

Cunninghame House
Irvine
KA12 8EE

27 March 2023

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 27 March 2023 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 Meeting held on 28 November 2022.
- 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. Coronation of King Charles III on Saturday 6 May 2023 - Extended Hours and Occasional Licences**
Submit report to the Licensing Board to determine a Policy for the King's Coronation for Extended Hours and Occasional Licences (copy enclosed).
- 5. Any Other Business**

Licensing Board

Sederunt: Eleanor Collier (Convenor)
Nairn McDonald (Vice-Convenor)
John Bell
Cameron Inglis
Christina Larsen
Matthew McLean
Jean McClung
Donald L Reid
Ronnie Stalker
Angela Stephen

Chair:

Apologies:

Meeting Ended:

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DRAFT
North Ayrshire Licensing Board
28 November 2022

Irvine, 28 November 2022 - At a meeting of the North Ayrshire Licensing Board at 10.00 am in the Council Chambers, Cunninghame House, Irvine.

Present

Councillors Eleanor Collier (Convenor), Christina Larsen, Matthew McLean, Jean McClung and Donald L Reid.

In Attendance

R Lynch, Clerk, G Cullen, Licensing Standards Officer, C Pollock, Licensing Administration Officer and M Champion, Admin Assistant.

Convenor

Councillor Eleanor Collier.

Apologies for Absence

Councillors Nairn McDonald, John Bell, Ronnie Stalker and Angela Stephen.

1. Declarations of Interest

There were no Declarations of Interest.

2. Minutes

The Board were asked to confirm the Minutes of the Board meeting held on 31 October 2022. 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;

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

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

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

A.1 Premises Licence Skelmorlie Golf Club, Beithglass Road, Skelmorlie

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Skelmorlie Golf Club, for the above premises. The Premises Licence Holder was not present or represented.

The Licence Holder was requesting the following variations:

1. Amend Layout plan
2. Amend under-18 access

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The Board considered the terms of the case summary report. As the Applicant was not represented the Clerk updated the Board on the application. He referred the Members to pages 15-27 of their papers which contained the existing Operating Plan and Layout Plan as well as the proposed Layout Plan. The Clerk explained that The Club had advised that no-one was available to attend the Meeting and he confirmed the Confirmation of Site Notice had been received.

Ms Cullen, LSO, explained the application is a tidy-up of the licence, the amendment to the Layout Plan is a room name change where children and young persons are currently permitted as well as allowing more flexibility for under 18's to attend social functions.

The Clerk explained the application is all within the Board's Policy and the Board could determine the application today or continue it to a future meeting if they have any questions for the applicant.

Having considered the terms of the case summary and the Clerk's update, Councillor Reid 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.2 Extended Hours Application 0243 Pitchers, 18 Bank Street, Irvine

The Board considered an application for Extended Hours (625/22) made by Signature Works (Scotland) Ltd for the above premises. The application is for an extension of core hours starting on Monday 26 December and ending at 3.00am on Tuesday 27 December. The Premises Licence Holder was represented by John Duncan, Director, and he was accompanied by Rachel Robertson, Premises Manager.

The Board considered the terms of a Case Summary Report by the Solicitor (Licensing). The Board also had regard to a report by Grace Cullen, Licensing Standards Officer. The Clerk referred to the Board's Festive Policy and advised Ms Robertson had also submitted a statement with the Extended Hours Application. The Premises have been granted Extended Hours to 3.00am for Boxing Night for many years. No objections to this application have been received from Police Scotland or the LSO.

The LSO confirmed the application is out-with the Board's Festive Policy hour of 2.00am however the Premises are well run and have had this granted by the Board for many years.

Ms Robertson then addressed the Board. She explained that Boxing Night is an important night and one of their busiest nights of the year.

The Clerk also noted their submission contained reference to including Boxing Night in the Board's future Festive Policy. He noted that this would be a decision for the Board when preparing their Policy in future years.

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

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A.3 The Waterside, 14 Bath Street, Largs

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Hillend Enterprises Ltd, for the above premises. The Premises Licence Holder was represented by Iain Hunter, Solicitor, and was accompanied by Brian Purdie, Director and Premises Manager.

The Licence Holder was requesting the following variations:

1. Amend Terminal Hour Sunday to Wednesday from 11.00pm to Midnight
2. Amend Terminal Hour Thursday to Saturday from 11.00pm for 1.00am

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.

Two objections to the application had been made by Brian Tracey and Paolo Castelveccchi. Copies of the written objections were given to the Board Members. Both objectors were present. Mr Hunter confirmed that he had seen a copy of the objections prior to the Board meeting.

Mr Hunter then addressed the Board. He clarified that Mr Purdie had been at the Licensing Board in June for an Extended Hours Application, however this application is permanent in nature. He confirmed receipt of the Board Report and noted there are no preliminary matters. He referred to his written submission to the Board sent by email on Friday afternoon. He confirmed his consent to the objectors having sight of the submission.

The Clerk highlighted the report was on page 35 of the Members papers and the 2 objections on pages 42 and 43. He also confirmed Confirmation of Site Notice had been received and referred to the previous history of the Premises as detailed in the report.

Referring to his written submission, Mr Hunter advised that his client has taken on board the issues in the past as well as the objections received. He referred to the significant change in economic circumstances and the difficulty in employing staff, in particular door stewards. Mr Purdie has tried diligently to get a door steward, including advertising online. He alleged that Mr Purdie had contacted a member of Board staff who did supply a contact telephone number for stewards. His proposal now is to identify and pay for SIA training and employ his own member of staff as a steward in order to comply with the Board's wishes.

Mr Hunter advised the premises are genuinely well run and staff are aware that both the front and rear doors must be closed. They are unable to stop people leaving and entering the premises but the doors are controlled as much as possible. Referring to the application, Mr Hunter noted that no objection has been received from the Police and advised that a previous objector has since moved home. Mr Purdie has spoke with the new owner and they are happy with the way the premises are run.

Reassuring the Board, Mr Hunter said that a considerable amount of money has been spent soundproofing the premises and hopes that the suggestion to extend the roof over the outdoor smoking area to the adjoining property with double insulation would suitably reduce noise from this area. These works will not be carried out until January by which time a door steward can be employed, and SIA trained.

Mr Hunter suggested that the Board grant the application on a trial basis for 3 to 6 months and have Board Officers monitor the premises and possibly the Board could carry out a site visit

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to view for themselves how the premises operate. He highlighted that his client is trying to make his business a success however in this economic climate it is very difficult.

The LSO confirmed compliance wise the premises are very well maintained and stated that since 2012 the historic noise and neighbour complaints were ultimately brought to the Board. She confirmed that in the last year no objections have been received from Environmental Health or the Police, however the Police have noted that no door stewards have been in place during the last year.

With regards to door stewards, the LSO confirmed to Councillor Larsen that she had some time ago spoke with Mr Purdie and suggested he contact the Police if he had problems obtaining a steward. She also advised him that as this was a Condition of his licence, he may want to have his own member of staff put through the training.

Mr Hunter confirmed Mr Purdie did speak with Police and as referred to in his written submission had previously arranged for his own member of staff to carry out the steward training.

Referring to the Licensing Board meeting in June when it was reiterated to Mr Purdie the requirement to have a door steward, Councillor Larsen enquired what advertising has been carried out to acquire a steward. Mr Hunter advised that online advertising has been carried out and he has had sight of some adverts and responses.

The Convenor explained that the biggest concern for the Board, which was reiterated back in June, is the absence of a door steward as this has been a Condition on the licence for the last 12 months. She also highlighted that door stewards attend other premises in North Ayrshire.

Mr Hunter confirmed to Councillor Larsen specific advertising for a steward had been placed on Bark and other sites were contacted. Mr Purdie explained to Councillor Larsen he has contacted lots of companies, all based in Glasgow, who would not provide a steward in Largs. He also added that a lot of the companies when searching online were no longer available.

Councillor Larsen expressed her concerns that Mr Purdie has been unable to obtain a door steward in the last year while this has been a Condition of his licence. Mr Purdie said that he did have someone identified to carry out the training however due to the physical nature of the training and the person awaiting surgery they were unable to carry this out. Mr Hunter suggested that if the application is granted Mr Purdie would not operate in this way until January in order that he could satisfy the Board a door steward was in place.

The Clerk referred to the Condition, the LSO clarified the Condition requires a door steward every time there is live entertainment on the premises. Councillor McLean highlighted the Board's Standard Condition C.4.4.

The Board adjourned with the Clerk at 10.31 am to obtain a copy of the Premises Licence and re-convened at 10.48 am.

The Clerk noted the adjournment was helpful in clarifying the Conditions on the Licence, copies were provided to Board Members and Mr Hunter.

Referring to the Condition placed by the Board in November last year, Councillor McClung enquired how often bands played in the premises, Mr Purdie confirmed that bands played every weekend. Mr Hunter also referred to the Covid restrictions placed on licensed premises.

Councillor McLean also expressed his concerns that live bands and dancing have been taking place in the last year with the Condition on the licence, with no door steward not being in place.

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Mr Purdie advised that he himself has been in attendance when live music has been taking place. On a Friday night there is karaoke between 7.30pm and 10.30pm and on a Saturday live music is played from 7.30pm to 10.30pm. Mr Purdie is in attendance all the time ensuring doors are not jammed open and there are no issues.

Referring to the Licensing Board Meeting in June, the Convenor noted that a photograph showed doors wedged open. Mr Purdie explained that no bands were playing at that time. The Convenor reiterated again the Condition requiring a door steward.

Councillor Larsen explained the issue for the Board is a Condition requiring there is a door steward is not being adhered to. Mr Hunter noted that Mr Purdie has not had legal representation in the past, although this is a Condition his client is trying to comply with going forward. Mr Hunter referred to the previous candidate who Mr Purdie had identified to carry out the stewarding training and confirmed that another candidate will be identified and will be trained.

Referring to the noise issues, Councillor Reid enquired from Mr Purdie if the noise generated is from the live bands or from noise in the outside shelter and would the additional works make a difference. Mr Purdie said that no noise is heard outside his premises from the bands. Mr Hunter explained that there is a smoking area at the rear of the premises. Councillor Reid suggested that restricting the number of people in the outside area at any time could be beneficial. Mr Hunter noted that this could be feasible. Mr Purdie clarified to Councillor Larsen that the smoking area is monitored by staff as well as there being CCTV in the outdoor smoking area and confirmed he is trying to obtain a door steward. He confirmed that without live music his premises would close as it is a music venue. Councillor Larsen repeated that the Condition on his licence must be complied with.

Referring to staff on duty at any time, Mr Purdie confirmed to Councillor McClung that 3 members of staff are on duty, 2 in the bar and himself circulating the premises and monitoring the doors.

Mr Tracey then addressed the Board. He expressed his concerns that when other licensed premises in Largs close, when this premises had live music, people left other premises to go to The Waterside. He has lived in the area for 5 years and has witnessed constant noise, people hanging about outside, shouting and screaming, loud music with no communication with Mr Purdie. He advised that there have been no issues with the premises closing at 11pm, when other premises in Largs close at 11.45pm. He expressed his concern that a door steward has not been on duty when live music has been played and raises concerns that this is not being adhered to.

Mr Castelveccchi then addressed the Board. Agreeing with the comments from Mr Tracey, he also noted that the premises have 2 entrances and suggested the premises should have 2 door stewards, one for each doorway. He explained he has just carried out a Google search and found 6 companies that will supply door stewards in Largs.

With regards to stewards, Mr Tracey highlighted that other premises in Largs had door stewards, Room and Lounge operated by Mr McDonald. He believes that people have lots of alcohol in other premises in Largs or at home before leaving to come to The Waterside for their live entertainment. The premises are too busy for only 2 people behind the bar, the heavy rock bands are noisy when the doors are opened and believes this premises is not designed for live bands.

