

Cunninghame House
Irvine
KA12 8EE

8 September 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 18 September 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 26 June 2023
- 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. Licensing (Scotland) Act 2005 – Licensing Policy Statement**
Review of existing Licensing Policy Statement and consideration of consultation responses for the Licensing Policy Statement 2023-2027 with NHS Ayrshire & Arran, Public Health Presentation to Licensing Board. (Report to follow)
- 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:

AGENDA ITEM 2

DRAFT
North Ayrshire Licensing Board
26 June 2023

Irvine, 26 June 2023 - 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), Nairn McDonald, John Bell, Cameron Inglis, Christina Larsen, Matthew McLean, Jean McClung and Donald L Reid.

In Attendance

R Lynch, Clerk, W O'Brien, Solicitor Licensing, G Cullen, Licensing Standards Officer, C Pollock, Licensing Administration Officer, M Champion, Admin Assistant and R Davidson, Resourcing Assistant.

Convenor

Councillor Eleanor Collier.

Apologies for Absence

Councillors 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 27 March 2023. 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 0529 Ravenspark Service Station, 50 Kilwinning Road, Irvine

The Board considered an Application for the grant of a Provisional Premises Licence made by Highland Fuels Limited. The Applicant was represented by Andrew Hunter, Solicitor and he was accompanied by Colin Begg, Retail Manager, Highland Fuels Limited.

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The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from the Applicants Agent, Mr Hunter

and retired to consider the case.

Councillor McDonald moved as a Motion that the Board should Grant the Provisional Premises Licence subject to Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions) Parts A and B.

Councillor McLean seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

A.2 Premises Licence 0144 The Station Inn, 4 Main Street, Glengarnock

The Board considered an Application for the grant of Variations of a Premises Licence made by the Licence Holder, Susan Margaret Williamson. Ms Williamson was present.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from the Licence-Holder

and decided that there was no need to retire to consider the case.

Councillor Bell moved as a Motion that the Board should grant the Variation Application to allow Children and Young Persons access to the dining room and outdoor area when food is being served, between 12.30pm and 7.30pm, and must be accompanied by an adult.

Councillor McLean seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

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A.3 Premises Licence 0293 Irvine Winton Bowling Club, 108 East Road, Irvine

The Board considered an Application for the grant of a Variation of a Premises Licence made by the Licence Holder, Irvine Winton Bowling Club. The Premises Licence Holder was represented by William Rae Beattie, Bar Convenor.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from the Licence-Holder

and decided that there was no need to retire to consider the case.

Councillor Reid moved as a Motion that the Board should Grant the Variation Application to extend the Outdoor Drinking Area.

Councillor McDonald seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

A.4 Premises Licence 0077 Binning Stores, 39 Sharon Street, Dalry

The Board considered an Application for the grant of Variations of a Premises Licence made by the Licence Holder, Partnership of Binning Stores. The Premises Licence Holder was represented by Stephen McGowan, Solicitor and he was accompanied by Inderjit Binning, Director, and his son Charanjit Binning.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from the Licence-Holder's Agent, Mr McGowan
- written submissions from 2 interested parties

and decided that there was no need to retire to consider the case.

Councillor Reid moved as a Motion that the Board should Grant the Variation Application to add Recorded Music, amend 'other activities' description in the Operating Plan, allow Home Deliveries and increase alcohol capacity from 11.39m² to 23.38m².

Councillor McLean seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

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A.5 Premises Licence 0519 Curry on the Corner, 45 Jack's Road, Saltcoats

The Board considered an Application for the grant of Variations of a Premises Licence made by the Licence Holder, N & S Properties Limited. The Premises Licence Holder was represented by Stephen McGowan, Solicitor, and he was accompanied by Jagg Sandhu, Premises Manager.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from the Licence-Holder's Agent, Mr McGowan
- written submission from one objector

and decided that there was no need to retire to consider the case.

Councillor McDonald moved as a Motion that the Board should Grant the Variation Application to allow on and off-sales from 11am on Sunday and add Outdoor Drinking. The Board's Standard Condition C.5 in relation to Outdoor Drinking will apply.

Councillor McLean seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

A.6 Premises Licence 0204 Spar Convenience Store, 2/3 Cardow Crescent, Girdle Toll, Irvine

The Board considered an Application for the grant of a Variation of a Premises Licence made by the Licence Holder, C J Lang & Son Limited. The Premises Licence Holder was represented by Stephen McGowan, Solicitor and he was accompanied by Stuart France, Area Manager.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from the Licence-Holder's Agent

and decided that there was no need to retire to consider the case.

Councillor Reid moved as a Motion that the Board should Grant the Variation Application to make various changes to the Operating Plan including Home Deliveries of alcohol.

Councillor McDonald seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

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A.7 Occasional Licence Application 325/23 Veronica Michaluk, Brodick Highland Games

The Board considered an application for Occasional Licence made by Veronica Michaluk. The application is for Brodick Highland Games within Ormidale Park, Brodick on Saturday 5 August 2023. The applicant, Veronica Michaluk, was present.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- the Report prepared by the LSO
- submissions from the Applicant

and decided that there was no need to retire to consider the case.

Councillor McDonald moved as a Motion that the Board should grant the Occasional Licence Application with the Board's Standard Conditions H.7.2(a) and 10(b) disapplied.

Councillor Reid seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

The Convenor advised that if this event goes by without incident or complaint future identical Occasional Licence applications for this event could be determined using Delegated Powers.

A.8 Occasional Licence Application 339/23 Yvonne Henderson, Dundonald Links

The Board considered an application for Occasional Licence made by Yvonne Henderson. The application is for the Professional Women's Golf Tournament at Dundonald Links from Wednesday 2 August to Monday 7 August 2023. The applicant, Yvonne Henderson was present, and she was accompanied by Gerard Findlay from IMG.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- the Report prepared by the LSO
- submissions from the Applicant

and decided that there was no need to retire to consider the case.

