

Cunninghame House  
Irvine  
KA12 8EE

15 June 2022

### **North Ayrshire Licensing Board**

You are requested to attend a Meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Ground Floor, Cunninghame House, Irvine on **Monday 20 June 2022 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

- 1. Declarations of Interest**
- 2. Minutes**  
Submit Minutes of the Board Meetings held on 22 November 2021 and 28 March 2022 (copy enclosed)
- 3. 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)
- 4. Any Other Business**

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## Licensing Board

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Sederunt: Eleanor Collier (Convenor)  
Nairn McDonald (Vice-Convenor)  
John Bell  
Christina Larsen  
Jean McClung  
Donald L Reid

Chair:

Apologies:

Meeting Ended:

## **AGENDA ITEM 2**

### **DRAFT**

#### **North Ayrshire Licensing Board 22 November 2021 Coronavirus Procedure**

**Meeting, 22 November 2021** - At a meeting of the North Ayrshire Licensing Board at 10.00 am using online video conferencing.

#### **Present**

Councillors Ronnie McNicol (Convenor), Todd Ferguson (Vice-Convenor), Robert Barr, John Easdale, Jean McClung and Davina McTiernan.

#### **In Attendance**

W O'Brien, Solicitor (Licensing), C Pollock, Licensing Administration Officer and M Champion, Admin Assistant.

#### **Convenor**

Councillor Ronnie McNicol

#### **Apologies for Absence**

Councillor Donald L Reid  
Councillor Angela Stephen  
Councillor Scott Gallacher

The Board determined that this meeting cannot be held in public for a reason relating to coronavirus. As an alternative the meeting was conducted using online video-conferencing instead of in the Council Chambers at Cunninghame House, Irvine. Accordingly, this meeting was not open to the public.

The legislation which permits this is the Coronavirus (Scotland) Act 2020, Schedule 5, Paragraph 4(5)(d), amending Licensing (Scotland) Act 2005, Schedule 1, Paragraph 12(2); the 2020 Act was extended to 30 September 2021 by the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 No. 299 and further extended to 31 March 2022 by the Coronavirus (Extension and Expiry) (Scotland) Act 2021.

The Convenor welcomed Members and Officers, Applicants and other participants to the virtual meeting and reminded them to switch off their microphones when not speaking and that Members should make sure that their camera is on during the meeting to ensure they are visible as being present. He also asked everyone to open the chat box and if they have a question or a point of order at any stage, they should indicate this by typing "Q" or "PO", respectively, in the chat box.

### **1. Declarations of Interest**

There were no Declarations of Interest.

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### **2. Minutes**

The Board were asked to confirm the Minutes of the Licensing Board meetings held on 23 August and 4 October 2021. The Board unanimously agreed to confirm and adopt the Minutes.

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

The Board considered a report by the Clerk to the Licensing Board on matters under the Licensing (Scotland) Act 2005. The report, on this occasion, contained 1 Appendix;

The Licensing Board agreed to dispose of the matters as follows;

#### **A. Premises Licence applications or any other applications requiring a Hearing**

##### **A.1 45 Jack's Road, Saltcoats**

The Board considered an application for grant of a Provisional Premises Licence made by N&S Properties Limited for the above premises. The Applicant was represented by Joanna Millar, Solicitor, and was accompanied by Mr Jaqq Sandhu, owner's son.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien confirmed preliminary matters should be covered by Ms Millar in her submission.

Ms Millar then addressed the Board. Referring to the Board Report, she confirmed that the outdoor drinking area, that has newly built houses close to this area, should be removed from the application. With regards to the original application submitted, Ms Millar clarified that home deliveries should be removed, on-sales hours should be amended in line with the Board's Policy hours and the Sunday opening time was to be 12.30pm. Additionally, a new layout plan will be lodged removing reference to bar, an anomaly not picked up before submitting.

Her Client had hoped to submit a full Premises Licence application but a delay in receiving Section 50 Certificates, due to Coronavirus, had prevented this. They are now in receipt of the Building Standards Certificate and hope to have the Environmental Health one today which would allow them to apply for Confirmation today as they are very keen to open and trade.

Referring to the Board Report, the capacity inconsistency between the Operating Plan and the Layout Plan of 190, Ms Millar asked if this could be increased to 250 if there are no issues as this is well within the sanitary provision. With regards to indoor/outdoor sports, this facility is for children's games ie colouring packs that can be taken away and games, not to provide pool or darts as it will be a family friendly premises.

With regards to overprovision and Licensing Objectives, Ms Millar confirmed there is CCTV already installed covering both inside and outside the premises which can viewed from inside the premises and on a mobile phone. It is a good system but it is intended to be updated to that used within her client's other premises. The family have over 50 years' experience of running similar premises and all staff will be well trained and there will be at least 2 Personal Licence holders. As the premises will be a restaurant, with no vertical drinking, run by experience operators there should not be any issues. She advised that her client ran a similar Premises in Renfrewshire operating an outdoor drinking area without concerns and this is also based in a residential area. The premises seek to attract families and will offer fresh local produce and will offer a wide range of low and no alcohol products as they supply in their other premises. Referring to the Board's overprovision Policy, Ms Millar believed the premises

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should be in function type 4, meals and restaurant premises. Although not currently licensed the previous licence was revoked for failing to pay the annual fee. The building is a purpose built stand-alone restaurant and will offer alternative foods very different from other premises in the area. The alcohol on display will not be aimed for off-sales, the off-sales facility is to permit customers to purchase a specific type not available elsewhere. The cost to purchase alcohol for take-away will be as the menu price list therefore not attractive. With regards to Gaming, there will be no AWP gaming machines, this is to permit charity or themed nights.

Ms Millar clarified that the premises will open regardless of the Provisional Premises Licence being granted, they would offer a BYOB but believe this is less regulated and wish to operate appropriately.

Referring to the background of the family and the investment in the premises, Ms Millar advised the Sandhu family have many years of experience in running similar premises and they have invested approximately half a million pound on these premises. Already they have interacted with the local community and have supported local fayres and schools in offering prizes for raffles and intend to run family fun days including Santa for the children. There will be 18 employees, 10 of which being full time, and anticipate this figure to increase, they are currently interviewing staff from the local area.

Ms Millar clarified to Councillor Barr that the request for Sunday hours has now been amended in line with the Board's Policy to 11am to midnight.

In respect of Occasional Licences, Ms Millar advised the Convenor that these had been lodged to facilitate the opening of the premises on 1 December. As soon as the Section 50 Certificates are available, they will be applying for Confirmation however the use of Occasional Licences would ensure the premises could open and not be held up due to an administrative error. Although the Board Policy does not permit the use of Occasional Licences in this manner they would appreciate if these could be granted to permit some breathing space in the interim period. Ms Millar confirmed to the Convenor these applications mirror exactly the Provisional Premises Licence application and as the use of the outdoor drinking area has been removed from the Provisional Premises Licence then it should be removed from the Occasional Licence applications. She also confirmed that Mr Sandhu has had contact with neighbours, although not able to invite them for a meeting due to the current pandemic, he has spoken with them and made them aware of his operation.

Mr Sandhu then addressed the Board, he confirmed to the Convenor that the fire damaged area at the back of the premises had been tidied up although this will be refurbished once revenue has been raised from the opening of the premises. He also confirmed he has spoken with neighbours who in fact have his mobile number and have been keeping watch on the premises while being unoccupied.

The Convenor and Councillor McClung being local Members for this area noted that there was not many restaurant type premises in this area. Councillor McClung advised previously any business running from this premises has always been well received with no history of problems and the only restaurant in the top end of the town. In agreement with Councillor McClung, Councillor McTiernan noted that the area at the back, not currently refurbished, did take the look away from the good work already done on the building. Ms Millar clarified that over half a million pound has already been spent on the building and once the premises have been trading they are very keen to develop the other side of the building and will consider a suitable use.

Ms Millar confirmed to Councillor Barr that the premises are not anticipating interest from children or young persons from the nearby secondary school. She confirmed any alcohol on display was not encouraging off-sales. They will not be a snack premises and do not anticipate

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any issue from school children. Children will be welcome with their families and young persons permitted for meals. Ms Millar confirmed to Councillor McClung at the moment there will be no takeaway menu at lunchtime attracting schoolchildren. This may be looked at for the next phase but not being focused on now. Councillor McClung noted that in previous years there has not been any issue with schoolchildren in this restaurant.

The Board adjourned with the Solicitor (Licensing) at 10.39 am to deliberate in private and the Applicant and all other external participants left the virtual meeting. The meeting re-convened at 10.58 am. The same Members and Officers were present.

Having considered the terms of the reports and the submissions made, the Convenor making an exception to the Board's Policy, proposed that the Board grant the Provisional Premises Licence application and permit the use of Occasional Licences. Councillor Ferguson seconded the motion. There was no counter-motion.

The Provisional Premises Licence is granted subject to Standard Conditions (Edition 5 as read with later amendments of the statutory mandatory conditions, and modified if the Board so direct) Parts A, B, C and F.

The Convenor confirmed Occasional Licence applications will now be processed by Board staff and a visit to the premises will be made prior to Confirmation.

### **A.2 Kilwinning Rangers Social Club, The Claire Hub @ Kilwinning Sports Club, Pennyburn Road, Kilwinning**

The Board considered an application for grant of a Provisional Premises Licence made by Kilwinning Rangers Social Club for the above premises. The Applicant was represented by Colin Boyd, Chairperson and Trustee of Kilwinning Sports Club and he was accompanied by Andrea Boyd.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien highlighted this is a complicated application and highlighted that the applicants' letter, proposed Operating Plan and Layout Plan are included in the Members background papers as well as a link to a short video, which will be played at the meeting.

Ms Boyd then addressed the Board. She confirmed that she is a volunteer of Kilwinning Rangers and Kilwinning Sports Club. Explaining the objectives of the social club, Ms Boyd advised the club was set up to bring together people from Kilwinning and the surrounding area in recreational activities, improve the use of the sports clubs facilities and increase funds that will remain in the local community. The club have been operating successfully for some time with the use of Occasional Licences for football matches and events both at this new clubhouse and at the teams' previous football park. Explaining that the club is the only one of its type in the area, Ms Boyd explained a full Premises Licence would allow the club to achieve their objectives, with no restrictions on the facilities and allowing a wider range of people to use their facilities. The clubhouse has been built from over £100,000 of donated labour and materials with input from North Ayrshire Council and Kilwinning Locality Partnership, working to bring the whole community together. They have an already expected social return on investment of 13:1 from the public funding and have a projected community wealth of £1million over 12 years through fundraising activities. Creating 8 part time positions will also provide employment in the local area. All profits from the club will remain in the local area and without having a full Premises Licence they would be restricted on the amount of people using the facilities and therefore less income would be generated. She explained that funds raised during the recent lockdown, from members continuing to pay fees, permitted the Club to run

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an after school club offering local children the opportunity of exercise and to socialise in a safe environment as well as providing hot food to children, some of whom are disadvantaged.

Ms Boyd advised that they would like to open the bar to permit other football teams to use the facilities. Presently the time scales that junior football teams have for games does not permit them to apply for Occasional Licences, they believe this could generate an additional 25% of their income, without a full Premises Licence this would not be possible. A full premises licence with no requirement of Occasional Licences for events would also allow unlimited funeral teas, host last minute parties, or have entertainment at short notice. All of which would be profitable to the social club and therefore the community, estimating an increase in income by at least 20%.

Referring to the protecting and improving public health licensing objective, Ms Boyd advised the unique premises also focuses on mental health. She explained the Claire Hub is named after a volunteer who suffered from mental health issues and is sadly no longer with us. They provide a safe space and signposting to support for members and the wider community. As contained in the club's Constitution, Ms Boyd confirmed they are not operating for profit, all profits will be spent on the aims of the club and helping other charities.

Ms Boyd then explained that if the Board were minded to refuse a full Premises Licence then their second option would be a premises licence subject to Part K of the Boards Conditions. The ability to only have 12 Occasional Licences in a year would restrict their ability to maximise the use of their premises and impact on their potential income, however, if the Part K proposal was unacceptable to the Board then they wish their application to be considered as a Section 125 Club.

Referring to the Board report, with regards to the off-sales display capacity, Ms Boyd confirmed it was not intended to have dedicated off-sales but wish to offer the facility for customers. The bar servery will have 4 fridges as shown on their layout plan which provides the dimensions of the areas that will be used for off-sales. She also confirmed their agreement to add "No person under 18 will be permitted to remain within 1 metre of any bar." Additionally CCTV will be available and can be checked by staff and door stewards will be used if required.

In summary, Ms Boyd advised the focus of the club is on mental health and to provide a family friendly environment where children and accompanying parents can watch football and children and young people can see that alcohol can be consumed in an acceptable manner. She also confirmed that approximately 50% of events would not provide alcohol and there will be a wide range of non alcoholic drinks available. As regards to overprovision, there are no other premises which will operate as they propose.

