the extent that on one occasion he required hospital treatment.
- [11] The Applicant's Representative indicated that the Applicant accepts there was mismanagement on this occasion and that this was not appropriate behaviour for a licence holder. He indicated that the manager on duty that day was no longer employed by the Applicant, that all staff since then have been clearly trained in the management of intoxication, and that as the owner/licence holder, the Applicant would have been subject to the training as well.
- [12] With respect to the objection made by a member of the community who had sustained damage to her motor vehicle from patrons of The Office, the DLC questioned the timing of the Applicant's subsequent communication with the Objector. The Applicant stated that the Objector made contact through 'The Office's' Facebook page and this was missed initially as a large number of messages were posted there and that those were not checked daily. By the time the Applicant was made aware of the complaint "a couple of months later", he indicated that the CCTV video footage was no longer available. When asked by the DLC to be more specific about the time that had passed before the Applicant made contact with the

Objector, the Applicant said it would have been four to five months, probably before Lockdown 2020.

- [13] The DLC also asked the Applicant to confirm when the new CCTV system was installed. The Applicant stated this was done mid-2020, and also confirmed that this was the work referenced in a quote from Censor Alarms & Security that had been included in the Applicant's evidence.
- [14] Relative to potential concerns by the DLC that the register of Managers had not been kept up to date, the DLC questioned why the Applicant had not taken greater care with this, particularly in light of a previous request to vary the conditions of the licence having been declined by the DLC in 2018. The Applicant agreed this had been brought to his attention by the Licensing Inspector¹ and indicated that he would make this a priority. The DLC pointed out that the Applicant had been spoken to about this particular issue on several occasions and asked how there could be guarantees that this would be addressed.
- [15] The Applicant's Representative indicated that during a Host Responsibility audit he had undertaken for the Applicant in the week prior to the hearing, he had identified that notification had been an ongoing issue. This matter had been discussed and the Applicant had asked for assistance with this going forward. When asked by the DLC if the Applicant was up to date with these notifications currently, the Applicant indicated there was nothing outstanding.
- [16] The Applicant's Counsel provided a written submission to the DLC. He read his submission to the hearing, referenced relevant sections of the Act,² and made several additional comments. He stated that the Applicant had installed a decibel meter from which regular readings are taken, and that there had been no further noise complaints for some time. The Applicant's Counsel noted that one of the original community objections had been on the basis of noise, and the fact this objection had subsequently been withdrawn indicated that noise was no longer an issue. He noted that this same Objector had been in support of the use of the outdoor area, subject to noise mitigation.
- [17] When questioned by the DLC as to when he had commenced Host Responsibility training, the Applicant's Representative indicated he had carried out Licence Controller Qualification training for the Applicant on a number of occasions and that the Applicant had last week asked him to carry out an audit of his systems to identify any issues. The Applicant's Representative stated he felt most of the Host Responsibility

¹ At pp30-31 of the Committee's Hearing Agenda.

² Sale and Supply of Alcohol Act 2012.

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matters were acceptable, but that there was an issue with notifications.

Licensing Inspector

- [18] The Licensing Inspector confirmed the contents of her report (dated 26 February 2021) and made some verbal additions and amendments during the hearing. She also provided a written submission to the DLC which she spoke to. The Licensing Inspector confirmed that of the original three objections to the application that were lodged, two were withdrawn, and the remaining Objector did not wish to speak to her objection for personal reasons and as such was not present during the hearing.
- [19] With reference to Section 231 Notices, the Licensing Inspector stated that at 1.31am on the day of the hearing she had received a Manager Notification form advising of the appointment of a Manager for The Office's premises; a copy of which was to be made available to the DLC for its consideration.
- [20] During questioning by the DLC, the Licensing Inspector confirmed a number of points. With reference to the manager's certificate application that had been withdrawn³, the Licensing Inspector confirmed her written statement that to date she had not received a Section 231 Notice terminating this person. The Licensing Inspector also noted that there were other managers listed in the Application who were no longer employed by The Office, and that she had not received Section 231 Notices for these individuals, further, that the only Notices received at Council were those listed within the 'Section 231 Notices' section of her submission, with the exception of the Notice received on the morning of the hearing.
- [21] During questioning relating to an email in the 'Police Emails and Statements' section of her submission, the Licensing Inspector explained that the statement relating to The Office being an 'Alcohol Target' was a reference, as far as she understood it, to groups of people targeting the premises. This included groups sitting out the front and causing trouble in the location as well as waiting to pick fights with those nearby. She added that in her opinion the Police were keeping an extra eye on The Office, and she referred to the 'Graduated Response Model' the Police used, which related to the number of calls received relating to a specific premise, which would then move it up the response model and that this then determined how often that premise is then visited by the Police.

