

Cunninghame House,  
Irvine.

25 September 2014

## **North Ayrshire Licensing Board**

You are requested to attend a meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, 3rd Floor, Cunninghame House, Irvine on **MONDAY 29 SEPTEMBER 2014** at **10.00 am** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

**1. Minutes**

Confirm the Minutes of the Board Meetings held on 28 April 2014, 23 June 2014 and 10 July 2014.

**2. Licences and Applications under the Licensing (Scotland) Act 2005**

Submit report by the Clerk to the Licensing Board on applications under the Licensing (Scotland) Act 2005 (copy enclosed).

**3. Consideration of NALB Policy for Festive Period 2014-2015**

Submit report to the Licensing Board regarding Occasional Extensions and Occasional Licences during the Festive Period 2014-2015 (copy enclosed).



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## Licensing Board

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Sederunt:   Ronnie McNicol (Convenor)  
              Tom Marshall (Vice-Convenor)  
              Robert Barr  
              John Bruce  
              Ian Clarkson  
              Catherine McMillan  
              Alan Munro  
              Donald Reid  
              Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

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## **Agenda Item 2**

**29 September 2014**

### **North Ayrshire Licensing Board**

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**Subject:** **Licences and Applications under the Licensing (Scotland) Act 2005**

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**Purpose:** To inform the Licensing Board on the background to applications received under the Licensing (Scotland) Act 2005.

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**Recommendation:** That the Licensing Board determines the applications.

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#### **1. Introduction**

- 1.1 The Licensing Board is responsible for determining applications made under the Licensing (Scotland) Act 2005, and for determining questions under that Act.
- 1.2 The Board has previously approved a Scheme of Delegation whereby certain matters can be delegated.

#### **2. Current Position**

- 2.1 The applications before the Board are set out in the attached appendices. Each appendix contains reports prepared by licensing staff for each individual case before the Board.
- 2.2 Appropriate consultation has taken place with Police Scotland and with the Council's Building Standards and Planning Sections. Where relevant the reports have been copied to the applicants and any persons making objections or representations. Any objections or representations have been copied to the applicants, so that a response might be made at the Board Hearing.

Clerk to the Licensing Board

Reference : W'OB/MC

*For further information please contact William O'Brien, Solicitor (Licensing), on 01294 324305*



## APPENDIX A

### Premises Licence Applications or any other Applications requiring a Hearing

| Case No. | Licence No. | Applicant/Licence Holder  | Premises   | Comments  |
|----------|-------------|---|--|---|
| 1.       | 0274        | Routenburn Golf Club<br>Routenburn Road<br>Largs<br>KA30 8QA  | Routenburn Golf Club<br>Routenburn Road<br>Largs<br>KA30 8QA                           | Premises Licence Review Proposal - Section 37<br>Continued from 30/09/13      |
| 2.       | 0288        | Garnock Community Social Club<br>Loadingbank Road<br>Kilbirnie<br>KA25 6JY                              | Garnock Community Social Club<br>Loadingbank Road<br>Kilbirnie<br>KA25 6JY             | Premises Licence Review Proposal - Section 37<br>Continued from 03/03/14      |
| 3.       | 0438        | P/ship of Alastair & Alison Bilsland<br>Bilslands<br>Shore Road<br>Brodict<br>Isle of Arran<br>KA27 8AJ | Bilslands<br>Shore Road<br>Brodict<br>Isle of Arran<br>KA27 8AJ                        | Application for Variation and Transfer of Premises Licence - Sections 33 & 35 |
| 4.       | 0388        | Ronald McConnachie<br>48 Ardrossan Road<br>Seamill<br>West Kilbride<br>KA23 9LT                         | Jack's Corner<br>2-4 Young Street<br>Ardrossan<br>KA22 8JZ                             | Application for Variation of Premises Licence - Section 29                    |
| 5.       | 0056        | Ronald McConnachie<br>48 Ardrossan Road<br>Seamill<br>West Kilbride<br>KA23 9LT                         | Windy Ha<br>31 Bradshaw Street<br>Saltcoats<br>KA21 5HR                                | Application for Variation of Premises Licence - Section 29                    |
| 6.       | 0137        | Parveen Akhtar<br>54 Dundonald Road<br>Dreghorn<br>Irvine<br>KA11 4AW                                   | Dreghorn Discount Food Store<br>52/54 Dundonald Road<br>Dreghorn<br>Irvine<br>KA11 4AW | Application for Variation of Premises Licence - Section 29                    |
| 7.       | 0252        | Paula Fisher<br>6 Clyde Terrace<br>Ardrossan<br>KA22 7EG  | Garfield's<br>59 Princes Street<br>Ardrossan<br>KA22 8DE                               | Application for Variation of Premises Licence - Section 29                    |

|     |                                 |   |   |  |
|-----|---------------------------------|---|---|--|
| 8.  | 0318                            | Girdle Toll Bowling Club<br>Burns Crescent<br>Girdle Toll<br>Irvine<br>KA11 1AR                 | Girdle Toll Bowling Club<br>Burns Crescent<br>Girdle Toll<br>Irvine<br>KA11 1AR | Application for<br>Variation of Premises<br>Licence - Section 29 |
| 9.  | 0171                            | Walcal Property Development Limited<br>51A Townfoot<br>Dreghorn<br>Irvine<br>KA11 4EH           | The Market Bar<br>35 Howgate<br>Kilwinning<br>KA13 6EW                          | Application for<br>Variation of Premises<br>Licence - Section 29 |
| 10. | 0241                            | Revels Sports Bar and Diner Limited<br>53 Main Street<br>Kilwinning<br>KA13 6AN                 | Revels<br>53-59 Main Street<br>Kilwinning<br>KA13 6AN                           | Application for<br>Variation of Premises<br>Licence - Section 29 |
| 11. | 0063                            | Franco Calistri<br>14 Kilwinning Road<br>Irvine<br>KA12 8RU                                     | Romeo & Juliet Inn<br>Kilbirnie Road<br>Dalry<br>KA24 5JS                       | Application for<br>Variation of Premises<br>Licence - Section 29 |
| 12. | 0088,<br>0117,<br>0154,<br>0423 | Martin McColl Limited<br>Martin McColl House<br>Ashwells Road<br>Brentwood<br>Essex<br>CM15 9ST | Various Premises  | Premises Licence<br>Review Proposal -<br>Section 37              |
| 13. | 0222                            | Graham Conrathe<br>Moorpark House Hotel<br>School Road<br>Kilbirnie<br>KA25 7LD                 | Moorpark House Hotel<br>School Road<br>Kilbirnie<br>KA25 7LD                    | Application for<br>Variation of Premises<br>Licence - Section 29 |
| 14. | 0222                            | Graham Conrathe<br>Moorpark House Hotel<br>School Road<br>Kilbirnie<br>KA25 7LD                 | Moorpark House Hotel<br>School Road<br>Kilbirnie<br>KA25 7LD                    | Premises Licence<br>Review Proposal -<br>Section 37              |



**Application for Variation of Premises Licence - Section 29**

|           |                        |
|-----------|------------------------|
| Applicant | Routenburn Golf Club   |
| Premises  | Routenburn Road, Largs |
| Ref.      | 274                    |

ON 20 MARCH 2013 VARIATIONS 4 & 5 WERE GRANTED FOR A TRIAL PERIOD OF 6 MONTHS, WITH NO MORE THAN 6 EVENTS IN THAT PERIOD. THE BOARD ALSO DECIDED TO MAKE A PREMISES LICENCE REVIEW PROPOSAL UNDER SECTION 37 WITH THE HEARING TO CALL AT A BOARD OCCURRING AFTER THAT 6 MONTH PERIOD. THE GROUNDS FOR REVIEW ARE THE 'PREVENTING PUBLIC NUISANCE' AND 'PROTECTING AND IMPROVING PUBLIC HEALTH' LICENSING OBJECTIVES. VARIATIONS 1, 2, 3 AND 6 WERE GRANTED

ON 30 SEPTEMBER 2013 THE BOARD EXTENDED THE TRIAL PERIOD FOR A FURTHER 12 MONTHS IN RELATION TO VARIATIONS 4 AND 5. DURING THE EXTENDED PERIOD THE CLUB ARE PERMITTED TO HOLD A MAXIMUM OF 12 EVENTS.

**1. Summary of Variation Request(s)**

| No. | Variation  |
|-----|--|
| 1   | Vary Layout Plan to add second Outdoor Drinking Area             |
| 2   | Amend under-18s access   |
| 3   | Permit Children in Rear Lounge (pool and darts)                  |
| 4   | Add 'live performances' to Operating Plan                        |
| 5   | Add karaoke, race nights and tribute nights to Operating Plan    |
| 6   | Remove Board conditions re toilet monitoring and capacity checks |

**2. Objections and Representations**

|                                      |                                  |
|--------------------------------------|----------------------------------|
| Police                               | No objection                     |
| Community Council                    | Letter will be handed to Members |
| Fire                                 | No objection                     |
| Health Board                         | No response yet                  |
| Planning                             | No objection                     |
| Building Standards                   | No objection                     |
| Other Objections or Representations? | See below                        |

| Name   | Address               | Date Received    | Late or OK |
|--|-----------------------|------------------|------------|
| Mr. & Mrs. Jonathan Marshall (by Solicitors - two letters) | 11a Routenburn Road   | 21 & 24 Dec 2012 | OK         |
| Fraser Graham & Lis Burton                                 | 5 Netherpark Crescent | 31 Dec 2012      | OK*        |
| Stuart Boyd  | 6 Netherpark Place    | 3 Jan 2013       | OK         |

|                            |                       |            |    |
|----------------------------|-----------------------|------------|----|
| Mr. & Mrs. Tristan Hiitter | 7 Netherpark Crescent | 3 Jan 2013 |    |
| William & Marjory Brown    | 11c Routenburn Road   | 4 Jan 2013 | OK |

*\* Date of email: confirming letter later sent*

### **3. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

#### **General Comment:**

The Board may wish to inspect the Premises or have a LSO report before determining any of the Variations and may consider that Variations 1, 4 and 5 are not consistent with Licensing Objective (c): 'preventing public nuisance'. The Board is entitled to ask the Applicant to vary the proposals, e.g. to alter the times or locations of activities which might lead to noise or other nuisance. If the Board allows any Variation, and is later satisfied that any new activity is inconsistent with any L.O. or that any Licence condition has been breached, it has the right to Vary the Licence so as to limit or remove the permission.

|  |
|--|
| <b>Variation 1: Vary Layout Plan to add second Outdoor Drinking Area</b>   |
| Discretionary refusal  |
| Notes:   |
| <p>The Licence already includes one ODA. The club-house is to the south of the car park, and the golf course is on the north of the car park. The existing ODA is the putting green beside the shop, and has a single picnic table.</p> <p>The proposal is to use the ground lying to the south of the club-house, between the building and the footpath.</p> <p>Board may consider that its Standard Conditions are sufficient:</p> <p>"C.5.1 No loudspeakers, televisions, radios or other devices for amplifying sound shall be positioned at any time in <u>Outdoor Drinking Areas</u>.</p> <p>C.5.2 No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm.."</p> |
| <b><u>Comments</u></b>   |
| <b><u>Largs Community Council</u></b>  |
| <p>This representation refers to the ODA which is <u>already</u> licensed, and not the requested second ODA.</p>   |

Graham & Burton

They request that the ODA should not be lit after 23.00: Condition C.5.2 means that, regardless of the licensed hours for inside Premises, no ODA may be used after 22.00.

**Variation 2: Amend under-18s access**

Discretionary refusal

Notes:

The Premises consist of a Main Lounge, Rear Lounge and Dining Room (and toilets and locker rooms).

At present under-18s are not permitted in either Lounge unless accompanied by a parent or responsible adult, and then only until 20.00 unless attending a social function.

The proposal is to allow access to all areas, provided that 'a responsible adult is on the Premises', at all Core Hours:

(a) Since the Premises consist of several rooms, there is no guarantee that the adult would actually be able to supervise an under-18.