In relation to food facilities for funerals and events, Mr Boyd confirmed to the Convenor that the pitch side take-away, only approximately 15-20ft away, and Kilwinning Sports Club would provide catering. This arrangement has been used in the past under an Occasional Licence for a sportsman's dinner to provide a 3 course meal. He also explained there is an area within the building which could also offer food.

In relation to employing staff, Ms Boyd confirmed they hope to employ 8 staff although they would not open every day, mainly Friday, Saturday and Sunday and other nights if football was taking place. Ms Boyd confirmed the intention is to have 2 Personal Licence Holders. She has just applied for a Personal Licence in order to be Premises Manager and they already have an existing Personal Licence Holder.

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Referring to overprovision, Ms Boyd advised the Convenor that although there are 2 licensed premises a short distance away offering similar facilities for events, this proposal is different as only they will have all proceeds put back into the local community and not for profit.

Mr Boyd confirmed to the Convenor there are about 550 members consisting of first team players, parents of children who are club members and coaches. He also confirmed the bar will be closed during football matches and spectators will be removed from the premises. Safeguards will be in place to show children how alcohol can be consumed responsibly, and the club encourage responsible behaviour.

Councillor Ferguson observed that Scottish Health Action are trying to disassociate the connection between alcohol and sporting events, and he highlighted the women's game as being an example of this. Ms Boyd confirmed that there will be no posters or signage referring to the sale of alcohol, when the serving area is closed off no alcohol will be visible in the hall.

Ms Boyd confirmed to the Convenor that the small fridges which will hold alcohol available for off-sales would not be seen unless someone leaned over the bar and only a section of the large fridge would be visible. Prices for off-sales would not be supermarket prices but bar prices. In relation to the building, only the 3 main halls will be licensed. Within the building there is also a beauty salon and offices used by the Sports club and Kilwinning Rangers.

The Board adjourned with the Solicitor (Licensing) at 11.41 am to deliberate in private and the Applicant and all other external participants left the virtual meeting. The meeting re-convened at 12.05 pm.

A roll-call was conducted to ensure all Members were present. The same Officers remained present.

Having considered the terms of the report, and the submissions made, Councillor Barr proposed that the Board grant the application as a Part K Club Licence (referring to 'Part K' of the Board's Standard Conditions), where the Premises would normally operate as a Members' Club, and not sell alcohol to non-Members, except at bona fide functions. Councillor McClung seconded the motion. Councillor Easdale moved, as an amendment, that the application be granted as a Full Licence. There was no seconder to the amendment.

There was then a roll-call vote. The Convenor and Councillors Ferguson, Barr, McClung and McTiernan voted for the motion. Councillor Easdale voted for the amendment.

With 5 votes in favour and 1 vote against, the motion was accordingly carried, and the application granted as a Part K Club Licence.

The Provisional Premises Licence is granted subject to Standard Conditions (Edition 5 as read with later amendments of the statutory mandatory conditions, and modified if the Board so direct) Parts A, B, C, F and K.

Councillor Ferguson gave his apologies and departed the meeting at 12.10 pm.



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### A.3 Volharding, c/o Clyde Marina, Ardrossan

The Board considered an application for grant of a Premises Licence made by Crofters Arran Ltd for the above premises. Donal Adam Boyle, Director of Crofters Arran Ltd was present.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising.

Mr Boyle then addressed the Board. He advised that he has entered a charter agreement to operate the vessel from next summer and as an additional revenue stream would like to be able to offer alcohol on board. The target market is corporate charter events and private functions providing hospitality. The requirement of a Premises Licence is to permit hospitality while berthed, with Clyde Marina being supportive to the proposal. He also requested the ability to sell Crofters produced spirits and liquors for off-sales from the vessel. Necessary works will be carried out in due course to permit a food offering.

Mr Boyle confirmed to the Convenor that the Site Notice was displayed at the entrance to the top ramp leading onto the berth. In relation to overprovision, he said that the aim is to will appeal to customers out with the local area. With regards to the capacity he confirmed the vessel is licensed for 12 persons and 3 crew while at sea due to the life saving provision on board however he has been advised that this is not a restriction while the vessel is berthed.

Confirming to the Convenor, Mr Boyle advised the vessel will be berthed in Ardrossan on the west side of the harbour in the commercial area, next to fishing vessels where there is a separate secure access from the other parts of the marina. It will not be berthed in Arran due to the lack of berthing facilities. He also clarified that while at sea there would be 10 passengers, 2 hospitality staff and 3 crew. It is planned that both day trips and night cruises will be available for corporate groups.

In relation to baby changing facilities, Mr Boyle confirmed that there will be no under 5s on board mainly due to life saving apparatus. He also confirmed to Councillor Easdale that on-sales hours should be amended in line with the Board's Policy. During the winter months when not at sea the intention is to operate as a dining restaurant although a lot of work will be required for this to happen.

As contained in the report, Mr O'Brien advised the Board that while vessels are at sea, with under 50 people on board, there is no requirement to be licensed.

Mr Boyle advised the Convenor that although the ship has a galley kitchen area this is not suitable for a commercial operation. In relation to products available for off-sales, he confirmed to Councillor Easdale it will be the products manufactured in Crofters Arran, gin and spirits as well as their own food products.

Clarifying the proposed operation while berthed to the Convenor and Councillor McClung, Mr Boyle advised they would be intending to operate a prebooking system but also accept walk-ins, although their products will be substantially more expensive than other premises.

In regards to the preliminary matter with the layout plan, Mr O'Brien confirmed this has now been received.

Mr Boyle advised the Convenor the vessel is currently in Girvan awaiting a slot to be taken to Ardrossan where maintenance work will be carried out, he hopes this will be available mid February/early March.

Having considered the terms of the reports and the submissions made, the Convenor proposed that the Board continue consideration of the Premises Licence application until a

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site visit could take place. Councillor Barr seconded the motion. There was no counter-motion.

The Board unanimously agreed without dissent or abstention to continue the case to a future meeting of the Licensing Board to allow a site visit to take place.

The Board adjourned at 12.35 pm for a 25 minute lunch break. All parties left the virtual meeting at this point.

The meeting reconvened at 1.05 pm. A roll-call was conducted to ensure all Members were present. The Convenor and Councillors Barr, Easdale, McClung and McTiernan were present. The same Officers were also present. Apologies were submitted prior to the meeting from Councillors Gallacher, Stephen and Reid and Councillor Ferguson left the meeting prior to case 3.

### **A.4 0051 Elms Bar, 21 Raise Street, Saltcoats**

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Trust Pubs Ltd, for the above premises. The Premises Licence Holder was represented by Joseph Fitzpatrick, Director.

The Licence Holder was requesting the following variations:

1. Add outdoor drinking
2. Permit under-18s in lounge on match days

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising.

Representations were submitted in relation to the application from the Council's Specialist Environmental Health Officer and Assistant Planning Officer. Copies of the representations were provided to the applicant prior to the Board meeting and copies were given to the Board Members for their consideration.

Mr Fitzpatrick then addressed the Board. He confirmed the application for the outdoor area was identical to the previous application which was refused at the Board on 24 May 2021. He explained that both Police Scotland and the Health Board were under the impression he wished to operate the outdoor area during the hours the Health Centre was opened and therefore submitted objections to his previous application. He has now consulted with Police Scotland and clarified the intention is only to open this area when the Health Centre is closed. Following advice given at the last Board meeting he did contact the Health Board and did eventually obtain a graph providing the information of the closing times of the various departments within the Health Centre, and this was provided to Board Members.

Mr Fitzpatrick confirmed to the Convenor he had not been in contact with the Planning Department regarding Planning Permission but had received pre application advice prior to submitting his earlier licensing application. Regarding comments from Environmental Health, Mr Fitzpatrick confirmed that no music would be played in the outdoor drinking area and all the issues raised have been addressed. He confirmed CCTV would cover the outdoor area, staff will do regular monitoring and will ensure the lounge door remains closed from 10.00pm to prevent noise from entertainment escaping Friday to Sunday. Regarding the complaint referred to by Environmental Health, Mr Fitzpatrick confirmed this was an oversight on his part. By allowing doors to be opened to help with ventilation in relation to covid this had contributed to the noise referred to. This problem has been addressed by ensuring doors and

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windows are closed and staff doing perimeter checks to ensure noise levels are reduced. Mr Fitzpatrick confirmed he will be in the premises at weekends and noise levels have remained steady with no other complaints. He also confirmed staff are deployed at both lounge and bar exits 30 minutes before closure ensuring safe dispersal of customers and preventing nuisance outside the pub.

The Convenor noted he was aware of the complaint and the LSO's outcome following mediation. Mr Fitzpatrick confirmed that following a meeting with the LSO he did speak with the complainer who appears to be happy with the measures put in place, he also advised that the ventilation system has now been repaired and is operational, as well as new windows having been installed which will also reduce noise levels. Referring to the surrounding fence, Mr Fitzpatrick confirmed this would be 6ft high so that there would be no sight of customers in the outdoor area.

With regards to Variation 2, Mr Fitzpatrick has received requests to allow teenagers into the lounge area prior to football buses leaving, this would be for one and a half hours from 11.00am -12.30pm at weekends and 4.30pm – 6.00pm for weekday matches.

The Board adjourned with the Solicitor (Licensing) at 1.22 pm to deliberate in private and the Applicant and all other external participants left the virtual meeting. The meeting re-convened at 1.38 pm. The same Members and Officers were present.

Having considered the terms of the reports and the submissions made, the Convenor proposed that the Board continue consideration of Variation 1 (add outdoor drinking area) until a Planning application has been submitted and determined and grant Variation 2 (permit under-18s in the lounge on match days). There was no counter motion.

The Board unanimously agreed without dissent or abstention to continue consideration of Variation 1 to a future meeting of the Licensing Board to allow Planning Permission to be determined and grant Variation 2.

The Convenor suggested that Mr Fitzpatrick contact the Planning Department for further advice.

### **A.5 0258 Oscar's, Winton Circus, Saltcoats**

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Henry Philip Fitzsimmons, for the above premises. The Premises Licence Holder was represented by Derek Watt, Premises Manager.

The Licence Holder was requesting the following variations:

1. Add outdoor drinking

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising.

Mr Watt then addressed the Board. He confirmed that the area had been operated successfully under Occasional Licences for some time during the summer months and the request is to have this permission permanently within the licence.

Having considered the terms of the report, and the submission made, the Convenor, being the local Member, confirmed there had been no issues or complaints of noise from the outdoor

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area whilst operating under Occasional Licences and proposed that the Board grant the application. Councillor McClung seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to grant.

### **A.6 0385 Scottfresh, 9 Dickson Way, Irvine**

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Dynamic Retail Ltd, for the above premises. The Premises Licence Holder was represented by Stephen McGowan, Solicitor and was accompanied by Mr Marwaha, Director.

The Licence Holder was requesting the following variations:

1. Amend address
2. Allow home delivery of alcohol

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising.

Mr McGowan then addressed the Board. He advised that Mr Marwaha had operated a chain of stores for many years and had been trading in this store for 7 years, and he has represented Mr Marwaha for approximately 10 years. Referring to the application, he confirmed this it was a general tidy up of the licence by adding wording to allow home deliveries and a food to go offering with the address amended following a change by Royal Mail. He advised that the premises recently submitted a Minor Variation application to reduce the alcohol display capacity following a store refit.

In relation to home deliveries, Mr McGowan advised that his client, as an experienced operator, does comply with the Board's Policy and the rules on record keeping required by law. They employ their own delivery drivers who are all trained and ensure challenge 25 is strictly adhered to. If no ID is available when delivery is attempted then orders are returned to the store.

Mr McGowan confirmed to Councillor Barr that no deliveries are left with neighbours, orders are only left with the person placing the order.

Having considered the terms of the report, and the submissions made, the Convenor, proposed that the Board grant the application. Councillor McTiernan seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to grant.

### **A.7 0080 The Waterside, 14 Bath Street, Largs**

The Board considered a Review Proposal under Section 37, relating to the above premises. The Licence Holder, Hillend Enterprises Ltd, were represented by Brian Purdie, Director and he was accompanied by Claire Morris.

Mr Findleton, Mr Castelvechi, Mr Mulholland and Mr Tracey, all of whom had submitted letters of complaint, were also present.

Copies of all letters, reports and other relevant documentation were re-issued to the Board Members. Copies were also provided to Mr Purdie, who confirmed receipt.

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The Board considered the terms of a report by the Solicitor (Licensing) which set out and summarised the issues arising. Mr O'Brien highlighted the Section 37 Review Proposal was made by the Board and not made by any person. He also advised the 3 sound recordings provided by Mr Findleton could not be heard on the virtual meeting.

The Convenor noted that due to Covid restrictions set by the Scottish Government, visits to Premises have not been permitted.

Mr Findleton referred the Board to his written submission with photographs and sound recordings. The Board also heard from Mr Mulholland, Mr Tracey, Mrs Findleton and Mr Castelvechi in relation to their written submissions as well as from Mr Purdie in response to the submissions.

The Board adjourned with the Solicitor (Licensing) at 2.40 pm to deliberate in private and external participants left the virtual meeting. The meeting re-convened at 3.15 pm.