Referring to the outdoor smoking area, Mr Castelveccchi believes the plans for the roof will not solve the noise problem as ventilation is required for a smoking area. Mr Tracey advised that he has no problems with the music, the issues arise at closing time when lots of people leave

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at the same time. Mr Castelvechi noted that Mr Purdie stated he had spoke with the new neighbour, however the new neighbour has not experienced the premises closing after 11pm.

The Clerk explained to Councillor McClung that the Board could stipulate an early curfew.

Referring to the reference that no premises in Largs are open after midnight on a Saturday, the LSO confirmed to the Convenor that most premises have a terminal hour of 1am however they can operate within this time and can chose to close earlier. The Clerk also acknowledge that premises may close earlier than their stipulated core hours. Mr Purdie alleged that Largs premises close at midnight.

To the objectors, Councillor Reid enquired what would be an acceptable trial period for the premises to be opened after midnight, Mr Tracey advised Councillor Reid that as nothing has been done in the last year to alleviate his concerns, he did not believe Mr Purdie was in a strong position to obtain this.

The Clerk asked that all parties sum up their submissions.

The LSO confirmed she had nothing further to add and both objectors confirmed they were comfortable with their submission.

In summing up his submission, Mr Hunter referred to the updates from Board Officers that Largs premises have terminal hours to 1am. He also noted that with reference to Mr McDonald's premises, Lounge, it is currently closed which is a sign of the current economic reality. He explained his Client has taken on board all the submissions made today, and previously, and he runs his premises well.

Mr Hunter confirmed that his Client volunteered to amend the application to midnight on Friday and Saturday nights and will take on board the suggestion for controlling the number of people in the smoking area as well as showing good intentions in spending money to reduce sound in the smoking area to allow him to operate his business. As Mr Purdie has not been legally represented in the past, Mr Hunter undertook that the later hours would not be brought into force until January, and not during the busy festive period.

The Clerk sought clarification from Mr Hunter on the amended application on hours and stewarding for a trial period. Mr Hunter agreed the application should be amended.

Mr Tracey noted that it has taken Mr Purdie so long to start to communicate and he is happy for this to continue. Stating concern, Mr Castelvechi referred to the 3 Reviews in the past, and consistent breach of Licensing Conditions, and he was seeking reassurance. Mr Hunter gave his assurance that the extra hours would not be in force until a licensed door steward was in place.

Referring to the suggestion of 2 door stewards, one at each of the 2 entrances, Mr Hunter confirmed to Councillor Reid the second entrance leads from the rear of the premises to the sea front and due to economic reasons this would not be feasible to his Client. Mr Purdie himself will manage the rear doorway and a door steward will be on the front door.

The Board adjourned with the Clerk at 11.18 am to deliberate in private and re-convened at 11.42 am.

The Convenor, after hearing from all parties, clarified all Conditions of the licence must be upheld and moving forward, a licensed door steward must be employed with immediate effect.

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Having considered the terms of the report and the submissions made, Councillor Larsen proposed that the Board grant the application to midnight for a trial period of 3 months, with an SIA door steward being in place.

Mr Hunter clarified to the Clerk that the amendment to Friday and Saturday until midnight was sufficient with Sunday remaining 11pm.

The Clerk confirmed the application was granted for a trial period of 3 months, for Friday and Saturday night only until midnight. This will not take effect until the Clerk issued the Varied Licence following confirmation the works have been completed and an SIA door steward is available. Delegation would be given to the Clerk to allow the trial period to take effect.

Mr Hunter noted that his Client would need some time to have a door steward trained and for a joiner to carry out the proposed works to the outside area.

The Convenor highlighted that no live music should take place until a licensed door steward is in place and advised Mr Purdie to contact Environmental Health for advice on the outside smoking area to ensure the proposals comply with regulations. She was pleased there has been some communication with the objectors and suggested Mr Purdie continues discussions with the complainers.

The Clerk confirmed on all other nights the terminal hour will be 11.00pm and dialogue should continue with all parties. Mr Hunter noted that during the recess they had had a short chat with one of the complainers.

4. Any Other Business

There was no other business to consider.

The meeting ended at 11.48 am.

Agenda Item 3

27 March 2023

North Ayrshire Licensing Board

Title:	Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.
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Purpose:	To advise the Board of the Law and the factual background.
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Recommendation:	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

Financial:	There are possible financial implications in relation to any Licensing decision.
Human Resources:	None.
Legal:	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.
Equality/Socio-economic Duty:	<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"> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act]; (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it; (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>

Climate Change and Carbon:	None
Key Priorities:	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".
Community Wealth Building:	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.

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.	0527	Muhammad Anees	Costcutter 1 Ladyha Court Girdle Toll Irvine KA11 1QN	Application for Grant of Provisional Premises Licence – Section 45
2.	0528	Jamie Gibbs	The Boathouse at Dougarie Dougarie Estate Machrie Isle of Arran KA27 8EB	Application for Grant of Premises Licence – Section 20
3.	0376	JD Wetherspoon (Scot) Limited	The Salt Cot 7 Hamilton Street Saltcoats KA21 5DY	Application for Variation of Premises Licence – Section 29
4.	0220	CJ Lang & Son Limited	Spar Convenience Store 15/19 Baird Avenue Kilwinning KA13 7AP	Application for Variation of Premises Licence – Section 29
5.	0053	HF Irvine Hotel Limited	Riverside Lodge Hotel Roseholm 46 Annick Road Irvine KA11 4LD	Application for Variation of Premises Licence – Section 29
6.	0051	Trust Pubs Limited	Elms Bar 21 Raise Street Saltcoats KA21 5JX	Application for Variation of Premises Licence – Section 29
7.	0144	Susan Margaret Williamson	The Station Inn 4/6 Main Street Glengarnock Beith KA14 3AT	Application for Variation of Premises Licence – Section 29

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
8.	0352	Brodict Brasserie Limited	The Brodict Bar Alma Road Brodict Isle of Arran KA27 8BU	Application for Variation of Premises Licence – Section 29
9.	0243	Signature Works (Scotland) Limited	Pitchers 18 Bank Street Irvine KA12 0AD	Application for Extended Hours – Section 68 Clerk to Report

**North Ayrshire Licensing Board
Case Summaries
Meeting: Monday 27 March 2023 at 10.00 a.m.**

Notice to Applicants and Licence-Holders

Cases marked ' * ' in the list below**

This means that the case has a detailed report which will be included in the Agenda published on the Board website and which will be copied to the Applicant or Licence-Holder.

Cases which are NOT marked ' * '**

These do not have a detailed report, but the Board will have this 'Case Summaries' document which will outline the issues (for example, what the Applicant wants and what the legal considerations are).

In either case:

As well as any reports or Case Summaries, the Board members will have Background Papers containing all relevant papers such as any letters and emails from anyone commenting on the case, like members of the public, the Police, and Council Departments.

Abbreviations:

"PL" : Premises Licence

"PLH": Premises Licence Holder

"DPM": Designated Premises Manager (in a Premises Licence)

1. "Costcutter", 1 Ladyha Court, Irvine [527]

Application for Provisional Premises Licence

***** See detailed report - page 22**

2. "Dougarie Boathouse", Dougarie, Isle of Arran [528]

Application for Premises Licence

The proposal is to use a converted boat house in an isolated location on the west coast of the Isle of Arran for functions such as weddings.

The only issue is the capacity of the building. One of the Licensing Objectives is 'securing public safety' and the Board is also entitled to refuse a Licence if the proposed Premises are unsuitable for their proposed use. Therefore the Premises Licence's Operating Plan must show a figure for capacity (Question 7 in the OP).

The Applicant has been in dialogue with Scott McLelland in NAC Protective Services and there is disagreement about whether the capacity should be 60 or 120.

The figure of 60 is based on the sanitary provision within the building. The figure of 120 is suggested because the Applicant may also have temporary facilities outside the building.

A possible compromise is that the Board should direct that Question 7 should be:

"60 (or whatever higher figure is from time to time temporarily approved by North Ayrshire Council's Protective Services Department, with the capacity returning to 60 after that temporary approval has ended)."

Wording the Operating Plan like this would save the Applicant the time and money involved in repeatedly returning to the Board each time a temporary increase was wanted – due to the licensing legislation, such a variation request would be treated as a "Major Variation", not a "Minor Variation", so would:

- cost hundreds of pounds and
- follow much the same procedure as the Licence Application itself, including a Hearing at the Board. The Board only meets about 4 times a year.

There is no issue with the Board's Overprovision Policy as the premises are Function Type 4 (premises primarily for food or accommodation) and are on the Isle of Arran.

3. "The Salt Cot", Hamilton Street, Saltcoats [376]

Application for Variation of Premises Licence

The request(s):

1	To allow Community Events
2	To allow Quiz Nights
3	To allow Bingo Nights
4	To allow Craft Fayres with local businesses
5	To allow psychic nights and tarot reading nights

Advice

The Board must grant a variation request unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives. It is the Clerk's opinion that there are no grounds of refusal.

If the Board grants a Variation but is later satisfied (for example, after complainers make a Review Application) that there is an inconsistency with the Licensing Objectives, the Board may review the earlier variation and alter it or revoke it altogether.

Variations [1] to [5]

If these are granted then the relevant part of the Operating Plan (OP 5(f)) will have these words added:

"The Premises may also be used:

V1	<i>To allow Community Events</i>
V2	<i>To allow Quiz Nights</i>
V3	<i>To allow Bingo Nights</i>
V4	<i>To allow Craft Fayres with local businesses</i>
V5	<i>To allow psychic nights and tarot reading nights</i>

In relation to V3 (Bingo):

The rules under the Gambling Act 2005 as to stakes, prizes and participants' ages will also apply and the Licence-Holder should seek advice from the Gambling Commission.

In relation to V4 (Craft Fayres):

*In addition to the permission under the **Alcohol** Licence, the organiser of a Fayre will still need a **Market Operator's Licence** under the Civic Government (Scotland) Act 1982, Section 40. The Licensing Board does not grant this Licence, so the organiser will need to apply to the Licensing Committee."*

4. "Spar", 15/19 Baird Avenue, Kilwinning [220]

Application for Variation of Premises Licence

The request(s):

1	To gaming such as the National Lottery
2	To allow home delivery and make other changes

Advice

The Board must grant a variation request unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives. It is the Clerk's opinion that there are no grounds of refusal.

If the Board grants a Variation but is later satisfied (for example, after complainers make a Review Application) that there is an inconsistency with the Licensing Objectives, the Board may review the earlier variation and alter it or revoke it altogether.

Variation [1]

Any Operating Plan lists the activities that can happen on the Premises. There are 17 categories of activity and each Operating Plan has 17 yes/no responses. At present the response for "Gaming" is "no". The proposal is to amend this to "yes". The proposal is not to have games such as poker and bingo in the shop, but instead to have a "National Lottery" terminal. The Gambling Act 2005 regulates gaming, betting and lotteries but in general does not apply to the "National Lottery" (2005 Act, Section 15). Instead the rules about stakes, prizes and the ages of participants are set by the Gambling Commission (which succeeded the National Lottery Commission) under the National Lottery etc. Act 1993. The National Lottery does not depend on Licences granted by individual Licensing Boards.

The request is "add gaming as an activity during and outwith core hours (to cover the use of the National Lottery outlet etc)". The phrase "during and outwith core hours" is to allow the activity outside the times when alcohol may be sold, which by Law cannot be outside 10.00 a.m. to 10.00 p.m..

Variation [2]

The request is (referring to Questions in the Operating Plan):

"Q5) amend and add the following wording - The premises may open for general trade prior to the commencement of core hours. Recorded music may be played, such as Spar Radio prior to the commencement of core hours. This is background level only. National Lottery tickets/cards can be purchased prior to core hours.