(b) the Core Hours are 11 - 24 (Sun - Thur) and 11 - 1 (Fri, Sat). The Board should consider whether or not this Application is inconsistent with Licensing Objective (e): 'protecting Children from harm'. This L.O. relates to Children aged 0-15 years, and not to older 'Young Persons' (aged 16-17).

The Board may consider that the absence of adult supervision of under-18s increases the risk of under-age drinking, and that the proposal is inconsistent with L.O. (a): 'preventing crime and disorder'.

**Variation 3: Permit Children in Rear Lounge (pool and darts)**

Discretionary refusal

Notes:

As with Var. 3, the L.O. 'protecting Children from harm' is relevant here.

The Licence is subject to NALB Standard Conditions, including:

"C.10.3 In the area(s) of the Premises to which Children are admitted: ...

(d) The playing of darts, pool, snooker or any other game is prohibited;

(e) There shall be no dartboard, pool table or other facilities for such activities in those area(s);"

**Variation 4: Add 'live performances' to Operating Plan**

Discretionary refusal

Notes:

The Board should consider whether or not this Application is inconsistent with L.O. (c): 'preventing public nuisance'.

**Variation 5: Add karaoke, race nights and tribute nights to Operating Plan**

Discretionary refusal

Notes: see Var. 4.

**Variation 6: Remove Board conditions re toilet monitoring and capacity checks**

Discretionary refusal

Notes:

The conditions referred to are:

"C.8.1 The Licensee shall have monitoring arrangements in place to verify the number of persons present to ensure that the occupancy capacity set by the Board is not exceeded;

C.8.2 Monitoring shall take place at regular intervals and shall particularly focus on peak trading times.

C.12.2 Toilets and washing facilities must be maintained clean and tidy, and should be inspected by staff regularly;"

Inspection records must be kept and shown to the L.S.O.. The Conditions were amended in February and June 2009. Previously inspections were required not less than once an hour.

The Operating Plan of all Premises requires to state their capacity (these Premises have an on-sales capacity of 120 people).

The Board should consider whether or not this proposal is inconsistent with L.O. (b): 'securing public safety'. The object of the conditions is to ensure that Premises do not exceed their capacity and become overcrowded. The Board would have to consider whether or not it is sufficient to replace regular visits by the L.S.O. with occasional visits from officers of Strathclyde Fire and Rescue or NAC Building Standards.

**4. Licence Conditions**

If Variations 3 or 6 are granted, the relevant Conditions will be deleted.

**Premises Licence Review Proposal - Section 37**

|                       |                               |
|-----------------------|-------------------------------|
| Licence Holder        | Garnock Community Social Club |
| Premises Address      | Loadingbank Road, Kilbirnie   |
| Premises Licence ref. | 288                           |

***CONTINUED FROM 3 MARCH 2014*****1. Introduction**

1.1. On 20 January 2014 the Board, after a preliminary consideration, decided that the current operation of the Club may not be consistent with the “preventing crime and disorder” Licensing Objective, and accordingly made a Premises Licence Review Proposal under Section 37. Accordingly on 3 March 2014 the Board is to hold a Review Hearing.

1.2. The fact that the Board has determined that there may be a Ground of Review should not be taken by the Board or any party as indication that the Board has concluded that a Ground of Review is or should be established. The Board would have to decide on the information it receives during the Hearing whether or not the Review should be upheld.

1.3. The Board is not limited to the Ground for Review referred to, or to the information contained in this Report. Under Sections 38(5) & (6), it may:

- (a) obtain further information from such persons, and in such manner, as the Board thinks fit;
- (b) take the information into account;
- (c) request the attendance of any person for the purpose of providing information, and the production of documents in any person’s possession or under that person’s control;
- (d) take into account any information relevant to any Ground for Review even though it is not relevant to any circumstances alleged in the Review Proposal.

1.4. Due to the circumstances here, this Report has been intimated to all interested parties. The Premises Licence is held by Garnock Community Social Club (“GCSC”) and only GCSC and its office-bearers will be entitled to be heard by the Board. This does not imply a judgment about any later action which allegedly has replaced the Management Committee: the Board is not empowered to make such a judgment. The Board has a discretion to hear any other party, but is not obliged to do so (see Paragraph 1.3). If the Board chooses to allow anyone to speak, this does not indicate acceptance of that person’s right to speak for the Club.

1.5. Since it is likely that any summary of the situation would be disputed by someone, for the avoidance of doubt any statement made here is not to be taken as the Board’s view that anyone is acting, or has acted, legally or illegally. Prior to making the Review Proposal, the Board considered a Briefing Note which had the

object of bringing to the Board's attention circumstances that indicated that there might appear to be matters for concern. It may be that on fuller consideration, and after hearing from the Premises Licence Holder the Board is satisfied that there are in fact no matters of concern. The Board has endeavoured to treat all sides equally, and has invited parties to resolve their differences (the text of the Board's email of 4 December 2013 from Board to Mr. Asbury, cc Mr. James Smith, is set out at the end of this Report).

## 2. Narrative

2.1. The Club holds Premises Licences for two properties in Kilbirnie: Main St. (Licence 264) and Loadingbank Rd (Licence 288). This Report concerns the Licence for Loadingbank Road. That Licence was granted on 1 September 2009, and on 14 September 2010 the Licence was varied to 'Part K' (see below).

2.2. The Club is also a Registered Charity (SCRO No. SC 041852). The Board is not responsible for the application of the law on charities, and this information is only supplied here as background.

2.3. There is a dispute relating to the Management Committee of the Club and other people. This dispute relates to a firm ("JNS Thistle Services") operated by James and Neil Smith which the Club engaged on 23 October 2013 to operate its facilities. For convenience these two factions are here referred to as 'the Management Committee' (represented by the Secretary, Mark Asbury) and 'the Smiths', although there may be other people asserting that they are the proper Club Management.

2.4. The Board has the following information:

4 July 2013: GCSC advised that the office-bearers were:

Chairman: Mr. John Kilpatrick  
Secretary: Mrs. Yvonne Hepburn  
Vice-Chairman: Mr. Peter Andrews

23 October 2013: Club and JNS Thistle Services agree "Heads of Terms", making various provisions. These included:

The Club "is appointing JNS Thistle Services to trade, operate and manage all licensed trade in all bar, lounge and function areas."

"Only JNS Thistle Services directors, staff and authorised persons will have access to behind the bar and stock areas of [the Club]"

The Board will be given a copy.

29 November 2013: GCSC advised that the office-bearers were:

Chairman: Mr. John Kilpatrick  
Secretary: Mr. Mark Asbury  
Vice-Chairman: Mr. Peter Andrews

7 January 2014: The Board received emails from Sharon Robertson stating that there had been a vote of 'no confidence' in the existing Committee and that the 'interim committee' consisted of

her  
Councillor Ian Walker  
Yvonne Hepburn  
Christina McDowall  
Joanne Waldron  
Elizabeth Johnstone

2.5. The Smiths invested money in the Club, but the other faction contends that the financial arrangement with the Smiths placed the Club at a disadvantage and was used by the Smiths to operate a profit-making business under the cover of the Club's charitable status. The Smiths contend that, had it not been for their involvement and investment, the Club would have closed due to substantial debt, that their involvement benefited the community because it kept a community asset going, and that they withdrew from involvement with the Club on 23 December 2013.

2.6. The Board's only concerns are with the correct application of the Licensing legislation, and the operation of the Premises consistently with the Licensing Objectives and the Licence Conditions. The Board has no powers to intervene in private disputes and parties should take independent legal advice. If Court action is appropriate, the Board would not be a party. However, the situation and whatever arrangement is finalised after resolution of any dispute might be of importance to the Licence. The Board is entitled to expect that a Club actually keeps to its Constitution and licence conditions.

### 3. Issues

3.1. There appear to three issues:

- (a) The statutory Transfer scheme may have been circumvented;
- (b) Licence Conditions may have been breached;
- (c) Criminal offences may have occurred.

#### **(a) The statutory Transfer scheme may have been circumvented:**

3.2. Whatever the type of Premises, the licence-holder can make any arrangements it pleases as to the operation of the bar etc., but the provision here limiting access to JNS staff etc. effectively excluded the Club's own office-bearers from these areas. The Licence is held by the Club, not JNS, and the Board remains entitled to look to the Club for the maintenance of the Licence conditions. When the undertaking was transferred to a third party, the Club ceased to be in a position to comply with the legal obligations falling on a licence-holder. This agreement might be interpreted as purporting to transfer the undertaking of the Club to a third party, without going through the statutory Transfer procedure overseen by the Board, and therefore without any Police vetting of the proposed 'transferee'.

**(b): Licence Conditions may have been breached**

3.3. The legislation (principally Section 125) places Premises in one or other of two categories:

(a) 'special treatment Clubs' - Clubs which are not conducted for profit and have constitutions making specified provisions. The overall effect is that Clubs should operate for their Members, and should not be commercial enterprises. Special Treatment Clubs:

- (i) they have lower licence fees than commercial premises,
- (ii) they do not require to have baby-changing facilities, and
- (iii) they do not require to have a Premises Manager.

but they are limited in the number of Occasional Licences they can have.

(b) any other Premises - this covers commercial premises.

3.4. The strict distinction between (a) and (b) caused some clubs financial problems. Those clubs had become dependent on providing regular functions for non-members, such as weddings, parties and funerals. This meant that their habitual operations were inconsistent with the licensing legislation, and they could not obtain sufficient numbers of Occasional Licences.

To accommodate such clubs, the Board extended its Standard Conditions, and in effect created an intermediate status:

"Clubs which still retain the character of Members Clubs but are entitled to operate without the Occasional Licence limitation."

These additional Standard Conditions are known as 'Part K Conditions', and any Club can ask the Board to vary its Licence from Part I to Part K.

3.5. When a Club asks the Board to make the change, the Club nominates a Premises Manager, signs a declaration and its office-bearers attend a Board Meeting with the object of satisfying the Board that the character of the Club will be retained. The Board makes a decision on the merits, and if the Variation requested is granted then the Club's Licensing Conditions are varied.

3.6. The Club is still expected to operate as a Club, in the sense that it will restrict the use of its facilities to its Members, as opposed to the public at large, except where the Premises are used for a bona fide pre-booked function such as a wedding reception or birthday party, when persons other than Members can use the facilities of the part of the Premises where the function is taking place, and buy or consume alcohol there.



3.7. As is normal with Clubs entitled by statute to special treatment, the Loadingbank Road Premises were originally subject to Part I of the Board's Standard Conditions (which is based on Section 125 and the related Regulations). In 2010 the Board agreed to a request by the Club to vary the Loadingbank Road Licence by surrendering the special status, and accordingly Part I of the Conditions was replaced by Part K (no change was requested for Main Street, which continues to have Part I conditions).

#### No Premises Manager

3.8. One of the consequences of seeking Part K status is that the Club must have a Premises Manager. GCSC did appoint a Premises Manager, Brian Kirk. Mr. Kirk no longer works at the Premises, and there has been no Variation requested. The issue was first raised by the Board with Mr. James Smith on 11 September 2013, and the same day the Solicitor (Licensing) emailed him explaining that the absence of a Premises Manager was an issue. Section 54 permits Premises to operate without a Premises Manager for up to 6 weeks, but that period had already expired. GCSC had not informed the Board that Mr. Kirk had ceased to be Premises Manager, which is an essential precondition of Section 54.

3.9. On 4 October 2013 the Board granted a Variation so as to substitute Ms. Amanda McFaulds as Premises Manager. The Board's staff believe that Ms. Faulds is an employee of the Smiths, and that she ceased working there on 23 December 2013. It therefore appears that the operation of the Club prior to 4 October involved a continuing breach of one of the Mandatory Licensing Conditions for Premises (2005 Act, Schedule 3, Paragraph 4(1)(a)):

"Alcohol is not to be sold on the Premises at any time when ... there is no Premises Manager in respect of the Premises ..."

If the Premises operated after 23 December the breach would recur.