A roll-call was conducted to ensure all Members were present. The same Officers remained present. The same Members and Officers were present.

On resuming, the Convenor enquired of the Board if there were any Motions.

### Motion

Councillor Barr moved that the Premises Licence be varied from 7 days today (Monday 29 November 2021) as follows:

1. the Operating Plan should be varied so that the Terminal Hour on each of seven days in the week should be 23.00, from their current position:

Monday	8.00 - 24.00
Tuesday	8.00 - 24.00
Wednesday	8.00 - 24.00
Thursday	8.00 - 01.00
Friday	8.00 - 01.00
Saturday	8.00 - 01.00
Sunday	11.00 - 24.00

2. The Conditions of the Premises Licence should be varied to add:

*"Throughout the period when live or amplified sound is to occur on the Premises, the Premises shall employ a licensed Door Steward (a person who holds a licence granted under Section 8 of the Private Security Industry Act 2001) who shall take reasonable steps to ensure that:*

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- (a) *no person who is unfit due to drink, drugs or any other reason may enter the Premises;*
- (b) *the Licence Conditions in the Board's Standard Conditions quoted below (heading "Licence conditions referred to") are continuously complied with."*

Councillor McTiernan seconded that Motion. There was no Amendment.

### Decision

There was no other Motion, and no expression of abstention or dissent. Members agreed unanimously that the Motion was carried. The Convenor told Mr. Purdie that the Premises Licence had been varied as above.

The Board's decision was taken under Section 39(2)(b) and reflected the Board's view:

- (a) that both "Grounds for Review" referred to in the Review Proposal were established:
1. that the operation of the Premises on the occasions and in the circumstances described had involved breaches of one or more of the Licence conditions;
  2. that the operation of the Premises has not been consistent with the 'preventing public nuisance' and 'protecting and improving public health' Licensing Objectives;
- (b) that the steps taken were necessary and appropriate for the purposes of those Licensing Objectives and that the steps were proportionate in all the circumstances.

### Appeal

The Premises Licence Holder has the right to appeal by Summary Application to Kilmarnock Sheriff Court within 21 days of the decision (Rule 3.34 of the Summary Application Rules 1999 No. 929 (as substituted by Article 9 of the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2010 No. 416).

The appeal period runs from the date of the decision, and not from the later date that the variation begins to operate, and is not postponed by any request for a Statement of Reasons. The variation would remain in force despite an appeal, unless and until the Sheriff directed otherwise (Section 132(7)).

## **4. Any other business**

The Board considered a written submission from Pitchers nightclub in relation to an exception to the festive policy. They requested permission to open on Sunday 26 December 2021 until 3.00am on Monday 27 December 2021 and explained that Boxing Night is one of their busiest nights, this has been permitted in previous years.

Mr Pollock confirmed the Police are aware of the request and have no objections to it.

The Board unanimously agreed to make an exception to their festive policy for Pitchers on Boxing Night this year.

Mr O'Brien referred to a recent letter received from Katy Clark, MSP, recommending all Licensing Boards accept, as their Policy, that Premises Licence Holders require to arrange late night transport home for their staff. The Board unanimously agreed that Mr O'Brien, on

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behalf of the Board, contact the Scottish Government inviting Ministers to make appropriate changes to the legislation in this regard.

The meeting ended at 3.30 pm.

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### **DRAFT MINUTES North Ayrshire Licensing Board 28 March 2022 Coronavirus Procedure**

**Meeting, 28 March 2022** - At a meeting of the North Ayrshire Licensing Board at 10.00 am using online video conferencing.

#### **Present**

Councillors Ronnie McNicol (Convenor), Robert Barr, Jean McClung, Davina McTiernan, Donald L Reid, Ronnie Stalker.

#### **In Attendance**

R Lynch, Senior Manager Legal Services, W O'Brien, Solicitor (Licensing), G Cullen, Licensing Standards Officer, C Pollock, Licensing Administration Officer and M Champion, Admin Assistant.

#### **Also In Attendance**

Inspector David Cameron (Police Scotland) joined the meeting from Case 9.  
Councillor Allan Hill was present and observing the meeting only.

#### **Convenor**

Councillor Ronnie McNicol.

#### **Apologies for Absence**

None.

The Board determined that this meeting cannot be held in public for a reason relating to coronavirus. As an alternative the meeting was conducted using online video-conferencing instead of in the Council Chambers at Cunninghame House, Irvine. Accordingly, this meeting was not open to the public.

The legislation which permits this is the Coronavirus (Scotland) Act 2020, Schedule 5, Paragraph 4(5)(d).

The Convenor welcomed Members and Officers, Applicants and other participants to the virtual meeting and reminded them to switch off their microphones when not speaking and that Members should make sure that their camera is on during the meeting to ensure they are visible as being present. He also asked everyone to open the chat box and if they have a question or a point of order at any stage, they should indicate this by typing "Q" or "PO", respectively, in the chat box.

#### **1. Declarations of Interest**

There was no Declarations of Interest.



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### 2. Minutes

The Board were asked to confirm the Minutes of the Board meeting held on 31 January 2022. The Board unanimously agreed to confirm and adopt the Minutes.

### 3. Queen's Platinum Jubilee, Thursday 2 June to Sunday 5 June 2022

The Board considered a report by the Solicitor (Licensing) regarding Extended Hours and Occasional Licences for the Queen's Platinum Jubilee. Referring to the Report, paragraph 6 - Consultation, Mr O'Brien advised that no comment has been received from the Police. The Board unanimously agreed to adopt a special Policy for the Jubilee Period. There was a brief discussion around it being a similar Policy to the Board's Festive Policy for licensed premises, Occasional Licences for Clubs and Occasional Licences for unlicensed premises. Due to concerns regarding street parties and public safety, it was decided that further consideration should be given to a policy later in the meeting when Inspector Cameron, Police Scotland, would be present.

### 4. Licences and Applications under the Licensing (Scotland) Act 2005.

The Board considered a report by the Clerk to the Licensing Board on matters under the Licensing (Scotland) Act 2005. The report, on this occasion, contained 1 Appendix;

The Licensing Board agreed to dispose of the matters as follows;

#### A. Premises Licence applications or any other applications requiring a Hearing

##### A.1 0523 Ravenspark Service Station, Kilwinning Road, Irvine

The Board resumed considered of an application for grant of a Provisional Premises Licence made by Highland Fuels Limited for the above premises. The Applicant was represented by Stewart Gibson, Agent.

Mr Gibson then addressed the Board. He submitted that 'reliance' was established and that the exception in Section 123(5) was established.

He explained that following the Board's determination that there should be an Excluded Premises 'locality' of a one-mile radius, the original petition conducted from 17 January until 24 January 2022 was reworked. Staff checked every postcode and removed ones that were outwith the one-mile radius of the Premises. From the original 293 signatures on the petition, 144 were relevant, in that those customers said that they were 'reliant' on the Premises for fuel and/or groceries. Further, on 22 February 2022 a one-day snapshot was taken, with 10 customers completing surveys. In order to obtain 10 surveys, 22 customers were interviewed.

Mr. Gibson summarised the survey: the main reason raised by local customers was the convenience of the Premises. The Premises were closing the next day for 4 months to be rebranded as a "Morrisons" convenience store. Previously they were mainly used for fuel although the outcome of the surveys reflected the need and 'reliance' on groceries also.

As to the Licensing Objectives, he said this was a 24-hour site with no history of trouble. There was no Police objection. One could say of any alcohol premises "any display of alcohol harms public health", but this is not what the Act says.

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Mr. O'Brien pointed out the Licensing Objective of concern is 'Protecting and Improving Public Health'. Mr. Gibson advised the Premises would be offering an overall shopping experience, with a full range of products, groceries and alcohol. He said that moderate consumption of alcohol was OK. The expectation is the type of alcohol on display will complement the area and not cause problems to public health.

With regards to Overprovision, Mr Gibson confirmed the premises will be the only garage forecourt in the area with the nearest convenience store 250 metres away. He confirmed the requested capacity is 20.6 m2 equating to 10% of the overall footage of the store. It would not be an alcohol-led business, but the proposed Licence would allow existing customers to purchase all their top-up groceries at the one time. He said his client had operated the site for many years as a 24-hour petrol site with no concerns from the Police as well as operating a number of garages selling alcohol in other parts of Scotland. The request to include the sale of alcohol at this site would allow his client to provide a better customer service.

Referring to the Overprovision 'locality' of the premises and the requested capacity, Mr. Gibson confirmed to the Convenor the figure requested had been changed from that initially applied for. Ideally they would like 20.6 m2 however this could be decreased if the sale of alcohol was permitted. Mr Gibson explained that the mix of people using the premises included the houses behind the garage accessed by foot to top up supplies, with the main defined reason of use for fuel.

With a view to the proposed location and locality, the Convenor asked Mr. Gibson if he thought selling alcohol at a petrol station was a good idea. Mr. Gibson replied that some local people access the Premises on foot, rather than by car. Customers had told him that they would still use the ASDA supermarket in Irvine for their weekly shop. Most of the customers he's spoken to came to the Premises for petrol. He pointed out that supermarkets and pubs often have car-parks, and asked "is that not encouraging drink-driving?". The 'browser' customers were on foot.

Mr O'Brien pointed out the Standard Condition B.3, relating to the garage layout, to provide separate pay points for fuel and alcohol would not be insisted upon.

The Convenor confirmed that submissions could be heard for both this case and case 2 as they are similar before determination.

### **A.2 Kilbirnie Service Station, 12 Dalry Road, Kilbirnie**

The Board resumed considered of an application for grant of a Premises Licence made by Highland Fuels Limited for the above premises. The Applicant was represented by Stewart Gibson, Agent.

Mr. Gibson said he had himself visited the Premises and was struck by the social interaction between staff and customers, e.g. chatting about girlfriends and pets.

He submitted that 'reliance' was established and that the exception in Section 123(5) applied.

At the earlier meeting the Board had determined the 'locality' for the 'Excluded Premises' issue was a radius of 2 miles. Mr. Gibson explained how the information on the 'reliance' question had been produced. From the original petition supplied with 65 signatures again staff undertook to remove postcodes that are not relevant, a total of 51 relevant signatures remained. These Premises are very much a community site with customers reliant on premises and there is a good interaction between staff and customers.

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Mr. Gibson confirmed the capacity requested was 11.0 m2 - there would be a small area behind the counter and one chilled section for alcohol equalling 11.0 m2. The Premises trade as a Londis Convenience Store. He suggested that 11.0 m2 in a more remote area was not 'overprovision'. He confirmed there were five other retail outlets within a one-mile radius, but this site was the only petrol station in the area and his clients would like the ability to sell alcohol as well. As with Ravenspark Service Station, the premises would rely on an increased spend from existing customers, and the facility to sell alcohol would not be a driver of the business as explained for case 1.

On Licensing Objectives: Mr. Gibson said that this case was the same as Case 1: the Licensing Objectives would not be compromised.

Councillor Reid commented that within 400 metres of the Premises there were several other licensed premises and gave the opinion that there was already sufficient alcohol provision in the area. He said there are local shops and also a social club across the road. Mr. Gibson explained the premises would offer convenience to local people.

Mr. O'Brien advised that NALB Standard Condition B.3 would not be insisted upon at either site. This Condition requires that Garages should have separate payment points for purchases of fuel and purchases of alcohol, either by using different buildings or with fuel customers using a payment window.

The Board adjourned with the Solicitor (Licensing) at 10.55 am to deliberate in private and all applicants and external participants left the virtual meeting. The meeting re-convened at 11.08 am.

A roll-call was conducted to ensure all Members were present. The same Officers were also present.

In respect of case 1, Ravenspark Service Station, having considered the terms of the report, and the submissions made, Councillor Barr moved that the Board refuse the application on the basis that:

1. it is inconsistent with the Licensing Objective 'protecting and improving public health', and
2. the grant of the Application would cause Overprovision of Licensed Premises of the same or similar description as the Subject Premises in the Locality.

Councillor McTiernan seconded the motion. There was no Amendment. The Board unanimously agreed without dissent or abstention to refuse.

The Convenor clarified that the Board did not regard Ravenspark Service Station as Excluded Premises, and that the decision was related to the Board's view of the Licensing Objective 'protecting and improving public health' and Overprovision. The application is therefore refused.

In respect of case 2, Kilbirnie Service Station, having considered the terms of the report, and the submissions made, Councillor Reid moved that the Board refuse the application on the basis that:

1. it is inconsistent with the Licensing Objective 'protecting and improving public health', and
2. the grant of the Application would cause Overprovision of Licensed Premises of the same or similar description as the Subject Premises in the Locality.

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Councillor Barr seconded the motion. There was no Amendment. The Board unanimously agreed without dissent or abstention to refuse.

The Convenor clarified that the Board did not regard Kilbirnie Service Station as Excluded Premises, and that the decision was related to the Board's view of the Licensing Objective 'protecting and improving public health' and Overprovision. The application is therefore refused.

### **A.3 Premises Licence 0051 Elms Bar, 21 Raise Street, Saltcoats**

The Board resumed considered an application for variation of a Premises Licence made by the Licence Holder, Trust Pubs Ltd, for the above premises. Joseph Fitzpatrick, Director of Trust Pubs Ltd was present.