Q5f) amend and add the following wording - The primary activity undertaken in the premises is the general retail sale of the following: Groceries; confectionery, bread & cakes, crisps/snacks, non-foods, toiletries, frozen & chilled foods, fruit/vegetables/flowers, news & magazines, toys, tobacco & cigarettes, beers/wines/spirits and other alcoholic products, non-alcoholic drinks. Charity collection point and charitable events take place. Food to Go. Click & collect. Home Deliveries.

Paypoint payment. National Lottery outlet. External automated cash machine. Sampling & promotional activities."

There are no reasons to refuse. Collection cans on shop counters do not need separate permissions from the Council as 'Public Charitable Collections' under Civic Government (Scotland) 1982, Section 119 as Section 119(2) is:

*"Subsection (1) above does not apply to a collection which takes place in the course of a public meeting or to a collection which takes place **by means of an unattended receptacle kept in a fixed position in a Public Place.**" [emphasis added]*

5. Riverside Lodge Hotel, 46 Annick Road, Irvine [53]

Application for Variation of Premises Licence

The request(s):

1	To allow craft fayres
2	To allow outdoor drinking

Advice

The Board must grant a variation request unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives. It is the Clerk's opinion that there are no grounds of refusal.

If the Board grants a Variation but is later satisfied (for example, after complainers make a Review Application) that there is an inconsistency with the Licensing Objectives, the Board may review the earlier variation and alter it or revoke it altogether.

Variation [1]

If this is granted then the relevant part of the Operating Plan (OP 5(f)) will have these words added:

*"The Premises may also be used to host Craft Fayres. In addition to the permission under the **Alcohol** Licence, the organiser of a Fayre will still need a **Market Operator's Licence** under the Civic Government (Scotland) Act 1982, Section 40. The Licensing Board does not grant this Licence, so the organiser will need to apply to the Licensing Committee."*

Variation [2]

At the Hearing:

[a] The Licence-Holder should tell the Board the proposed times of operation. Unless the Board direct otherwise, the Licence Standard Conditions only allow operation between 11.00 a.m. and 10.00 p.m.;

[b] The Licence-Holder should have given the Board an updated Layout Plan showing both the Premises as currently licensed and the proposed new garden area. In the absence of this, the Licence-Holder should attend the Board with a plan or photographs showing that area.

If the Board is satisfied that it can identify the area and that the use of the area is unlikely to cause a nuisance to nearby homes, it should grant the variation.

6. "The Elms Bar", Raise Street, Saltcoats [51]

Application for Variation of Premises Licence

***** See detailed report - page 45**

7. "The Station Inn", 4 Main Street, Glengarnock [144]

Application for Variation of Premises Licence

The proposal is to have an Outdoor Drinking Area ('Beer Garden') on ground at the rear of the building.

There have been no objections or representations from members of the public, the Police, or Council Departments.

The Board must grant a variation request unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives.

If the Board grants a Variation but is later satisfied (for example, after complainers make a Review Application) that there is an inconsistency with the Licensing Objectives, the Board may review the earlier variation and alter it or revoke it altogether.

8. "The Brodick Bar", Alma Road, Brodick, Isle of Arran [352]

Application for Variation of Premises Licence

***** See detailed report - page 50**

9. "Pitchers" Nightclub, Bank Street, Irvine [243]

Application for Extended Hours

The Application is for Easter Sunday

Clerk to report.

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Muhammed Anees
Premises	"Cost Cutter", 1 Ladyha Court, Irvine, KA11 1QN
Ref.	527

Preliminary matter

The Board should consider whether or not to ask the Police to provide an Anti-Social Behaviour report (a report detailing all cases of Antisocial Behaviour on, or in the 'vicinity' of, the Premises, in the past year) - Licensing (Scotland) Act 2005, Section 24A.

The Clerk advises that this is not appropriate as a Report would be unlikely to tell the Board anything useful and would mean the Board would have to adjourn the case to the next meeting - Monday 26 June 2023 at 10am..

The term 'vicinity' is not defined in the legislation and the Police base their report on a 50 m. radius around the Premises. The typical ASB report does not specify details of the incidents (for example, it might just list a range of offences and say things like "in the past year, within 50 m. of the Premises, there have been X breaches of the Peace, Y assaults ...").

The Board would need to take care when drawing inferences. An ASB report may have little value if it covers an urban or residential area since there might well be 'public order' offences in the 'vicinity' which have nothing to do with the Premises or how they are run.

The legislation allows the Board to have regard to:

- a) unproved allegations
- b) hearsay allegations
- c) by unknown third parties
- d) about unidentified perpetrators
- e) at unknown times
- f) in the 'vicinity'
- g) where the conduct and the perpetrators may have no connection to the Premises.

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL). The proposal is for an off-sales capacity of 13.33 square metres within a free-standing convenience store in a residential area. The shop at present sells food, groceries, newspapers, magazines, sweets, tobacco and soft drinks, but no alcohol.

The request is for 10.00 - 22.00, 7 days a week. This is the maximum permitted by the legislation and is within NALB Policy.

This is the sixth Application by the same Applicant for the same Premises. The last refusal was on 19 February 2018.

The previous cases were:

- (a) On 10 July 2014 the Board refused a PPL Application where the capacity requested was 24.6 sq.m. (NALB 456);
- (b) On 17 November 2014 the Board refused a PPL Application where the capacity requested was 18.32 sq.m. (NALB 463);
- (c) On 22 February 2016 the Board refused a PPL Application where the capacity requested was 4.6 sq.m. (NALB 475). The initial request was for 22.08 sq.m. but the proposed capacity was reduced to 4.6 sq.m. during the submissions to the Board by the Applicant's agent; this was to be only the area behind the counter, as opposed to a publicly-accessible area in the body of the shop;
- (d) On 12 December 2016 (NALB 486) the Board refused an Application seeking 22.08 sq.m.;
- (e) On 19 February 2018 (NALB 497) the Board refused an Application seeking 18.246 square metres.

The Board carried out a Site Visit on 9 July 2014, immediately before decision (a).

Part of the Applicant's submissions in relation to these Applications was that there was likely to be a housing development nearby of 185 to 200 houses. In some of the Applications the business was called "News Buster".

The submissions made to the Board in relation to decision (c) are noted in the Statement of Reasons which was issued to the Applicant shortly afterwards, which is set out below "6. 2016 Statement of Reasons".

2. Effect of a Provisional Premises Licence

The PPL relates to Premises which are to be converted for use as Licensed Premises, and is valid for a period of four years. During this period, the Applicant can request the Board to Confirm the PPL, or to extend the period.

The Premises cannot sell alcohol until the PPL is Confirmed. The Licence-Holder will apply to the Board for Confirmation once the construction or conversion is complete, and after Certificates as to Building Control (and if appropriate Food Hygiene) are issued. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

The requirement to lodge a Food Hygiene Certificate depends on whether or not there is a 'Food Business' within the Food Safety Act 1990. A FHC is needed even for a shop which sells tinned or packaged food, as well as for a restaurant or any Premises serving prepared food.

The Board decision on the PPL relates only to licensing legislation, and does not act as permission or certification under other legislation, such as Planning or Building Control. If the PPL is granted, the Premises cannot operate until all other legislative requirements are met.

3. Objections and Representations

These will be copied to the Applicant and circulated to Members with the background papers.

4. Issues

Advice: The Board has a discretion to grant or refuse the Application. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any of the potential Ground(s) for Refusal set out below exist:

- (a) the Application may be inconsistent with the Licensing Objectives
- (b) Overprovision may result from the grant of the Licence

If any Ground for Refusal applies, the Board must refuse. However, the Board is obliged to grant the Application if the Applicant accepts a suitable modification to the Operating Plan or Layout Plan (or both), where that modification deals with the potential Ground for Refusal: Section 23(7).

If no Ground for Refusal applies, the Board must grant: Section 23(4)-(5).

(a) the Application may be inconsistent with the Licensing Objectives

The Board is obliged to take account of the Licensing Objectives:

- (a): 'preventing crime and disorder'
- (c): 'preventing public nuisance'
- (d): 'protecting & improving public health'

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

Some of the comments made by the objector relate to criminal conduct:

- by third parties over whom the Applicant has no control, and
- about things which may happen outside the Premises.

As usual this Application was copied to the Police for comment, and it would be open to them to make representations to the Board. They have not done so.

L.O. (c): 'preventing public nuisance'

The Premises are currently operating as a convenience store and the proposal is to add the facility to sell alcohol. The Board might consider that it would be premature to speculate that undue noise nuisance would be likely as a result of the sale of alcohol.

If there is later a substantial noise problem, it will be open to anyone (e.g.

neighbours):

- to refer the matter to NAC Protective Services under the Environmental Protection Act 1990, Section 80
- to make a Review Application to the Board under 2005 Act, Section 36. The Board has advice on this:

<https://www.north-ayrshire.gov.uk/business/licences-and-permits/food-alcohol-gambling-licences/licensing-board.aspx>

under the heading "Objections and Complaints about Licensed Premises".

The Licensing Board is not entitled to determine matters which are regulated by other legislation, such as Planning and Parking. 2005 Act, Section 27(7) is:

"A Licensing Board may not impose a condition under subsection (6) which— ...

(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment. "

Planning is a matter for North Ayrshire Council under the Town and Country Planning (Scotland) Act 1997. Parking is a matter for the Police (under the Road Traffic legislation) and the NAC Roads Dept. under the Roads (Scotland) Act 1984.

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

The L.O. expressly states 'improving'. Opinions may differ as to whether the creation of a new facility to sell alcohol (or the expansion of an existing facility):

- (i) damages public health, or
- (ii) makes no difference,

but the Board might consider that it is unlikely to 'improve' public health.

In other cases, the Board has heard the submission that "it makes no difference", the argument being that adding a facility here does not increase the overall amount of alcohol consumed in society, because the free market will operate so as to re-distribute existing business. The Board has not accepted such submissions.

The L.O. also refers to 'public' health. The Act directs the Board to look at the effect on wider society. Any supposed health benefits enjoyed by the Licensee or staff (e.g. gaining profits or wages) cannot outweigh the potential damage caused by alcohol consumption.

The factors relevant to this L.O. overlap with the issue of 'Overprovision' (see below).

(b) Overprovision may result from the grant of the Licence

1. Section 23(5) is:

"(5) The Grounds for Refusal are— ...

(e) that the Board considers that, if the Application were to be granted, there would, as a result, be Overprovision of Licensed Premises, or Licensed Premises of the same or similar description as the subject premises, in the Locality."

Section 23(5) was amended by the Air Weapons and Licensing (Scotland) Act 2015, Section 55(3) with effect from 30 September 2016 (Commencement Order 4, S.S.I. 2016-132).

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party. The Scottish Government Guidance which applied at the time that the LPS was adopted was published in 2007 but the updated Guidance published in 2023 is substantially the same on this point and is (emphasis added):

"Overprovision Assessment

*3.9 The 2005 Act placed a duty on Licensing Boards to make an assessment of overprovision and include a statement regarding this in their statement of licensing policy. This policy provides Licensing Boards with powers to consider the unique circumstances of their area and decide whether, based on local needs, it is appropriate to restrict access to alcohol through limits on new licences, licences of a particular type, or variations of existing licences. **Where it is assessed that there is overprovision a rebuttable presumption is created against granting new licences although each case is judged on its own merits and there is always the possibility of exceptions.** The Air Weapons and Licensing (Scotland) Act 2015 amended the 2005 Act overprovision assessment provisions. Chapter 5 "The Overprovision Assessment" covers this in more depth."*

3. The application of the Board's Overprovision Policy in a particular case is affected by two issues:

(a) the 'Locality' of the Premises (The Board has determined that there are 6 'Localities' in their area, coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

(b) the 'Function Type' of the Premises (there are 6):

1. Off-sales Premises;

2. Nightclubs (or parts of Premises which operate as nightclubs);

3. Other On-sales Premises (Public Houses);

4. Hotels, Restaurants and other On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to

that purpose;

5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125;

6. Members' Clubs which have chosen to give up their entitlement to that Special Treatment.

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

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

5. The starting-point of any consideration of an Application for a new Licence (or for an increase in capacity in an existing Licence) is that there is a presumption of refusal. This presumption applies anywhere in North Ayrshire, regardless of the type of licensed Premises, but the presumption becomes stronger in certain parts of North Ayrshire and certain types of Premises.