The Convenor moved as a Motion that the Board should grant the Occasional Licence Application from 10am to 10pm each day with the Board's Standard Conditions H.7.2(a) and 10(b) disapplied.

Councillor McLean seconded this Motion.

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The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

The Convenor advised that if this event goes by without incident or complaint future identical Occasional Licence applications for this event could be determined using Delegated Powers.

4. Licensing Policy Statement 2023-2027

Mr O'Brien explained the procedure for reviewing the Board's Licensing Policy Statement which requires to be reviewed by 5 November 2023. He explained the consultation procedure and suggested a proposal statement is added to the website with Communications arranging for Twitter and Facebook posts providing links to the website seeking public consultation. Any public comments or comments from the relevant consultees are expected to be on the Agenda for the Licensing Board Meeting on 18 September 2023.

The Board agreed to the consultation process proceeding as suggested.

The Clerk further explained that as well as engaging the public on this matter, the new Licensing Board could establish a special Policy Committee engaging with Police partners and the Health Board to collate new guidance to be looked at. He confirmed to the Convenor that if any Board Member has any views on key areas these should be submitted to the Board's Solicitor. He also noted the consultation should cover the wider area following Councillor McDonald's request to include local Trade Unions within the consultation. The Chair advised she would like to see the Local Licensing Forum re-established.

5. Any Other Business

There was no other business to consider.

The meeting ended at 12.25 pm.

Agenda Item 3

18 September 2023

North Ayrshire Licensing Board

Title: Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.

Purpose: To advise the Board of the Law and the factual background.

Recommendation: That the Board determines whether or not to grant the Applications listed.

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.	0530	Motor Fuel Limited	Annick Service Station Annick Drive Dreghorn Irvine KA11 4HJ	Application for Grant of Provisional Premises Licence – Section 45
2.	0531	Navneet Kaur Sandhu	USave 15 Dickson Way Irvine KA12 9JD	Application for Grant of Provisional Premises Licence – Section 45
3.	0532	Microtech Business Intelligence Ltd	Shop 2A The Grange Business Centre Glebe Street Stevenston KA20 3EJ	Application for Grant of Provisional Premises Licence – Section 45
4.	0533	Partnership of Sahal Sahiri & Kim Sahiri	Edgewater Shore Road Broddick Isle of Arran KA27 8AJ	Application for Grant of Provisional Premises Licence – Section 45
5.	0014	Glencloy Drinks Co Ltd	Greenbank Inn 97 New Street Dalry KA24 5BY	Application for Variation of Premises Licence – Section 29
6.	0334	Francis O'Neill	Spar 51 Skelmorlie Castle Road Skelmorlie PA17 5AH	Application for Variation of Premises Licence – Section 29
7.	0310	Skelmorlie Golf Club	Skelmorlie Golf Club Beithglass Road Skelmorlie PA17 5ES	Application for Variation of Premises Licence – Section 29
8.	0129	Firthport Limited	Millport Pier Hotel 1 Quay Head Millport KA28 0AW	Application for Variation of Premises Licence – Section 29

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
9.	NA2784	Sheila Bannatyne		Personal Licence Review Hearing – Section 83
10.	NA2602	Margaret Pollock		Personal Licence Review Hearing – Section 83
11.	526/23-528/23	Thomas McGarrigle	The Arran Gift Box Company Duchess Court Unit 1 Home Farm Brodict KA27 8DD	Applications for Occasional Licences – Sections 56-61

**North Ayrshire Licensing Board
Case Summaries
Meeting: Monday 18 September 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)

Cases 1-4: Applications for "Premises Licences" / "Provisional Premises Licences"

1. "Annick Service Station", Dreghorn [530]

Application for Provisional Premises Licence

***** See detailed report in Agenda (page 25)**

2. "Usave", 15 Dickson Way, Irvine [531]

Application for Provisional Premises Licence

Applicant

Mrs. Navneet Kaur Sandhu

** Preliminary

The Board should continue consideration of the Licence Application for 2 reasons:

1. For the Applicant to comply with the rules about "Site Notices" - the Board should state the start and end dates
2. For the Applicant to obtain a Provisional Planning Certificate

1. Site Notice not displayed

The prescribed procedure is set by Regulations and requires the Licence Applicant to display a public notice at or near the Premises, informing the public of what the proposal is and giving details of the Board's address. This is so that anyone interested can state Objections or Representations. This Site Notice is to be on view continuously for a 21-day period (the Board sets the start and end dates). Normally, after that 21-day period the Licence Applicant gives the Board a Certificate confirming that this has happened.

Commonly Licence Applicants tie the Site Notice to a nearby lamp-post or attach the Site Notice to the inside of a window, facing out.

The solicitors (TLT Solicitors) representing the objector Dynamic Retail Ltd ("Scotfresh") have sent the Board a photograph showing the Premises with the rolling shutter down, covering the shop window and door, so that even if the Site Notice was displayed on the shop window facing out it would not be visible to the public while the shop was closed.

The rules include:

"Where a Board considers that a notice required by paragraph (2) has for any reason not been in place for the whole of the period specified in paragraph (3) or has been damaged during that period, it may require the applicant to display the notice for a further 21-day period." (The Licensing (Procedure) (Scotland) Regulations 2007 No. 453, Reg. 7(4)).