The Licence Holder was requesting the following variation:

1. Add Outdoor Drinking

Mr O'Brien explained that the case had been continued from the Board meeting on 22 November 2021 in order that Planning Permission could be applied for and determined. The options for the Board were detailed in pages 103-104 of the Members' papers.

Mr Fitzpatrick then addressed the Board. He confirmed that Planning Permission has been granted for a trial period of 12 months, however due to a genuine mistake Planning had restricted the use of the area on a Saturday to 4.30pm to 10.00pm. The Planning decision had been based on out-of-date information supplied by the Health Board indicating the Health Centre was open on a Saturday. Planning had acknowledged that if the correct information had been supplied at the time of their decision, Planning Permission would have been permitted from 1.00pm.

Mr O'Brien referred to the 3 Options for the Board as contained within the report as well as Part D - Effect on Licence Conditions - of the Report with suggested wording for the Operating Plan. Mr Fitzpatrick advised that the outdoor area would consist of 12 tables of 4, totalling 48 persons. He also confirmed that he has submitted a Planning Notice of Review although due to the forthcoming Council Elections there are no Review meetings confirmed, however he has been advised a Monitoring Officer will be consulted on this.

Mr O'Brien advised the Board that if they were minded to grant the application, this would permit the use of the area if Planning varied their permission and not require submission of another Variation application to amend the times on a Saturday from 4.30 pm to 1.00 pm. He also confirmed that no objections have been received for this application although he believed comments were submitted during the Planning process.

The Board adjourned with the Solicitor (Licensing) at 11.24 am to deliberate in private and the Applicant and all other external participants left the virtual meeting. The meeting re-convened at 11.39 am.

A roll-call was conducted to ensure all Members were present. The same Officers were also present.

Having considered the terms of the reports and the submissions made Councillor Barr proposed that the Board grant the application with the use of the outdoor area Monday-Friday 18:00 to 22:00, Saturday and Sunday 13:00 to 22:00, subject to Planning Permission. Councillor Stalker seconded the motion. There was no amendment.

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The Board unanimously agreed without dissent or abstention to grant.

The Convenor confirmed the application is granted without limit of time and the Operating Plan will include:

"On 28 March 2022 the Board granted the variation to allow the proposed Outdoor Drinking Area, on condition that the Outdoor Drinking Area shall not operate outside these hours:

Monday to Friday: 18.00 to 22.00;  
Saturday and Sunday: 13.00 to 22.00,

where 'operate' means the use by patrons:

- for the consumption of any drink (alcoholic or not) or food
- for smoking
- for any other activity

and accordingly Condition C.5.2 of the Board's Standard Conditions does not apply.

### **For the Licence-Holder's information**

This is not a condition of the Licensing Board's decision: the Outdoor Drinking Area cannot be used unless that use is also consistent with the Planning Permission granted by North Ayrshire Council as the Planning Authority."

Mr Fitzpatrick confirmed to Councillor Bar that when music is playing at the premises windows and doors remained closed.

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### **A.4 Premises Licence 0319 Largs Sailing Club, Largs Yacht Haven, Irvine Road, Largs**

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Largs Sailing Club, for the above premises. The Premises Licence Holder was represented by Marilyn Robertson, Chairperson.

The Licence Holder was requesting the following variations:

1. Revert to holding a 'Special Status' Club Licence.
2. Add 'theatre' to the list of permitted activities.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising.

Ms Robertson then addressed the Board. She explained the club previously changed to a Part K Club to allow for an increase in the permitted 12 Occasional Licences to hold non-member events. Due to the current climate this has changed considerably for the club who are now focusing on growing their membership. The additional theatre activity is a request from several members who are also members of an operatic society to use the club's large facilities for theatre performances.

Having considered the terms of the report, and the submission made, Councillor Barr proposed that the Board grant the application. Councillor Reid seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to grant.

Standard Condition Part I (Clubs) will replace Part K (Clubs to which Section 125 does not apply).

### **A.5 Premises Licence 0090 Eglinton Bar, 14 Skelmorlie Castle Road, Skelmorlie**

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Pennine Leisure Ltd, for the above premises. The Premises Licence Holder was represented by Peter Harvey, Solicitor, who was accompanied by Gareth Swain, Director.

The Licence Holder was requesting the following variations:

1. Add restaurant on first floor
2. Extension of Outdoor Drinking Area ('beer garden')
3. Use of existing outbuilding as a games room
4. Add conference facilities and dance facilities

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien advised the Board that Mr Harvey's submission, layout plans and a photograph of the premises are contained in the background papers.

Mr Harvey then addressed the Board. Following communication with Mr O'Brien, revised layout plans have been submitted clarifying there will be no on-street outdoor drinking facility. The only outdoor drinking area will be the beer garden, currently licensed, an extension to this area as well as an additional area to the rear. The games room, converted from the former

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garage, will have a pool table and children will be excluded from this room. As well as the external facilities, changes are being made to the ground floor bar and a proposed upstairs function area. Since purchasing the premises last year his clients would like the ability to provide functions in the upstairs area, Planning Permission has been granted and Building Warrant has been applied for. No other premises in Skelmorlie offer facilities for functions.

Referring to the outdoor drinking area, Mr Harvey confirmed for the avoidance of doubt, this will be the area to the south of the layout plan, an extension to the current outdoor drinking area and not the area to the north. He explained that following a previous noise complaint from the neighbour on the south side of the building, a 1.8m wooden fence has been erected replacing a 5 ft wall, preventing visibility. The front of the premises will be secured and upgraded with gates installed limiting visibility of the beer garden. Access to the beer garden will be from within the premises.

Mr Swain addressed the Board and confirmed to Councillor Barr and the Convenor, CCTV will be throughout the building including the outdoor drinking area and the games room and he has a good relationship with the neighbour.

Mr Harvey confirmed to the Convenor the existing outdoor facility provides for 6 tables of 6 people. The proposed layout plan provides for an additional 4 tables, a maximum capacity of 60 people. Mr Swain also confirmed to the Convenor there will be no outdoor drinking on the pavement nor in the garden area and bar meals would be provided for both lunch and dinner.

Referring to the layout plan, Mr Harvey confirmed the Standing capacity of 20 is an error.

With regards to Variation 1, the Convenor confirmed that the Board agreed as there are no other facilities available in the Skelmorlie area this request would be treated as an Exception to the Board's Overprovision Policy.

Having considered the terms of the report, and the submissions made, the Convenor proposed that the Board grant the application. Councillor Barr seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to grant.

### **A.6 Premises Licence 0114 Dalgarnen House Hotel, Dalry Road, Kilwinning**

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Newark Bay Ltd, for the above premises. Alan Carnegie, Director of Newark Bay Ltd was present.

The Licence Holder was requesting the following variations:

1. Amend premises description
2. Amend Layout Plan
3. Add various 'spa' activities

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising.

Mr Carnegie then addressed the Board. The Variation of the layout plan updates changes carried out recently as well as some carried out by the previous owners including location of the bar, removal of the cottage, conversion of bedroom into steam/sauna room as well as including an outdoor spa overlooking the river with some fencing and decking. Planning Permission has been received for the works and Mr Carnegie confirmed that he remains in

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correspondence with Building Control. Mr O'Brien noted there are no issues for the Licensing Board.

To address the noise concerns from the outside spa, Mr Carnegie advised Councillor Barr that he has erected a screening fence, put more signage on display and staff are making regular checks of the area to prevent noise. He has also installed CCTV in this area in order to monitor noise levels. He has spoken with residents who have noticed a benefit from the changes.

Having considered the terms of the report, and the submission made, the Convenor proposed that the Board grant the application. Councillor Reid seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to grant.

The Board adjourned at 12.09 pm for a short break. All parties left the virtual meeting at this point.

The meeting reconvened at 12.18 pm. A roll-call was conducted to confirm that all Members were present. The same Officers were also present.

### **A.7 Premises Licence 0007 Bar One, 55 Vernon Street, Saltcoats**

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Bar One (Saltcoats) Limited, for the above premises. The Premises Licence Holder was represented by Brian McMahon, Licensing Consultant, and he was accompanied by Miriam Wyllie, Director of Bar One (Saltcoats) Ltd and Hayley Kean, Premises Manager.

The Licence Holder was requesting the following variations:

1. Allow under-18s related to staff
2. Allow under-18s for entertainment

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising.

Mr McMahon then addressed the Board. Firstly, the request to permit children of staff, under 18 years of age, into the premises is to cover situations when staff require to go in on short notice so that their children can be with them and not be left unattended. Secondly, to allow under-18s access to provide entertainment such as talented DJs to play in The Box and the Bar. This will not take place often but will allow young people the opportunity to be involved in hospitality.

To ensure young persons will not have access to alcohol, Mr McMahon confirmed to Councillor Barr under-18s will be chaperoned on a one-to-one basis at all times and will not be permitted near the bar area. He also confirmed his acceptance to the suggested wording for Variation 1 as contained in the Report.

Mr O'Brien highlighted the application referred to advising the LSO when under-18s will access for entertainment. Although this was not required Councillor Barr commented that this showed good management.

Having considered the terms of the report, and the submission made, Councillor Barr proposed that the Board grant the application. Councillor McClung seconded the motion. There was no Amendment.



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The Board unanimously agreed without dissent or abstention to grant.

### **A.8 Premises Licence 0060 Crofters, Shore Road, Brodick**

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Crofters Arran Limited, for the above premises. The Premises Licence Holder was not present or represented.

The Licence Holder was requesting the following variations:

1. Allow market to rear
2. Increase capacity from 46 to 120

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien referred Members to his extensive email to the Premises Licence Holder as well as a favourable representation from Arran Community Council and an objection from Mr Raeside, all contained in their background papers. A copy of the representation and objection were provided to the applicant prior to the Board meeting. A further email received from Mr Raeside on 25 March 2022 was read to the Board.

Following advice from Mr O'Brien suggesting wording should be accepted by the applicant as well as addressing issues of public nuisance, Councillor Barr proposed that the case be continued to later in the meeting to allow for the Applicant to join the meeting in the event they may be delayed for some reason. The Convenor agreed to continue consideration of the case to later in the meeting.

### **A.10 Personal Licence NA0847 Hardeep Singh Binning**

The Board considered a Personal Licence Review Hearing in relation to Hardeep Singh Binning. The Review Hearing was convened by the Board on receipt of a notice by the Chief Superintendent under Section 83(4)(b), made in a letter dated 2 March 2022. Mr Binning was not present and had indicated by email he was in India and unable to attend.

The Board considered the terms of a report by the Solicitor (Licensing) which referred to the Chief Superintendent's notice to the Board, summarised the issues arising, and advised the Board on how to proceed. Mr O'Brien advised that Personal Licence Holders require to notify the Board of a conviction within one month, Mr Binning had not done so until the Police alerted him of this recently. Mr Binning had advised that he had forgot to do so as he has sold his business. The Board agreed to proceed with the Review Hearing in the absence of Mr Binning.

Copies of the Police letter were given to the Board Members. Inspector Cameron read the content of the letter.

Having considered the terms of the report and the Police Notice, the Convenor moved that the Board make an order to endorse Mr Binning's Personal Licence under Section 83(9)(c)) of the 2005 Act, for the purposes of Licensing Objective (a) preventing crime and disorder. Councillor Barr seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to make an order to endorse Mr Binning's Personal Licence.

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### **A.10 Personal Licence NA2938 Derek Sinclair**

The Board considered a Personal Licence Review Hearing in relation to Derek Sinclair. The Review Hearing was convened by the Board on receipt of a notice by the Chief Superintendent under Section 83(4)(b), made in a letter dated 8 March 2022. Mr Sinclair was not present.

The Board considered the terms of a report by the Solicitor (Licensing) which referred to the Chief Superintendent's notice to the Board, summarised the issues arising, and advised the Board on how to proceed. Mr O'Brien advised that Mr Sinclair had not notified the Board of his conviction within one month. The Board agreed to proceed with the Review Hearing in the absence of Mr Sinclair.

Copies of the Police letter were given to the Board Members. Inspector Cameron read the content of their letter.

Having considered the terms of the report and the Police Notice, the Convenor moved that the Board make an order to endorse Mr Sinclair's Personal Licence under Section 83(9)(c) of the 2005 Act, for the purposes of Licensing Objective (a) preventing crime and disorder. Councillor Reid seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to make an order to endorse Mr Sinclair's Personal Licence.

### **A.11 Premises Licence 0243 Pitchers, 18 Bank Street, Irvine**

The Board considered an application for Extended Hours (114/22) made by Signature Works (Scotland) Ltd for the above premises. The application was for an extension of core hours to 3.00 am on Sunday 17 April 2022 for Easter. The Premises Licence Holder was represented by John Duncan, Director.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. The Board also had regard to a report by Grace Cullen, Licensing Standards Officer. Police Scotland confirmed they have no objection with this application.