6. While there is a presumption of refusal of all Applications, the presumption in a particular case is strengthened if one of the Additional Factors relating to 'Locality' or 'Function Type' is present. The presumption of refusal is further strengthened if both Additional Factors occur.

7. Applying the Policy to the present case:

- (a) The Subject Premises are in the "Irvine and Area" Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranside) (Locality 4);
- (b) Additional Factor (Locality): The Premises are in a Locality where Applications are especially unlikely to be granted (regardless of the Function Type);
- (c) The Subject Premises are in Function Type 1 (Off-sales);
- (d) Additional Factor (Function Type): any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality).

8. Since both Additional Factors are present here, the presumption of refusal is especially strong.

9. The Policy is only a guideline and does not set rigid quotas. It would always

be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

10. The LPS, Annex E includes:

"3.5(d) ... 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",

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

11. The Licensing Board's Licensing Policy Statement 2018-23 is on the Board's website, with the documents which the Board considers supports its Overprovision Policy:

- (a) Alcohol Facts and figures
- (b) Traffic Light Chart
- (c) Monitoring Report 2018 (Alcohol-specific Deaths)
- (d) Alcohol Related Harm in Scotland 2016
- (e) Alcohol Information - North Ayrshire
- (f) Alcohol Outlet and Harm
- (g) Licensing Indicators
- (h) Alcohol Statistics (Scotland and NA)
- (i) Alcohol-related crimes in NA (Police)
- (j) Fires and Alcohol-related incidents
- (k) Premises Licences in North Ayrshire

Document (b) uses a 'Traffic Light' system how three health indicators in North Ayrshire compare with the Scottish average:

The health indicators are:

Life expectancy: males

Life expectancy: females

Alcohol-related hospital stays

The colour system is:

red : Statistically significantly 'worse' than Scottish average

amber : Statistically not significantly different from Scottish average

green : Statistically significantly 'better' than Scottish average

Over each of the 6 Localities in North Ayrshire:

		red	amber	green
--	--	-----	-------	-------

1. North Coast	1	11	6
2. Three Towns	15	9	3
3. Kilwinning	4	5	3
4. Irvine etc.	8	27	1
5. Garnock Valley	3	14	1
6. Arran	0	1	0

(The Localities have different numbers of Intermediate Zones)

In the Board's view the 'Additional Factor' related to Locality should apply in Localities 2, 3, 4 and 5, but not in Localities 1 or 6.

12. The Board has ensured that the statistical basis of the Policy remains up-to-date. The Board has considered in cases since the LPS was adopted that it continued to be a reliable guideline. Extensive statistics, both on health and other matters, were considered prior to it being adopted, and the Board has been kept informed on more recent developments. For example the Board Meeting on 5 September 2022 had a Report dealing with two matters:

(a) The annual report published by Public Health Scotland ("PHS") as part of the "Monitoring and Evaluating Scotland's Alcohol Strategy" ("MESAS"). The MESAS report presents all the latest available data on key alcohol indicators in Scotland, e.g. the link between alcohol consumption and health. The report includes many data sets and charts.

(b) The current review of the Minimum Pricing legislation.

Both matters would be relevant to the Board's approach to the Licensing Objective of 'protecting and improving public health' and the question of Overprovision, and the Board would consider these when reviewing the Licensing Policy Statement (the deadline for this review is 5 November 2023).

At an earlier meeting (before the current LPS was adopted) the Board were told about the "CRESH Report":

"Alcohol-related illness and death in Scottish neighbourhoods: is there a relationship with the number of alcohol outlets?" - Report for Alcohol Focus Scotland (AFS) produced by the "Centre for Research on Environment, Society and Health" of the Universities of Glasgow and Edinburgh, published 2 October 2014 ("CRESH");

The Board noted that the author of the CRESH report, while saying that there was a correlation between the number and density of alcohol outlets, acknowledged that it could not be said on the basis of the information available that there was a causal link:

"The alcohol-related hospitalisation results suggest the existence of outlet availability thresholds – over 6 off-sales, 9 on-sales, or 14 total outlets within 800 m – below which hospitalisation rates did not differ, but above which rates increased significantly.

... while [the CRESH study] suggested significant associations between outlet availability and alcohol-related harm we cannot conclude that the relationship is

causal."

AFS had also published local authority factsheets, and the one for North Ayrshire noted that a significant positive relationship was found between outlet density (on-sales premises) and alcohol-related deaths and hospitalisations. It stated:

"Alcohol-related harm

In North Ayrshire as a whole there is:

- An annual average of 35 alcohol-related deaths (26 deaths per 100,000 adults). This is similar to the Scottish average of 25 deaths per 100,000.

- An average alcohol-related hospitalisation rate ratio of 148. This is 48% higher than the Scottish average of 100."

The factsheet had a caveat recognising the correlation vs. causal link distinction:

"This study shows a relationship between alcohol outlet density and alcohol-related health harms, but does not definitively conclude that there is a causal relationship. Proving something is "causal" with population level data is difficult because of the ethical and financial constraints in conducting the studies needed to prove a causal relationship. Often it is necessary to use the best possible population level evidence we have to determine what is likely, probable or reasonable in the absence of the studies that would provide "causal" evidence."

The Board has appreciated the distinction, and acknowledged that it is likely to be impossible to say, pointing at particular Premises:

"the operation of these Premises is inconsistent with the 'protecting and improving Public Health Licensing Objective' ".

It is particularly difficult to say that where the Premises have not yet opened.

However, the Board has accepted that it is legitimate to consider the whole 'Locality' generally when assessing Overprovision, and that is what the Board have done. The Board have been satisfied that throughout North Ayrshire there has for many years been a significant negative causal link between alcohol provision and Public Health. This leads to a presumption of refusal against any grant of either a new Licence or the increase in capacity in an existing Licence.

Case relating to nearby Premises:

There may be a reference to decisions to grant and later to vary a Licence for nearby Premises:

(a) On 20 February 2017 the Board granted a Premises Licence to Motor Fuel Group (trading as "Murco") for the Premises "Girdle Toll Service Station", Littlestone Road, Long Drive, Irvine KA11 2DJ (NALB 488).

The requested display capacity was 10.06 square metres. After hearing

submissions (and the Applicant's Solicitor reduced the request to 7.5 sq.m.), the Board agreed to treat the case as an exception to its Overprovision Policy, and granted.

(b) On 31 October 2022 the Board granted a variation application for those premises (now trading as "BP Girdle Toll Service Station") increasing the alcohol display capacity to 12.525 sq.m.. Again the Overprovision Policy was raised, and again the Board agreed to make an exception.

The fact that the submissions in 2017 and 2022 persuaded a Board to make exceptions does not mean that a future Applicant will succeed in persuading the Board to do the same.

See Licensing Policy Statement 2018-2023, Annex E, Paragraph 3.7 (part (a) is to be emphasised here):

"3.7. Subsequent Events

It does not follow that, where one Licence ceases to be in force or there is a reduction in capacity, the Board will proceed on the basis that there is now 'surplus' capacity which can be filled without doing harm to the Licensing Objectives or the Overprovision Policy.

The Assessment should be regarded as varied as a result of subsequent events:

(a) If the Board sees fit to depart from the Policy in an individual case, then the Assessment should be regarded as varied, and the Board will take into account the fact that it has already been departed from;

for example:

Suppose that the original Assessment notes that there are 1,000 customers in a particular Locality; if the Board later grants an Application which increases the capacity to 1,100, a second Application for Premises in the same Locality will be approached by the Board on the view

(i) that the Board has already changed its position;

(ii) that the maximum appropriate level is 1,100,

(iii) that the second Application is even more likely to lead to Overprovision;

(b) If capacity is reduced, as by the closure of Licensed Premises or the variation of an existing Licence, then the Assessment should be regarded as automatically varied:

in the same example, if the Capacity in the Locality fell from 1,000 customers to 900, the Board would approach a new Application on the

basis that that the maximum appropriate level was 900 and that the Locality was already at its Overprovision limit."

5. 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)
- B (Off-Sales)

6. 2016 Statement of Reasons

Licensing (Scotland) Act 2005 - Statement of Reasons The Licensing (Procedure) (Scotland) Regulations 2007 No. 453, Regulation 15(3) and Schedule 4

1. Name and address of Licensing Board:
North Ayrshire Licensing Board, Cunninghame House, Irvine
2. Date of Licensing Board meeting:
22 February 2016
3. Name and address of agent
For Applicant Mr. Muhammed Anees: Mr. Robert Jordan, Licensing Consultant. P.R. Retail Consultants, Pump House, Old Head Road, Henham, Bishop's Stortford, Herts., CM22 6JG.
4. Name and address of premises (if applicable)
" News Buster", 1 Ladyha Court, Irvine, KA11 1QN (NALB Ref. 456)
5. Materials before the Board
<u>(a) Board's documents</u>
1. Licensing Policy Statement (adopted 19 November 2013) (hereafter "LPS");
2. Application for Grant of Provisional Premises Licence;
3. Report to Board on the Application prepared by Solicitor (Licensing);
<u>(b) Objections, Representations and other documents</u>
1. Letter of 12 February 2016 from Public Health Department, NHS Ayrshire and Arran (the "Relevant Health Board" (in terms of Section 21(1)(ca) of the 2005 Act, as inserted by Alcohol (Scotland) Act 2010): hereafter "Health Board").
2. Letter of 19 February 2016 from Irvine Community Council.
3. Antisocial Behaviour Report dated 10 February 2016 by the Chief Constable under 2005 Act, Section 24A, as added by the Criminal Justice and Licensing (Scotland) Act 2010, Section 183(2) and SSI 2010-413).

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4.	Representation by Jim Hunter, Building Standards Surveyor, dated 12 February 2016.
6. Type of application	
Application for Grant of Provisional Premises Licence	
7. Names of all parties present	
The Board consisted of Councillors Ian Clarkson (Convenor), Tom Marshall (Vice Convenor), Robert Barr, John Bruce, John Easdale, Grace McLean, Catherine McMillan and Donald Reid.	
The Board was accompanied by William O'Brien (Solicitor (Licensing)), Kenzie Sharkey (Solicitor (Contracts and Licensing)), Michelle Champion (Administration Assistant) and Grace Cullen (Licensing Standards Officer).	
For Applicant: Mr. Robert Jordan, Licensing Consultant, and Mr. Anees, Applicant.	
For Chief Constable: Chief Inspector Shaw and Sergeant Griffiths.	
8. Preliminary issues	
None.	
9. Summary of submissions made	
See below	
10. Decision(s) taken	
See below	
10a. Reasons for decision	
See below	
11. Legal powers used to come to decision	
Sections 23 and 25	
12. Date statement of reasons issued	
7 March 2016	
Name of Representative of Clerk	
Print Name	
William O'Brien, Solicitor (Licensing)	

9. Summary of submissions made

Introduction

The Premises are currently unlicensed and consist of a free-standing 'convenience store' in a residential area. The shop at present sells food, groceries, newspapers, magazines, sweets, tobacco and soft drinks, but no alcohol.