³ At page 7 of the Licensing Inspector's submission.

- [22] With respect to the evidence presented by the Applicant, the DLC noted that there seemed to be several inconsistencies when compared with the Licensing Inspector's evidence, and asked if there was anything she wished to raise as a result of this initial observation. The Licensing Inspector referenced the earlier discussion relating to the Objector attempting to make contact with the Applicant regarding the damage to her car, and stated that the Objector was sure the messages she was sending had been read by the Applicant, and it was only after the Licensing Inspector told the Applicant that the Objector was trying to get in contact with him that anything was done about it. There was a long period of time during which the Objector was sending messages/phoning and not receiving any response, and in fact that was perhaps the reason the Objector had approached the Licensing Inspector.
- [23] The DLC sought clarity from The Licensing Inspector as to whether or not the Licensing Inspector opposed the Application. She stated that she had not initially opposed the Application, as she thought that if her recommended conditions for the renewal of licence were put in place, the Council could work with the Applicant to achieve a better run premises. Having considered the evidence presented during the hearing, she was now of the view that she was in opposition to the Application.
- [24] The DLC asked the Licensing Inspector for more information regarding a fence issue, relating to a temporary fence fixture that was located between The Office and the former dry-cleaning premises. She referenced aerial photographs of the immediate area and pointed out the alleyway between 522 and 520 Main Street. She explained the fence in the Applicant's photograph of the back area of the premises used to have barbed wire around the top of it; however, it now had trellis and artificial greenery at the top of the fence. She submitted that this had always been one of the fencing problems – in that people were coming down the alleyway and attempting to jump over this fence; the Licensing Inspector believed they had succeeded on occasion, and she had noted this in one of the Police reports in her submission.
- [25] The other fence in the photo marked 'A' was a temporary fence which was located right out at the footpath, which was in place when she had undertaken her recent night inspection in late 2020. The Licensing Inspector stated she did not know if this fence was still in place currently, but noted how easy it was to jump over and that she had seen people doing so. The Licensing Inspector confirmed this had been an issue for a large number of years.
- [26] While The Licensing Inspector confirmed that the car park at the rear of the building was shared with the old dry-cleaner's building, under cross-

examination, the Applicant's Counsel, in relation to her statement regarding people jumping over the fence, asked if this was occurring at the temporary fence between 520 and 522 Main Street, or at the fence at the back of the premises. The Licensing Inspector confirmed this was occurring at both fence sites and made reference to two Safe City Reports which stated that people were going over the fence to gain access to the premises. As a result she drew the conclusion that they had obviously got over the front fence on the street, gone down the alleyway to the back of the premises and got over the big fence also.

- [27] However, she was uncertain if this had occurred when the barbed wire or the trellis was in place, and confirmed that one incident was mentioned in the first Safe City report for the period 27 August to 27 September 2020, with one particular incident occurring on 11 September at 2.20am. The Licensing Inspector confirmed she had carried out a daytime inspection after the trellis was installed, and accepted that this was an improvement and that it had reduced the potential for someone to jump the fence and gain access to the premises.
- [28] The Applicant's Counsel referred to the incident mentioned in the Licensing Inspector's submission relating to a 'Hotel Check' conducted at The Office by the Police, in which the attending Officer stated he believed there were between 300-400 patrons at the premises. The Applicant's Counsel noted the Licensing Inspector's comment that she did not believe that number of people could physically fit into the premises, and asked if it was possible that this incident could have been referring to another premise, not The Office.
- [29] The Licensing Inspector stated it was definitely The Office because it had an inspection form attached which clearly stated 'The Office'. She also noted the name of the manager on duty at the time which confirmed it was The Office as she knew this person was a former employee of the premises. Counsel pointed out that, regardless, this incident predated the improvements that had been made to the premises, and he reiterated that the Police had withdrawn their opposition to the Application.
- [30] With reference to the incident referred to in the Licensing Inspector's submission where the Applicant had been intoxicated and taken to hospital, the Applicant's Counsel noted that the Police carried out an investigation of the incident but that no Holding, or Application for Suspension or Cancellation, of the licence had been requested at that time, or any other time, although there had been grounds for this to occur on more than one occasion.