Mr Duncan then addressed the Board with the background to the application. He advised that Easter Sunday is one of the busiest nights of the year and confirmed to Councillor Barr door stewards will be on duty from 7.00pm or 8.00pm until 3.00am due to the football match taking place earlier in the day. The Premises did have the same Extended Hours applications granted in previous years.

Having considered the terms of the report, and the submissions made, the Convenor moved that the application be granted. Councillor Reid seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant the Extended Hours application to 3.00am.

Following discussion on the Board's Policy for Extended Hours, it was agreed Easter Sunday should be included as a 'special event of local or national significance'. The Board's Policy for Easter Sunday for nightclubs will be 2.00am. Applications for later hours will require to be determined by the Licensing Board.

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### **12. Premises Licence 0010 The Eglinton Inn, 48 Eglinton Street, Beith**

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Ross Paterson Stevenson, for the above premises. The Premises Licence Holder was represented by Robbie McElroy, Solicitor, and he was accompanied by Mr Stevenson.

The Licence Holder was requesting the following variations:

1. Change Sunday on-sales to commence at 11.00 (instead of 12.30)
2. Change Sunday off-sales to commence at 11.00 (instead of 12.30)
3. Allow some facilities to be offered outside Core Hours
4. Add Theatre
5. Additional explanatory wording
6. Amendment to under-18 provisions
7. Amendment to capacity wording

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising.

Mr McElroy then addressed the Board. He explained the application is generally to tidy up the Operating Plan following Mr Stevenson taking over the premises last year. The request to amend the Sunday commencement hour for on and off-sales brings this into line with the Board's Policy as well as the other days of the week. He confirmed activities are to be available before core hours to permit bar meals, restaurant facilities and music earlier in the day but no alcohol will be permitted in the outdoor area prior to core hours. The request to add Theatre is to provide flexibility for future, he noted the proposed Operating Plan had an error, Yes should be within column 4, to be available outwith core hours for Theatre and Dance Facilities. Access for children and young persons and capacity wording are both being simplified.

At 12.52pm Mr Raymond Lynch, Senior Manager Legal Services, noted his apologies and left the meeting.

With regards to Variation 3, Mr O'Brien highlighted the Board's Standard Condition C.5.2, Mr Stevenson confirmed he would accept the suggested wording to supply tea, coffee and soft drinks with breakfast rolls in the outdoor drinking area from 10.00am.

Having considered the terms of the report, and the submission made, the Convenor proposed that the Board grant the application. Councillor Reid seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to grant.

Standard Condition C.5.2 in relation to the Outdoor Drinking Area is amended to read:  
"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 p.m. except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 10.00 a.m.."

### **A.8 Premises Licence 0060 Crofters, Shore Road, Brodick**

The Board resumed considered of an application for variations of a Premises Licence made by the Licence Holder, Crofters Arran Limited, for the above premises. The Premises Licence Holder was still not present or represented.

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A favourable representation had been received from Arran Community Council and an objection from Mr Raeside, both contained in the background papers. Mr Calderwood on behalf of Arran Community Council was present. Mr Raeside had confirmed by email he was unable to attend.

The Licence Holder was requesting the following variations:

1. Allow market to rear
2. Increase capacity from 46 to 120

The Board considered the terms of the report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien referred Members to the suggested wording contained within the Report regarding the operation of the market. Both he and Ms Cullen had recently been in contact with the applicant concerning the requirement for a Market Operators Licence. An issue with the capacity also requires to be addressed.

Mr Pollock confirmed to the Board the applicant, Mr Boyle and Ms Goodwin had received all the joining instructions for the meeting.

The Convenor, noting his frustration at the lack of attendance or relevant communication from the applicant, moved that the Board continue consideration of the application to a future meeting. The Board unanimously agreed without dissent or abstention to continue consideration to a future meeting.

Mr O'Brien highlighted that due to the Local Government Elections in May, the next Licensing Board Meeting is provisionally arranged for 20 June 2022, however, this may require to be cancelled at short notice. Thereafter the next scheduled meeting is 5 September. Mr O'Brien confirmed he will email the applicant with this information.

Mr Calderwood noted that he had discussions with the applicant, and he will update the Community Council on the outcome of this meeting.

### **3. Queen's Platinum Jubilee, Thursday 2 June to Sunday 5 June 2022**

The Board resumed consideration of a special Policy for the Jubilee Period. Inspector Cameron, Police Scotland, now present, was made aware of the Board's email for comment. He advised the Police would work along with the Board on a Policy similar to that of the Festive Policy.

Following much discussion regarding Occasional Licence applications and the requirement for plans delineating specific areas for Street Parties as well as decanting drinks into plastic or paper containers the Board decided to adopt a Policy, the exact wording of which would be prepared and confirmed by Mr O'Brien.

Once prepared, it was agreed that the Policy will be on the Board's web page and Communications will be asked to highlight it on the Council's Social Media.

### **A.13 Stephanie Maureen Conn, Application for Occasional Licence Application Sections 56-61**

The Board considered an application for Occasional Licence made by Stephanie Maureen Conn. The applicant was present and was accompanied by Eileen Bowden and Jack Quirk.

## AGENDA ITEM 2

A roll-call was conducted to confirm all Members were present. The Convenor and Councillors Reid, Stalker, McTiernan, Barr and McClung were present. Councillor Hill was observing the meeting only and will take part in the Public Entertainment Licence application being determined by the Licensing Committee at the end of the Licensing Board Meeting. The same Officers, excluding Mr Lynch, were also present.

Objections to the application were received from Police Scotland, the Council's Protective Services Department and the Scottish Fire and Rescue Service (SFRS). Copies of the objections were provided to Ms Conn and Ms Bowden prior to the Board meeting and copies were provided to the Board Members. Inspector Cameron from Police Scotland, Scott McLelland from Protective Services and John Alexander from SFRS were present. Kevin Rennie, SFRS, was now no longer able to join the meeting.

Ms Bowden then addressed the Board. The purpose of the event is to provide DJs performing music from 8.00pm until 3.00am in her leisure and activity centre warehouse. She confirmed that communications have taken place between Protective Services and SFRS and apologised for the lack of a Safety Management Plan which has now been submitted. Ms Bowden read her written submission to the Board to address issues raised by Police Scotland, Protective Services and SFRS.

Inspector Cameron read the content of the objection letter from Police Scotland, Mr Alexander read the content of the objection letter from SFRS and Mr McLelland highlighted the issues for Protective Services.

Ms Bowden addressed issues raised in all 3 objections.

Ms Conn advised the Convenor of her experience to date and confirmed that 32 staff would be on duty during the Occasional Licence event.

Ms Bowden confirmed her operation of the warehouse commenced last summer and provides leisure facilities in North Ayrshire, the business has been very well received and provides refreshments as well as entertainment. Previously, she has managed a trampoline park and a soft play centre.

Issues were raised on the safety of the building by Mr Alexander as well as Mr McLelland, who confirmed a Building Warrant must be submitted to make any alterations to the building. He highlighted the procedure for a Building Warrant would take 3-4 weeks from processing to approval and could not be determined by the date of the event, 9 April.

Ms Bowden answered questions from Councillors Reid, Barr and McClung.

Having considered the terms of the report, and all of the submissions made, Councillor Barr proposed that the Board refuse the application. Councillor Reid seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to refuse the Occasional Licence application.

### **5 Any other business**

There was no other business to consider.

The meeting ended at 14:38.

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## **Agenda Item 3**

**20 June 2022**

### **North Ayrshire Licensing Board**

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<b>Title:</b>	<b>Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.</b>
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<b>Purpose:</b>	To advise the Board of the Law and the factual background.
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<b>Recommendation:</b>	That the Board determines whether or not to grant the Applications listed.
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#### **1. Executive Summary**

- 1.1 The Licensing Board is responsible for determining Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005 (such as Review Hearings involving holders of Premises Licences and Personal Licences).
- 1.2 The Board has approved a Scheme of Delegation whereby certain matters can be delegated to the Clerk and other licensing staff. Matters which cannot be delegated, or where the officers have declined to exercise the delegation, are referred to the Board.

#### **2. Background**

- 2.1 The Applications and other matters before the Board are detailed in the attached appendices. Each appendix contains a Report prepared by licensing staff for each individual case before the Board. These Reports set out the particular factual and legal issues which licensing staff consider arise in each case, and set out the action which the Board would be entitled to take.
- 2.2 Where relevant, the reports have been copied to the Applicants or Licence-Holders. Where objections or representations are competent, these have been copied to the Applicant so that a response might be made at the Board Hearing.

#### **3. Proposals**

- 3.1 In each case, after considering the Application and after hearing any submissions for the Applicant and persons making objections or representations, the Board should determine whether or not to grant the Application or take appropriate action.

#### 4. Implications/Socio-economic Duty

<b>Financial:</b>	There are possible financial implications in relation to any Licensing decision.
<b>Human Resources:</b>	None.
<b>Legal:</b>	There are possible legal implications in relation to any licensing decision. Many Board decisions may be appealed against, but not all, and not all parties to a case have a right of appeal.
<b>Equality/Socio-economic Duty:</b>	<p>Equality Act 2010 imposes duties on the Council: Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council:</p> <p>"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage".</p> <p>Section 149(1) ("Public sector equality duty") the Council:</p> <p>"must, in the exercise of its functions, have due regard to the need to-</p> <ul style="list-style-type: none"> <li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];</li> <li>(b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;</li> <li>(c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it." <p>The "Relevant Protected Characteristics" are age; disability; gender reassignment, pregnancy and maternity; race; religion or belief; sex; and sexual orientation.</p> <p>The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Board otherwise in a particular case, there are no significant impacts to be considered.</p> </li></ul>

<b>Climate Change and Carbon:</b>	None
<b>Key Priorities:</b>	An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders and the suitability of premises, helps progress towards one Priority Outcome of the draft North Ayrshire Council Plan 2019-2024: "North Ayrshire's residents and communities are safe".
<b>Community Wealth Building:</b>	There are no Community Wealth Building issues.

## 5. Consultation

- 5.1 Consultation has taken place in line with statutory requirements. The requirements vary depending on the particular issue raised, and where appropriate these are detailed in the report for each case.

Raymond Lynch  
Clerk

For further information please contact **William O'Brien, Solicitor (Licensing)**, on [licensing@north-ayrshire.gov.uk](mailto:licensing@north-ayrshire.gov.uk).

## Background Papers

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## APPENDIX A

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

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
1.	0060	Crofters Arran Ltd	Crofters Shore Road Brodict Isle of Arran KA27 8AJ	Application for Variation of Premises Licence – Section 29 Continued from 28/3/22
2.	0073	Kadir Turbun	Allegria 86 Gallowgate Street Largs KA30 8LZ	Application for Variation of Premises Licence – Section 29 Clerk to Report
3.	0115	C J Lang & Son Ltd	Spar 25 Holehouse Road Largs KA30 9EL	Application for Variation of Premises Licence – Section 29 Clerk to Report
4.	0199	C J Lang & Son Ltd	Spar Convenience Store 8/12 Wheatley Road Saltcoats KA21 6ES	Application for Variation of Premises Licence – Section 29 Clerk to Report
5.	0524	Fintry Bay Ltd	Fintry Bay Fintry Bay House West Bay Road Millport KA28 0HA	Application for Grant of Premises Licence – Section 20
6.	0525	Daniel McKinnon	The Clyde Kitchen 31-33 Shore Road Skelmorlie PA17 5AN	Application for Grant of Premises Licence – Section 20
7.	259/22	Daniel James Stirling	Making Waves Festival Beach Park Irvine KA12 8FA	Application for Occasional Licence – Section 56-61
8.	204/22	Greene King Retailing Ltd	Pavement Café The Carrick 112-114 High Street Irvine KA12 8AH	Application for Occasional Licence – Section 56-61 Clerk to Report

<b>Case No.</b>	<b>Licence No.</b>	<b>Applicant/Licence Holder</b>	<b>Premises</b>	<b>Comments</b>
9.	251/22	Hillend Enterprises Limited	The Waterside 14 Bath Street Largs KA30 8BL	Application for Extended Hours – Sections 68-70A

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

Applicant	Crofters Arran Ltd.
Premises	"Crofters", Shore Road, Brodick, Isle of Arran KA27 8LZ
Ref.	0060

*CONTINUED FROM 28 MARCH 2022*

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

<b>No.</b>	<b>Variation</b>
1	Allow market to rear
2	Increase capacity from 46 to 120

### **B. 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 have a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

### **V. 1: Allow market to rear**

Advice: The Board have a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, there is no breach of Board Policy, and that the Application can be granted.

Notes:

**If the Board grant the Variation, the market can only operate if and when a separate "Market Operator's Licence" under Section 40 of the Civic Government (Scotland) Act 1982 is applied for and granted. The Solicitor (Licensing) explained this to the Applicant by email of 10 February 2022 @ 21:27, which will be in Members' Background Papers.**

**If a Market is licensed under the 1982 Act, it may include the sale of alcohol by the Premises Licence Holder as this is already licensed by the Premises Licence (Operating Plan, Part 3: 11.00 - 22.00 x 7 days). No-one else (such as stall-holders who are not employed by the Premises Licence Holder may sell alcohol on the Premises.**

On 24 May 2021 the Board varied the Premises Licence in a number of respects, including Variations:

- 1: "Create Outdoor Drinking Area at rear."
- 5: "Vary Layout Plan to allow on-site distillation of alcohol."
- 6: "Allow food sale for e-commerce and home deliveries."