2. No "Provisional Planning Certificate"

At the time of preparing this note the Applicant has not given the Board a "Provisional Planning Certificate" confirming the Premises' status under the Planning legislation. If there is still no Certificate by the date of the Board (18 September 2023) the Board will have no alternative but to continue consideration to a later meeting. The next scheduled Board is Monday 18 December 2023 at 10am. Although the same sort of business has traded in the Premises in the recent past and there is unlikely to be a problem with the Planning status, the Board cannot delegate the decision to grant the Provisional Premises Licence to the Clerk as this decision is reserved to the Board (Licensing (Scotland) Act 2005, Schedule 1, Paragraph 10(2)(c)).

Application

Proposal for off-sales facility in existing convenience store.
Licensed Hours conform to Board Policy: Off-sales: 10.00 - 22.00 (all days)
Capacity: off-sales=21.2 sq.m.

There are 2 objection which will be in Members' Background Papers:

[a] Irvine Community Council

[b] TLT Solicitor, for Dynamic Retail Group Limited (trading as "Scotfresh"), whose Premises at 110-114 Dickson Way are immediate neighbours of the Subject Premises and already have a Premises Licence.

The PPL does not allow the Premises to sell alcohol. The Applicant will later apply to the Board for Confirmation of the PPL, producing necessary statutory certificates. The Premises will be inspected by a Board officer to confirm that they have been completed in line with the Board's approval. Confirmation decisions are usually done by the Clerk using Delegated Powers and the case is unlikely to return to the Board. Once Confirmation is granted the Premises can then start trading in alcohol.

Notes

1. Previous refusal

In Application Form (Q4) Mrs. Sandhu says that on 24 May 2021 the Board refused a similar application for the Premises. On that day after a roll-call vote the Board unanimously refused her PPL application, having the opinions:

(a) that it was inconsistent with the Licensing Objective 'protecting and improving public health', and

(b) that the grant of the Application would cause Overprovision of Licensed Premises of the same or similar description as the Subject Premises in the Locality. The proposal then was for a capacity of 17.6 sq.m. whereas the 2023 request is 21.2 sq.m..

The Board had regard to the Petitions both for and against the Application but attached no weight to them.

The Board consisted of Councillors Ronnie McNicol (Convenor), Todd Ferguson (Vice-Convenor), Robert Barr, John Easdale, Jean McClung, Davina McTiernan and Donald L Reid.

favour of the motion and the Board unanimously agreed without dissent or abstention to refuse.

2. Applicant's views on amending Operating Plan?

Q5 of the Operating Plan (the activities other than the sale of alcohol) has not been completed. On the basis of the description of the Premises elsewhere in the application papers (convenience store with off-sales Licence 10.00 - 22.00, 7 days) the Clerk has assumed that the Applicant intends the following, but the Applicant should tell the Board if this is correct:

[a] All 16 questions about the activities in Columns 2 and 3 are "no" except that "Recorded Music" is "yes". If the premises deal with the National Lottery, the answer for "Gaming" is also "yes";

[b] In Column 4, all questions are to be "Not applicable" except that "Recorded Music" is "yes" (also "Gaming" is "yes" if the National Lottery is there);

[c] The box on the Form for further details will be:

"Recorded music may be played to customers. The shop is a convenience store and will be open for non-alcohol sales outside the Licensed Hours. All necessary consents from the 'Performing Rights Society' and other copyright managers will be obtained."

[d] If appropriate, add "National Lottery services will also be provided."

[e] Q5(f) ("any other activities") will be blank.

[f] Q5(g) ("Late night premises opening after 1.00 a.m.") will be blank.

3. Shop Unit 2A, The Grange Business Centre, Stevenston [532]

Application for Provisional Premises Licence

***** See detailed report in Agenda (page 36)**

4. "Edgewater", Shore Road, Brodick [533]

Application for Provisional Premises Licence

Applicant

The Partnership of Sahal Sahiri and Kim Sahiri, 49C St Augustines Road, London NW1 9RL

Background

The Premises are a bar-restaurant which until recently traded as "Crofter's" (NALB Premises Licence 60). The previous owner was sequestrated on 16 February 2023 and the Trustee in Sequestration did not have the Licence transferred to him, so it automatically terminated. Therefore when the present Applicants bought from the Trustee they had to apply for a new Licence. The Applicants expect to later apply to the Board for Confirmation of the PPL so that

the Premises can start trading in December 2023. Confirmation decisions are usually done by the Clerk using Delegated Powers and the case is unlikely to return to the Board.

Application

Both on-sales and off-sales.

Licensed Hours conform to Board Policy:

On-Sales: Sun-Wed: 11.00 - 24.00; Thu-Sat: 11.00 - 01.00.

Off-sales: 11.00 - 22.00 (all days)

Capacity: on-sales=46 patrons, off-sales=9.89 m2

Two "Outdoor Drinking Areas":

1. Pavement

Layout Plan shows 'Street Alfresco' – on the public pavement along most of the frontage.

On 24 May 2021 the Board considered several variation requests made by the then Licence Holder, including a proposal for a pavement cafe. The Board decided to permit the use of outdoor pavement area in accordance with the usual Licence conditions (during the from 11.00 am to 10.00 pm) and also permitted the area to be used prior to 11.00 am for non-alcoholic drinks.

Licence Condition C.5.3 is:

"Where an Outdoor Drinking Area is situated on a public footway to which Section 59 of the Roads (Scotland) Act 1984 applies:

- (a) the Licensee shall hold a Consent granted by the Roads Authority under that Section;*
- (b) the Licensee shall comply with the conditions attached to that Consent;*
- (c) the Outdoor Drinking Area shall be separated from the public footpath by a physical barrier so that the Area may be entered only by customers and staff of the Premises;*
- (d) alcohol shall be consumed only by persons seated in the Outdoor Drinking Area - no 'vertical drinking' shall take place on a public footway."*

Applicant should undertake not to use the proposed pavement area without first obtaining a Roads Authority Consent.