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- [31] The Applicant stated he believed there had been a couple of misunderstandings that he wished to clarify. With reference to the incident in the Licensing Inspector's submission regarding the Applicant, who at the time was the duty manager, having been asleep in his office within the premises, the Applicant stated that when the Police arrived to carry out a Hotel Check his walkie talkie had run out of power, which was why his staff had been unable to contact him. He also stated that the staff had probably "joked" about him being asleep. At the time of the Hotel Check, The Applicant said he had seen the Police arrive on the security cameras and had come out of his office to speak to them.
- [32] With reference to the comments made by ex-employees about The Office's operations contained within the Licensing Inspector's submission, The Applicant stated he had on several occasions employed the wrong people. He had given one of these staff members the authority to organise the security team, but the security team was not good enough. The Applicant stated that this staff member and the security team he put in place no longer worked for him. The Applicant also stated that the ex-employee named in the Inspector's Report had been "trespassed" from the premises, and that the ex-employee had said he would be speaking to the Licensing Inspector as a result. The Applicant felt this was in retaliation for being banned from the premises.
- [33] With reference to the temporary fence in the photo marked 'A', the Applicant stated it was a shared driveway between 522 and 520 Main Street, so it had to be open all the time. He said he had approached the new owner of 520 Main Street and raised the possibility of installing a gate. The owner had stated that he did not want anything attached to his building, so this was the reason for the temporary fence being installed. The Applicant stated that it needed to be easy to remove as the owner of 520 Main Street leased out a car park which was accessed via this driveway, and that he believed the temporary fence had stopped a lot of the litter and broken bottles that had been an issue in this area.
- [34] In response to the intoxication incident, the Applicant stated that he did not usually drink much, and that in the last ten years this had been the only time he had been drunk. He informed the DLC that he was not the duty manager on the day in question; an ex-employee was on duty. He had only had a few rums, and had asked the duty manager if one of the security team could drive him home. He said that he fell asleep and the driver parked on King Street as he did not know the Applicant's address. It was at this point that the Police became involved.

- [35] When questioned by the DLC regarding the timing of noise complaints, the Licensing Inspector confirmed that there had been no noise complaints to the Council since she had written her original report, nor since the Variation of Condition of Licence had been declined. Whilst all noise complaints were detailed in the Licensing Inspector's report, these largely related to the previous DLC hearing.

Right of Reply – The Applicant

- [36] In exercising the Right of Reply, the Applicant's Counsel made a number of points. The Applicant had effectively given the DLC an undertaking that, should his licence be renewed for the remainder of its term, he would use the opportunity to provide a foundation for the regulatory agencies to assess all of the improvements that he has outlined to the DLC. This included the Applicant and his staff doing whatever they could to reduce disorder in Main Street, although this would only work if all other licensees in the area took those steps as well. The Applicant's Counsel reiterated there were a number of other licensed premises in the immediate vicinity.
- [37] The Applicant's Counsel believed that it was clear that issues had been identified, and that the Applicant had taken the initiative to address these. He had acknowledged that improvements needed to be made and had sought expert help to do so. Counsel noted the improvements that had already been made in the form of the installation of the new CCTV system, the work that the Applicant's Representative had been doing, and the Applicant's desire to refresh his own knowledge of his obligations as a licensee and manager. He also noted that the Applicant had engaged two certified, dedicated crowd controllers on staff. The Applicant's Counsel stated that the Applicant deserved the opportunity to have these improvements put to the test.
- [38] The Applicant's Counsel also noted that neither the Police nor the Objector had appeared at the hearing, but this did not detract from the Applicant's acknowledgement of the issues raised by both parties and his desire to address these.
- [39] The Applicant's Counsel made reference to the Applicant's intoxication incident. The Applicant had advised the DLC that he is not a regular drinker, and this may well have contributed to what had happened on that occasion. It was submitted that the Applicant had acknowledged that this was a mistake and had taken steps to address his relationship with alcohol.
- [40] The Applicant was also open to some of the conditions recommended by the Licensing Inspector being imposed on the licence. This included