The Board permitted use of the rear Outdoor Drinking Area:

- from 11.00 am to 10.00 pm, on condition that music should cease at 8.00 pm and
- prior to 11.00 am (from 9.00 am) for non-alcoholic drinks.

The PLH now proposes to operate a regular market in the marquee at the rear, with up to 9 stalls. The market will sell both the PLH's own products and will also cater for local traders. There are toilet facilities in the portacabin that services the marquee.

The PLH proposes that the Board should allow additional wording in the Operating Plan (Part 5(f) "Any other activities"):

*"Regular mini-farmer's market in marquee at the rear of the site, starting no earlier than 11:00am, where Crofters Larder condiments as well as Crofters Still produce will be for sale to customers to take away. Remaining stalls to be available to other local island businesses to sell local produce."*

Questions:

- how often is the market to operate?
- what are the earliest and latest times for the market?

In deciding whether or not to grant a Licence Variation, particularly one for outside a building, the Board would have to be satisfied that the proposal was not inconsistent with any of the Licensing Objectives, and in particular L.O. (c): 'preventing public nuisance' and L.O. (d) 'protecting and improving public health'. These factors were considered by the Board on 24 May 2021, and the report then contained:

*"The Premises are in Shore Road, Brodick, in a mixed residential and commercial area, about 60 metres east of the junction with Alma Road. They are already licensed for indoor operation, which includes live music. ...*

*The Premises are within 100 metres of "The Brodick Bar", Alma Road, where proposals to allow outdoor drinking (but not with live music or films) attracted opposition from neighbouring residents."*

On the matter of a separate licence being needed, the report at the Board on 24 May 2021 included (in relation to Variation 6):

***"1. Pop-up traders are prohibited.***

*The new Operating Plan lodged by the Applicants includes:*

*"Additionally, the Rear Alfresco to be occasionally serviced by pop-up bar server and/or mobile food vendor."*

*The new Layout Plan shows the outside area at the rear and part of it is marked:*

*"Dotted Area denotes space for pop-up food or drinks vendor"*

*Only the Applicants can supply food and drink on the Premises. The Applicants cannot allow traders who they do not themselves employ continuously to do business on the Premises, even if these traders have "Street Traders Licences" under the Civic Government (Scotland) Act 1982, Section 39. None of the exemptions in Section 39(3) apply."*

### **V. 2: Increase capacity from 46 to 120**

Advice: This variation should be refused as inconsistent with

- (a) the Board's Overprovision Policy and
- (b) the Licensing Objectives "securing public safety" and "protecting and improving public health".

Notes:

This report does not contain the usual information about these matters, on the assumption that the proposal to increase capacity relates only to the outside area, and not to the capacity of the building itself.

Therefore, any new Operating Plan to be produced by Board staff will again say that the capacity is 46 (see email of 10 February 2022, heading "Capacity").

However, if the Applicant tells the Board that he proposes 120 customers inside then the Board should consider continuing Variation 2 to a future Board meeting, to allow for the preparation of:

- the usual Board report and
- a report from the Council's Building Standards Department with an assessment of whether or not a substantial increase in capacity would lead to over-crowding and compromise fire safety.

The next scheduled meeting of the Board is on Monday 20 June 2022. However, that date should be regarded as 'provisional', because the Board will only meet that day if there are sufficient newly-elected Members who have passed statutory training to form a quorum. The new Board will be elected at the First Statutory Meeting of the Council on Wednesday 18 May 2022, following the Council election. The next scheduled Board meeting is Monday 5 September 2022 (Friday 22 July 2022)

## C. Effect on Licence Conditions (Section 30(6))

If Variation 1 is granted, the Board should:

- (a) state the earliest and latest times for the market, and
- (b) add the following words to the Operating Plan, Part 5(f) ("Any other activities") in place of the paragraph quoted above proposed by the PLH.

### Addition to Operating Plan

*"The conduct of markets where the stall-holders will be third-parties (neither the Premises Licence Holder nor anyone acting on behalf of the PLH) to be conducted in under a "Market Operator's Licence" under Section 40 of the Civic Government (Scotland) Act 1982.*

*The markets will take place between the hours of ..... and ..... on the area to the rear of the building and will involve no more than ..... stalls, selling ..... .*

*The sales may include off-sales of alcohol by the PLH (and not by anyone else). These sales can only take place within the Licensed hours specified in Part 3 of the Operating Plan.*

*No loudspeakers, televisions, radios or other devices for amplifying sound shall be positioned at any time in the area while it is operating as a Market."*

The final paragraph is a condition similar to Standard Condition C.5.1 which already applies to the Outdoor Drinking Area. This condition is permitted by Section 27(9)(b), as applied to Variations by Section 27(10). Section 27(9)(b) permits the Board to attach discretionary conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with—

*"... (b) any other activity carried on in such Premises." (where 'any other activity' means 'any activity other than the sale of alcohol')*

Further, the Mandatory Condition in 2005 Act, Schedule 3, Paragraph 3 would apply to the additional words (as it already does to anything else the Operating Plan covers):

*"3. Any other activity to be carried on in the Premises is to be carried on only in accordance with the Operating Plan contained in the Licence." (again, 'any other activity' means 'any activity other than the sale of alcohol').*

No other variation of the Conditions is appropriate.

## **D. Notes for Applicant**

The Board's decision is not:

(1) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deal with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(2) a Licence granted by the copyright holder of television, video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers; including a TV screen in a public area) this is a 'public performance' and may need a Licence from:

- "PRS for Music" (formerly the "Performing Rights Society"),
- "Motion Picture Licensing Company Ltd"
- the maker of the programme or recording.

The Licensing Board do not grant this Licence.

**Application for Grant of Premises Licence - Section 20**

Applicant	Fintry Bay Ltd.
Premises	Fintry Bay House, West Bay Road, Millport, Isle of Cumbrae KA28 0HA
Ref.	0524

**Preliminary**

The Applicant should lodge a Certificate confirming Display of Site Notice. Until the Board have it, they cannot determine the Application.

**1. Summary of Proposal**

The Applicant has applied for the Grant of a Premises Licence.

The Premises are a cafe/restaurant with outdoor patio situated on the West side of the Isle of Cumbrae, approximately three miles from the town of Millport. The Premises are on the west coast of the island, on the B896 road round the island.

The Premises apply to be licensed for on-sales only, operating 11.00 - 24.00 (all 7 days) with a customer capacity:

inside - 50

outside - 70

Photographs of the Premises on the internet:

[https://www.google.com/maps/@55.7708161,-4.9358817,3a,75y,100.8h,87.98t/data=!3m6!1e1!3m4!1sU9gy9\\_nuenwN3stsv126Q!2e0!7i16384!8i8192](https://www.google.com/maps/@55.7708161,-4.9358817,3a,75y,100.8h,87.98t/data=!3m6!1e1!3m4!1sU9gy9_nuenwN3stsv126Q!2e0!7i16384!8i8192)

[https://www.google.com/maps/uv?pb=!1s0x4889c0a0845e56f3%3A0xf02b696d63dac0da!3m1!7e115!4shttps%3A%2F%2Fh5.googleusercontent.com%2Fp%2FAF1QipOSs3Pj\\_zx0fnhcNz6DngOOOEcW8nSVDJrK7xPS%3Dw284-h160-k-no!5smap%20fintry%20bay%20cumbrae%20-%20Google%20Search!15sCglgAQ&imagekey=!1e10!2sAF1QipOSs3Pj\\_zx0fnhcNz6DngOOOEcW8nSVDJrK7xPS&hl=en&sa=X&ved=2ahUKEwjYkN2bz6b4AhUmQkEAHcXSDDMQoip6BAhLEAM](https://www.google.com/maps/uv?pb=!1s0x4889c0a0845e56f3%3A0xf02b696d63dac0da!3m1!7e115!4shttps%3A%2F%2Fh5.googleusercontent.com%2Fp%2FAF1QipOSs3Pj_zx0fnhcNz6DngOOOEcW8nSVDJrK7xPS%3Dw284-h160-k-no!5smap%20fintry%20bay%20cumbrae%20-%20Google%20Search!15sCglgAQ&imagekey=!1e10!2sAF1QipOSs3Pj_zx0fnhcNz6DngOOOEcW8nSVDJrK7xPS&hl=en&sa=X&ved=2ahUKEwjYkN2bz6b4AhUmQkEAHcXSDDMQoip6BAhLEAM)

**2. Requests to remove and vary Licence conditions**

These requests relate to the Outdoor Drinking Area.

Unless the Board direct otherwise, the Premises Licence would be subject to the



Board's Standard Conditions, which include:

*"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."*

These are discretionary conditions (as opposed to the national mandatory conditions prescribed by the Scottish Government) and the Board can treat any particular Premises as an exception to policy and remove or vary the conditions as they see fit.

### The requests

#### Condition C.5.1 (Loudspeakers etc.)

The Applicants ask the Board to remove this condition entirely and say:

*"We are 2.5 miles from any other property and would not cause any disturbance with regards to noise levels."*

#### Condition C.5.2 (opening times)

The Applicants ask the Board to vary this condition and say:

*"I would like to ask for condition C5.2 to be dissapplied to enable us to serve non alcoholic drinks outdoors on the patio prior to 11am. We would like to serve teas/coffees etc on the patio from 9am."*

The Board have allowed early use of such areas in other cases, adding to C.5.2 words such as "except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from ...."

Even if the Board permit the Outdoor Drinking Area initially, and/or alter either Licence Condition, they may review that decision later if satisfied that the operation of the Outdoor Drinking Area is not consistent with the Licensing Objectives.

In making any decision about an Outdoor Drinking Area:

1. The Board are obliged to take account of two Licensing Objectives:

(c): 'preventing public nuisance'

(d): 'protecting & improving public health'

2. The Board require to balance competing rights:

(a) Regularly exposing neighbours to noise and other nuisances may breach neighbours' human rights to respect for private life, family life and home under Article 8 of the European Convention on Human Rights. If the Board were being asked to permit nuisance (by granting or varying a Licence), their decision might be the basis of a claim for compensation by them against the

Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633).

(b) The Licence Holder has a right to free enjoyment of his possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.

3. Neither right is absolute. There is no precedent for a Board having liability for failing to prevent a nuisance. The Board are obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. The Licensing Objectives are not conclusive, and do not oblige the Board to close Premises or to impose such a substantial variation that Premises become uneconomic.

### **3. Issues**

Advice: The Board have a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and (subject to the issue of Overprovision - see below) there is no breach of Board Policy.

If the Board consider that Overprovision should be considered further here, this application should be continued to a later meeting and the Clerk will prepare a further report describing the Policy. The Board will still be obliged to consider whether or not this case can be treated as an exception to Policy.

### **4. Overprovision**

#### **Possible reason for refusal: Overprovision may result from the grant of the Licence**

The Board's Overprovision Policy would normally presume refusal - there is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2018-22, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

Paragraph 3.5(d) of the Licensing Policy Statement 2018-2022 is:

*"Where the Premises are in Function Type 4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), the Board may regard the grant of a new Licence (or Variation of an existing one) as not calling for refusal, on the view that such Premises may not be a significant contributor to overall disorder.*

*However, since the Board:*

- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and*
- endorses the view that "alcohol is not an ordinary commodity",*

*it may refuse the Application here also. 'Meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table, and is available at all times until 45 minutes before the terminal licensed hour."*

Accordingly, while the Board are entitled to refuse the Application due to Overprovision, they are not bound to do so, so the present Report omits the usual details about the Policy. If the Board consider that this is an issue which should be investigated, the case could be continued.

## **5. Observations**

### **(a) Exclusion area around bar**

The Applicant should confirm that these words can be added to the Operating Plan (OP 6(e)):

*"No person under 18 will be permitted to remain within 1 metre of any bar."*

Reason: the Licensing Objectives "preventing crime and disorder" and "protecting children and young persons from harm".

### **(b) Baby-changing Facilities**

The Applicant should:

- (a) state where such facilities will be (e.g. in a 'disabled toilet', or in both the ladies' and gents' toilets), or
- (b) amend the Operating Plan to exclude children under 5; or
- (c) give Board an undertaking that the Premises will not open until necessary facilities are available to the public.

Reason: Since the Premises are to admit children under 5, the Mandatory Condition requiring Baby-Changing Facilities accessible by both genders applies (Sch. 3, Para. 12, S.C. C.3). Since the condition is mandatory by statute, the Board have no power to vary it or dispense with compliance.

Without such facilities, or without children under 5 being excluded, the Board may consider that reasons to refuse exist:

- (a) inconsistency with L.O. (d) ("protecting and improving public health");
- (b) inconsistency with L.O. (e) ("protecting children from harm");
- (c) unsuitability for use for the sale of alcohol, given that their use will involve a breach of a mandatory licence condition.