The proposal in the Application was:

- (1) for an off-sale display capacity of 22.08 sq.m. (this was reduced during Mr. Jordan's submissions to 4.6 sq.m.);
- (2) Licensed Hours to be 10.00 - 22.00, 7 days a week (the maximum permitted by the legislation and NALB Policy).

This was the third Application by the same Applicant for the same Premises:

CASE 1

(a) On 10 July 2014 the Board refused a PPL Application where the capacity requested was 24.6 sq.m. (NALB 456)

(b) On 17 November 2014 the Board refused a PPL Application where the capacity requested was 18.32 sq.m. (NALB 463)

The Board carried out a Site Visit on 9 July 2014, immediately before the first decision.

Part of the Applicant's submissions in relation to these Applications was that there was likely to be a housing development nearby of 200 houses. In the week ending 10 October 2014 NAC granted a Building Warrant (14/00289/BW) for the erection of 48 dwelling-houses on a site to the north-east of The Grange, Perceton, Irvine.

Submissions

(a) For Applicant

Mr. Jordan advised the Board that the Applicant was now only seeking an alcohol display capacity of 4.6 sq.m. (2.0 m by 2.3 m), and this would all be behind the counter at Area A on the layout plan submitted with the application. This would be a 4.6% capacity increase in the overall area.

He felt that this Licence would improve viability of the shop. His client would like to further invest in the shop, so as to provide additional fresh vegetables and a chill area, but the shop would not remain viable without the facility to provide alcohol. He confirmed that his client would not be selling

- single cans of alcohol, or
- 1, 2 or 3 litre plastic bottles of beer and cider.

A Personal Licence Holder would be on duty at all times. At the moment there are CCTV cameras in the Premises but if granted an additional 3 extra cameras would be installed outside.

The Premises are a 30-minute walk away from the nearest Premises selling alcohol. Trade is being lost as customers are going elsewhere to purchase goods along with alcohol. Mr. Anees' customers asked him why they cannot buy their whole shop in one place. The future viability of the shop was in question.

Referring to the Community Council objection he pointed out that there was no local objection.

Referring to the Health Board objection, Mr. Jordan confirmed that his client would not be selling beer, lager or cider above 5% ABV and that all alcohol will be behind the counter which would prevent shoplifting of alcohol and a minimum purchase of 2 cans of alcohol would be applied.

Concerning the Licensing Objective "Protecting and Improving Public Health", Mr. Jordan said that the Premises would promote public health. They would have a cash machine and provide lottery facilities. The health issue was cheap alcohol, being sold as cheaply as 17.3 pence/unit, so Mr. Anees would not be selling cheap alcohol. He would not sell beer, lager or cider above 5% ABV nor sell 1, 2 or 3 litre plastic bottles

CASE 1

of beer and cider. Shoplifting is a problem and they would have CCTV and a Personal Licence Holder on duty at all times.

Mr. Jordan advised that Mr. Anees had operated the shop for 10 years, and would ensure that all his staff would be thoroughly trained, so as to prevent agent sales and ensure 'Challenge 25' policy is in place.

Mr. Anees explained the catchment area of his Premises and advised that there are 185 new houses planned with 45 already been built. He confirmed that his business would not be viable without the facility to sell alcohol. His customers told him they have to walk 30" to reach another shop. £400-£500-worth of food was wasted every week, and chilled food had to be thrown out as there is not enough footfall.

He said he was very responsible and stayed in the area. He had a Personal Licence and would be in the shop all the time. His proposal would create 2 full-time and 3 part-time jobs. Mr. Jordan said that as the shop would be open longer, it would take on more staff.

Mr. Anees said that at the moment he was struggling to pay rent and goods are being wasted due to the decrease in customer footfall, as customers are going to other stores who have an alcohol facility. Mr. Anees has operated these premises for nearly 10 years and advised that he is very responsible and has previously operated licensed premises in Kilmarnock. He lives in this area and if the licence be granted this would create at least 2 full time and 3 part time posts.

Mr. Jordan noted that no objections had been received from neighbours as they are in support of this application. He confirmed receipt of the objection from the Community Council and the Anti-Social Behaviour Report from Police Scotland although this report did not link anti-social behaviour to alcohol.

(b) Questions and comments from Councillors

Councillor Bruce pointed out to Mr. Jordan that this was the third application for the same premises by the same applicant, the previous two Applications having been refused, and the Board had carried out a Site Visit. He asked what was the difference between this Application and the previous two that were refused? Mr. Jordan advised that on this occasion there was to be a reduction in the off-sales display capacity, and the Applicant would restrict the sale of alcohol over 5% ABV, would not sell single cans of beer or cider, and all alcohol will be behind the counter area. Single bottles would be sold but not single cans. He said these things were not mentioned before.

Councillor Easdale said he did not attend the previous site visit to the Premises. He asked if the intention was for all the 4.6 sq.m. of alcohol to be behind the counter. Mr. Jordan confirmed that this would be the case, so all alcohol would be inaccessible to the public.

The Convenor pointed out the Application as lodged requested a capacity of 22.08 sq.m. but Mr. Jordan had just given a different figure, and sought clarification. Mr. Jordan advised that his client is now only looking for a total of 4.6 sq.m. and that they accepted that that area was enough for viability of store.

Councillor Easdale asked if staff would have in-house training or training from an outside organisation?

Mr. Anees advised that he could get "Servewise" training himself. He lived locally, only 5 minutes away, and would be in the Premises himself most of the time. He previously employed 6-8 people in his premises in Kilmarnock and that he had trained all the staff. At the moment he also employs a part time member of staff with a Personal Licence. One woman on his staff had worked in a pub for 20-30 years. He would train the other staff and provide them with regular on-going training. He confirmed to Councillor Easdale that training records would be completed for all staff and that he would ensure staff had regularly weekly refresher training and would only accept passport and driving licence identification for everyone under the age of 25.

Mr. Anees said he would have more CCTV outside store to watch young people and would also ensure that youngsters would not hang around the outside of the shop.

(c) Deliberation

At 10.19 the Board retired to Members Lounge with the Solicitor (Licensing). The Board returned to the public meeting at 10.25.

10. Decision(s) taken

The Convenor said to Mr. Jordan that, before the Board came to a vote, there was an issue about a roller-shutter (The Convenor was referring to the Observation by Jim Hunter, Building Standards Surveyor, dated 12 February 2016). The roller-shutter was not locked in the open position. The Convenor pointed out that it was the escape route for the public as well as the staff. Mr. Anees explained how the issue had arisen. Mr. Jordan said that it would now be the first thing done each working-day. These comments were noted and the Board took no account of the matter in determining the Application.

Thereafter the Convenor enquired if there was any Motion.

Cllr. Barr said he agreed with the position of the Community Council and the Health Board, and that he had attended the Site Visit on 9 July 2014. He moved to refuse the Application on the basis of Overprovision.

Cllr. Bruce seconded this Motion.

The Convenor enquired if there was any other Motion.

Cllr. MacMillan moved to grant.

Cllr. Easdale said that the Applicant was making reasonable efforts on staff-training, and that he had reduced the area to 4.6 sq.m., so he seconded Cllr. MacMillan's motion to grant.

On a roll-call vote:

For the Motion to refuse: Cllrs. Clarkson (Convenor), Marshall (Vice-Convenor), Reid, McLean, Barr and Bruce.

For the Motion to grant: Cllrs. MacMillan and Easdale.

Accordingly the Board voted 6-2 to refuse.

Mr. Jordan requested a Direction under Section 25 (so as to permit a further Application within one year without the need for a material change of circumstances). Under the Scheme of Delegations approved by the Board on 3 March 2014 this decision was delegated to the Convenor, who granted the request.

Mr. Jordan requested a Statement of Reasons.

10a. Reasons for Decision

(a) Board's approach to Objections and Representations

The Board was satisfied that the Objections and Representations received were competent and did not fall to be rejected as "frivolous or vexatious" under Section 22(4). The Board noted that both Objections from the Health Board and the Community Council raised the issue of Overprovision ("OVP").

In relation to the Representation by Jim Hunter, Building Standards Surveyor, dated 12 February 2016, the Board noted the Applicant's comments and took no account of the matter in determining the Application.

Mr. Jordan made the point that, while there was an objection from the Community Council, there was no local objection. It was not clear what he wanted the Board to take from that fact. The Board were clear that

- the absence of objections from individual residents did not imply popular support for the proposal
- the views of a representative body (and statutory consultee) should not be disregarded.

(b) Forum

The Licensing Forum did not give any advice or make any recommendation to the Board in relation to the particular Application, and accordingly the duty on the Board created by Section 12 did not arise.

(c) Potential Grounds for Refusal

Sections 23(4) and (5) provide:

"23(4) The Board must, in considering and determining the Application, consider whether any of the grounds for refusal applies and—

(a) if none of them applies, the Board must grant the Application, or

(b) if any of them applies, the Board must refuse the Application.

23(5) The grounds for refusal are—

(a) that the Subject Premises are Excluded Premises,

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(b) that the Application must be refused under section 25(2), 64(2) or 65(3),

(c) that the Licensing Board considers that the granting of the Application would be inconsistent with one or more of the Licensing Objectives,

(d) that, having regard to—

(i) the nature of the activities proposed to be carried on in the Subject Premises,

(ii) the location, character and condition of the Premises, and

(iii) the persons likely to frequent the Premises,

the Board considers that the Premises are unsuitable for use for the sale of Alcohol,

(e) that, having regard to the number and Capacity of—

(i) Licensed Premises, or

(ii) Licensed Premises of the same or similar description as the Subject Premises,

in the locality in which the Subject Premises are situated, the Board considers that, if the Application were to be granted, there would, as a result, be Overprovision of Licensed Premises, or Licensed Premises of that description, in the locality."

The Board was satisfied that none of Grounds for Refusal (a), (b), (c) or (d) applied:

(i) Ground (a): the Premises were not 'Excluded Premises' (e.g. garages);

(ii) Ground (b): There were no mandatory refusal grounds present;

(iii) Ground (c): The issue of inconsistency with one or more Licensing Objectives did not arise, in that, although the representations raised issues about the Licensing Objective "protecting and improving public health" the Board was satisfied that no specific findings in relation to that L.O. were necessary, and that their approach to Overprovision addressed this. The Board's own Overprovision Policy had been adopted following extensive consultation of various bodies, including the Health Board, the Police and Community Councils (see LPS, Annex D) so a degree of overlap was inevitable;

The Board were satisfied that the ASB Report from the Chief Constable did not cause them to be concerned that the proposal was inconsistent with the Licensing Objective "preventing crime and disorder";

(iv) Ground (d): The Board had no reason to suppose that the Premises were unsuitable for the sale of alcohol.

(d) Ground (e): Overprovision

(i) The Board's approach to Overprovision was set out in the LPS and in the Report prepared by the Solicitor (Licensing).

(ii) The Board required, in the exercise of their functions under the Act, to have regard to:

(A) any Guidance issued by Scottish Ministers (Section 142(3)). If the Board decided not to follow the Guidance they would have to give the Scottish Ministers notice of their decision together with a statement of the reasons for it (Section 142(4)). There was a rebuttable presumption of refusal due to Scottish Government guidance issued under Section 142 (Paragraphs 54 to 57);

(B) their LPS (Section 6(4)). In this case, the relevant part was LPS Annex E.

(iii) In adopting the Overprovision Policy, the Board were aware that a Policy is not a rigid rule. It is always open to the particular Applicant to seek to persuade the Board that the Application should be granted. Therefore, whenever an Application is made which raises a Policy issue, the Board Report alerts the Applicant, so that submissions can be made with a view to persuading the Board to make an exception. However, it is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

(iv) For the purpose of the LPS:

(A) Under Section 7(2) it is for the Licensing Board to determine the relevant 'Localities'. The Board had decided to divide their area into 6 'Localities' (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership). The Subject Premises were in Locality 4 : Irvine and Area (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranyard);

(B) Premises are distinguished by 'Function Types'. The Subject Premises were in Function Type 1 (Off-sales).