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forgoing the use of the smoking area at the front of the premises after 10pm on Thursday, Friday and Saturday nights. If the additional area at the back of the premises was approved, this would also reduce the need for the area at the front as there would be an additional exterior area for smokers which could be monitored by the security system, crowd controllers and the CCTV system.

- [41] In terms of placing a gate between the Applicant's premises and 520 Main Street, The Applicant's Counsel felt this would probably require the consent of the owner of that land. It was noted by him that if the owner had appeared at the hearing this could have been discussed. He also suggested that the situation could be revisited in a year's time, with the hope that the higher fence, the additional staff, the additional CCTV system and the work that the Applicant's Representative is undertaking would address the issues the neighbouring landowner had. If not, then he would have an opportunity to object to the licence being renewed in a year's time.
- [42] With regard to the updated CCTV system, the DLC noted that the evidence given suggested that the Applicant was the only person that had access to live monitoring of activity on the premises, and questioned whether the Applicant was always on the premises to do so. The Applicant's Counsel noted that the security cameras record and retain information for a period of time, and that this information was securely stored. The Applicant confirmed there were two monitors for live monitoring – one in his office and the other at the bar where all staff could see it. It was also confirmed that he was the only person who can access recorded information, and that the footage is stored for two weeks to a month.
- [43] With reference to the incident when the Applicant was asleep in his office while he was the duty manager, the DLC asked how long the Applicant had been missing from the bar area before he emerged once the premises had been closed down by the Police. The Applicant asserted that the premises were not closed down, and indicated that his staff had attempted to contact him by text message and calling but that he did not have his phone with him, and his walkie talkie had run out of power. The Applicant said he was absent for about ten minutes.
- [44] The DLC drew the Applicant's attention to the photograph of the rear outside area submitted by the Applicant during the hearing. They asked if cameras were positioned in such a way that all tucked away areas were able to be monitored. He indicated there were three cameras in this area and there were also mobile cameras in use.
- [45] When questioned by the DLC regarding how staff manage the number of people onsite during busy times, so as to comply with the building

code, the Applicant indicated that staff had a counter on their mobile phones so they know at any given time how many people were on the premises. He noted that this was especially relevant with COVID restrictions in place.

- [46] The DLC questioned the Applicant regarding his plans to ensure he and his staff met all training and compliance requirements going forward. The Applicant said he had a staff training booklet, that staff were trained on the first day of their employment and this was revisited in a month's time, and again in six months' time. The Applicant recognised he needed help in this area and had engaged the Applicant's Representative to assist with ensuring information was kept up to date. Counsel also indicated that the first thing the Applicant was going to do was to ensure manager's notifications were up to date.
- [47] When questioned further by the DLC regarding regular staff meetings and refresher training, the Applicant advised that new staff receive most of their training in the first week, with refresher training in one month and again in 3-6 months' time. The Applicant confirmed that he was on the premises most of the time and provided ongoing on-the-job training and monitoring for staff. He also confirmed that he did not use any national training programmes or apps for training, but that a third party had designed a system which he was continuing to use.
- [48] The DLC referred the Applicant to a specific question he had been asked earlier in the proceedings when he had indicated that Section 231 Notices were up to date, but the Licensing Inspector had indicated this was not the case. The Applicant's Representative said that he would work with the Applicant and the Licensing Inspector to remedy any inconsistencies immediately, and ensure that going forward the Applicant was assisted to meet his obligations in this regard.
- [49] Finally, the DLC noted there were two security guards in place from Thursday to Saturday and asked how the absence of one of them would be managed. The Applicant stated there were three or four other staff who were able to fill in if necessary and that he was looking to employ more dedicated security staff. He also stated that there were always licensed security personnel on the premises on Thursday, Friday and Saturday nights. The Applicant's Counsel indicated that managers and other staff were also able to carry out security duties if required.