2. Rear garden

(a) The request is to serve food, teas, coffees and soft drinks both inside and outside from 08.00. Therefore the Licence will contain the usual Standard Conditions (Parts A, B and C) but with Condition C.5.2 (which restricts the use of an "Outdoor Drinking Area" to the hours 11.00 to 22.00) modified by adding:

"except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 08.00."

(b) The "Outdoor Drinking Area" is to be used in the same way that it was when the Premises were recently licensed, the Operating Plan proposed includes:

"OCCASIONAL NON-AMPLIFIED ACOUSTIC MUSIC IE HARP, ACOUSTIC SIGNER OR SMALL PIPES TO PLAY IN THE REAR OUTDOOR DRINKING AREA, MUSIC TO CEASE AT 8.00 PM."

(c) The "Outdoor Drinking Area" catered for markets while the Premises were last licensed, and in 2023 the Operating Plan proposed includes:

"THE CONDUCT OF MARKETS WHERE THE STALL-HOLDERS WILL BE THIRDPARTIES (NEITHER THE PREMISES LICENCE HOLDER NOR ANYONE ACTING ON BEHALF OF THE PLH) TO BE CONDUCTED UNDER A "MARKET OPERATOR'S LICENCE" UNDER SECTION 40 OF THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982.

THE MARKETS WILL TAKE PLACE BETWEEN THE HOURS OF 11.00AM AND 9.00PM ON THE AREA TO THE REAR OF THE BUILDING AND WILL INVOLVE NO MORE THAN 9 STALLS, SELLING FOOD, VEGETABLES AND SEASONAL PRODUCE."

(d) On 13 April 2021 North Ayrshire Council granted Temporary Planning Permission (ref 21/00141/PP):

"Erection of open sided marquee to rear of licensed premises for customer use for a temporary period of two years at Crofters, Knox House, Brodick"

on condition:

"That the marquee hereby approved shall be removed from the site on or before 13th April 2023 to the satisfaction of North Ayrshire Council as planning authority".

That restriction was removed by NAC Planning on 07 Oct 2022 (ref. 22/00628/PP) so the marquee can be permanent.

Gaming

The Operating Plan states:

"ANY GAMING WILL BE RESTRICTED TO THE LIMITS ON STAKES AND PRIZES SPECIFIED BY THE GAMBLING ACT 2005 AND THAT ANY USE OF GAMING MACHINES WILL BE IN ACCORDANCE WITH THAT ACT. NO CHILD WILL BE PERMITTED TO OPERATE ANY AMUSEMENT-WITH-PRIZE MACHINE OR VIDEO/DVD/ELECTRONIC MACHINE WHICH IS ON THE PREMISES."

but the Layout Plan does not show the location of any gaming machines. Applicant should advise the Board:

(a) what 'gaming' is to include;

- (b) what age limit is to apply: 'child' means 'under 16' and persons aged 16-17 are 'young persons';
- (c) are Gaming Machines to be used;
- (d) if so, what Category are they (Categories are A to D, relating to stakes and prizes; Category D has low stakes and prizes and is aimed at under-18s.

Cases 5-12: Applications for Variations, and other matters

5. "Greenbank Inn", Dalry [0014]

Application for Variation of Premises Licence

The request(s)

1	To extend access to under-5s
2	Change on-sales and off-sales hours on Sunday to 11.00 am.
3	Allow for access by under-18s from 11.00 am (all week)

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 potential grounds of refusal affecting any request.

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.

Notes

V1: To extend access to under-5s

If the premises are to allow under-5s, then a Mandatory Condition applies:

"There are to be on the Premises facilities for baby changing which are to be accessible to persons of either gender." (Licensing (Scotland) Act, Schedule 3, Paragraph 12).

This is a national condition, applied by the legislation, so the Board has no power to relax or vary it.

The Applicant must either:

- confirm that the Premises already have suitable facilities or
- undertake to the Board that under-5s will not be allowed until they do.

V2: Change on-sales and off-sales hours on Sunday to 11.00 am.

This proposal is within Board Policy and there appears to be no reason to refuse it.

It is likely that the request follows from a historical accident which affected many Premises in Scotland. The earlier licensing legislation (the Licensing (Scotland) Act 1976, which was repealed on 31 August 2009) treated the hours on Sundays as two periods instead of one. In order to obtain 'grandfather rights' when existing Premises requested a licence under the new legislation, many Premises modified their applications to reflect the 'old' hours, and later asked the Board to vary the hours to reflect the 'new' policy.

V3: Allow for access by under-18s from 11.00 am (all week)

There appears to be no reason to refuse this proposal.

6. "Spar", 51 Skelmorlie Castle Road, Skelmorlie, PA17 5AH [0334]

Application for Variation of Premises Licence

The request(s)

1	Change of name from "Spar" to "Keystore"
2	Vary Off-sales hours to 10.00 am - 10.00 pm. on all 7 days

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 potential grounds of refusal affecting any request.

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.

Notes

V1: Change of name from "Spar" to "Keystore"

This is a 'Minor Variation' so the Board has no option but to grant it. V1 is only calling at the Board because of V2. If the only request was to change name, this would be covered by Delegated Powers and would not call at the Board.

V2: Vary Off-sales hours to 10.00 am - 10.00 pm. on all 7 days

This proposal is within Board Policy and there appears to be no reason to refuse it. Although this request is within Board Policy it is not a 'Minor Variation' and cannot be delegated, as decisions on 'Major Variations' are reserved to the Board (Licensing (Scotland) Act 2005, Schedule 1, Paragraph 10(2)(d)).

**7. Skelmorlie Golf Club, Beithglass Avenue, Skelmorlie PA17 5ES
[310]**

Application for Variation of Premises Licence

The request(s)

1	Amend terminal hour on Friday from 23.00 to 24.00
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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 potential grounds of refusal affecting any request.