#### Constitution

3.10. Although the two GCSC Premises have different sets of Licence Conditions, what is common to both is that:

- (a) they should conform to the Club's Constitution (I.2 and K.4);
- (b) the Premises are still required by Condition to be under the management of the Club, so the apparent Transfer to JNS might be seen as inconsistent with that obligation.

3.11. In the Loadingbank Road Licence, Condition K.4 requires that the Club's Constitution should make certain provisions, including:

- "(d) That no member of the Committee and no manager or staff employed in the Premises shall have any personal interest in the sale of alcoholic liquor in the Premises or in the profits arising from such sale;"

3.12. While it is a private matter for any Club to arrange for the running of its bar, the purchase of stock etc., and it is quite permissible for a Club to engage a third party to do these things (subject to there being a Premises Manager in a Part K Club), it is not permissible for the third party to derive any profit from the activity.

Generally, the Board's approach (and the statute) reflects the view that Clubs should act as clubs. They are not supposed to be businesses - any profit should go to the Club itself, and the sale of alcohol is restricted.

**(c): Criminal offences may have occurred**

3.13. The main criminal offence in the 2005 Act is in Section 1: Alcohol is not to be sold except under and in accordance with a Licence.

There are two conditions, which must be satisfied together, to avoid prosecution. The Premises have a Licence, so the 'under' requirement is met, but the 'in accordance with' requirement would not be met:

- if the Premises operate without a Premises Manager.
- if the Constitution is breached;

**4. Procedure**

4.1. As with any other Review, the Board first has to consider the question:

*"is a 'Ground for Review' established?"*

If the Board answers "no", the Review Proposal is discharged and there is no further procedure.

4.2. If the Board answers "yes", a second question arises:

*"what action (if any) is necessary or appropriate for the purposes of any of the Licensing Objectives?"*

The Board would be entitled (but not obliged) to take any of the steps stated in Section 39(2):

- (a) to issue a Written Warning to the Licence Holder,
- (b) to make a Variation of the Licence,
- (c) to Suspend the Licence for such period as the Board may determine,
- (d) to Revoke the Licence.

The Board might consider that no action was required; for example, if it was satisfied that any cause for concern had been resolved and was unlikely to recur.

4.3. If the Board considered that either Variation or Suspension was appropriate, but was later satisfied, on application by the Licence Holder, that that order was no longer necessary, the Board would be entitled to recall the order (Section 40). For example, if the Board considered that a situation justified Suspension but was later satisfied that the issue which had led to the Suspension had been addressed and was unlikely to recur, the Board might decide to recall the Suspension before it expired.

5. Email of 4 December 2013 from Board to Mr. Asbury, cc Mr. James Smith:

"Dear Mr. Asbury

I refer to our conversation yesterday (3 Dec 2013). I am copying this to Mr. James Smith, your solicitor Mr. Stewart, and the Convenor of the Licensing Board and LSO.

I have discussed this with the Convenor. In my email of 28 Nov I mentioned the possibility of Review procedure. Under Section 37 of the Licensing (Scotland) Act the Board, on its own initiative, can commence Review procedure. This can result in the Board taking any of the steps stated in Section 39(2):

- (a) to issue a Written Warning to the Licence Holder,
- (b) to make a Variation of the Licence,
- (c) to Suspend the Licence for such period as the Board may determine,
- (d) to Revoke the Licence.

The Board has its next scheduled meeting on Monday 20 Jan 2014. If the Board then thinks that the operation of the Premises involves failure to comply with the Loadingbank Licence conditions, it is possible that Review procedure will be commenced, with the issue being determined at a Hearing of the Club on 3 March.

I have been asked by the Convenor to impress upon all parties that the Licence itself is in jeopardy, and that it is in the interests of everyone that there be a resolution which ensures that the Licence conditions are complied with. By 'everyone' I do not mean only the Club, although I would point out that since the Licence is not held by Mr. Smith, he would have no right to be heard at the Board or to appeal to the Sheriff Court against any decision."



**Application for Variation and Transfer of Premises Licence - Sections 33 & 35**

|            |  |
|------------|--|
| Applicant  | Partnership of Alastair & Alison Bilsland  |
| Transferee | Tesco Licences Ltd.  |
| Premises   | Currently "Bilsland's", proposed "Tesco Store", Shore Road, Isle of Arran KA27 8AJ |
| Ref.       | 438  |

**Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014:*

1. *Until the Board has a Certificate of Display, it cannot determine the Application.*
2. *no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

**1. Background**

The holder of the Licence has requested two things of the Board

- (a) Variation of the Licence.
- (b) Transfer, if the Board agrees to the proposed Variation.

At present the Premises operate as a Licensed cafe and retail shop. The shop sells a wide variety of clothing, books, maps and souvenirs, and includes a small off-sales display. The cafe (and an Outdoor Drinking Area) has a capacity of 70 persons and the shop has an off-sales capacity of 8.2 square metres.

The licence holder has contracted to sell the Premises to a major supermarket company. This sale is conditional on substantial alterations being made. The Premises will cease to have an on-sales capacity, the cafe and outdoor Drinking Area will close, and the off-sales capacity will increase to 41.0 square metres.

At present the small shop adjacent to the larger building is occupied by a business "Taste of Arran" and has a small off-sales display. Tesco's proposal relates only to the larger building, so the small shop will only be able to sell alcohol if it separately applies for and is granted a Premises Licence. Occasional Licences would probably not be available:

*"The Board considers that O.L.s should be used only for genuine 'occasions', and should not be used for the operation of commercial Premises." (Licensing Policy Statement (2013-16, Para. 8.5)*

Since the Applicant has stated that the Transfer Application is contingent on the grant of the Variation Application, the Board must determine the Variation Application before determining the Transfer Application. If the Board refuses the Variation Application, the Transfer Application automatically falls (Sections 35(3-4)).

**(a) Variation****a.1. Summary of Variation Requests**

| <b>No.</b> | <b>Variation</b>   |
|------------|--|
| 1          | <i>Increase off-sales capacity from 8.2 to 41 sq.m.</i>  |
| 2          | <i>Amend Layout Plan &amp; make changes to Operating Plan arising as consequences of the general scheme of Variation</i> |
| 3          | <i>Increase Off-Sales Hours from 20.00 to 22.00 (7 days)</i>   |
| 4          | <i>Delete On-Sales hours and capacity</i>  |
| 5          | <i>Remove Conditions C.8, C.12, C.5.2</i>  |
| 6          | <i>Substitute Premises Manager</i>   |

**a.2. Variation: Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

**Variation 1: Increase off-sales capacity from 8.2 to 41 sq.m.**

Discretionary refusal

Notes:

**(a) Overprovision may result if the Application is granted**

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2016, Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

- (a) the existing number and capacities of Premises in that Locality and in that Function Type is already sufficient,
- (b) Overprovision would result if the Application was to be granted, and
- (c) the Application should be refused.

The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

The Board will expect Applicants who are seeking the grant of a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the

apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application.

This report to the Board supplies the following information:

- (a) the Locality of the Premises
- (b) the Function Type of the Premises
- (c) any Additional Factors
- (d) other similar premises in the Locality

(a) the Locality of the Premises

The Board has determined that there are 6 'localities' in its area (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

The Subject Premises are in Locality 6 (Arran).

(b) the Function Type of the Premises

The Board's Overprovision Policy distinguishes Premises by 'Function Types'.

The Subject Premises are in Function Type 1 (Off-sales).

(c) Additional Factors

The likelihood that the Application will be granted or refused will be influenced by the Locality and the Function Type:

- (1) Locality: the Premises are not in one of 4 Localities where Applications are especially unlikely to be granted (regardless of the Function Type - "Three Towns"; "Kilwinning"; "Irvine etc."; or "Garnock Valley") so the Additional Factor related to Locality does not apply;
- (2) Function Type: any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality);

(d) other similar premises in the Locality

On Arran there are 40 outlets for alcohol sale, mostly on-sales (with a total capacity of 4,176 customers) and including 8 off-sales (with a total capacity of 471.4 square metres). The Board will have a summary of the licence position.

The population of the Arran Locality is 5,299 people (Source: Population from 'Scottish Neighbourhood Statistics' 2011).

Most off-sales are small Premises in villages, but Brodick includes two supermarkets, both licensed to Co-operative Food:

Licence 105, Shore Road, Brodick (66.5 sq.m.)  
Licence 349, Main Street, Invercloy (26.8 sq.m.)

**Variation 2: Amend Layout Plan & make changes to Operating Plan arising as consequences of the general scheme of Variation**

Mandatory Grant : The request is for a 'Minor Variation'

**Variation 3: Increase Off-Sales Hours from 20.00 to 22.00 (7 days)**

Discretionary refusal

Note: this Variation is in accordance with Policy, which allows Premises the maximum off-sales hours permitted by statute (10.00 - 22.00, 7 days).

The Board is not obliged to keep to its Policy. An Applicant can have no legitimate expectation that a Policy will be applied without regard to the merits of a particular case, and without the Board considering a Licensing Objective, such as "protecting & improving public health".

The L.O. expressly states "improving". Opinions may differ as to whether an increase in the ability to sell alcohol damages public health, or makes no difference, but it is unlikely to improve it.

It may be claimed that the increase simply increases consumer choice, and will not lead to an overall increase in consumption. This argument has been disapproved by the Scottish Parliament, which has limited off-sale displays and alcohol advertisements.

**Variation 4: Delete On-Sales hours and capacity**

Mandatory Grant : The request is for a 'Minor Variation'

**Variation 5: Remove Conditions C.8, C.12, C.5.2**

Refuse as unnecessary

Note: The Board's Standard Conditions are in Parts, relevant to the particular type of Premises, e.g.

A (all Premises)  
B (off-sales)  
C (on-sales)

The Licence was granted subject to Parts A, B and C. Conditions C.8 and C.12 were removed by the Board at the Applicant's request on 21 August 2013 (they related to the checking of toilets and customer capacity. Condition C.5.2 relates to



Outdoor Drinking Areas, so would cease to apply if Variations 1 & 2 were granted.)

Section 30 deals with decisions about Variations, and includes (sub-section 30(6)):

*"Where the Licensing Board grants the Application, the Board may make a Variation of the conditions to which the Licence is subject."*

If Variations 1 & 2 were granted, the Board would then remove the whole of Part C from the Licence.

#### **Variation 6: Substitute Premises Manager**

Mandatory Grant : The request is for a 'Minor Variation'

### **a.3. Licence Conditions on Variation**

See Note to Variation 5: If Variations 1 & 2 were granted, the Board should consider whether to act under Section 30(6) so as to delete the whole of Part C.

### **(b) Transfer**

#### **b.1. Relationship of the Transfer Application to the Variation**

If the Variation is refused, the Transfer Application would automatically fall and the Board would not require to determine it.

If the Variation is granted, the disposal of the Transfer Application depends on the response of the Police.

If some of the Variations are granted and some are refused, the Applicant will require to advise the Board whether or not the Transfer Application should be regarded as having fallen.

#### **b.2. Initial Procedure**

The Application has been intimated to the Chief Constable, who is obliged to respond to the Board with a Notice stating either that:

- (a) neither the Transferee nor any Connected Person has been convicted of any Relevant Offence or Foreign Offence, or
- (b) that there are such convictions.

In either case, the Chief Constable may recommend that the Board should refuse the Transfer Application, if he considers that it is necessary for the purposes of any of the Licensing Objectives (Sections 33(7) - (9) as substituted by Criminal Justice and Licensing (Scotland) Act 2010).

There is no other consultation, and no display of a Site Notice, for the Transfer part of the Application. For the Variation part, there is the same consultation, Site Notice and

scope for objections and representations as applies in other cases involving a Major Variation or the grant of a Premises Licence.

**b.3. The Board's Decision on the Transfer Application**

The Board will be advised of the Chief Constable's response.

(a) If there are no relevant convictions and the Chief Constable does not recommended refusal, the Board is obliged to grant the Transfer Application.