(v) In determining any particular application, the Board has regard to:

(A) the 'Locality' of the Premises;

(B) the 'Function Type' of the Premises;

(C) any 'Additional Factors' (see below);

(D) other similar Premises in the Locality.

(vi) Additional Factors: As indicated in the LPS, the likelihood that the Application will be granted or refused will be influenced by the 'Locality' and the 'Function Type':

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(A) Locality: the Premises are in one of 4 Localities where Applications are especially unlikely to be granted (regardless of the Function Type) - "Three Towns"; "Kilwinning"; "Irvine and Area"; or "Garnock Valley";

(B) Function Type: any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality);

LPS Annex E, Para. 4.5 ("Additional Factors") includes:

"(b) Function Type: the Board is aware:

- that a substantial proportion of alcohol is bought from off-sales shops and consumed in an unregulated environment (unlike a public house, there are no checks on the rate consumed, volume consumed, the consumer's state of intoxication, or the age of the consumer);

- that disorder in or near on-sales is often contributed to by customers 'front-loading' by drinking at home or in public places;

Accordingly any Application for Premises in Function Type 1 is especially unlikely to be granted (regardless of the Locality);"

Both of the "Additional Factors" were present here.

(vii) The Board proceeded with the following presumptions:

(A) the existing number and capacities of Premises in that 'Locality' and of that 'Function Type' was already sufficient,

(B) Overprovision would result if the Application was to be granted, and

(C) the Application should be refused.

(viii) The Board considered that the LPS continued to be a reliable guideline, and recalled that extensive statistics, both on health and other matters, had been considered prior to it being adopted. The Board had been kept informed on more recent developments. At their meeting on 19 January 2015 the Board had received a Report on two further health reports produced since the current LPS was prepared:

(A) "Alcohol-related illness and death in Scottish neighbourhoods: is there a relationship with the number of alcohol outlets?" - Report for Alcohol Focus Scotland (AFS) produced by the "Centre for Research on Environment, Society and Health" of the Universities of Glasgow and Edinburgh, published 2 October 2014 ("CRESH");

(B) "Monitoring and Evaluating Scotland's Alcohol Strategy", Report published by NHS Health Scotland, 4th Annual Report, published 8 December 2014 ("MESAS 4").

The Board had noted that the author of the CRESH report, while saying that there was a correlation between the number and density of alcohol outlets, acknowledged

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that it could not be said on the basis of the information available that there was a causal link.

AFS had also published local authority factsheets, and the one for North Ayrshire noted that a significant positive relationship was found between outlet density (on-sales premises) and alcohol-related deaths and hospitalisations. It stated:

"Alcohol-related harm

In North Ayrshire as a whole there is:

- An annual average of 35 alcohol-related deaths (26 deaths per 100,000 adults). This is similar to the Scottish average of 25 deaths per 100,000.

- An average alcohol-related hospitalisation rate ratio of 148. This is 48% higher than the Scottish average of 100."

The factsheet had a caveat recognising the correlation vs. causal link distinction:

"This study shows a relationship between alcohol outlet density and alcohol-related health harms, but does not definitively conclude that there is a causal relationship. Proving something is "causal" with population level data is difficult because of the ethical and financial constraints in conducting the studies needed to prove a causal relationship. Often it is necessary to use the best possible population level evidence we have to determine what is likely, probable or reasonable in the absence of the studies that would provide "causal" evidence."

The Board appreciated the distinction, and acknowledged that it is unlikely to be possible to say, pointing at particular Premises:

"the operation of these Premises is inconsistent with the 'protecting and improving Public Health Licensing Objective' ".

It is particularly difficult to say that where the Premises have not yet opened.

However, it is legitimate to consider the whole 'Locality' generally when assessing Overprovision, and that is what the Board have done. The Board were satisfied that throughout North Ayrshire there is a significant negative causal link between alcohol provision and Public Health. This leads to a presumption of refusal against any grant of either a new Licence or the increase in capacity in an existing Licence.

The Applicant did not suggest that the LPS had been overtaken by events or that there was other data that the Board should consider. The Board were satisfied that there was little likelihood of the Overprovision Policy being abandoned or significantly revised in the near future (e.g. due to a substantial improvement in health data).

The Board had regard to LPS document (b) (titled "Neighbourhood Areas"). This grouped the Intermediate Zones in North Ayrshire into "Neighbourhood Areas" using a 'traffic light' system for a number of health-related indicators. This showed that in the area of "Irvine etc." there were 12 Intermediate Zones, of which 10 were either totally 'red' or had a significant number of 'red' indicators.

The Board was aware that the "Perceton and Lawthorn" Intermediate Zone did not have the same 'red' preponderance, but felt that that Intermediate Zone should not

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be looked at in isolation. When the Board had reviewed the previous LPS and prepared the current one in November 2013, the Board had deliberately moved away from focussing on individual Intermediate Zones (the model used in the previous LPS for the period 2010-2013) and had instead grouped them together as larger "Neighbourhood Areas" corresponding to main population centres.

Section 7 ("Duty to assess Overprovision") includes:

"(2) It is for the Licensing Board to determine the "localities" within the Board's area for the purposes of this Act."

The Board had thought that the area approach was reasonable, given that the population is mobile, car-ownership is widespread, and that the bulk of alcohol is bought at large supermarkets.

(ix) The Board's LPS, Annex E, Para. 4.5(d) includes:

"... 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" ..."

The Board considered that Applicant was not addressing the Licensing Objective of 'protecting and improving public health'. It was not for the Board to determine that there would be any harm to health arising from this proposal. It would be difficult and probably impossible to point to particular Premises and say:

"The proposal for these Premises is inconsistent with the Licensing Objective of 'protecting & improving public health' "

On the contrary, the Scottish Government Guidance was that, once a Board had determined that Overprovision existed, there was a presumption of refusal. The Board had already concluded that the Locality was overprovided. In the present case, considering all that was said, the Board had the view that no adequate reason had been put forward which should induce the Board to make an exception to its Policy in favour of the present application.

(x) The Board had carried out a Site Visit to the Subject Premises and to the surrounding area.

The three existing shops were:

No.	Premises Name	Premises Address	PostCode	IZ	FT	Off-Sales
204	Spar Convenience Store	2/3 Cardow Crescent	KA11 2DH	43	1	29.34
6	Keystore	89 Burns Crescent	KA11 1AQ	40	1	62.6
389	Premier / Girdle Toll Post Office	83 Burns Crescent	KA11 1AQ	40	1	8.94

"IZ" = "Intermediate Zone"

"FT" = "Function Type"

The Board was satisfied from the Site Visit and that all three Premises were within ten minutes' walk of the Subject Premises.

The Board had regard to

- the position of the Premises
- the residential nature of the locality
- the proximity of three existing shops, and
- the presence of several other off-sales shops in the "KA11" PostCode area

and concluded that the Locality was already overprovided with places where alcohol could be bought.

(xi) The Board considered the Applicant's request to be treated as an exception to the Board's Overprovision Policy. The Board did not see anything exceptional in the present Application.

(x) The Applicant had made much in the present Application (and in the two previous Applications) of the fact that extra houses were being built locally.

The Board noted that the "Locality" was the whole of the Irvine area. In the OVP Assessment, the population of that Locality was 37,738 people (see document (b) attached to LPS, titled "Neighbourhood Areas"). The Board considered that the addition of 200 extra homes would not make a substantial difference to the Overprovision situation in the "Irvine Locality".

(xi) The Board noted Mr. Jordan's comments about the cheap price of alcohol. The Board have no powers to control the price at which alcohol is sold. If the Alcohol (Minimum Pricing) (Scotland) Act 2012 (asp 4) is commenced, Scottish Ministers will have power to prescribe a "Minimum Price Per Unit", and it will then be one of the Mandatory Conditions of a Premises Licence that alcohol must not be sold below the set price.

The 2012 Act has not been commenced. Unless and until the 2012 Act is commenced the Board have no power to Revoke, Suspend or take any other action in respect of the price of alcohol. The Board cannot impose restrictions on what types of alcohol, or what volumes, may be sold. While the Applicant's proposals were welcomed, they should be seen at most as voluntary undertakings. The Board could not have imposed such restrictions.

(xii) The Board rejected the proposition that they should take the viability of the business into account. The 2005 Act does not make that a relevant criterion. The Board have often observed that 'alcohol is not an ordinary commodity' and are unlikely to be sympathetic to the submission that a Licence is necessary for a business. The Board's OVP Policy provides that the presumption of refusal is less strong if the Premises are in Function Type 4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), but even there an Application may be refused:

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"... 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." (LPS, Annex E, Para. 4.5(d))

(xiii) Apart from the Applications made for the Subject Premises, the Board had also dealt with a PPL application by B.P. Oil UK Ltd. for the shop attached to the filling station "B.P. Girdle Toll Connect", Littlestone Row, Long Drive, Irvine KA11 2DJ (NALB ref. 443), where the PPL Application was refused on 21st August 2013. The Board had accepted that the Premises there were not "excluded premises" (garages etc.) but considered that the Application fell to be refused both because it was inconsistent with the Licensing Objective "protecting and improving public health" and because the Board considered that granting the Application would result in Overprovision of Licensed Premises of the same or similar description as the Subject Premises, in the locality. This decision was not appealed.

Mr. Jordan contended that the proposal would simply re-locate existing alcohol sales, rather than increase alcohol consumption. The Board did not agree that this was the correct approach.

After the B.P. Oil decision, the Board had issued a Statement of Reasons which included:

"[The Applicant's Solicitor] had been specifically asked to say what he thought 'improving' in the Licensing Objective 'protecting and improving public health' meant and had replied that it meant 'makes no difference'. The Board did not agree. The Scottish Parliament is not to be supposed to have used the words 'protecting' and 'improving' for no purpose. While the Board did not subscribe to the view that new Licences could never be granted, it was not sufficient to treat customer choice as the sole criterion. The words of the statute acted as a direction to the Board to consider Public Health information and to form an opinion as to whether or not a proposal for new Licensed premises would be likely to promote the goals of 'protecting' and 'improving' public health."

The Board remained of the view that it was not enough to say that the proposal would simply re-distribute existing alcohol sales.

(xiv) Accordingly the Board determined that the "Ground for Refusal" stated in Section 23(5)(e) (overprovision in the Locality of Premises of the same or similar description as the Subject Premises) applied, and refused the Application as it was obliged to do by Section 23(4)(b).

Application for Variation of Premises Licence - Section 29

Applicant	Trust Pubs Ltd
Premises	"Elms Bar", 21 Raise Street, Saltcoats, KA21 5JX
Ref.	0051

A. Preliminary

The Board's Background Papers will include:

- a submission from the Premises Licence Holder
- the email set out at [2] below.

B. Proposal

The proposal relates to an Outdoor Drinking Area ("ODA") which the Board has previously allowed to operate.

The current hours are

Monday to Friday : 18.00 - 22.00

Saturday & Sunday : 13.00 - 22.00

The request is to increase the Monday – Friday hours to the same as the weekend - 13.00 - 22.00.

C. Layout

The Premises are at the corner of Raise Street and Barnett Crescent, near the centre of Saltcoats. The area is mainly residential. The ODA is on ground to the rear of the Public House building, between the building and Barnett Crescent. On the other side of Barnett Crescent are many houses. Most of the buildings in Raise Street are houses - the exceptions including Saltcoats Health Centre (immediately beside the "Elms Bar") and Saltcoats Police Office (on the other side of the Health Centre).