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.

Notes

V1: Amend terminal hour on Friday from 23.00 to 24.00

This proposal is within Board Policy and there appears to be no reason to refuse it. Although this request is within Board Policy it is not a 'Minor Variation' and cannot be delegated, as decisions on 'Major Variations' are reserved to the Board (Licensing (Scotland) Act 2005, Schedule 1, Paragraph 10(2)(d)).

**8. "Millport Pier Hotel", 1 Quay Head, Millport, Isle of Cumbrae,
KA28 0AW [0129]**

Application for Variation of Premises Licence

The request(s)

1	Extend non-resident under-18 access from 8 p.m. to 10 p.m.
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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 potential grounds of refusal affecting any request.

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.

Notes

V1: Extend non-resident under-18 access from 8 p.m. to 10 p.m.

There appears to be no reason to refuse this proposal.

The proposal is to make 2 changes Operating Plan:

Q6(b) (TERMS of access to on-sales Premises by 'Children' and 'Young Persons')

To read -

"HOTEL PROVIDES ACCOMODATION TO FAMILIES, WITH ALCOHOL AS AN ANCILLARY TO THAT BUSINESS. CHILDREN AND YOUNG PERSONS OF ANY AGE WHO ARE RESIDENT IN THE HOTEL WILL BE PERMITTED IN ALL PUBLIC AREAS AND BEDROOMS AT ALL TIMES WHEN THE PREMISES ARE OPEN FOR BUSINESS. CHILDREN AND YOUNG PERSONS WHO ARE NOT RESIDENT WILL BE ALLOWED UNTIL 10.00PM WHEN ACCOMPANIED BY AN ADULT."

Q6(d) (TIMES of access to on-sales Premises by 'Children' and 'Young Persons')

to read -

"ANY TIME FOR RESIDENTS, BUT ONLY UNTIL 10.00PM FOR NON-RESIDENTS."

Under-18s are divided by the Licensing (Scotland) Act 2005:

"Young Persons" - aged 16 or 17

"Children" - aged under 16

Currently:

- under-18s who are non-residents are only allowed to 8.00 p.m. - this applies to both "Young Persons" and "Children", **but**

- the requirement to be accompanied by an adult only applies to "Children"

The proposal is to require "Young Persons" to be accompanied too, and to extend the time for both to 10.00 p.m..

9. Sheila Bannatyne [NA2784]

Personal Licence Review

***** See detailed report in Agenda (page 43)**

10. Margaret Pollock [NA2602]

Personal Licence Review

***** See detailed report in Agenda (page 47)**

11. Arran Gift Box Company

Applications for Occasional Licences

***** See detailed report in Agenda (page 51)**

12. Licensing Policy Statement

Health Board Presentation

***** See detailed report in Agenda (To Follow)**

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Motor Fuel Limited, Gladstone Place, 10 Bricket Road, St Albans, AL1 3JX (Registered Company 05206547)
Premises	Annick Service Station, Annick Drive, Dreghorn, KA11 4HJ
Ref.	530

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL) for an off-sales convenience store on the same site as the petrol filling station beside the B7081 Long Drive Roundabout and consists of a shop within a petrol station.

Members' Background Papers will include a Google Streetview photograph (June 2023):

https://www.google.com/maps/@55.6090074,-4.6380841,3a,75y,239.49h,87.36t/data=!3m7!1e1!3m5!1sqqQYIXdbhtbwXP0ik8Ai2Q!2e0!6shhttps:%2F%2Fstreetviewpixels-pa.googleapis.com%2Fv1%2Fthumbnail%3Fpanoid%3DqqQYIXdbhtbwXP0ik8Ai2Q%26cb_client%3Dmaps_sv.tactile.gps%26w%3D203%26h%3D100%26yaw%3D113.2712%26pitch%3D0%26thumbfov%3D100!7i16384!8i8192?entry=ttu

The alcohol hours requested are 10.00 - 22.00, 7 days a week. This is the maximum permitted by the legislation and is within NALB Policy. The proposed display capacity is 17.5 square metres. The filling station operates 24-hours. The shop operates between 05.00 and 23.00 and the premises have a 'night pay window' for the rest of the 24-hour period.

The PPL relates to Premises which are to be constructed or 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 will then have to give the Board both a "Building Control Certificate" and a "Food Hygiene Certificate". A "Food Hygiene Certificate" is needed because there will be a "Food Business" within the Food Safety Act 1990. This Certificate is needed for a shop which sells tinned or packaged food, as well as for a restaurant or any Premises serving prepared food. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

2. Issues

The potential Ground(s) for Refusal which may exist are:

- (a) the Premises may be "Excluded Premises"

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

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

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

If any Ground for Refusal applies:

the Board must refuse. However, the Board must grant 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 the Applicant proposes modifications to address the issue(s) raised below, the Board should consider those proposals.

If no Ground for Refusal applies

the Board must grant: Section 23(4)-(5).

(a) "Excluded Premises"

The 2005 Act requires that 'Excluded Premises' should be refused a Premises Licence. This term is defined:

- so that motorway service stations and some garages are prevented from having Premises Licences (Sections 23(5)(a), 123(2)), but
- it does not prevent all garages from selling alcohol.

This is due to Section 123(5):

"Despite subsection (2)(b) [the general exclusion of 'garages'], Premises used for the sale by retail of petrol or derv or which form part of Premises so used are not Excluded Premises if persons resident in the locality in which the Premises are situated are, or are likely to become, reliant to a significant extent on the Premises as the principal source of—

(a) petrol or derv, or

(b) groceries (where the Premises are, or are to be, used also for the sale by retail of groceries)."