(b) If not (a), the Board must hold a Hearing for the purpose of considering and determining the Transfer Application. The Board must have regard to the Notice, and

(i) if satisfied that it is necessary to do so for the purposes of any of the Licensing Objectives, the Board should refuse the Transfer Application, but

(ii) if not so satisfied, the Board should grant it.

Locality - Arran  
Data as at 28 August 2014

FT = 'Function Type'  
An OVP assessment includes all  
Function Types except FT5 (Section 125 Clubs)  
  
1 = off-sales shop  
2 = nightclubs  
3 = public houses  
4 = accommodation/food  
5 = Club [125] (non-OVP)  
6 = Club ['Part K', non-125] (OVP)

| No. | Premises Name                             | Premises Address                               | PostCode | FT | On-Sales | Off-Sales |
|-----|---|--|----------|----|----------|-----------|
| 12  | Co-operative Food                         | Main Street, Lamlash                           | KA27 8LX | 1  | ~        | 16.9      |
| 15  | A & C Cameron, Blackwaterfoot Post Office | Blackwaterfoot, Isle of Arran                  | KA27 8EU | 1  | ~        | 6.6       |
| 96  | MBS Building & Timber Supplies            | The Old Pier, Whiting Bay, Isle of Arran       | KA27 8PR | 1  | ~        | 12.0      |
| 105 | Co-operative Food                         | Shore Road, Brodick, Isle of Arran             | KA27 8LA | 1  | ~        | 66.5      |
| 349 | Co-operative Food                         | Main Street, Invercloy, Brodick, Isle of Arran | KA27 8LA | 1  | ~        | 26.8      |
| 362 | Bay Stores                                | Shore Road, Whiting Bay, Isle of Arran         | KA27 8PZ | 1  | ~        | 9.5       |
| 397 | Isle of Arran Brewery                     | Cladach, Brodick, Isle of Arran                | KA27 8DE | 1  | ~        | 189.6     |
| 407 | Pirnmill Village Store & Post Office      | Pirnmill, Isle of Arran                        | KA27 8HP | 1  | ~        | 5.0       |
| 46  | Glenisle Hotel                            | Lamlash, Isle of Arran                         | KA27 8LY | 3  | 70       | 6.7       |
| 62  | Lochranza Hotel                           | Lochranza, Isle of Arran                       | KA27 8HL | 3  | 145      | ~         |
| 100 | The Catacol Bay Hotel                     | Catacol, Isle of Arran                         | KA27 8HN | 3  | 113      | 6.5       |
| 103 | Auchrannie House Hotel                    | Auchrannie Road, Brodick, Isle of Arran        | KA27 8BZ | 3  | 485      | 13.9      |
| 104 | Isle of Arran Distillery                  | Visitor Centre, Lochranza, Isle of Arran       | KA27 8HJ | 3  | 142      | 43.3      |
| 127 | The Wineport                              | Cladach, Isle of Arran                         | KA27 8DE | 3  | 88       | ?         |
| 173 | Kinloch Hotel                             | Blackwaterfoot, Isle of Arran                  | KA27 8ET | 3  | 300      | 3.0       |
| 185 | Drift Inn                                 | Shore Road, Lamlash, Isle of Arran             | KA27 8JN | 3  | 120      | 6.8       |
| 188 | Sannox Bay Hotel                          | Sannox, Isle of Arran                          | KA27 8JD | 3  | 85       | 6.3       |
| 245 | Blackwaterfoot Lodge                      | Blackwaterfoot, Isle of Arran                  | KA27 8EU | 3  | 30       | 3.9       |
| 257 | Pierhead Tavern                           | Main Street, Lamlash, Isle of Arran            | KA27 8JN | 3  | 150      | ~         |
| 332 | The Lagg Hotel                            | Lagg, Isle of Arran                            | KA27 8PQ | 3  | 296      | ~         |
| 345 | McLaren Hotel                             | Brodick, Isle of Arran                         | KA27 8JT | 3  | 160      | ~         |
| 352 | The Brodick Bar                           | Alma Road, Brodick, Isle of Arran              | KA27 8BU | 3  | 130      | ~         |
| 358 | Eden Lodge Hotel                          | Whiting Bay, Isle of Arran                     | KA27 8QH | 3  | 175      | ~         |
| 359 | Ormidale Hotel                            | Brodick, Isle of Arran                         | KA27 8BY | 3  | 295      | ~         |
| 374 | Corrie Hotel                              | Corrie, Isle of Arran                          | KA27 8JB | 3  | 195      | 4.0       |
| 402 | Kildonan Hotel                            | Kildonan, Isle of Arran                        | KA27 8SE | 3  | 310      | 22.3      |
| 405 | Lamlash Bay Hotel                         | Shore Road, Lamlash                            | KA27 8LU | 3  | 114      | 3.8       |
| 413 | Arran on a Plate                          | Shore Road, Brodick, Isle of Arran             | KA27 8AJ | 3  | 60       | ~         |
| 418 | The Douglas Hotel                         | Brodick, Isle of Arran                         | KA27 8AW | 3  | 262      | ~         |
| 49  | The Glenartney                            | Mayish Road, Brodick, Isle of Arran            | KA27 8BX | 4  | 24       | ~         |
| 60  | Fiddlers'                                 | Shore Road, Brodick, Isle of Arran             | KA27 8AJ | 4  | 46       | 9.9       |
| 123 | Copperwheat's Coffee Shop                 | Pier Buildings, Market Road, Brodick           | KA27 8ED | 4  | 46       | ~         |
| 186 | Altachorvie                               | Shore Road, Isle of Arran                      | KA27 8LQ | 4  | 70       | ~         |
| 234 | Burlington                                | Shore Road, Whiting Bay, Isle of Arran         | KA27 8PZ | 4  | 42       | ~         |
| 350 | The Invercloy                             | Shore Road, Brodick, Isle of Arran             | KA27 8AJ | 4  | 25       | ~         |
| 356 | The Beach Hut                             | Shore Road, Whiting Bay, Isle of Arran         | KA27 8PR | 4  | 48       | ~         |
| 357 | Trafalgar Restaurant                      | Shore Road, Whiting Bay, Isle of Arran         | KA27 8PZ | 4  | 20       | ~         |
| 396 | Kilmichael Country House Hotel            | Glencloy, By Brodick, Isle of Arran            | KA27 8BY | 4  | 20       | ~         |
| 428 | Café Thyme                                | Auchencar, Machrie, Isle of Arran              | KA27 8EB | 4  | 40       | ~         |
| 438 | Bilslands                                 | Shore Road, Brodick, Isle of Arran             | KA27 8AJ | 4  | 70       | 8.2       |

#### SUMMARY

|               | Premises  | On-sales     | Off-Sales    |
|---------------|-----------|--------------|--------------|
| FT1           | 8         | 0            | 332.8        |
| FT2           | 0         | 0            | 0.0          |
| FT3           | 21        | 3,725        | 120.4        |
| FT4           | 11        | 451          | 18.1         |
| FT6           | 0         | 0            | 0.0          |
| <b>Totals</b> | <b>40</b> | <b>4,176</b> | <b>471.4</b> |



**Application for Variation of Premises Licence - Section 29**

|           |  |
|-----------|--|
| Applicant | Ronald McConnachie                           |
| Premises  | "Jack's Corner", 2-4 Young Street, Ardrossan |
| Ref.      | 388  |

**Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014:*

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

**1. Summary of Variation Request(s)**

| <b>No.</b> | <b>Variation</b>                                      |
|------------|---|
| 1          | <i>Increase On-Sales Hours to 1.00 a.m. on Monday</i> |
| 2          | <i>Add 'Bar Meals', to be served in Lounge</i>        |
| 3          | <i>Add Smoking Area at Caledonia Road enclosure</i>   |

**2. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

**Variation 1: Increase On-Sales Hours to 1.00 a.m. on Monday**

Discretionary refusal

Notes: The reason given is Dart Competitions.

On 30 May 2013 the Board refused the same Application, which was also made for darts. Due to Section 32 the Board would have been obliged to refuse a request for the same Variation made within one year of the earlier refusal, unless either

- (a) the Board was satisfied that there had been a material change of circumstances since; or
- (b) the Board had decided to remove this bar at the time.

The Board did not make a Direction.

The request is outside the Board's policy, which is 24.00 on Sun - Wed and 1.00 on Thu - Sat.

The Premises already have the maximum hours permitted by Policy.

### **Licensing Objectives**

The Board may consider that the Application is not consistent with the following Licensing Objectives:

#### **(a) L.O. (a): 'preventing crime and disorder'**

The practice was adopted many years ago for 'Regular Extensions' under the 1976 Act and takes into account representations from the Police. That practice was repeated in the 2005 Act LPS, which operates throughout North Ayrshire. In general, only nightclubs open after midnight (Sun-Wed) or 1.00 a.m. (Thur-Fri). The Subject Premises are a public house in a mixed residential/commercial area. If the Board was to depart from its Policy here, it might receive similar requests from all over NA.

#### **(b) L.O. (d): 'protecting & improving public health'**

The L.O. expressly states 'improving'. An increase in the ability to sell or consume alcohol cannot be said to improve public health. Opinions may differ as to whether it damages public health, or makes no difference, but it is unlikely to improve it.

### **Variation 2: Add 'Bar Meals', to be served in Lounge**

Grant (no statutory reason to refuse, and no breach of Board policy)

Notes: The Premises are in three parts. On entering from Young Street, on the right is the 'Public Bar' and on the left is the 'Lounge Bar'. From the Lounge Bar, upstairs is an area with tables, the Lounge'.

At present the O.P. categories 'Restaurant facilities' and 'Bar Meals' are both 'No'.

*Note to Applicant: this is not a matter for the Licensing Board, but if the Premises are to serve food they should be approved under the Food Safety legislation by the NAC Environmental Health Department.*

### **Variation 3: Add Smoking Area at Caledonia Road enclosure**

Refuse as unnecessary

Notes:

If the area is to be used only for smoking, and not for the consumption of alcohol, then the use is not covered by the alcohol licence. There is nothing for the Licensing Board to grant or refuse.

However, for the Applicant's information:

- (a) the present proposal is to use the paved area at the Caledonia Street entrance. When the Board met on 30 May 2013 there were 3 variation

requests. A 4th had been included in the original application - a proposed 'beer garden' at the same place. This proposal attracted several objections from neighbours and the Applicant withdrew it.

(b) any smoking shelter would be likely to require Planning Permission (the Licensing Board does not grant or refuse this); NAC Planning Department advises that there is no grant of Planning Permission in place for a smoke shelter, and that the Planning Officer has already advised the Applicant that Permission would be unlikely to be approved.

(c) Separate from any question of Variation, if the Board later upholds a Review based on complaints of nuisance caused by customers of the Premises, the Board would be entitled to consider what action, if any, would be "necessary or appropriate for the purposes of any of the Licensing Objectives".

(d) There are several Licence Conditions which already apply. The Licence is subject to the usual Board Standard Conditions, which include:

C.4.1 Licensee to apply best practicable means to prevent nuisance to persons outside

C.4.2 Signs to be displayed asking customers to respect the local neighbourhood and keep noise levels to a minimum while outside the building or at the entrances to the building

C.4.3 Licensee to take reasonable steps to ensure that at all times that customers do not cause nuisance to persons outside the Premises

Alleged breach of those conditions would be a Ground for Review.

### **3. Licence Conditions**

No variation of the Conditions is appropriate.