The ODA is enclosed by a 6-foot fence, has CCTV and table service. The capacity is 48 persons (12 x 4-seat tables).

The Premises inside have the usual Policy Hours for public houses (Sunday to Wednesday: 11.00 - 24.00; Thursday to Saturday: 11.00 - 1.00). In accordance with the Board's conditions throughout North Ayrshire, the ODA closes at 10.00 p.m..

D. Objections and Representations

The Application has been processed in the usual way, with an advertisement on the Board's website and the display of a Site Notice at or near the Premises. The Planning Application which led to the decision on 14 March 2023 was also intimated to neighbours, appeared on the NAC website, and was reported in the "Ardrossan and Saltcoats Herald" newspaper of Saturday 4 February 2023 with the headline "Elms Bar: Saltcoats beer garden opening hours could be extended". This report is on the internet at:

<https://www.ardrossanherald.com/news/23298390.elms-bar-saltcoats-beer-garden-opening-hours-extended/>

There are no objections or representations, except for two representations:

[1] Paul Brennan, NAC Specialist Environmental Health Officer

This includes:

"The variation is to permit use of the outdoor drinking area Monday to Friday 1pm-10pm.

*Current consented hours are:
Monday to Friday: 6pm-10pm ; and
Saturday and Sunday: 1pm-10pm.*

Environmental Health can advise that no noise complaints have been received regarding the use of the beer garden for the current consented hours.

There are reservations though that the proposed additional hours may have an adverse impact on the noise sensitive health centre which is located in close proximity to the beer garden.

It is recommended therefore that should the Board be minded to grant the application that this be for a temporary period of 12 months to allow Environmental Health to assess and investigate any complaints that may be received."

[2] Marie McCloskey, Community Services Locality Coordinator, North Ayrshire Health & Social Care Partnership, Saltcoats Health Centre, 17/19 Raise Street, Saltcoats.

This email to the Premises Licence Holder Joe Fitzpatrick of 26 January 2023 is:

"Hi Joe

I hope this email finds you well.

Following our recent conversations, we appreciate that you will shortly be submitting a new application for extended hours for use of the beer garden area.

I am writing to advise that Andy Mathie, Community Services Locality Manager, has spoken with staff from Saltcoats Group Practice and pharmacy and there have been no issues or concerns raised regarding the use of the beer garden adjacent to the health centre since the last application.

If I can be of further help, please do not hesitate to contact me.

[signed]"

E. History

27 January 2022

The Council granted Planning Permission for the Outdoor Drinking Area ("beer garden") was granted for a trial period of 12 months (21/01150/PP)

28 March 2022

The Board granted a variation of the Premises Licence. This variation was granted without limit of time, but the practical effect was that the area could only be used for 12 months since the land could only be used consistently with the Planning Permission.

The Board decision on 28 March 2022 involved a second Application. The first Application was refused by the Board on 24 May 2021. The Board then had objections from both the Police and the Health Board. The second application was again intimated to them, but neither stated objections or representations.

14 March 2023

NAC granted an application to vary the Planning Permission (23/00080/PP) so as:

[1] to allow the area to be used Monday to Friday 13.00 to 22.00 (the same hours were already allowed for Saturdays and Sundays;

[2] to remove the '12-month' condition and so allow permanent use of the land.

27 March 2023

This third Application to the Board is to vary the operating hours in the Licence to match the hours of the Planning Permission:

The current licensed hours are: Monday to Friday 18.00 - 22.00

The requested licensed hours are: Monday – Friday 13.00 - 22.00

F. Advice

1. There are two sets of legislation relevant here:

[a] the legislation regulating the decisions of the Licensing Board as to the sale of alcohol;

[b] the legislation regulating the decisions of the Council as "Planning Authority" to grant Planning Permission or set conditions on the use of land.

2. These functions are separate and there is no obligation on either body to follow the decisions of the other. However, the Clerk's advice to the Board is that where the considerations which are relevant to each are similar – as they are here – the Board would need a good reason not to follow the decision of the Planning Authority.

3. Section 30(4) of the Licensing (Scotland) Act 2005 sets out how a Board should approach an application for Variation:

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"Where a Hearing is held under subsection (3), the Board must consider whether any of the Grounds for Refusal applies and—

(a) if none of them applies, the Board must grant the Application,

(b) if any of them applies, the Board must refuse the Application."

4. The Grounds for Refusal are set out in Section 30(5). The Board has no information to suggest that any of them apply here, so the Board has no alternative but to grant the application. The Board may limit the duration to 12 months but this is unnecessary because no variation decision is ever 'permanent': it can always be reviewed later, on cause shown. If the Board allowed the variation, but was later satisfied that the operation was inconsistent with any Licensing Objective or that any Licence condition had been breached, it would have the right to hold a Review Hearing which might conclude with a decision to Vary the Licence so as to limit or remove the permission.

5. For example, the Board might do that after a Review Application made by a neighbouring occupier, if the Board was satisfied that the complaint was established. If there is later a substantial noise problem, it will be open to anyone (e.g. neighbours):

- to refer the matter to NAC Protective Services under the Environmental Protection Act 1990, Section 80

- to make a Review Application to the Board under 2005 Act, Section 36. The Board has advice on this:

<https://www.north-ayrshire.gov.uk/business/licences-and-permits/food-alcohol-gambling-licences/licensing-board.aspx>

under the heading "Objections and Complaints about Licensed Premises".

G. Effect on Licence Conditions (Section 30(6))

On granting a Variation application, the Board may make such variation of the Licence Conditions "as they consider necessary or expedient for the purposes of any of the Licensing Objectives" - Section 30(6), read with 27(6).

The Board on 28 March 2022 amended the Operating Plan to 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: 16.30 to 22.00; 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."

If the Board grants the variation requested on 27 March 2023 these words will be deleted. Otherwise, no variation of the Conditions is appropriate.

H. 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 Variation of Premises Licence - Section 29

Applicant	Brodick Brasserie Ltd.
Premises	Alma Road, Brodick, Isle of Arran KA27 8BU
Ref.	0352

A. Preliminary

There are no preliminary matters.

B. Summary of Variation Request(s)

No.	Variation
1	<i>Rebrand the Premises without amending Operating Plan</i>
2	<i>Vary the Operating Plan to include 'televised sports'</i>
3	<i>Vary the Layout Plan to include a service kitchen</i>

C. Description of Premises

The Premises have a single Premises Licence which covers two activities: a restaurant and a bar. The Premise Licence Holder proposes to rebrand the two activities while maintaining them as a single Licence.

The PLH says in the Variation application:

"We wish to rebrand the two areas of the business to encourage greater customer awareness of the two styles provided. The Brasserie is in effect a fine dining restaurant on the verge of Michelin accreditation and the term Brasserie does not sufficiently reflect this, leading to customer confusion. We propose to rename the Restaurant as ... We propose to rename the Bar as ... We wish to make a clear distinction about the food we provide in both areas. We propose to continue to operate the venue as one business (Brodick Brasserie Ltd) and we ask that the licence be maintained as a single premises albeit with two brand names. We seek no change to Operating Plan or capacity but attach an amended Layout plan."

D. Issues

V.3 is a 'Minor Variation' so (however the Board decide V1 and V2) V3 must be granted: Section 30(2).

In relation to V1 and V2: under Section 30(4) the Board must consider whether any of the Grounds for Refusal (set out in Section 30(5)) apply and—

- (a) if none of them applies, the Board must grant the Application,
- (b) if any of them applies, the Board must refuse the Application.

The Board's Background Papers include Objections and Representations and the Board must consider in the case of each variation request whether or not any of the statutory Grounds of Refusal applies.

The Licensing Standards Officer can update the Board verbally at the meeting on her limited involvement with the authors.

In particular:

V.1: Rebrand the Premises without amending Operating Plan

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 Board should grant.

Notes:

How property owners choose to name their businesses is no concern of the Board since it does not engage the Licensing Objectives, provided that a change of name when made to the Premises Licence is a 'Minor Variation', so the Licence-Holder must apply for it (fee £20) and the Board must grant: Section 30(2).

In the present case there is no need for a Minor Variation since the Premises Licence is already, and will continue to be, in the name of "Brodict Brasserie Ltd.".

V.2: Vary the Operating Plan to include 'televised sports'

Advice: Discretionary refusal

Notes:

The Board would have to be satisfied that the proposals were not inconsistent with any of the Licensing Objectives, and in particular:

(a): 'preventing crime and disorder'

(c): 'preventing public nuisance'

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

Some of the comments made by the objectors relate to criminal conduct:

- by third parties over whom the Applicant has no control, and

- about things which may happen outside the Premises.

As usual this Application was copied to the Police for comment, and it would be open to them to make representations to the Board. They have not done so.

It is common for Premises to offer televised sport and the fact that they do so does not create a likelihood that the Premises will thereby become a source of crime and disorder.

L.O. (c): 'preventing public nuisance'

The Premises are currently operating as a bar-restaurant and have not been subject to Licence Review procedure before. The Board might consider that it would be premature to speculate that undue noise nuisance would be likely as a result of the variation proposal.

The Licensing Board is not entitled to determine matters which are regulated by other legislation, such as Planning and Parking. 2005 Act, Section 27(7) is:

*"A Licensing Board may not impose a condition under subsection (6) which—
...*

(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment. "

Planning is a matter for North Ayrshire Council under the Town and Country Planning (Scotland) Act 1997. Parking is a matter for the Police (under the Road Traffic legislation) and the NAC Roads Dept. under the Roads (Scotland) Act 1984.

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), its 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.

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.

Future action

If the Board grant the variation requested and are later satisfied that this is inconsistent with any Licensing Objective or that any Licence condition has been

breached, they have the right to hold a Review Hearing which might conclude with a decision to Vary the Licence so as to limit or remove the permission.

That action would normally follow a Review Application commenced by a third-party, rather than the Review being commenced by the Board. If there is later a substantial noise problem, it will be open to anyone (e.g. neighbours):

- to refer the matter to NAC Protective Services under the Environmental Protection Act 1990, Section 80
- to make a Review Application to the Board under 2005 Act, Section 36. The Board has advice on this:

<https://www.north-ayrshire.gov.uk/business/licences-and-permits/food-alcohol-gambling-licences/licensing-board.aspx>

under the heading "Objections and Complaints about Licensed Premises".

V.3: Vary Layout Plan

Advice: the Board are legally obliged to grant this request (as this is a 'Minor Variation').

Notes: This variation arises from the reconstruction of the Premises.

The Premises Licence Holder says:

"In order that we can adequately provide a separate Bar food menu we wish to establish a service kitchen in the store area adjacent to the Bar. Our plan is to prepare all food in the existing kitchen. Discussion with Environmental Health and Building Control are ongoing and we have taken their advice in preparing plans. Building control have indicated that the Store area is their preferred location for the kitchen. We are not making any structural changes but will ensure all electrical, plumbing, ventilation and surface area finishes meet Building Control and Health & Safety requirements. The Kitchen detailed plan as well as the description and specification are attached. An amended Layout Plan is attached."

E. Effect on Licence Conditions (Section 30(6))

No variation of the Conditions is appropriate.

F. 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.

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Report

to

North Ayrshire Licensing Board

by

Clerk

Subject:	Coronation of King Charles III on Saturday 6 May 2023 - Extended Hours and Occasional Licences
Purpose	To summarise the Board's powers
Recommendation:	<p>That the Board:</p> <p>(a) determine whether or not Extended Hours should be granted to Licensed Premises on request on that occasion; and if so, determine the policy as to closing hours.</p> <p>(b) determine whether or not Occasional Licences should be granted to Licensed Clubs on request; and if so, determine the policy as to closing hours.</p> <p>(c) determine whether or not Occasional Licences should be granted on request to unlicensed Premises (such as community centres and street parties), and if so, on what terms;</p>

1. Introduction

1.1. The Coronation of King Charles III will take place on Saturday 6 May 2023.

1.2. The Board requires to form a Policy covering 3 different situations:

- (a) Extended Hours: Licensed Premises (such as public houses and restaurants) may request additional hours;
- (b) Licensed Clubs: may request Occasional Licences to open to the general public (these Clubs can usually only supply their own members);
- (c) Unlicensed Premises: community centres, street parties and other Unlicensed Premises may be the subject of Occasional Licence Applications.