The Application form includes:

"The applicant considers that persons within the locality of the premises are reliant on the premises to a significant extent on the premises as a principal source of petrol or derv or groceries and thereby satisfy the criteria of section

123(5) of the Licensing (Scotland) Act and as such are not excluded premises."

An example of the use of this exception is to allow for garages selling alcohol and groceries in rural areas where the Application Premises are the only shop for miles, but this is not the only possible use of the exception, and a Board may accept that it applies to Premises in residential areas.

The statutory question should be addressed as follows:

1. What parts of Section 123(5) apply?

The Applicant should advise the Board which one (or both) of the branches of Section 123(5) is said to apply:

- (a) petrol or derv
- (b) groceries

This Report is prepared on the assumption that both apply - (b) applies here because the Application Premises are, or are to be, used also for the sale by retail of groceries.

2. What is the "Locality"?

The Board should determine the "Locality" to be considered for the purpose of the "Excluded Premises" question. This is different from the "Locality" used in the Overprovision question - the Locality there is already set by Board Policy.

The Board should invite the Applicant's views on this.

This Report is prepared on the assumption that the Locality should be within a radius of one mile (about 1,600 metres) from the Subject Premises.

Within that radius, the other premises within (a) and (b) of Section 123(5) are:

(a) petrol or derv outlets

There are no premises in type (a) within that radius. The nearest premises are:

1. Sainsbury's Petrol Station - Ayr Road [2.44 km, 1.52 miles] (105 hours per week: 07.00 - 22.00, seven days)
2. Ravenspark Filling Station (Highland Fuels), Kilwinning Road, Irvine KA12 7JB [3.60 km, 2.25 miles] (168 hours per week: 24 hours, 7 days)
3. ESSO, Old Glasgow Rd, Kilwinning KA13 7JB [7.36 km, 4.60 miles] (105 hours per week: 07.00 - 22.00, seven days)
4. Howie's (Gulf) 4 Stevenston Road, Kilwinning [8.93 km, 5.58 miles] (hours not stated on website)

5. Morrison's Petrol Station, Kilwinning Road, Stevenston [10.89 km, 6.81 miles] (103 Hours per week: 06.00-21.00 Mon-Sat; 08.00-21.00 Sun)

(b) grocery outlets

1. ALDI Supermarket, East Rd, Irvine KA12 0AF [2.34 km, 1.46 miles] (95 Hours per week: 08.00-22.00 Mon-Sat; 09.00-20.00 Sun)

2. Paterson Premier "Go Grocer" 131A Paterson Ave, Irvine KA12 9LP [2.37 km, 1.48 miles] (87 Hours per week: 07.00-20.00 Mon-Sat; 09.00-18.00 Sun)

3. Iceland Foods, Caledonian House, 80-106 High St, Irvine KA12 0AX [2.40 km, 1.5 miles] (72 Hours per week: 08.00-19.00 Mon-Sat; 11.00-17.00 Sun)

4. Co-op Food, 46 Caldon Rd, Irvine KA12 0RH [2.39 km, 1.5 miles] (105 hours per week: 07.00 - 22.00, seven days)

5. Sainsbury's supermarket, Ayr Rd, Irvine KA12 8BH [2.43 km, 1.52 miles] (97 Hours per week: 08.00-22.00 Mon-Fri; 07.00-22.00 Sat; 08.00-20.00 Sun)

6. "Shop Local", 135 High St, Irvine KA12 8AA [2.54 km, 1.59 miles] (66 Hours per week: 07.00-18.00 Mon-Sat; closed Sun)

7. Keystore Convenience Store, 1 James Cres, Irvine KA12 0UL [2.83 km, 1.77 miles] (103 Hours per week: 07.00-22.00 Mon-Sat; 08.00-21.00 Sun)

8. M & S "Simply Food", Riverway Retail Park, 2a New Street Roundabout, Irvine KA12 8AG [2.87 km, 1.79 miles] (78 Hours per week: 08.00-20.00 Mon-Fri; 08.00-18.00 Sat; 10.00-18.00 Sun)

9. TESCO EXTRA Superstore, Retail Park Riverway, 15-16 Riverway, Irvine KA12 8AY [2.88 km, 1.80 miles] (126 hours per week: 06.00 - 24.00, seven days)

10. Food Warehouse, Retail Park Riverway, Irvine KA12 8DT [2.89 km, 1.81 miles] (hours not stated on website)

11. ASDA Superstore, Rivergate Shopping Centre, Irvine KA12 8EH [2.92 km 1.83 miles] (98 hours per week: 08.00 - 22.00, seven days)

Most of the Premises in (b) have an alcohol Licence. Approximate distances from the Subject Premises are given. Opening hours taken from the business' website.

3. What is the Statutory Guidance?

Under Section 142 Scottish Ministers may issue guidance, and a Licensing Board must have regard to that. 'Having regard' does not mean that the Board

must always follow the Guidance. The Board must instead prefer the statute and advice from the Courts and must form their own views on the circumstances of the particular case.

The guidance was revised in January 2023 and now says little of significance to the 'excluded premises' question, although at paragraph 14.5 it quotes without comment part of Midlothian Licensing Board's Licensing Policy Statement:

"In determining such an application the Board will expect the applicant to provide sufficient information to enable it to consider the locality in which the premises are situated, the other sources of petrol or derv and/or groceries in the locality and the extent to which the persons resident in the locality are, or are likely to become, reliant to a significant extent on the premises as a principal source of petrol or derv, or groceries."

This reflects previous practice in North Ayrshire, where Applicants have given the Board consumer surveys.

4. what is the Court guidance?