### Application for Variation of Premises Licence - Section 29

|           |   |
|-----------|---|
| Applicant | Ronald McConnachie                        |
| Premises  | "Windy Ha", 31 Bradshaw Street, Saltcoats |
| Ref.      | 56  |

#### **Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014:*

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

#### **1. Summary of Variation Request(s)**

| <b>No.</b> | <b>Variation</b>  |
|------------|---|
| 1          | <i>Increase On-Sales Hours to 1.00 a.m. on Monday and Wednesday</i> |
| 2          | <i>Vary On-Sales and Off-Sales Hours to 11.00 a.m. on Sunday</i>    |
| 3          | <i>Extend access to under-5s</i>                                    |
| 4          | <i>Increase on-sales capacity to Building Standards figure</i>      |

#### **2. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

|  |
|--|
| <b>Variation 1: Increase On-Sales Hours to 1.00 a.m. on Monday and Wednesday</b>                       |
| Discretionary refusal  |
| Notes: The reason given is Darts (Mon) and Ladies' Dominoes (Wed).                                     |
| The request is outside the Board's policy, which is 24.00 on Sun - Wed and 1.00 on Thu - Sat.          |
| The Premises already have the maximum hours permitted by Policy.                                       |
| <b><u>Licensing Objectives</u></b>   |
| The Board may consider that the Application is not consistent with the following Licensing Objectives: |
| <u>(a) L.O. (a): 'preventing crime and disorder'</u>   |

The practice was adopted many years ago for 'Regular Extensions' under the 1976 Act and takes into account representations from the Police. That practice was repeated in the 2005 Act LPS, which operates throughout North Ayrshire. In general, only nightclubs open after midnight (Sun-Wed) or 1.00 a.m (Thur-Fri). The Subject Premises are a public house in a mixed residential/commercial area. If the Board was to depart from its Policy here, it might receive similar requests from all over NA.

(b) L.O. (d): 'protecting & improving public health'

The L.O. expressly states 'improving'. An increase in the ability to sell or consume alcohol cannot be said to improve public health. Opinions may differ as to whether it damages public health, or makes no difference, but it is unlikely to improve it.

**Variation 2: Vary On-Sales and Off-Sales Hours to 11.00 a.m. on Sunday**

Grant (no statutory reason to refuse, and no breach of Board policy)

Notes: Currently licensed on Sunday 12.30 - 24.00 (on-sales) & 12.30 - 22.00 (off-sales)

**Variation 3: Extend access to under-5s**

Discretionary refusal

Notes:

The reason given is "for food provision on current terms and times as per operating plan."

At present the Children aged 5 and over are permitted until 20.00 if accompanied by an adult for the purpose of consuming a meal.

The distinction 5/under-5 is due to one of the Mandatory conditions required by the legislation. As this is a Mandatory condition the Board cannot vary it. The Condition requires that on-sales Premises which admit under-5s must have facilities for baby changing which are to be accessible to persons of either gender.

There are two possible reasons for refusal:

(1) The Board should only grant such a variation if satisfied that that Condition is likely to be complied with. The Applicant should advise the Board what arrangements he proposes.

(2) The Board may consider that the Application is not consistent with Licensing Objective (e): 'protecting Children from harm'. This L.O. relates to Children aged 0-15 years, and not to older 'Young Persons' (aged 16-17). The Board should only grant such a variation if satisfied that the Premises are a suitable environment for Children under 5. The Board may satisfy itself on the basis of an inspection of the Layout Plan, a site inspection, or information from the LSO.

**Variation 4: Increase on-sales capacity to Building Standards figure**

Discretionary refusal

Notes:

The current capacity is 100 customers. The Board staff have asked NAC Building Standards to state what the approved figure is, and the Board will be informed.

Any increase in capacity raises the issue of Overprovision (and, with on-sales, the Licensing Objectives 'preventing crime and disorder' and 'securing public safety') but if the change is slight and accords with Building Standards' assessment then the Board may be willing to grant the Variation.

If the Board wishes further information, e.g. data relevant to an Overprovision decision, the Board might continue the case to a later meeting to obtain this data.

**3. Licence Conditions**

No variation of the Conditions is appropriate.



### Application for Variation of Premises Licence - Section 29

|           |   |
|-----------|---|
| Applicant | Parveen Akhtar  |
| Premises  | "Dreghorn Discount Food Store", 52-54 Dundonald Rd., Dreghorn |
| Ref.      | 137   |

#### **Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014:*

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

#### **1. Summary of Variation Request(s)**

| <b>No.</b> | <b>Variation</b>   |
|------------|--|
| 1          | Increase off-sales capacity from 15.70 sq. m. to 18.66 sq.m. (about 19%) |
| 2          | Alter Layout Plan  |

#### **2. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

#### **Variation 1: Increase off-sales capacity from 15.70 sq. m. to 18.66 sq.m. (about 19%)**

##### **Discretionary refusal**

Notes: The Premises are a 'convenience store' with an off-sales facility. At present, alcohol is displayed behind the till counter and over several shelves in an area with a single entrance near the counter, so that staff can see the area directly. The Applicant proposes to rearrange shelves and fridges, but the layout will be similar. The Applicant says that no under-age person will be allowed in the alcohol area.

There are two issues:

(a) the Variation may be inconsistent with Licensing Objective (d): 'protecting & improving public health';

(b) the Variation may create Overprovision.

##### **(a) Licensing Objective**

The L.O. expressly states 'improving'. Opinions may differ as to whether an increase

in the ability to sell alcohol damages public health, or makes no difference, but it is unlikely to improve it.

It may be claimed that the increase simply increases consumer choice, and will not lead to an overall increase in consumption. This argument has been disapproved by the Scottish Parliament, which has limited off-sale displays and alcohol advertisements.

#### (b) Overprovision

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2016, Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

- (a) the existing number and capacities of Premises in that Locality and in that Function Type is already sufficient,
- (b) Overprovision would result if the Application was to be granted, and
- (c) the Application should be refused.

The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

The Board will expect Applicants who are seeking the grant of a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application.

This report to the Board supplies the following information:

- (a) the Locality of the Premises
- (b) the Function Type of the Premises
- (c) any Additional Factors
- (d) other similar premises in the Locality

#### (a) the Locality of the Premises

The Board has determined that there are 6 'localities' in its area (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

The Subject Premises are in Locality 4 : Irvine and Area (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torran yard).

(b) the Function Type of the Premises

The Board's Overprovision Policy distinguishes Premises by 'Function Types'. The Subject Premises are in Function Type 1 (Off-sales).

(c) Additional Factors

The likelihood that the Application will be granted or refused will be influenced by the Locality and the Function Type:

- (1) Locality: the Premises are in one of 4 Localities where Applications are especially unlikely to be granted (regardless of the Function Type) - "Three Towns"; "Kilwinning"; "Irvine etc."; or "Garnock Valley";
- (2) Function Type: any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality);

(d) other similar premises in the Locality

See attached "Overprovision Assessment Report".

**Variation 2: Alter Layout Plan**

Mandatory Grant : The request is for a 'Minor Variation'

Notes: If Variation 2 is granted but Variation 1 is refused, the proposed alteration to the layout can continue, but the Applicant will have to continue with the current alcohol capacity, which will mean that some of the shelves or fridges will have to be used for non-alcohol goods.

**3. Licence Conditions**

The Licence was granted subject to Edition 3 of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5.





Overprovision Assessment Report: Dregghorn Discount Food Store (NALB 137)

A. The OA divides:

North Ayrshire into 6 'Localities'; and  
Premises into 6 'Function Types'.

B. The 'Localities' are:

1. North Coast
2. Three Towns
3. Kilwinning
4. Irvine and area
5. Garnock Valley
6. Arran

C. The 'Function Types' are:

1. Off-sales Premises
2. On-sales Premises principally providing entertainment (e.g. nightclubs)
3. Other on-sales Premises (e.g. public houses)
4. On-sales Premises (accommodation/meals/non-alcoholic refreshment)
5. Members' Clubs with Special Treatment (excluded from Overprovision)
6. Members' Clubs without Special Treatment ('Part K Clubs')

D. The Subject Premises are:

in 'Locality' : 4 (Irvine and area);  
in 'Function Type' : 1 (Off-sales Premises)

E. In THIS Locality:

People in this Locality: 37,738  
ALL alcohol outlets in this Locality : 104 (or 2.7 per 1,000 people)  
Total ON-SALES capacity: 14,573 customers (or 386 per 1,000 people)  
Total OFF-SALES capacity: 1,536 sq.m. (or 40 per 1,000 people)

F. Premises of THIS Function Type in THIS Locality:

The number of Premises of the same Locality/Function Type : 36

These are:

|                                   |          | sq.m. |
|-----------------------------------|----------|-------|
| 1. Keystore                       | KA11 1AQ | 62.6  |
| 2. Fullarton Street Newsagents    | KA12 8DG | 2.6   |
| 3. Keystore                       | KA11 4AQ | 6.3   |
| 4. Aldi                           | KA12 0AA | 29.6  |
| 5. Co-operative Food              | KA11 4ES | 32.6  |
| 6. Premier                        | KA12 9LP | 3.1   |
| 7. Thornhouse Stores              | KA12 0LU | 33.7  |
| 8. The Kiosk                      | KA12 0PZ | 16.7  |
| 9. Nisa Extra                     | KA11 1PQ | 22.7  |
| 10. Booker Cash and Carry         | KA11 5AU | 377.1 |
| 11. Harbourside Stores            | KA12 8PU | 1.2   |
| 12. Dregghorn Discount Food Store | KA11 4AW | 15.7  |
| 13. Annes Store                   | KA12 8RP | 17.4  |
| 14. Springside Stores             | KA11 3BG | 12    |
| 15. Max Stores                    | KA12 0NU | 25.8  |
| 16. Marks and Spencer Simply Food | KA12 8AG | 48.5  |
| 17. Asda Store                    | KA12 8EH | 255.1 |
| 18. Village Store                 | KA11 1ND | 25.7  |

Sheet1

|                                       |          |      |
|---------------------------------------|----------|------|
| 19. Iceland Foods Limited             | KA12 0AX | 8.8  |
| 20. Redburn Stores                    | KA12 9BG | 21.6 |
| 21. Irvine Late Shop                  | KA12 0AD | 9.7  |
| 22. Towerlands Stores                 | KA11 1HA | 1.6  |
| 23. Spar Convenience Store            | KA11 2DH | 29.3 |
| 24. West End Dairy                    | KA11 4EZ | 13.2 |
| 25. Tesco Extra                       | KA12 8AY | 270  |
| 26. Costcutters                       | KA12 0UL | 5.2  |
| 27. J & A Quinn                       | KA11 3AW | 0    |
| 28. Spar Convenience Store            | KA12 8AH | 39   |
| 29. Broomlands Supermarket            | KA11 1HB | 10.9 |
| 30. Townhead Stores                   | KA12 0EH | 11.8 |
| 31. Nisa Local                        | KA12 9HD | 22.2 |
| 32. Premier / Girdle Toll Post Office | KA11 1AQ | 8.9  |
| 33. Premier Store                     | KA12 0RF | 15.6 |
| 34. Co-operative Food                 | KA12 0RF | 14.7 |
| 35. Bobby's Bargain                   | KA12 0XE | 19.6 |
| 36. Home Bargains                     | KA12 8AG | 25.4 |

These figures disregard:

1. Clubs which are entitled to special treatment under section 125 (FT=5)
2. Gantries in on-sales premises

Sources:

1. Licensing Policy Statement (2013-16) Annex E)
2. Population from 'Scottish Neighbourhood Statistics' (SNS) 2011
3. NALB Premises Licences data as at 26 August 2014  
(off-sales capacity figures rounded down to nearest 0.1 sq.m.)

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## Application for Variation of Premises Licence - Section 29

|           |  |
|-----------|--|
| Applicant | Ms. Paula Fisher                           |
| Premises  | "Garfield's", 59 Princes Street, Ardrossan |
| Ref.      | 252  |

**Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014. Until the Board has a Certificate of Display, it cannot determine the Application.*

**1. Summary of Variation Request(s)**

| No. | Variation  |
|-----|--|
| 1   | Change off-sales hours from 11.00 a.m. to 10.00 a.m (7 days)   |
| 2   | Change on-sales Terminal Hour from 24.00 to 1.00 a.m. Thur-Sat   |
| 3   | Increase access area for under-15s   |
| 4   | Increase access times for under-18s  |
| 5   | Add activities - quiz nights, magic shows, comedians, charity events, seasonal events, e.g. Santa's Grotto |

**2. Objections and Representations**

|                                      |                 |
|--------------------------------------|-----------------|
| Police                               | No objection    |
| Community Council                    | Disbanded       |
| Fire                                 | No objection    |
| Health Board                         | No response yet |
| NAC Building Standards               | No objection    |
| NAC Planning                         | No objection    |
| Other Objections or Representations? | None            |

**3. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

|  |
|--|
| <b>Variation 1: Change off-sales hours from 11.00 a.m. to 10.00 a.m (7 days)</b>   |
| Grant (no statutory reason to refuse, and no breach of Board policy)               |
| Notes: Premises are already licensed for <u>on-sales</u> from 10.00 a.m. (7 days). |

**Variation 2: Change on-sales Terminal Hour from 24.00 to 1.00 a.m. Thur-Sat**

Grant (no statutory reason to refuse, and no breach of Board policy)

**Variation 3: Increase access area for under-15s**

Discretionary refusal

Notes:

The existing Licence reflects the Applicant's understanding of the age categories 'Children' and 'Young People' and does not follow the legislation:

The Applicant means by 'Children' persons aged 0-14, and by 'Young People' 15-17.