FINDINGS

- [50] The DLC has considered all of the information that has been placed before it in considering this On-Licence Renewal application.

- [51] The Applicant's Counsel's written legal submissions make significant reference to the "two hurdles" identified in the DLC's previous Decision in relation to these premises of July 2018. It is important for the DLC to indicate that while two members of the current Panel were part of that earlier 2018 Decision, the reference to the "two hurdles" was a consideration for that application and those circumstances at the time. These are not binding on the current application before the DLC at present.
- [52] With the consent of The Applicant, the DLC undertook a site visit of The Office Bar on 25 November 2021. This has been helpful in understanding some of the practical considerations, such as potential layout and other matters of relevance.
- [53] The DLC is aware that there are two objections to the Renewal of On-Licence with a Variation of Conditions – Hong Jia Ltd at premises trading as 'The Office Bar' located at 522 Main Street. The objections originate from the Licensing Inspector and Ms Laura Clifford, a member of the public.
- [54] The DLC notes that there were initially three other objections, one from the Police which was withdrawn in February 2020 and two others from the neighbouring businesses which were also withdrawn prior to the DLC hearing. We note that as the objections have been withdrawn, they are not active, and therefore form no basis in reaching our conclusions.
- [55] While the original position of the Licensing Inspector was to not oppose the application, she had confirmed in the hearing that her position was now one of being in opposition to the granting of the licence. We understand, as we specifically asked her in the hearing, that this altered stance was due to her having heard all of the evidence presented.
- [56] While that is her prerogative, it is over to the DLC to consider the issues that have been raised and the evidence that ultimately gives weight to the conclusions that we reach. The fact that the Licensing Inspector has modified her position on this application is a matter for her; it is the substance and weight of the issues raised that we are more concerned with when asking the question of whether it is appropriate to grant the application under the relevant sections of the Act.
- [57] Returning to the nature of the Licensing Inspector's objection, she cites two main concerns. These are the suitability of the Applicant and the amenity and good order of the locality. The objector Ms Clifford opposes the application citing Section 106 a (ii) of the Act, current and possible future, levels of nuisance and vandalism. It is fair to say that she largely relies on her personal experience of vandalism of her car

and a lack of engagement from the licensee to hold such an opposition.

- [58] While this Application is made under section 127(2), the relevant criteria for which we must have regard is outlined in sections 105 and 106. After considering all of the evidence placed before us, we make some observations and conclusions in that respect.

The DLC must have regard to whether (in its opinion) the amenity and good order of the locality would be likely to be reduced by more than a minor extent, by the effects of the issue of the licence [s105 (a)(ii) of the Act]

- [59] In front of the DLC is a real consideration around the impact upon the amenity and good order of the locality as a direct result of The Office's operations.
- [60] The DLC notes that the Licensing Inspector tabled evidence that confirmed there were 449 call outs lodged with the Police during the period 2 November 2018 to 26 September 2021. Our analysis of that data notes that 105 (23%) of those call outs were directly associated with The Office's address of 522 Main Street.
- [61] The DLC also has before it the Licensing Inspector's tabled evidence of six Safe City Reports⁴ from the period 27 August 2020 to 28 March 2021, in addition to reports for the period 5 August 2021 to 26 September 2021. It is clear to us that this data shows that the Safe City Hosts reported 273 incidents, of which 63 (23%) were directly associated with, or next door to, The Office Bar premises.
- [62] Further, the DLC were also provided, in the form of tabled evidence, with text messages, notes, emails, police reports and photos from the Licensing Inspector for the period 28 May 2019 to 15 July 2021. We also note that all this data postdates the consideration of the Variation of Licence in 2018, which was heard before an in-person full hearing of the DLC.
- [63] Section 31 outlines the requirement for a licensee to take particular action relating to notifying any staff changes for those that hold Manager's Certificates. The DLC has considered that the Licensing Inspector presented evidence indicating that on several occasions this requirement has not been met. As per paragraph 19 of the Applicant's written evidence, he accepts that notifications have not always been made as they should have.

⁴ These reports are generated by the Safe City Hosts. Our understanding is that they are independent community patrols who provide detailed reports for community and safety stakeholders.