The Court of Session has stated that the appropriate approach to the question "are the Application Premises not 'Excluded Premises' ?":

*"is that there be **a recognisable number of persons** in the **locality**, not necessarily constituted as a group, who as a matter of their purchasing **habits** see and treat the shop premises in question as the **principal** source from which they may in ordinary course obtain either groceries or fuel and who would properly consider themselves **materially disadvantaged or inconvenienced** were that shop not to provide those retail facilities. In judging that matter, evidence of alternative retail outlets for groceries or motor fuel (or the local knowledge of the licensing board to that effect) is plainly not excluded; but the existence of some alternative facilities within the locality will **not** in itself prevent the giving of a positive answer to the question. ..." (BP Oil (UK) Ltd. v the Licensing Boards of Edinburgh and Glasgow ([2011] CSIH 29, 2011 SLT 491, Paragraph 51) (emphasis added **thus**)*

The Board can assess those issues by considering:

- (i) their local knowledge;
- (ii) whether there are alternative retail outlets for groceries or motor fuel (but the existence of such alternative facilities in the locality does not automatically mean that the Application Premises must be regarded as 'Excluded Premises');
- (iii) information supplied by the Applicant as to the number or percentage of persons resident in the locality who use (or are likely to use) the Application Premises as their principal source of petrol/derv or groceries. Commonly Applicants seek to address the Excluded Premises issue by producing customer data. The Board should bear in

mind that a survey is a snapshot of the customers over a short time and may not even survey the opinions of everyone who used the Premises in that time. The fact that a survey may only record a few people does not mean that the results of the survey can be disregarded as representing only a "mere 'handful' " since it might be accepted as indicating the ratio of "reliant" residents using the Premises.

'Reliant' does not mean 'totally dependent'. In reversing a Board which had held that Premises failed to establish 'reliance' the Sheriff Principal said:

"The question of whether premises are relied on to a significant extent by a group of persons is not one which can be decided by asking an individual if he or she is reliant on the premises "to a significant extent". Moreover, whatever "reliance" means, for the purpose of this section, it cannot mean total dependence; anyone in Scotland who lives within range of a Tesco home delivery service is not totally dependent on a garage shop for groceries. It follows that the mere existence of alternative facilities cannot exclude the operation of section 123(5); it is all a question of degree." (ROC UK Ltd. v City of Edinburgh Licensing Board [2010] ScotSC 21, Paragraph 17).

(b) Licensing Objectives

The relevant L.O. is " protecting and improving public health".

The factors relevant to this L.O. overlap with the issue of 'Overprovision' (see below). The Board's views on this L.O. are set out in Paragraph 2.13 of the Licensing Policy Statement 2018-2023:

"2.13. It is widely accepted that there is a clear link between the availability of alcohol and alcohol-related health harms. North Ayrshire figures also demonstrate a clear link between alcohol related harm and deprivation. The greater the availability of alcohol, the greater the expected harm, particularly in more deprived communities. The Board wishes to see Licensed Premises thriving in the area, but this cannot be at the expense of the health and wellbeing of patrons or the wider community. ..."

and in Paragraph 3.5, after stating that the Overprovision policy which otherwise applies to off-sales, public houses etc. might not be applied against premises such as restaurants, the LPS goes on:

"However, since the Board:

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

it may refuse the Application here also. ..."

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

In other cases, the Board have 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 have 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 to public health caused by alcohol consumption.

(c) Overprovision

1. Section 23(5)(e) is:

"23(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 2018-23, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

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; 'Meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table, and is available at all times until 45 minutes before the terminal licensed hour;

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 (the Board calls these 'Part K Clubs').

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 with 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) **Locality**: The Subject Premises are in the "Irvine and Area" Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranyard) (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) **Function Type**: 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. The Board will expect Applicants who are seeking the grant of a new Licence (or the increase in capacity in 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.

10. The Licensing Policy Statement includes:

"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." LPS 2018-23, Annex D, Paragraph 3.6.

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.

3. 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)

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

4. Notes to Applicant

The Board's decision is not:

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

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

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

CASE 1

The Licensing Board does not grant this Licence.

Application for Grant of Provisional Premises Licence - Section 45

Applicant	"Microtech Business Intelligence Ltd.", Registered Office: 17-19 Hill Street, Kilmarnock, KA3 1HA (Company Registration Number: SC467753)
Premises	Unit 2A, The Grange Business Centre, Stevenston
Ref.	0532

1. Background

The proposal is for an off-sales and retail shop on the ground floor of a purpose-built retail unit.

This Report relates to the third Application for the Premises at Unit 2A (there are already Premises Licences for 2 other workshop units in the same building – Units 2B and 2C - but these are for online businesses whereas the proposal for 2A is for a traditional shop with public access – see below "Other Licences").

The previous 2A Applications have been similar – a convenience store with an alcohol off-sales facility.

The two previous Applications were both refused:

- on 25 January 2021 (NALB ref 511)
- on 24 May 2021 (NALB ref 513)

Both were Applications for a PPL made by Mr. Muhammad Anees for the same Premises. The Board refused both on the basis of the Board's Overprovision Policy.

Normally at least 12 months must pass before a Board can consider a further application, but when the first refusal was stated the Applicant's agent asked for a Direction under Section 25 (which would otherwise prevent a further application within 12 months in the absence of a change of circumstances), and the Convenor made that Direction. Therefore the Board dealt with a further Application only 4 months later.

The first Application requested an off-sales area of 37.98 square metres.

The second Application requested 19.25 square meters.

The 2023 Application also requests 19.25 square meters.

There is one objection, from the "Prevention, Early Intervention and Recovery Service" "Turning Point Scotland" (P.E.A.R.), which has an office in the same building as the proposed shop. PEAR also opposed the second application.