The legislation means by 'Children' persons aged 0-15, and by 'Young People' 16-17.

The Applicant might confirm to the Board that the Operating Plan should be amended to reflect the legislation's age division, and that the Variation requests should be read accordingly.

In the Premises (as viewed from the entrance), there are several tables on the right and the bar and kitchen are on the left. At present the Applicant limits 'Children' (0-14) to a single table at the back of the premises. The proposal is to extend that access to all the tables to the right of the entrance.

In the Clerk's opinion this proposal does not appear to be inconsistent with any of the Licensing Objectives, but Variation 4 ("Increase access times for under-18s") - which affects both 'Children' and 'Young People' may be.

**Variation 4: Increase access times for under-18s**

Discretionary refusal

Notes:

At present all under-18s are permitted on the Premises:

'Children' - until 5.00 p.m.

'Young People' - until 9.00 p.m.

Both types can remain for the full Terminal Hour if attending a function.

The proposal is to extend access for both types to the Terminal Hour at all times (24.00 midnight Sun-Wed, 1.00 a.m. Thur-Sat).

The Board may consider that the Application is not consistent with one of the Licensing Objectives: (e): 'protecting Children from harm'

This L.O. relates to 'Children' aged 0-15 years, and not to older 'Young Persons' (aged 16-17) - a person of 15 is regarded by the legislation as a 'child' and is

protected accordingly.

The Board may consider that the proposal to allow anyone under 16 on the Premises after 22.00 during 'normal' trading (i.e. otherwise than attending a function) is not consistent with this L.O..

**Variation 5: Add activities - quiz nights, magic shows, comedians, charity events, seasonal events, e.g. Santa's Grotto**

Grant (no statutory reason to refuse, and no breach of Board policy)

#### **4. Licence Conditions**

No variation of the Conditions is appropriate.



**Application for Variation of Premises Licence - Section 29**

|           |                                     |
|-----------|-------------------------------------|
| Applicant | Girdle Toll Bowling Club            |
| Premises  | Burns Crescent, Girdle Toll, Irvine |
| Ref.      | 318                                 |

**Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014. Until the Board has a Certificate of Display, it cannot determine the Application.*

**1. Summary of Variation Request(s)**

| <b>No.</b> | <b>Variation</b>  |
|------------|---|
| 1          | Change Sunday opening time to 11.00 a.m. from 12.30 p.m.. |
| 2          | Add activity - serving of food at special events          |
| 3          | Add activity - music                                      |

**2. Objections and Representations**

|                                      |                 |
|--------------------------------------|-----------------|
| Police                               | No objection    |
| Community Council                    | No response yet |
| Fire                                 | No objection    |
| Health Board                         | No response yet |
| NAC Building Standards               | No objection    |
| NAC Planning                         | No objection    |
| Other Objections or Representations? | None            |

**3. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

|  |
|--|
| <b>Variation 1: Change Sunday opening time to 11.00 a.m. from 12.30 p.m..</b>  |
| Grant (no statutory reason to refuse, and no breach of Board policy)   |
| Notes:<br>Premises are already licensed on 6 days 11.00 a.m. - 1.00 a.m..  |
| The Applicant would have opted for 12.30 p.m. on Sunday as these <u>were</u> the 'Permitted Hours' on Sunday under the 1976 Act, so it would have been a condition of having 'grandfather rights' that the same hours were repeated in the Application |

for the 2005 Act Licence.

#### **Variation 2: Add activity - serving of food at special events**

Grant (no statutory reason to refuse, and no breach of Board policy)

*Note to Applicant: this is not an issue for the Licensing Board dealing with the alcohol licence, but the supply or storage of food is regulated by other legislation. The Applicant is advised to discuss the proposal with the Council's Environmental Health Department.*

#### **Variation 3: Add activity - music**

Mandatory Grant : The request is for a 'Minor Variation'

Grant (no statutory reason to refuse, and no breach of Board policy)

Notes:

In general, an Operating Plan covers 'music' in two categories: 'music', which is contrasted with the other category 'live performances', so means only recorded music.

The current OP already permits 'live performances', so the Applicant should clarify what else is proposed.

#### **4. Licence Conditions**

No variation of the Conditions is appropriate.



**Application for Variation of Premises Licence - Section 29**

|           |  |
|-----------|--|
| Applicant | Walcal Property Development Ltd.         |
| Premises  | "The Market Bar", 35 Howgate, Kilwinning |
| Ref.      | 171                                      |

**Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014:*

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

**1. Summary of Variation Request(s)**

| <b>No.</b> | <b>Variation</b>                                  |
|------------|---|
| 1          | Add "Live Performances" and "Karaoke"             |
| 2          | Increase Sunday terminal hour from 23.00 to 24.00 |

**2. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

**Variation 1: Add "Live Performances" and "Karaoke"**

Grant (no statutory reason to refuse, and no breach of Board policy)

**Variation 2: Increase Sunday terminal hour from 23.00 to 24.00**

Grant (no statutory reason to refuse, and no breach of Board policy)

**3. Licence Conditions**

The Licence was granted subject to Edition 3 of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5.



**Application for Variation of Premises Licence - Section 29**

|           |   |
|-----------|---|
| Applicant | Revels Sports Bar and Diner Ltd.                  |
| Premises  | "Revels", 53-59 Main Street, Kilwinning, KA13 6AN |
| Ref.      | 241   |

**Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014:*

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

**1. Summary of Variation Request(s)**

| <b>No.</b> | <b>Variation</b>   |
|------------|--|
| 1          | Site 'bouncy castle' in Outdoor Drinking Area (already licensed) |

**2. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

| <b>Variation 1: Site 'bouncy castle' in Outdoor Drinking Area (already licensed)</b>   |
|--|
| Discretionary refusal  |
| Notes:<br><br>Although the proposed use is common, the Board may wish a Report from the Senior Manager Protective Services commenting on whether or not the proposal meets Building Standards. The Board is not entitled to enforce the separate legislation, but information may be relevant to the application of the Licensing Objectives:<br><br>L.O. (b): 'securing public safety'<br>L.O. (e): 'protecting children from harm' |
| If the Variation is granted, it will be noted as 'any other activities' in O.P. 5(f).  |

**3. Licence Conditions**

No variation of the Conditions is appropriate.



**Application for Variation of Premises Licence - Section 29**

|           |   |
|-----------|---|
| Applicant | Franco Calistri   |
| Premises  | "Romeo and Juliet Inn", Kilbirnie Road, Dalry, KA24 5JS |
| Ref.      | 63  |

**Preliminary**

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014:*

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

**1. Summary of Variation Request(s)**

| <b>No.</b> | <b>Variation</b>  |
|------------|---|
| 1          | Add 'Music', 'Live Performances', 'Dance Facilities' & 'Televised Sport'                |
| 2          | Vary Condition so as to allow outdoor drinking to 24.00 (from 22.00)                    |
| 3          | Add Quiz Nights, Charity Nights, & Karaoke  |
| 4          | Increase hours for non-resident under-18s to full Core Hours for functions (from 22.00) |

**2. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

**Variation 1: Add 'Music', 'Live Performances', 'Dance Facilities' & 'Televised Sport'**

Grant (no statutory reason to refuse, and no breach of Board policy)

**Variation 2: Vary Condition so as to allow outdoor drinking to 24.00 (from 22.00)**

Discretionary refusal

Notes:

The Condition relates to "Outdoor Drinking Areas":

*"C.5.2 No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm.."*

The Condition was adopted due to the Licensing Objective of "preventing public nuisance". It is not a Mandatory Condition, and the Board is entitled to vary it on a case-by-case basis. The Premises are in a rural location and the area is at the rear of the Premises, adjoining a field.

### **Variation 3: Add Quiz Nights, Charity Nights, & Karaoke**

Grant (no statutory reason to refuse, and no breach of Board policy)

Notes:

This is a separate request from Variation 1 because these activities are not among those listed in the prescribed form of Operating Plan. If this Variation is granted, the activities will be added to the 'any other activities' part of the O.P..

### **Variation 4: Increase hours for non-resident under-18s to full Core Hours for functions (from 22.00)**

Discretionary refusal

Notes:

At present non-resident under-18s (both "Children" and "Young Persons") are allowed on the Premises until 22.00 if accompanied by an adult both:

- (a) where they are having a meal and
- (b) where they are attending a function.

Residents are permitted at all times.

The proposal is that the time should remain 22.00 for meals, but that under-18s attending functions should be allowed on the Premises for the full Core Hours (Policy Hours: Sun-Wed 24.00; Thu-Sat 1.00). The time could be up to an hour later if the Board has granted Extended Hours for the particular occasion.

The Board would have to consider whether or not that proposal is consistent with one of the Licensing Objectives: 'protecting Children from harm'.

At present this L.O. relates to Children aged 0-15 years, and not to older 'Young Persons' (aged 16-17). (The Air Weapons and Licensing (Scotland) Bill, introduced to the Scottish Parliament in May 2014 proposes to extend this L.O. to 'Young Persons').

The Board may consider that the proposal to allow Children (aged 0-15) on the Premises after 22.00 is not consistent with this L.O..

### **3. Licence Conditions**

If Variation 2 is granted, the Conditions should be varied accordingly.

**Premises Licence Review Proposal - Section 37**

|                         |   |
|-------------------------|---|
| Premises                | Shops at:<br>45-47 Moorburn Road, Largs (Board ref.: 088)<br>23 West Doura Court, Kilwinning (117)<br>21 Old Raise Road, Saltcoats (154)<br>16-18 & 22a Central Avenue, Ardrossan (423) |
| Premises Licence Holder | Martin McColl Stores Ltd  |

**1. Background**

The Board has received confirmation from the Chief Constable that the Premises Licence Holder has been convicted:

|           |   |
|-----------|---|
| Date:     | 26 June 2014  |
| Court:    | West Suffolk Magistrates' Court                               |
| Offence:  | Licensing Act 2003, Section 146 (Sale of alcohol to children) |
| Disposal: | Fine £1,500   |

|           |   |
|-----------|---|
| Date:     | 26 June 2014  |
| Court:    | West Suffolk Magistrates' Court   |
| Offence:  | Licensing Act 2003, Section 147A (Persistently selling alcohol to children) |
| Disposal: | Fine £13,500  |

|           |                                 |
|-----------|---------------------------------|
| Date:     | 26 June 2014                    |
| Court:    | West Suffolk Magistrates' Court |
| Offence:  | Licensing Act 2003, Section 146 |
| Disposal: | Fine £2,000                     |

|           |                                 |
|-----------|---------------------------------|
| Date:     | 26 June 2014                    |
| Court:    | West Suffolk Magistrates' Court |
| Offence:  | Licensing Act 2003, Section 146 |
| Disposal: | Fine £2,000                     |

The person in the first charge was 16 years and one month old. The person in the third charge was 16 years and 4 months. The person in the third charge was 16 years and 9 months. The ages of the persons in the second charge are not stated.

**(a) Section 146 ("Sale of alcohol to children")**

The Licensing Act 2003 is the principal licensing legislation in England and Wales.