### **(c) Information for Applicant**

The static double-decker bus used for holiday lets is not included in the Premises

Licence for the sale of alcohol under the Licensing (Scotland) Act 2005.

The bus is likely to require a Short-Term Let Licence under the Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022 No. 32. The new scheme commences on 1 October 2022 but for existing hosts (a person operating a short-term let before 1 October 2022) the Licensing requirement does not start then:

- (a) All existing hosts must submit a licence application by 31 March 2023 and hold an appropriate licence by 1 July 2024;
- (b) Any new host wishing to start short-term letting after 1 October 2022:
  - must submit a licence application and
  - cannot commence until the licence has been approved.

### **6. Summary of issues for Board**

The Board should consider whether or not

- (a) the Premises Licence should be granted.
- (b) the Outdoor Drinking Area can be included in the Premises
- (c) the Premises should not be subject to Condition C.5.1 (loudspeakers etc.)
- (d) the Outdoor Drinking Area can be used before 11.00 a.m., and if so, from what time and for what purposes.

### **7. Licence Conditions**

If the Licence is granted, it will be subject to the following parts of the NALB Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions):

- A (All Premises)
- C (On-sale Premises)

If the Board agreed to vary or remove any of the conditions, the Premises Licence will reflect this.

### **8. Notes for Applicant**

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deal with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of television, video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers; including a TV screen in a public area) this is a 'public performance' and may need a Licence from:

- "PRS for Music" (formerly the "Performing Rights Society"),
- "Motion Picture Licensing Company Ltd"
- the maker of the programme or recording.

The Licensing Board do not grant this Licence.

**Application for Grant of Premises Licence - Section 20**

Applicant	Daniel McKinnon
Premises	"The Clyde Kitchen", 31-33 Shore Road, Skelmorlie, PA17 5AN
Ref.	0525

**Preliminary**

The Applicant should lodge a Certificate confirming Display of Site Notice. Until the Board have it, they cannot determine the Application.

**1. Summary of Proposal**

The Applicant has applied for the Grant of a Premises Licence.

The Premises were formerly the residents' tearoom for the residents of Strathclyde House, Shore Road, Skelmorlie. They were also open to the general public before the present Application was made, and will continue to be.

On-sales only 12.00 - 21.00 (seven days)  
Capacity = 72 customers

The Licence Application extends to

- (a) the building
- (b) the upper terrace "Outdoor Drinking Area"

There is also a lower terrace at Strathclyde House which is not part of the Licensed Premises. Alcohol sold on the Premises can only be drunk in areas (a) and (b) and

- cannot be served to customers on the lower terrace, and
- cannot be taken by customers outside areas (a) and (b)

Photographs of the Premises on the internet:

[https://www.google.co.uk/maps/@55.8589041,-4.8896921,3a,75y,94.04h,100.7t/data=!3m6!1e1!3m4!1sd5DU\\_oLpkU\\_N7pZpeU6YFg!2e0!7i16384!8i8192](https://www.google.co.uk/maps/@55.8589041,-4.8896921,3a,75y,94.04h,100.7t/data=!3m6!1e1!3m4!1sd5DU_oLpkU_N7pZpeU6YFg!2e0!7i16384!8i8192)

**2. Possible amendment of the Operating Plan**

The Operating Plan:

- should give the Board an accurate picture of what the Applicant wants the

Board to license.

- is effectively a set of conditions which the Applicant must observe, because two of the mandatory national conditions of a Premises Licence in the Licensing (Scotland) Act 2005, Schedule 3 are Paragraphs 2(1) and 3(1):

2(1) *"Alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence."*

3(1) *"Any other activity to be carried on in the premises is to be carried on only in accordance with the operating plan contained in the licence."*

Therefore, if the Applicant proposes that the Premises are to be open before 12.00, for example to sell meals and teas, coffees and other soft drinks, then the Applicant should amend the Operating Plan. The amendment needed would be to Q5 of the Operating Plan (activities other than the sale of alcohol).

At present the Operating Plan is completed so that for all the activities proposed (e.g. "restaurant facilities" and "Outdoor drinking facilities") the Applicant has answered:

- "yes" to the question "To be provided during core licensed hours" (Column 3)  
but

- "no" to the question "Where activities are also to be provided outwith core licensed hours please confirm" (Column 4).

If the Premises are to offer any of these activities before 12.00, the answer in each column should be "yes".

### **3. Possible request to vary Licence conditions**

Unless the Board direct otherwise, the Premises Licence would be subject to the Board's Standard Conditions, which include:

*"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."*

These are discretionary conditions (as opposed to the national mandatory conditions prescribed by the Scottish Government) and the Board can treat any particular Premises as an exception to policy and remove or vary the conditions as they see fit.

If the Applicant proposes to use the upper terrace before 10.00 he may wish to consider asking the Board to vary Condition C.5.2 (times). The Premises are within a residential complex for the elderly, and there are other residences within 200 metres, so the Board might doubt whether it would be consistent with the statutory Licensing Objectives to amend Condition C.5.1 (loudspeakers etc. in "Outdoor Drinking

Areas").

The Board have allowed early use of such areas in other cases, adding to C.5.2 words such as "except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from ...."

Even if the Board permit the Outdoor Drinking Area initially, and/or alter either Licence Condition, they may review that decision later if satisfied that the operation of the Outdoor Drinking Area is not consistent with the Licensing Objectives.

In making any decision about an Outdoor Drinking Area:

1. The Board are obliged to take account of two Licensing Objectives:
  - (c): 'preventing public nuisance'
  - (d): 'protecting & improving public health'
2. The Board require to balance competing rights:
  - (a) Regularly exposing neighbours to noise and other nuisances may breach neighbours' human rights to respect for private life, family life and home under Article 8 of the European Convention on Human Rights. If the Board were being asked to permit nuisance (by granting or varying a Licence), their decision might be the basis of a claim for compensation by them against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633).
  - (b) The Licence Holder has a right to free enjoyment of his possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.
3. Neither right is absolute. There is no precedent for a Board having liability for failing to prevent a nuisance. The Board are obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. The Licensing Objectives are not conclusive, and do not oblige the Board to close Premises or to impose such a substantial variation that Premises become uneconomic.

## **4. Issues**

Advice: The Board have a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and (subject to the issue of Overprovision - see below) there is no breach of Board Policy.

If the Board consider that Overprovision should be considered further here, this application should be continued to a later meeting and the Clerk will prepare a further report describing the Policy. The Board will still be obliged to consider whether or not this case can be treated as an exception to Policy.



## **5. Overprovision**

### **Possible reason for refusal: Overprovision may result from the grant of the Licence**

The Board's Overprovision Policy would normally presume refusal - there is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2018-22, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

Paragraph 3.5(d) of the Licensing Policy Statement 2018-2022 is:

*"Where the Premises are in Function Type 4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), the Board may regard the grant of a new Licence (or Variation of an existing one) as not calling for refusal, on the view that such Premises may not be a significant contributor to overall disorder.*

*However, since the Board:*

*- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and*

*- endorses the view that "alcohol is not an ordinary commodity",*

*it may refuse the Application here also. 'Meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table, and is available at all times until 45 minutes before the terminal licensed hour."*

Accordingly, while the Board are entitled to refuse the Application due to Overprovision, they are not bound to do so, so the present Report omits the usual details about the Policy. If the Board consider that this is an issue which should be investigated, the case could be continued.

## **6. Observations**

### **(a) Exclusion area around bar**

The Applicant should confirm that these words can be added to the Operating Plan (OP 6(e)):

*"No person under 18 will be permitted to remain within 1 metre of any bar."*

Reason: the Licensing Objectives "preventing crime and disorder" and "protecting children and young persons from harm".

### **(b) Baby-changing Facilities**

The Applicant should:

(a) state where such facilities will be (e.g. in a 'disabled toilet', or in both the

ladies' and gents' toilets), or

(b) amend the Operating Plan to exclude children under 5; or

(c) give Board an undertaking that the Premises will not open until necessary facilities are available to the public.

Reason: Since the Premises are to admit children under 5, the Mandatory Condition requiring Baby-Changing Facilities accessible by both genders applies (Sch. 3, Para. 12, S.C. C.3). Since the condition is mandatory by statute, the Board have no power to vary it or dispense with compliance.

Without such facilities, or without children under 5 being excluded, the Board may consider that reasons to refuse exist:

(a) inconsistency with L.O. (d) ("protecting and improving public health");

(b) inconsistency with L.O. (e) ("protecting children from harm");

(c) unsuitability for use for the sale of alcohol, given that their use will involve a breach of a mandatory licence condition.

## **7. Summary of issues for Board**

The Board should consider whether or not

(a) the Premises Licence should be granted.

(b) the upper terrace Outdoor Drinking Area can be included in the Premises

(c) the Outdoor Drinking Area can be used before 11.00, and if so, from what time and for what purposes.

## **8. Licence Conditions**

If the Licence is granted, it will be subject to the following parts of the NALB Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions):

A (All Premises)

C (On-sale Premises)

If the Board agreed to vary or remove any of the conditions, the Premises Licence will reflect this.

## 9. Notes for Applicant

[A] Other Licences etc.

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deal with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of television, video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers; including a TV screen in a public area) this is a 'public performance' and may need a Licence from:

- "PRS for Music" (formerly the "Performing Rights Society"),
- "Motion Picture Licensing Company Ltd"
- the maker of the programme or recording.

The Licensing Board do not grant this Licence.

B. Seasonal Variations

The Application states in Operating Plan Q4 ("Seasonal Variations"):

*"Possibly Christmas and New Years Day, same hours as above, possibly less"*

The Licence will not permit operation outside the Core Hours specified in Operating Plan Q2/Q3 (i.e. the ordinary trading hours, 7-days-a-week). The Applicant requires to include in Operating Plan Q4 the intention to seek extra hours, but this is only an intention.

The way for Premises to obtain extra hours is to apply to the Board for 'Extended Hours' under Section 68 (an Occasional Extension) as and when the hours are wanted. Applications should be lodged at least 28 days in advance of the proposed date (see Statement of Practice in Licensing Policy Statement 2018-22, Annex C - on Board's website). The individual requests are then copied to the Police, who can make representations. The Extension will be granted only if within Board Policy. Each year the Board decides the Policy for the forthcoming Christmas-New Year period.

The Board have not made any Determination under Section 67 authorising a general extension of hours throughout North Ayrshire.

**Application for Occasional Licence - Sections 56-61**

Applicant	Daniel James Stirling
Premises	Irvine Beach Park (bar at the "Making Waves Festival")
O.L. Ref.	259-22

**1. Date(s) and Time(s) requested**

Sat 23 July 2022	12.00 - 22.00
Sun 24 July 2022	12.00 - 17.45

**2. Reason this case is being referred to the meeting**

Most Occasional Licences are granted under Delegated Powers (by a Board officer without a Hearing), subject to NALB Standard Licence Conditions. This particular Application is being referred to the Board as the Applicant has asked that one of the Licence Conditions should be varied on this occasion, so the delegation does not apply.

**3. Background to event**

The background is the "Making Waves Festival" which involves a number of activities on the Harbourside and Beach Park in Irvine, including a music event with an estimated 3,000 people in a fenced and ticketed area. The Occasional Licence is requested for the bar in that area.

The "Making Waves Festival" is organised by North Ayrshire Council and others, and has been planned over many months with input from Police Scotland; NHS Civil Contingencies; NAC Protective Services, and other agencies. A detailed "Event Management Plan" has been drafted and revised over the months.

An officer from the relevant Council Department has been invited to accompany the Licence Applicant at the Board Meeting and will be available to answer Members' questions.

**4. General description of Occasional Licences**

An O.L. is granted temporarily for Premises which are not otherwise Licensed, to cater for parties and other social events.

The Applicant can be:

- (a) a Premises Licence Holder,
- (b) a Personal Licence Holder,
- (c) a voluntary organisation, or
- (d) a club.

In cases (a) and (b):

- there is currently no limit to the number of O.L.s that a Licence Holder may request (so some Licence Holders operate a business of providing bars for social functions). Legislation was passed in 2010 to enable the Scottish Government to make

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Regulations setting an "Occasional Licence Limit", but to date no such Regulations have been made, so there are only limits in cases (c) and (d);

- the Premises or Personal Licence may have been granted by a Board outside North Ayrshire. The Applicant here holds a Personal Licence issued by North Lanarkshire Licensing Board (NL 2010).

In addition to consulting the Police and Licensing Standards Officer, the Board give public notice by advertising on their website, usually for 7 days; and anyone can object in that time.

An O.L. covers a period of up to 14 days (although often requested for only a few hours). It costs £10, in contrast to the fee for permanent commercial Premises (where the initial fee is in the range £800 to £2,000, and in addition an Annual Fee in the range £220 to £900 is due).

Unlike "Premises Licences", "Occasional Licences" are not counted for Overprovision purposes, and Overprovision is not a valid reason for refusing an O.L. - for example, a proposal for a permanent public house or nightclub might well be refused due to the Board's Overprovision Policy, but the issue would not even be raised with an O.L..