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[64] Section 214⁵ requires that a Duty Manager is to be on duty at all times the premises is open and responsible for compliance. The DLC also notes that the Licensing Inspector presented evidence that on 24 July 2021 there was no duty manager onsite and she has cited the Reference number⁶ used by the Police in support. This report noted that the Duty Manager was the Applicant and that the licensee could not be found so the Police closed the bar.

[65] It is clear to us that the Licensed Premises was closed by the Police. Whilst the Applicant may hold the belief that it was not; his position is at direct odds with the evidence and therefore we reject his contention in this regard.

[66] In support of the view that the licensee does not meet this criteria, the DLC considers the following evidence as particularly important⁷:

17 January 2019	<ul style="list-style-type: none">• Duty Managers register not up to date. Duty Manager did not have a certificate.
2 February 2019	<ul style="list-style-type: none">• The outdoor area at the rear of the building had doubled in size. The area was not licensed for this extension (<i>refer to previous DLC Hearing and Decision in 2018</i>).
25 February 2019	<ul style="list-style-type: none">• Reports of Security Staff drinking alcohol on duty.• Complaints from neighbouring building owner regarding broken bottles, drug paraphernalia and cigarette butts down the shared driveway.• Glass, vomit, urine, rubbish, cigarette butts and the Amenity and Good Order around the premises impacted.
28 May 2019	<ul style="list-style-type: none">• Increased incidents in the outside front smoking area of the premises.• Intoxicated patrons on the premises.

⁵ Specifically, Section 214 ss1-4.

⁶ Police Event number P047295252.

⁷ For simplicity, the following have been itemised via a table.

	<ul style="list-style-type: none"> • CCTV footage of the Cobb's carpark where patrons from The Office could be seen fighting and suspected drug deals taking place.
25 July 2019	<ul style="list-style-type: none"> • Security staff did not have the required qualification under the relevant Act⁸.
15 January 2020	<ul style="list-style-type: none"> • People still congregating on the street. The Applicant was asked by Police to close the front smoking area from 10.00pm on Thursday, Friday and Saturday nights. A four week trial took place commencing on 16 January 2020.
16 November 2019	<ul style="list-style-type: none"> • No low alcohol drinks in fridge.
15 January 2020	<ul style="list-style-type: none"> • Issues with the front smoking area. The amenity and good order of the area impacted upon.
13 June 2020	<ul style="list-style-type: none"> • Manager's register not updated.
16 October 2020	<ul style="list-style-type: none"> • Unqualified security staff being used.
8 July 2020	<ul style="list-style-type: none"> • Two assaults at Bar. One involved The Office's Security team who head butted a patron. Concerns about cooperation of getting CCTV footage.
21 July 2020	<ul style="list-style-type: none"> • Issues with not being able to view The Office CCTV.
13 January 2021	<ul style="list-style-type: none"> • The Applicant was found intoxicated in his car after drinking at his premises on 9 November 2020. • Police concerned that the Duty Manager allowed him to get into that state as the Police took the Applicant to the hospital as he was unresponsive.

⁸ The relevant Act is the Private Security Personnel and Private Investigators Act 2010.

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24 July 2021	<ul style="list-style-type: none"> No Duty Manager on for several hours. In breach of Alcohol Licence.
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- [67] While the DLC note that the above evidence is via texts, notes, emails and police reports, this was not challenged sufficiently by the Applicant during the hearing and therefore the DLC considers it appropriate to give those concerns sufficient weight.
- [68] Ms Clifford has provided written evidence in support of her opposition to the Application. Her main issue related to her experience on 29 May 2019 when she parked her vehicle in Main Street in the PNCC angle parks outside The Office. Upon returning to her car at 8.30pm she found two men brawling on top of her vehicle. Both parties were heavily intoxicated and had been drinking in the outdoor seating area at The Office. Ms Clifford contacted The Office but they failed to respond. Despite the contact from the complainant, the Applicant ignored phone and Facebook messages.
- [69] The DLC notes paragraph 16 of the Applicant's written evidence which indicates that while it took some time for the Applicant to respond to Ms Clifford, the incident happened right on the 2020 nationwide lockdown in response to the COVID-19 pandemic which had created a lot of uncertainty.
- [70] The DLC forms the view that there is inconsistency with the Applicant's statement about this as Ms Clifford reported her car damage in May 2019 and the lockdown did not happen until March 2020, ten months later. We must say that this is symptomatic of the reliability and credibility of the Applicant's evidence before us.
- [71] The Applicant has highlighted that the Variation Application was heard by the DLC in July 2018 but was declined. In its Decision⁹, the DLC identified that the Variation Application faced two significant hurdles to overcome; the concerns around noise being generated from the site and the noncompliant history of the Applicant. In respect of this Application, we do acknowledge that there have been no noise issues reported since that decision was issued. Therefore any suggestions of noise concerns for this Application are disregarded as they are not relevant.