Under Section 146 it is an offence to sell alcohol to an individual aged under 18, unless:

- (a) the seller had a reasonable belief that the buyer was of age, or
- (b) if person charged is not the same as the person who in fact sold the alcohol (e.g. an employer), that he exercised all due diligence to avoid committing the offence.

This offence is similar to the offence under Section 102 of the Scottish Act. It is therefore to be taken into account as a "Foreign Offence", being an offence under the law of any place other than Scotland which is similar in nature to any "Relevant Offence" as prescribed by The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513 (as applied by Section 129(2) of the Scottish Act).

(b) Section 147A ("Persistently selling alcohol to children")

It is an offence if alcohol is unlawfully sold on the same premises to an individual aged under 18 on 2 or more different occasions within a period of 3 consecutive months. To avoid double-jeopardy, these occasions cannot also be used as the basis of the usual Section 146 charge. The maximum fine is £20,000, and also the Court is entitled to suspend the Licence for up to 3 months.

The Board is entitled to have regard to the conviction under Section 147A. There is no equivalent offence in Scots Law to that under Section 147A, but if similar circumstances happened in Scotland:

- (i) the prosecution would be under Section 102 of the Scottish Act;
- (ii) if a Scottish Court dealt with a complaint or indictment involving separate under-age offences at the same Premises over a short length of time then the overall penalty might be higher.

**2. Procedure**

Under Section 44 the Board must, on receipt of that confirmation, make a Review Proposal under Section 37 (Review of Premises Licence on Licensing Board's initiative).

The information given by the Police is limited to that given above, and does not contain other details of the charge, e.g. circumstances.

**3. Action**

Given that the convictions relate to Premises outside North Ayrshire and are unlikely to have a bearing on Premises within the Board's area, the Board may wish to conclude the Review by taking no action. If the Board considers that Revocation or the other steps otherwise available may be appropriate, and wishes to be addressed by the Licence Holder, the case should be continued to a later meeting.



**Application for Variation of Premises Licence - Section 29**

|           |   |
|-----------|---|
| Applicant | Graham Conrathe                           |
| Premises  | Moorpark House Hotel, Kilbirnie, KA25 7LD |
| Ref.      | 222                                       |

**Preliminary**

*The Premises appear on the Board's agenda of 29 September 2014 for two matters - a Review under Section 37 and the present Application for Variation under Section 29.*

*The Board can hear the two cases together, but it should make separate decisions in each.*

*This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 September 2014:*

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

**1. Summary of Variation Request(s)**

| <b>No.</b> | <b>Variation</b>  |
|------------|---|
| 1          | <i>Vary Condition C.5.2 so as to allow drinking in all outside areas to 24.00 (Mon-Sat) or 23.00 (Sun)</i>  |
| 2          | <i>Vary Condition C.5.1 so as to allow playing of Live Music, Radio, amplified and recorded music in all outside areas 12.00 - 17.00 (7 days)</i> |

**2. The Location**

The Premises are in a rural location to the north-west of Kilbirnie lying to the east of School Lane. There are dwelling-houses on the west of School Lane. The closest to the Premises is 'Woodhill', occupied by Mr. David and Mrs. Kathleen Wilson.

Measured from 'Woodhill', the licensed outside areas are approximately:

North Terrace – 100 m.  
 West Garden and Terrace – 50 to 65 m.  
 South Terrace – 65 m.

The North Terrace is on the far side of the Premises, as viewed from 'Woodhill'.

**3. Previous Decision**

On 21 November 2012 the Board considered Variation Applications by the same PLH in relation to the same Premises:

| <b>No.</b> | <b>Variation</b>  |
|------------|---|
| 1          | <i>Amend Layout Plan to add Outdoor Drinking Area – North Terrace</i>   |
| 2          | <i>Amend Layout Plan to add Outdoor Drinking Area – West Terrace, Croquet Lawn and West Garden</i>                      |
| 3          | <i>Amend Layout Plan to add Outdoor Drinking Area – South Terrace</i>   |
| 4          | <i>Vary Condition C.5.2 so as to permit use of North Terrace until 24.00 for the consumption of alcohol and smoking</i> |

Variations 1, 2, and 3 were granted. Variation 4 was refused, and accordingly the Condition remained as it was - requiring drinking to cease at 22.00 (the area could continue to be used for smoking after then).

#### **4. Issues**

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with L.O.s or Board Policy are highlighted.

##### **Variation 1: Vary Condition C.5.2 so as to allow drinking in all outside areas to 24.00 (Mon-Sat) or 23.00 (Sun)**

Discretionary refusal

Notes:

The Board's Standard Conditions for Outdoor Drinking Areas include:

"C.5.2 No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm.."

On a case-by-case basis the Board has agreed to vary this Condition. Any decision depends on the Board being satisfied that the proposals are not inconsistent with any of the Licensing Objectives, and in particular L.O. (c): 'preventing public nuisance'.

##### **Variation 2: Vary Condition C.5.1 so as to allow playing of Live Music, Radio, amplified and recorded music in all outside areas 12.00 - 17.00 (7 days)**

Discretionary refusal

Notes:

The Board's Standard Conditions include:

"C.5.1 No loudspeakers, televisions, radios or other devices for amplifying sound shall be positioned at any time in Outdoor Drinking Areas."

The Board has never agreed to vary this Condition. As with any non-mandatory condition, it is entitled to do. The same L.O. issues arise as with Variation 1.

**Premises Licence Review Proposal (Second Stage) - Section 37**

|                       |                                  |
|-----------------------|----------------------------------|
| Premises              | Moorpark House Hotel             |
| Premises Address      | School Road, Kilbirnie, KA25 7LD |
| Premises Licence ref. | 222                              |
| Licence Holder        | Graham Conrathe                  |
| Premises Manager      | same                             |
| Personal Licence ref. | NA0425                           |

**1. Background**

1.1. By letter of 7 July 2014 Mr. David Wilson, "Woodhill", School Road, Kilbirnie (here "the Complainer") informed the Board of certain alleged circumstances relating to these Premises.

1.2. The spreadsheet accompanying the Complainer's letter lists 163 alleged incidents over the period 25 July 2013 to 6 July 2014. Copies of the letter and the spreadsheet will be distributed to Members at the Meeting.

1.3. These alleged incidents are categorised by time periods:

| <b>Number of Incidents</b> | <b>Time Period</b>            |
|----------------------------|-------------------------------|
| 48                         | afternoon (up to 17.00)       |
| 5                          | evening (17.00 - 20.00)       |
| 7                          | late evening (20.00 - 22.00)  |
| 32                         | night (22.00 - 23.30)         |
| 43                         | late night (23.30 - 00.30)    |
| 28                         | late late night (after 00.30) |
| <b>163</b>                 | <b>Total</b>                  |

1.4. Section 37(1) is:

*"The Appropriate Licensing Board in respect of any Licensed Premises in relation to which a Premises Licence has effect may, on their own initiative, propose to review the Licence on any of the Grounds for Review."*

The statute provides that the possible "Grounds for Review" are—

- (a) that one or more of the conditions to which the Premises Licence is subject has been breached, or
- (b) any other ground relevant to one or more of the Licensing Objectives.

1.5. The Board carried out a preliminary consideration on 10 July 2014, and then decided:

- (a) whether or not to make a Proposal;

(b) if so, what the alleged "Grounds for Review" should be (Section 37(4)).

1.6. The Board decided to make a Proposal on the following "Grounds of Review":

1. *The operation of the Premises on the occasions and in the circumstances listed may have involved breaches of one or more of the Licence conditions;*

2. *The operation of the Premises may not be consistent with the 'preventing public nuisance' Licensing Objective;*

1.7. The fact that the Board decided, on a preliminary consideration, that there might be one or more Grounds of Review, should not be taken by the Board or anyone else as an indication that the Board has concluded that a Ground of Review is or should be established. At a later Hearing (e.g. 29 September 2014) the Board would have to decide on the information it has then received whether or not the Review should be upheld.

## **2. The Premises**

2.1. The Premises are a Hotel sitting in its own grounds. The Premises are in a rural location to the north-west of Kilbirnie lying to the east of School Lane. There are dwelling-houses on the west of School Lane. The closest to the Premises is 'Woodhill', occupied by the Complainer.

2.2. The Board decided on 21 November 2012 to add three Outdoor Drinking Areas to the north, west and south of the Premises. The Complainer objected to these Variations.

2.3. Measured from 'Woodhill', the proposed areas are approximately:

North Terrace – 100 m.

West Garden and Terrace – 50 to 65 m.

South Terrace – 65 m.

The North Terrace is on the far side of the Premises, as viewed from 'Woodhill'.

2.4. The areas can be used between 11.00 a.m. and 10.00 p.m. (see Condition 5.2 below). At the same time as requesting the North Terrace, the Premises Licence Holder (PLH) requested that the time there be extended to 24.00. The Board refused this.

## **2.6 The Licensed Hours**

The on-sales hours are:

|           |               |
|-----------|---------------|
| Monday    | 11.00 - 24.00 |
| Tuesday   | 11.00 - 24.00 |
| Wednesday | 11.00 - 24.00 |
| Thursday  | 11.00 - 01.00 |
| Friday    | 11.00 - 01.00 |
| Saturday  | 11.00 - 01.00 |
| Sunday    | 12.30 - 24.00 |

The Premises are also licensed for off-sales, with the same commencement hours and the terminal hour at 22.00 on all days.

## 2.7. The Licensed activities

|   | <b><i>Licensed</i></b> |
|---|------------------------|
| Accommodation   | x                      |
| Conference facilities   | x                      |
| Restaurant facilities   | x                      |
| Bar meals   | x                      |
| Receptions (including weddings, funerals, birthdays, retirements, etc.) | x                      |
| Club or other group meetings  | x                      |
| Recorded music  | x                      |
| Live performances   | x                      |
| Dance facilities  | x                      |
| Theatre   |                        |
| Films   | x                      |
| Gaming  |                        |
| Indoor/Outdoor sports   |                        |
| Televised sport   | x                      |
| Outdoor Drinking  | x                      |
| Adult entertainment   |                        |

## 2.8. The Licence Conditions

The Premises Licence is subject to the Board's Standard Conditions, which include:

### **"C.4 Noise and other nuisances"**

*C.4.1 The Licensee shall apply best practicable means to prevent persons outside the Premises or any Outdoor Drinking Area being subjected to nuisance from noise, vibration, smell or otherwise.*

*C.4.2 Signs will be displayed inside the building, near each exit (including any exit leading to an Outdoor Drinking Area), asking customers to respect the*

*local neighbourhood and keep noise levels to a minimum while outside the building or at the entrances to the building. Each sign shall be of at least A4 size, in letters of not less than 12 points in height, and positioned so that is easily readable by customers or drivers.*

*C.4.3 The Licensee shall take reasonable steps to ensure that at all times that the Premises are open to the Public (and for 15 minutes after the Terminal Hour) customers do not cause nuisance to neighbouring occupiers or persons outside the Premises.*

*C.4.4 When any of the activities to which this Condition applies take place on the Premises after 22.00, the following requirements apply:*

*(a) All windows and doors (both external and internal) shall be kept closed, except that doors may be opened from time to time to permit the immediate passage of people provided that they are then again closed;*

*(b) Where equipment is used for the amplification, relaying or making of sound, the Premises shall, at the request of an Officer authorised by the Council, use sound limiter equipment set so that the equipment does not operate beyond sound levels agreed.*

*The activities to which this Condition applies are the playing of Recorded Music, karaoke, the giving of Live performances, Dancing, the performance of Theatre, the showing of Films, and the operation of Radio, Television or Jukebox.*

### **C.5 Outdoor Drinking Areas**

*C.5.1 No loudspeakers, televisions, radios or other devices for amplifying sound shall be positioned at any time in Outdoor Drinking Areas.*

*C.5.2 No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm.."*

## **3. Review Procedure**

3.1. The Board must give the Licence Holder and any person supplying information to the Board (e.g. the Complainer) an opportunity to be heard, and decide whether or not a Ground for Review is established.