Occasional Licences are subject to two types of condition :

- (i) the Licence conditions set out in the Licensing (Scotland) Act 2005, Schedule 4 ("Occasional licences: mandatory conditions"). These conditions apply throughout Scotland. The Schedule is available on a Government website:

<https://www.legislation.gov.uk/asp/2005/16/schedule/4>

- (ii) Standard Conditions applied by the local Licensing Board.

The NALB Standard Conditions are authorised by Licensing (Scotland) Act 2005, Section 60(4), which is:

*"... where a Licensing Board grants an Occasional Licence, the Board may impose such other conditions ... as they consider necessary or expedient for the purposes of any of the Licensing Objectives."*

In the case of Occasional Licences, the relevant parts of the NALB Standard Conditions are Parts A and H. They reflect the Board's view on what is "necessary or expedient for the purposes of any of the Licensing Objectives."

The Licensing Objectives are set out in Section 4:

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and

- (e) protecting children and young persons from harm. ("children" means persons aged 0-15 & "young persons" means persons aged 16-17)

Since the legislation has changed slightly since the Standard Conditions were last revised, a Licence is granted with wording to the effect of "This Licence is granted subject to the conditions set out in Parts A and H of the North Ayrshire Licensing Board Standard Conditions (as read with the statutory mandatory conditions)."

### **5. Issues for the Board**

The statute prescribes several potential "Grounds for Refusal" and provides that, unless the Board are satisfied that one or more "Grounds for Refusal" are established, the Board must grant the Occasional Licence Application.

There have been no objections or adverse representations.

In the opinion of the Depute Clerk none of the "Grounds for Refusal" are established, and the only questions for the Board are:

- (a) whether or not the event should be treated as an exception to Board Policy, so that a NALB Licence condition ("Temporary Structures") which would otherwise apply would be dis-applied.
- (b) whether or not an additional condition should be attached:

*"No glasses shall be used. All drinks (alcoholic or not) shall be decanted into paper or plastic containers."*

### **(a) The Occasional Licence itself**

Since there appears to be no "Ground for Refusal" here, the Board must grant the Occasional Licence Application.

### **(b) The "Temporary Structures" Condition**

This condition is:

#### **"H.7 Temporary Structures**

H.7.1 In this condition "temporary structure" includes marquee or tent.

H.7.2 Where a temporary structure is used:

(a) Alcohol must only be consumed within

(1) the temporary structure or

(2) a roped area beside it reserved exclusively for this purpose;

*(these two areas are together the licensed area). The roped area shall not exceed in size the equivalent of one-half the floor area of the temporary structure itself.*

*(b) The Licence Holder shall follow the instructions of any officer of North Ayrshire Council prior to and throughout the duration of the Occasional Licence."*

The Applicant wants customers to be able to take their drinks anywhere in the fenced and ticketed area. Since that Licence Condition was adopted because of concerns about disorder linked to drinking, the Convenor wanted the Police to be asked for views on the proposal, and they responded:

*"I can advise that there are no police objections to this application. However, the Event Management Plan references four stewards to cover the bar area. Should the decision be made that the whole area of the Venue is to be fully licensed, consideration should be given to increasing the stewarding numbers."*

The Convenor also asked for:

*"...more information such as the extent of the area, type of barriers, number of stewards, ticket/entrance policy, age range of customers, general track record of the organisers with such events, details of containers (plastic/glass?) and details of toilet provision."*

and this request was passed to the relevant Council officer.

The Board will have to decide whether or not the arrangements proposed by the Applicant are sufficient to justify Condition H.7 being disapplied.

### **(c) The "Plastic glasses and decanting" Condition**

The Board Policy on the use of plastic glasses and decanting under Occasional Licences is set out at Paragraph 8.25 of the Licensing Policy Statement (2018-2022), and depends on what the function or event is:

- for Junior Football and contact sports such as boxing, karate or other martial arts tournaments - one of the conditions is:

*"No glasses shall be used. All drinks (alcoholic or not) shall be decanted into paper or plastic containers."*

- Otherwise, there is normally no need to use drinks containers made of plastic or toughened glass, or to decant alcohol into containers made of these materials, at events which are covered by an O.L..

However, the Board are always obliged to consider the Licensing Objectives and they have a discretion to apply any conditions which they "consider necessary or expedient for the purposes of any of the Licensing Objectives."

The Board should decide whether or not such a condition should be applied here.

**Application for Extended Hours - Sections 68-70A**

<b>Premises Licence Holder (here "PLH")</b>	Hillend Enterprises Ltd.
<b>Premises</b>	"The Waterside", 14 Bath Street, Largs, KA30 8BL
<b>Premises Licence ref.</b>	0080
<b>Premises Manager</b>	Brian Purdie

**1. Extension request**

<b>Ref.</b>	<b>Day, Date and Period</b>	<b>Purpose</b>	<b>Proposed Terminal Hour and end date</b>
251-22	Friday 24th June, 2022	Largs Live Music Festival	Saturday 25th of June, 2022, 1.00am
	Saturday 25th June, 2022		Sunday 26th of June, 2022, 1.00am
	Sunday 26th June, 2022		Sunday 26th of June, 2022, 12.00 p.m.

**2. Introduction**

The present Hearing follows a Review Hearing on 22 November 2022.

That Review Hearing followed complaints from neighbours. There had been similar complaints over many years, and other Board Hearings, described below ("History of Licence").

**3. Description of the Premises**

The Premises are a public house with a capacity of 96 patrons and consist of a Lounge Bar and Function Area on the ground floor, with the manager's flat above. The Public House is part of a terrace in the block bounded by Bath Street and on three sides by Fort Street. Bath St. has a mixture of commercial and residential property. The Premises open onto Bath Street and have a rear exit, and a close leads from there towards Fort Street. The Premises have a smoking shelter near the rear exit.

**4. History of Licence**

(1) 14 April 2009 - the Premises Licence was granted to Greene King Retailing Ltd during the Transition between the Licensing (Scotland) Act 1976 and the Licensing (Scotland) Act 2005.

(2) 3 March 2011 - Licence varied: Premises Manager now Brian Purdie (PLH remained Greene King Retailing Ltd).



### First Review

(3) 26 June 2012 - The Board considered a Review Application submitted by a neighbour of the Premises, Mr. Paul Castelvechi, Flat H, 18 Main St., Largs. The Application was accompanied by a Petition signed by 16 other residents. The Board had a report from the LSO describing alleged noise disturbances since July 2010. The Board upheld the Application in relation to the Licensing Objectives:

*“(c) preventing public nuisance”*

*“(d) protecting and improving public health”*

and varied the Licence by adding a further condition:

*“Amplified music or noise will cease at 12.30 a.m. on a Friday and Saturday night and 11.30 p.m. on a Sunday night.”*

### Second Review

(4) The Board subsequently dealt with a second Review Application commenced by the Environmental Health Officer. This called on 22 August 2012, was continued to the meeting of 3 October 2012, and finally to 18 December 2012, pending noise-abatement works and monitoring by the EHO.

(5) 18 December 2012 - the Board determined to take no further action on the Review Application, considering that the matters raised by the Applicant had now been resolved, as:

- works had been carried out on the Premises with a view to remedying the problem raised by the Review Application, and
- the PLH proposed to cease having live music 30 minutes before the Terminal Hour.

### Transfer

(6) 12 May 2014 - the Board granted a Transfer Application, from Greene King Retailing Ltd. to Hillend Enterprises Ltd. (the present Premises Licence Holder).

### First Variation

(7) 11 January 2016 - the Board refused a Variation Application proposing to vary the Premises Licence by increasing on-sale terminal Core Hours on Fridays & Saturdays 2.30 a.m. from 1.00 a.m..

There were several Objections and Representations to this request, including from:

1. Mr. Paul Castelvechi, Flat H, 18 Main Street, Largs
2. Mr. David Findleton, Flat B, 10 Bath Street, Largs

Second Variation

(8) On that date the Board continued consideration of a second Variation Application pending a Site Visit by Members. That request was:

*"Add dance facilities to the Operating Plan"*

(9) 22 February 2016 - after the Site Visit, the Board resumed consideration. The Objections and Representations were again before the Board. Having heard from the Licence-Holder and objectors the Board granted the variation application to add dance facilities.

**5. Review Hearing on 22 November 2021**

The meeting was held remotely. After hearing from Mr. Brian Purdie, the Designated Premises Manager, and from residents, and after considering the Report prepared by the Clerk and the written submissions made by many of the parties, the Board retired to deliberate in private. On resuming, the Board decided that:

(a) that both "Grounds for Review" referred to in the Review Proposal were established:

1. that the operation of the Premises on the occasions and in the circumstances described had involved breaches of one or more of the Licence conditions;
2. that the operation of the Premises had not been consistent with the 'preventing public nuisance' and 'protecting and improving public health' Licensing Objectives;

(b) that the variation below was necessary and appropriate for the purposes of those Licensing Objectives and was proportionate in all the circumstances.

**6. Variation on 22 November 2021**

[a] the Operating Plan should be varied so that the Terminal Hour on each of seven days in the week should be 23.00, from their current position:

Monday	8.00 - 24.00
Tuesday	8.00 - 24.00
Wednesday	8.00 - 24.00
Thursday	8.00 - 01.00
Friday	8.00 - 01.00
Saturday	8.00 - 01.00
Sunday	11.00 - 24.00

[b] The Conditions of the Premises Licence should be varied to add:

*"Throughout the period when live or amplified sound is to occur on the Premises, the Premises shall employ a licensed Door Steward (a person who holds a licence granted under Section 8 of the Private Security Industry Act 2001) who shall take reasonable steps to ensure that:*

- (a) no person who is unfit due to drink, drugs or any other reason may enter the Premises;*
- (b) the Licence Conditions in the Board's Standard Conditions quoted below (heading "Licence conditions referred to") are continuously complied with."*

This condition was additional to the 'neighbourhood conditions' which apply to all Premises Licences in North Ayrshire - these are set out below and are the "Licence conditions referred to" in the Board decision of 22 November 2021.

### **7. Neighbourhood Conditions**

*"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 door 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."*

### **8. Extended Hours Procedure**

The legislation requires only that the Licensing Board inform the Police and the Board's Licensing Standards Officer (Ms. Grace Cullen). There is no mandatory consultation with neighbours.

It is however lawful for the Board to obtain information from any source which is likely to have a bearing on their assessment - a Board can take into account information even if the person supplying it does not have a formal role in the process.

For example, in the Court of Session case J. & J. (Inns) Ltd. v Angus District Licensing Board, 1992 S.L.T. 930 (a case where a Board relied on information from the Police although the legislation at the time gave the Police no formal role) the judge said:

*It would be absurd if a board was required to exercise its discretion by having to work in the dark because it could not entertain any information which might be available."*

Therefore the Convenor of the Licensing Board directed that in this case because of the history the Board would proceed by:

- (a) telling the neighbours,
- (b) allowing them to state, either by appearance or in writing, any objections or representations they might have, and
- (c) calling the case at the Board Meeting on Monday 20 June 2022, at 10.00 a.m., in Council Chambers, Cunninghame House, Irvine.

Accordingly the Board contacted the neighbours who were involved earlier, and all have made representations. The Police have also reported on the Application.

All these will be in Members' Background Papers.

### **9. How the Board should proceed**

The Board must consider:

- A. any written or oral submissions by or behalf of the PLH and the third parties.
- B. the Licensing Objectives:
  - (a) preventing crime and disorder,
  - (b) securing public safety,
  - (c) preventing public nuisance,
  - (d) protecting and improving public health, and

- (e) protecting children and young persons from harm.
- C. the Licensing Standards Officer's report.
- D. any Notice of Objection given by the Chief Constable.

The Board should be satisfied:

- (a) that the Extended Hours are requested to cover either:
  - (1) a special event or occasion to be catered for on the Premises, or
  - (2) a special event of local or national significance,
- (b) that the Period of Extended Hours requested is reasonable.

The Board require to balance competing rights:

- (a) Regularly exposing neighbours to noise and other nuisances may breach neighbours' human rights - the rights to respect for private life, family life and home under Article 8 of the European Convention on Human Rights.

If the Board were being asked to permit nuisance (by granting or varying a Licence), their decision might be the basis of a claim for compensation by them against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633); but

There is no precedent for a Board having liability for failing to prevent a nuisance;

- (b) Licence Holders have a right to free enjoyment of their possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.

Neither right is absolute. The Board are obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. The Licensing Objectives are not conclusive, and do not oblige the Board to close Premises or to impose such a substantial variation that Premises become uneconomic.

The Standard Conditions (and the additional condition here) are the way that the Board has chosen to balance competing rights - they include conditions designed to minimise nuisance.

## **10. Additional Licence Conditions**

Under Section 70A, if the Board grant an Extended Hours Application, they may make such variation, addition, deletion or other modification of the Premises Licence Conditions as they consider necessary or expedient for the purposes of any of the Licensing Objectives. Such a variation only applies during the period of extra hours, and the Conditions continue to apply for the rest of the Licensed Hours as they did before the Extended Hours were granted.