Building Warrant of Fitness

- [72] On 9 April 2019, there were concerns regarding the total number of patrons on the premises. Evidence tabled by the Licensing Inspector

⁹ At paragraph 69 of that Decision.

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identified that there was clearly in excess of 99 people on the premises. Evidence also confirmed that the Duty Manager on at the time was The Applicant, and that he was unaware of the maximum capacity permitted at the time.

- [73] It would be a basic expectation that the Duty Manager on at the time should know what the maximum capacity of the premises should be at any given time, especially as the Duty Manager at the time was the Applicant. This also lends itself to considerations about his suitability and expertise within a licensed premises managerial role.

Site Visit

- [74] During the site visit, the DLC noted that the monitor in the bar area is positioned in a small room off the bar. It was clear to us that there was no clear line of sight to the CCTV monitors from some of the physical positions that bar personnel would be serving from. This would also be the case for other bar staff or the duty manager, if they were serving or talking to customers at the bar.

Conclusion

- [75] It is clear to us, based on the evidence, that there are many concerns about the impact the granting of an On-Licence Renewal to The Office would have for the local community. A significant concern is the impact upon the amenity and good order of the locality. The suggestion that, moving forward, such concerns can be mitigated by a change in approach by The Office's operations cannot be accepted. This is because the Applicant has had an opportunity to mitigate what clearly are sustained breaches and conduct, soon after being granted an On-Licence by the DLC.
- [76] While the DLC accepts that there are other licensed premises in the area, the evidence clearly establishes a link between The Office as a focus and contributor to the significant reduction in amenity and good order of the locality.
- [77] It is disappointing that the rigours of the previous DLC hearing and process, that gave the Applicant a chance to prove they could comply, have been unheeded. The evidence, individually and collectively, clearly establishes that if a continuation of the On-Licence was to be granted; it would not be consistent with the considerations we are required to exercise under the Act¹⁰.

¹⁰ Specifically under s105 of the Act.

DECISION

- [78] The 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 is **declined**.

Dated this 16th day of December 2021



Ms Susan Baty (Chairperson)
Palmerston North District Licensing Committee



Mrs Aleisha Rutherford (Committee Member)
Palmerston North District Licensing Committee



Mr Rod Titcombe (Committee Member)
Palmerston North District Licensing Committee

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
Yang (Martin) Wang for a Renewal of
Manager's Certificate

HEARING COMMITTEE:

Ms Susan Baty (Chair), Mrs Aleisha
Rutherford and Mr Rod Titcombe

PLACE OF HEARING:

Seminar Room
Conference & Function Centre
354 Main Street
PALMERSTON NORTH

DATE OF HEARING:

25 November 2021

DATE OF DECISION:

16 December 2021

APPEARANCES:

Applicant:
Mr Yang (Martin) Wang

Counsel for the Applicant:
Mr Alyn Higgins

Palmerston North City Council
Licensing Inspector:
Mrs Lynne Kroll

AB RS AR

DECISION OF THE DISTRICT LICENSING COMMITTEE

THE APPLICATION

- [1] The Applicant, Mr Yang (Martin) Wang, submitted an Application for a Renewal of his Manager's Certificate on 17 September 2020 ("the Application"). His current Certificate expired on 23 September 2020.
- [2] The Alcohol Harm Prevention Officer, New Zealand Police ("the Police") submitted a Report (dated 18 September 2020) indicating that they had no opposition to the Application.
- [3] The Licensing Inspector's Report (dated 11 March 2021) recommended that the Application be considered at the same time as consideration of the application by Hong Jia Limited for an On Licence Renewal with Variation of Conditions in respect of premises known as The Office.
- [4] The Palmerston North District Licensing Committee ("DLC") set this matter down for a Hearing on 25 November 2021.