1.3. The questions the Board should consider are set out at Paragraph 8 and a possible policy is set out at Paragraph 9.

1.4. Once the Board has decided on policy the Board's website will be updated.

2. Current Position

This depends on the Premises:

- (a) Licensed Premises: "Extended Hours" (here "E.H.")
- (b) Licensed Clubs: "Occasional Licence" (here "O.L.")
- (c) Unlicensed Premises: "Occasional Licence".

(a) Licensed Premises: "Extended Hours"

The Board is entitled (but not obliged) to grant "Extended Hours Applications" under Section 68 of the Licensing (Scotland) Act 2005 on the Application of the Holder of the Premises Licence in respect of any Licensed Premises,

"if the Board consider it appropriate to do so in connection with—

- (i) a special event or occasion to be catered for on the Premises, or*
- (ii) a special event of local or national significance"*

For example, a public house may ask to stay open later than normal.

(b) Licensed Clubs: "Occasional Licence"

The Board is entitled (but not obliged) to grant "Occasional Licence Applications" under the Licensing (Clubs) (Scotland) Regulations 2007 for Club Premises. This entitles the Club temporarily to sell alcohol to the **general public**, and not simply to its own members.

(c) Unlicensed Premises: "Occasional Licence"

The Board is entitled (but not obliged) to grant an O.L. for unlicensed Premises on the Application of the Holder of the Premises or Personal Licence, or a Voluntary Organisation, under Section 56 of the 2005 Act.

3. Procedure

With both E.H. and O.L., such Applications are normally granted under Delegated Powers, after being copied to the Police and Licensing Standards Officers (O.L. Applications are also publicly advertised for 7 days, to allow for objections or representations from the public).

If the Application is within Policy, and there are no adverse comments, the Application is granted under Delegated Powers by a Board officer. Most Applications are dealt with this way.

If there are adverse comments, then:

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- (a) if time permits the matter calls at a Meeting in the usual way, but
- (b) since such cases often arise only a few weeks before the proposed event the legislation permits the Board to dispense with a Hearing, provided that the Applicant has been given an opportunity to comment on any such adverse comment.

Accordingly, the Board has delegated authority to determine both E.H. and O.L. Applications to the Convenor, or Vice-Convenor or other Members:

- (a) the Applicant should be sent copies of the adverse comments or advised orally or by email of their contents;
- (b) the Applicant should be invited to lodge written or email comments within 3 days;
- (c) the Convenor, and whom failing the Vice-Convenor, and whom failing any Member of the Board, may:
 - determine the Application
 - add to or vary the Conditions of the Premises Licence or Occasional Licence, and
 - authorise departure in the case of that Application from the Board's Policy on hours or any other matter.

4. Policy on Hours

4.1. There is no standing Policy to deal with specific events like the 2023 Coronation, or the late Queen's Golden and Platinum Jubilees in 2012 and 2022. Instead, the Board considers events individually, e.g. it decided not to give special treatment to the Royal Wedding on April 29th 2011.

4.2. There is an E.H. Policy for the Festive Period (Christmas and New Year) but otherwise the ordinary on-sales closing hours are:

- (a) public houses and restaurants: Sunday to Wednesday: 24.00 midnight; Thursday to Saturday: 01.00 a.m.
- (b) nightclubs: Sunday to Wednesday: 01.00 a.m.; Thursday to Saturday: 2.30 a.m.;
- (c) Clubs: 01.00 a.m., seven days a week.

During the Festive Period, the closing hours in all cases are 60 minutes beyond the normal (except that nightclubs close at 03.00 a.m. so have only 30 minutes extra).

Off-sales cannot request E.H. as they already have the maximum entitlement permitted by Law: 10.00 a.m. to 10.00 p.m.: Section 65(2)(d).

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4.3. Opening hours depend on the particular Licence. The Board's policy at the stage of granting Licences is 11.00 a.m., but it may permit earlier opening if it is satisfied that this is appropriate.

4.4. The closing-time policy for O.L. is the same as for public houses and restaurants: Sunday to Wednesday: 24.00 midnight; Thursday to Saturday: 01.00 a.m., with an extra hour granted in the Festive Period.

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

5. Street Parties

(a) no Board permission is needed unless Alcohol is to be **sold**. However, anyone consuming alcohol outside "Licensed Premises" – even if the person owns it or it has been gifted by someone else - is liable to prosecution by the Police under the 'drinking in public' Byelaws. This means that a street party should be covered by an Occasional Licence so that it is "Licensed Premises";

(b) Apart from Licensing, the organiser of a Street Party might require a Temporary Traffic Regulation Order to close a street. The Licensing Board have no powers to make such an Order. Anyone wanting a TTRO should apply to the Council's Roads Department at least 28 days before the requested closure to:

roadspermits@north-ayrshire.gov.uk

using the application form on:

<https://www.north-ayrshire.gov.uk/roads-and-travel/road-maintenance-permits-and-services.aspx>

There will be no fee for applying for a TTRO for the Coronation.

The Council's Roads Department still require the standard TTRO form to be completed with as much information as possible. The closure of the public road for any reason is still a potentially hazardous undertaking, whether it is for a short cul-de-sac or a through road which requires a diversion route. Road signs must be installed by suitably qualified individuals.

6. Consultation

Both the Police and the Health Board have been sent this Report and invited to comment on the issues raised.

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A consideration is that the Board has to have regard to the Licensing Objectives set out in the Licensing (Scotland) Act 2005, Section 4(1):

- (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.

7. Other Powers

Under Section 67 of the Licensing (Scotland) Act 2005 a Licensing Board may, if they consider it appropriate to do so in connection with a special event of local or national significance, make a Determination extending Licensed Hours by such period as the Board may specify in the Determination.

The Scottish legislation does not have an equivalent to the legislation in England and Wales. The legislation there is the Licensing Act 2003, which includes Section 172 ("Relaxation of opening hours for special occasions"). This allows central government, rather than local licensing authorities, to make an Order specifying a "Relaxation Period" of up to 4 days in for a "Celebration Period" (an occasion "of exceptional international, national, or local significance"). Such Orders were made for the late Queen's Diamond Jubilee in 2012 and the Platinum Jubilee in 2022. The Coronation Order for England and Wales was debated in Parliament on 6 March 2023 and will apply to on-sales premises already licensed until 11.00 p.m. and will extend the licensing hours for such premises to 1.00 am the following day, on 3 days: Friday 5 May, Saturday 6 May and Sunday 7 May 2023.

The Scottish Determination power has never been used in North Ayrshire. Instead, Premises wishing Extended Hours use Section 68 so are treated on a case-by-case basis, with the Police having a role in each case.

The Determination power is not being proposed because it would not deal with all the matters raised in this Report. A Determination could only deal with issue (a):

- (a) Licensed Premises: "Extended Hours"

and issues (b) and (c) would remain.

- (b) Licensed Clubs: "Occasional Licence"
- (c) Unlicensed Premises: "Occasional Licence"

This is because Occasional Licences cannot be covered by a Determination (Occasional Licences are regulated by Part 4 of the 2005 Act whereas the Section 67 procedure is part of Part 5, which deals with "Licensed Hours", i.e. for Premises that are already licensed).

8. Proposals

The Board's decisions depend on the answers to the following questions:

Question 1

"Should the Coronation be treated as an exceptional event for which Extended Hours or an Occasional Licence may be sought for Coronation Day (Saturday 6 May 2023) ?"

"No": no other question needs to be answered.

"Yes": ask Question 2.

Question 2

"Should the Coronation be treated as an exceptional event for which Extended Hours or an Occasional Licence may be requested for any periods wholly within the period Friday 5 May to Monday 8 May 2023?"

"No": no other discussion is needed.

"Yes": ask Question 3.

Question 3

"Should Extended Hours be allowed to on-sales before the usual opening time, and if so, what extra time should be allowed?"

9. Suggested Policy

[IF THE BOARD DIRECT THAT THE POLICY SHOULD ONLY APPLY TO a DIFFERENT PERIOD, THE DOCUMENT PUBLISHED WILL BE AMENDED APPROPRIATELY]

North Ayrshire Licensing Board

Coronation of King Charles III - Saturday 6 May 2023.

This policy applies to applications in the "Celebration Period" of:

- Friday 5 May 2023
- Saturday 6 May 2023
- Sunday 7 May 2023
- Monday 8 May 2023

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The policy on Extended Hours applies to the period starting **and ending** on a day within the "Celebration Period":

For example:

- if a public house ordinarily has Licensed Hours commencing at 11.00 a.m. on Saturday and ending at 1.00 a.m. on Sunday morning, then the policy allows it to apply to apply for Extended Hours so that it could stay open from 11.00 a.m. on Saturday 6 May 2023 until 02.00 a.m. on the morning of Sunday 7 May 2023;
- if a public house ordinarily has Licensed Hours commencing at 11.00 a.m. on Sunday and ending at midnight on the night of Sunday/Monday, then the policy allows it to apply to apply for Extended Hours so that it could stay open from 11.00 a.m. on Sunday 7 May 2023 until 01.00 a.m. on the morning of Monday 8 May 2023.

(a) Licensed Premises - Extended Hours

Premises with a Premises Licence may apply for Extended Hours for these closing hours:

- (i) public houses and restaurants:
02.00 a.m. (Thursday, Friday and Saturday)
01.00 a.m. (Sunday to Wednesday)
- (ii) nightclubs:
03.00 a.m. (Thursday, Friday and Saturday)
02.00 a.m. (Sunday to Wednesday)
- (iii) Clubs: 2.00 a.m. (all 7 days)

The **opening** hours remain as stated in the Operating Plan.

Off-sales cannot apply for Extended Hours if they are already licensed 10.00 a.m. to 10.00 p.m.

(b) Occasional Licences for Licensed Clubs

Maximum hours 11.00 a.m. to 1.00 a.m. on any day covered by the policy.

(c) Occasional Licences for Unlicensed Premises

Maximum hours 11.00 a.m. to 1.00 a.m. on any day covered by the policy.

(d) Occasional Licences for OUTSIDE Unlicensed Premises

May be granted, with the same hours as in (c), but if outside a building or permanent structure these further provisions apply:

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What the Applicant should do

The Applicant must give the Board a plan (hand-drawn, or on a "Google" aerial photo, or professionally drawn):

- (a) showing the area in relation to nearby streets and houses, and
- (b) if the place to be licensed is a street, footpath or footway, the plan is to show where signs will be placed:
 - alerting traffic that the public way is blocked and
 - telling road-users what alternative route to use.

Licences Conditions in (d)

The O.L. will have the usual Standard Conditions (Parts A and H) but modified by the following:

“(a) Alcohol can only be sold and consumed outside a building or permanent structure in an area which is shown on the plan approved by the Board; and

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

(c) Standard Condition H.7 (Temporary Structures) does not apply.”

(d) Standard Condition H.9 (Supervision) does not apply (the rules about stewarding and training).”

Decisions in (d)

- Board officers may only use Delegated Powers if the Applicant is:
 - the Holder of a Premises Licence,
 - The Holder of a Personal Licence, or
 - a Licensed Club
- If the Applicant is a Voluntary Association the Application should be referred to the Convenor, failing whom the Vice-Convenor, failing whom any Member of the Board.