3.2. The Board is entitled to inspect the Premises prior to determining the Review.

3.3. The Board is entitled by Section 38(5) to

(a) obtain further information from such persons, and in such manner, as the Board thinks fit, and

(b) consider any possible Ground for Review even though it is not relevant to any circumstances alleged in the original Review Proposal. If the Board proposes to do this, it should inform the Licence Holder of its intention and consider whether an adjournment is appropriate.

3.4. The Board is entitled to have regard to the letter dated 9 November 2012 by the Complainer's Solicitor, setting out his objection to the proposed addition of the three Outdoor Drinking Areas, and the two letters from the Complainer to the Licensing Standards Officer dated 31 July 2012.

#### **4. Board's Powers on Review**

4.1. If the Board is satisfied that a Ground for Review is established, the Board may take any one or more of the following steps if it considers necessary or appropriate for the purposes of any of the Licensing Objectives:

- (a) issue a Written Warning to the Licence Holder;
- (b) make a Variation of the Licence - either indefinitely or for a specific time. The Variation may relate to any part of the Licence, for example:
  - (i) the operating hours for the Premises (or any part);
  - (ii) the Premises Manager can be removed;
  - (iii) the activities which may be carried on on the Premises (or any part);
  - (iv) the terms for access by persons under 18 to the Premises (or any part);
  - (v) the Licence Conditions (the Variation cannot alter the statutory Mandatory Conditions; none of the Conditions quoted are such);
- (c) Suspend the Licence for a specific time (while the Licence is suspended, Annual Fees continue to be charged). If the Board imposes a Suspension, it should not have immediate effect unless this is considered necessary in the public interest; most Suspensions should be postponed to give the PLH the opportunity to appeal to the Sheriff Court. Any Board order takes effect immediately, and is not postponed by an appeal, but if appealing the PLH can ask the Sheriff to recall the Suspension pending appeal. The postponement is in the Board's discretion, but 7 days would be reasonable;
- (d) Revoke the Licence. Similar considerations apply to the question of whether or not the Revocation should have immediate effect.

4.2. The Board is not obliged to take any of these steps, and it may decide that although a Ground for Review is established, no action is required.

4.3. The Board may take these steps either on the basis of the original Review Procedure, or on the basis of information obtained in the course of the Review Procedure.

## **5. Further Action**

If the Board decides to Vary or Suspend the Licence, the Board is later entitled to revoke its order if the Holder requests this and the Board is satisfied that, by reason of a change of circumstances, the Variation or Suspension is no longer necessary. A decision to issue a Written Warning or to Revoke a Licence cannot later be revoked.

## **6. Personal Licence**

6.1. Under Section 84, whether or not the Board takes any action in relation to a Premises Licence, the Board may consider that any Personal Licence Holder who is or was working in the Licensed Premises concerned (for example, a Premises Manager or a member of staff) acted in a manner which was inconsistent with any of the Licensing Objectives. If there is a suggestion that staff training was inadequate, the Premises Manager's Personal Licence may be reviewed whether or not he was present at the time of the circumstances alleged.

6.2. If the Licence Holder is working in Licensed Premises in North Ayrshire, and has had the opportunity to be heard, the Board Meeting which considers the present Premises Licence Review can consider that review at the same time as the Hearing relating to the Premises Licence.

Otherwise, the Board should

- (a) continue the case to a later date to allow notice to be given to the Personal Licence Holder, or
- (b) notify the appropriate other Licensing Board, and make a recommendation to that Board as to whether the Personal Licence should be Revoked, Suspended or Endorsed. That Board will then hold a Hearing.

6.3. Whichever Board holds the Personal Licence Review Hearing may, if it considers it necessary for any of the Licensing Objectives:

- (a) Revoke the Personal Licence,
- (b) Suspend the Personal Licence for up to 6 months,
- (c) Endorse the Personal Licence. An endorsement lasts 5 years. If the Licence Holder gets 3 Endorsements in a 5 year period, then the Board would have to consider whether the Licence should be Suspended (for up to 6 months) or Revoked (these are not automatic).



6.4. The Board is not obliged to take any of these steps, and it may decide that although a Ground for Review is established, no action is required.



Report

to

North Ayrshire Licensing Board

by

Solicitor (Licensing)

|                 |  |
|-----------------|--|
| Subject:        | Occasional Extensions and Occasional Licences – Festive Period 2014-15   |
| Purpose:        | To advise the Board about previous and current Policy and procedure  |
| Recommendation: | That the Board <ol style="list-style-type: none"><li>1. determine Policy</li><li>2. extend the Scheme of Delegations</li></ol> |

**1. Background**

1.1. The Board is entitled to grant:

"Occasional Extensions" under Section 68 to Premises which are already licensed ("Extended Hours" or "E.H.");

"Occasional Licences" under Part 4 to Premises which are not already licensed ("O.L.").

1.2. The NALB Policy on Terminal Core Hours throughout the year is:

(a) Public Houses and Restaurants: Sunday to Wednesday: 24.00; Thursday to Saturday: 1.00.

(b) Nightclubs: Sunday to Wednesday: 1.00; Thursday to Saturday: 2.30.

(c) Members' Clubs: 7 days - 1.00.

1.3. In previous years, the Board has determined Policy for the Festive Period, which has:

(a) designated the dates of the 'Festive Period', during which extra hours were permitted - in past years, the Festive Period lasted about 5 weeks, starting around 1 December and continuing until the first day before shops and offices re-opened after New Year;

(b) divided the Festive Period in two, allocating the number of days of Extended Hours which could be applied for by each Premises. In past years, the Policy was:

(i) in the period to 15 December, up to four periods;

(ii) in the period from 16 December, up to seven periods.

(c) determined what the authorised extension should be. In past years, this was one hour for each period of Licensed Hours beyond the Policy normally applicable for the particular type of Licensed Premises during the year, except that the extension for nightclubs in the period Thursday to Saturday was only 30", from 2.30 to 3.00 a.m.;

(d) qualified the Policy:

if Christmas Eve and Hogmanay fell on Sunday to Wednesday then, for the sole purpose of determining the application of Policy, an Application by individual Premises for Extended Hours under Section 68 for those nights was treated as an Application for a Saturday. (e.g. the maximum terminal hour which a public house could seek for those days was 2.00 a.m. during the Festive Period);

(e) directed that a curfew of 00.30 should apply to all on-sales premises (which is the same as during the rest of the year).

1.4. For the Festive Period 2013-2014, the Board's policy was to divide a period of about 5 weeks into two:

(a) the first period (Sunday 1 December 2013 to Saturday 14 December 2013) - a maximum of 4 periods of Extended Hours;

(b) the second period (Sunday 15 December 2013 to Saturday 4 January 2014) - a maximum of 7 periods of Extended Hours;

(c) Christmas Eve & Hogmanay were treated as if they were Saturdays (in 2013, both fell on Tuesdays);

(d) the curfew remained at 00.30 (as in the rest of the year).

1.5. The practice of the other Ayrshire Boards is

(a) South Ayrshire LB:

The festive period is from 1st December to 2nd January. An extra hour is allowed. There is no curfew.

(b) East Ayrshire L.B.

The festive period is taken to be from two weeks prior to Christmas Day until 6 January.

Premises can stay open up to 4 days:

nightclub/discos can open to 3.00 a.m. with curfew at 2.15am. (in the rest of the year 2.30 a.m. with curfew at 1.15 a.m.)

other on-sales can open to 2.00 a.m. (rest of the year 1.00 a.m.)

1.6. Premises which are otherwise unlicensed (e.g. a Community Centre) might be covered temporarily by an Occasional Licence. The Policy on hours during the year is as for Public Houses, with one hour extra during the Festive Period.

1.7. The Board's Standard Conditions require all Premises open after 1.00 a.m. to have a First Aider and to observe a 00.30 curfew, regardless of the nature of the Licence or permission which authorises opening after 1.00 a.m. (e.g. an Occasional Extension or an Occasional Licence): NALB Conditions C.17, D.1 and D.4.

1.8. The Board has not previously made a Policy on extending off-sales hours. It is not necessary that it should, as most such Premises already have the maximum statutory hours (10.00 - 22.00, 7 days).

1.9. The Board has not used its powers under Section 67 ("Power for Licensing Board to grant general extensions of Licensed Hours"), i.e. PLHs have the option to apply for later hours, but do not automatically have them. Under the Policy Applications are treated on their merits, with the Police and L.S.O. being asked to comment on each proposal.

## **2. Procedure**

2.1. For the convenience of Licensees, the Board accepts a single Application Form covering several different days, although these are individual Applications. The prescribed fee per Application is £10, so an Application covering 4 dates would cost £40.

2.2. As with Applications throughout the year, the Board has a Policy requiring Applications to be made at least 28 days in advance of the date requested (detailed in the Board's Licensing Policy Statement 2013-2016, Annex C).

2.3. E.H. Applications are not publicised and there is no scope for public comment. If there is a complaint about the operation of Premises during Extended Hours, this would be dealt with as a normal Review.

2.4. O.L. Applications are publicised on the Board website for 7 days.

## **3. Proposed Amendment to Scheme of Delegations**

3.1. Both types of Application are sent to the Police and Licensing Standards Officer for Report. These Reports are usually to be given within 10 days (E.H.) or 21 days (O.L.). However, the Board can shorten this period to not less than 24 hours if satisfied that the Application requires to be dealt with quickly (E.H.: Sections 69(4)-(6); O.L.: Sections 57(4) & (5)).

3.2. Most Applications attract no adverse comments from Police etc. and are granted under Delegated Powers.

3.3. In E.H. cases that require to be dealt with quickly, the Board has previously delegated authority to the Convenor (whom failing the Vice-Convenor, whom failing any Member) to make both the preliminary decision to reduce the notice period, and thereafter to decide on whether or not to grant the Application itself.

3.4. The Board is invited to make a similar delegation for O.L., by adding to the Scheme of Delegations approved on 3 March 2014:

*"Section 57(4): to determine that the Application requires to be dealt with quickly (so that the period for response from Police, LSO and any third party is reduced from 21 days to such shorter period of not less than 24 hours as the Board may determine);*

*Section 57(5): in a Section 57(4) case, to determine what the shorter period should be;"*

As with the Delegation for E.H., this additional Delegation would operate throughout the year, and not only in the Festive Period.

#### **4. Issues**

4.1 The Board is invited to determine Policy. The Board should consider the Licensing Objectives, and in particular "protecting and improving public health".

4.2. It is suggested that for the forthcoming Festive Period the Policy might be:

(a) the first period should be Sunday 30 November 2014 to Saturday 13 December 2014 (both dates inclusive);

(b) in that period, each Premises can apply for a maximum of 4 periods of Extended Hours;

(c) the second period should be Sunday 14 December 2014 to Saturday 3 January 2015 (both dates inclusive);

(d) in that period, each Premises could apply for a maximum of 7 periods of Extended Hours;

(e) Since Christmas Eve & Hogmanay both fall on Wednesdays in 2014, the Board might agree to treat these nights as if they were Saturdays;

(f) the maximum extension should be for the period from the end of the particular Premises' Core Hours for that day until one hour for each period of Licensed Hours beyond the Policy normally applicable for the particular type of Licensed Premises during the year, except that the extension for nightclubs in the period Thursday to Saturday was only 30", from 2.30 to 3.00 a.m.;

(g) the maximum Terminal Hour for Occasional Licences should be 2.00 a.m. (on all 7 days);

(h) a 00.30 curfew should apply to all Licences (whether Premises Licences or Occasional Licences).

4.3. (f) is not worded simply as 'one hour after Core Hours' because if the extension is related to the actual hours held by particular Premises during the rest of the year, this might disadvantage those Premises which have chosen to have shorter Terminal Hours throughout the rest of the year.

For example, a restaurant might normally close at 21.00 all week:

(a) If the Extension is linked to NALB Policy, then that restaurant could seek a festive extension to 1.00 (Sunday-Wednesday) or 2.00 (Thursday-Friday), but

(b) If the Extension is linked to actual Core Hours, it could only seek an extension to 22.00.