THE LAW

- [5] The relevant legislation is the Sale and Supply of Alcohol Act 2012 ("the Act"). The Application which has been lodged pursuant to s 224 and the criteria for which this Application must be considered against is set out in s 227 of the Act.

EVIDENCE

The Hearing

The Applicant

- [6] The Applicant was represented by Mr Alyn Higgins, Legal Counsel. The Applicant's Counsel stated that he was not aware of any opposition to the Application, and that there was nothing new that had not already been discussed during the hearing of the application by Hong Jia Limited for an On Licence Renewal with Variation of Conditions earlier on the day of the hearing.

AB RS AR

- [7] Mr Higgins stated that the Applicant had indicated he was open and committed to working on his obligations and improving wherever he could, and to working with regulatory agencies to do that.

Licensing Inspector

- [8] The Licensing Inspector confirmed the contents of her report (dated 11 March 2021) and requested that the relevant points discussed during the hearing of the application by Hong Jia Limited for an On Licence Renewal with Variation of Conditions earlier, be taken into consideration when the DLC made its decision.

Right of Reply – Mr Wang

- [9] In exercising the Right of Reply on behalf of the Applicant, the Applicant's Counsel noted there had been no opposition to the Application but that it be deferred until such time as the licence application was considered.
- [10] He confirmed there had been no holdings or enforcement action taken against the Applicant in the time he had held a Manager's Certificate, when there were grounds to do so.
- [11] He reiterated the Applicant was committed to improving where necessary and deserved an opportunity to have that put to the test by the granting of the renewal of his Manager's Certificate. The timeframe for which the Renewal would be granted would give the enforcement agencies time to scrutinise the commitments the Applicant has made to the DLC as part of the hearing, and to be reviewed and assessed as necessary.

FINDINGS

- [12] There were no objections from either of the parties to having both the hearing of this Application and Hong Jia Limited's On-Licence Renewal Application on the same day. This is the reason for the brevity of submissions made in the hearing by the Applicant and Licencing Inspector relative to this Manager's Certificate Renewal for the Applicant.
- [13] The findings that are relevant to the consideration of the Applicant's suitability for a Renewal of his Manager's Certificate have been canvassed.

Conclusion

- [14] Many of the issues raised in the preceding hearing for the On-Licence Renewal are relevant to this Application. The issues relating to the Applicant's suitability are adequately addressed in that Decision, which is appended to this Decision, so that the two can be read in conjunction with each other.
- [15] In short, there are strong and evidence-based concerns about the Applicant's suitability around¹:
- Lack of awareness of the need for on-going training in Host Responsibility;
 - Lack of adequate processes as a holder of a current Manager's Certificate;
 - Previous instance(s) of dereliction of his Manager's Certificate duties;
 - Numerous and broad instances of non-compliance of his Manager's Certificate conditions and responsibilities.
- [16] In the DLC's opinion, these concerns are significant and cannot be adequately mitigated by the imposition of conditions. Therefore, a decline must be the outcome.

¹ The DLC does not see this as an exclusive list, which is why this Decision needs to be read in conjunction with the issues raised and the findings arrived at, in the Decision relating to the Application by Hong Jia Limited for an On Licence Renewal with Variation of Conditions.

JB RS AL

DECISION

- [17] The application by Yang (Martin) Wang for a Renewal of Manager's Certificate is **declined**.

Dated this 16th day of December 2021



Ms Susan Baty (Chairperson)
Palmerston North District Licensing Committee



Mrs Aleisha Rutherford (Committee Member)
Palmerston North District Licensing Committee



Mr Rod Titcombe (Committee Member)
Palmerston North District Licensing Committee

ATTACHMENTS

1. Decision of the District Licensing Committee in the matter of the application made by Hong Jia Limited for an On Licence Renewal with variation of conditions in respect of premises known as The Office Bar situated at 522 Main Street, Palmerston North