2. Other Licences

The Applicants already have two Licences for units in this building:

- (1) Workshop 2B (on ground floor of building) (NALB 516)
- (2) Workshop 2C (on ground floor of building) (NALB 517)

In both cases:

- Provisional Premises Licence (PPL) was granted on 7 June 2021 and Confirmed on 24 June 2021;
- Premises offering alcohol for consumption off the premises;
- Premises have Licensed Hours of 10.00 - 22.00, 7 days a week. This is the maximum permitted by the legislation and is within NALB Policy;
- Capacity is zero - the Applicants are holding licences for Premises which they will lease to tenants. The Premises 2B and 2C will trade solely online and will not be traditional 'shops'. The tenants will be nominated as Premises Managers.

3. Summary of Proposal for Unit 2A

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL). The PPL relates to Premises which are to be constructed or 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 proposal is for off-sales 10.00 - 22.00, 7 days a week. This is the maximum permitted by the legislation and is within NALB Policy.

The proposed capacity is 19.25 sq.m..

All 3 Premises (2A, 2B and 2C) are workshops on the ground floor of the Grange Business Centre in Stevenston, located on the corner of Glebe Street and Boglemart Street where there is a mixture of both commercial and residential properties.

The only access to Workshops 2B and 2C is from the loading area at the rear of the building. Workshop 2A (the present Application) enters from Glebe Street.

There are 8 offices above the workshops on the first floor of the building.

Each unit (2B and 2C) includes a secure alcohol store. Neither would sell direct to the public, but by using mail-order/internet to order the alcohol, for later delivery:

- Unit 2B (NALB 516): total floor area 101.6 sq.m., of which 24.8 sq.m. is a secure alcohol store

- Unit 2C (NALB 517): total floor area 76 sq.m., of which 13 sq.m. is a secure alcohol store.

For the purpose of the Operating Plans the capacity is nil in each case.

4. Legal effect of a "Provisional Premises Licence"

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 will then have to give the Board both a "Building Control Certificate" and a "Food Hygiene Certificate". A "Food Hygiene Certificate" is needed because there will be a "Food Business" within the Food Safety Act 1990. This Certificate is needed for a shop which sells tinned or packaged food, as well as for a restaurant or any Premises serving prepared food. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

5. 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.

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 the Applicant proposes modifications to address the issue(s) raised below, the Board should consider those proposals.

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

The potential Ground for Refusal which may exist is Overprovision may result from the grant of the Licence.

Overprovision may result from the grant of the Licence

1. Section 23(5)(e) 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 2018-23, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

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; 'Meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table, and is available at all times until 45 minutes before the terminal licensed hour;
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 (the Board calls these 'Part K Clubs').

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 with 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) **Locality:** The Subject Premises are in the "Three Towns" Locality (Ardrossan, Saltcoats & Stevenston) (Locality 2);

(b) **'Additional Factor' (Locality):** The Premises are in a Locality where Applications are especially unlikely to be granted (regardless of the Function Type);

(c) **Function Type:** 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 Licensing Policy Statement includes:

"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." LPS 2018-23, Annex D, Paragraph 3.6.

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.

6. Summary of issues for Board

The Board should consider whether or not the Premises Licence should be granted.

7. Licence Conditions

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

- A (All Premises)

B (Off-Sales)

8. Notes to Applicant

The Board's decision is not:

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

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

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

The Licensing Board does not grant this Licence.

Personal Licence Review Hearing - Section 83

Licence Holder	Sheila Bannatyne
Ref.	NA2784

1. Introduction

Within one month of conviction of a "Relevant or Foreign Offence" (offences which are on a statutory list - The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513) a Personal Licence Holder must tell the Board (Section 82(2)).

The Licence Holder here complied with this legal obligation.

The Police have confirmed details of the conviction and a copy of their letter will be in Members' Background Papers.

2. Circumstances

The Police have not made a Recommendation that the Board should Revoke, Suspend or Endorse the Personal Licence (Section 83(5)). The Police view is not binding on the Board.

3. Hearing Procedure

Under Section 83 the Board must hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

4. Board's Powers on Review

The Board must proceed in two stages:

Stage 1

The Board must answer this question:

"Is the Licence Holder not a fit and proper person to be the holder of a Personal Licence, having regard to the Licensing Objectives?"

The Licensing Objectives are:

- (a) preventing crime and disorder,
- (b) securing public safety,

- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting 'Children' or 'Young People' from harm (any persons aged under 18) (Section 4)

The statute uses the phrase "having regard to the Licensing Objectives" to direct the Board's attention to the relevance of the offender's conduct to the sale of alcohol. This is not the general 'fit and proper' test which applies in other types of Licensing. It would be possible for a Board to say:

"The offence here has no relevance to the sale of alcohol. The offender has already been dealt with by the Court, so it is inappropriate for the Licensing Board to do more."

What happens next depends on the Board's answer:

"yes, the Licence Holder is NOT a fit and proper person"

then:

- (a) the Board should decide which Licensing Objective(s) are relevant,
- (b) the Board **must** revoke the Personal Licence (the Board have no discretion) - the Licence is revoked altogether, rather than simply being suspended for a time (Section 83(9A), as added by Air Weapons and Licensing (Scotland) Act 2015, and S.S.I. 2017/119).

"no, the Board is not prepared to say that the Licence Holder fails THAT 'fit and proper' test"

then the Board must proceed to Stage 2.

Stage 2

If the Board reach Stage 2, it now has a **discretion**.

If the Board consider it is necessary for any of the Licensing Objectives, the Board **may**:

- (a) Revoke the Personal Licence,
- (b) Suspend the Personal Licence for up to 6 months, or
- (c) Endorse the Personal Licence.

The Board is not obliged to take any of these steps and may decide to take no further action.

5. Effect of Endorsement

An Endorsement lasts 5 years. If a Licence-Holder gets 3 Endorsements in a 5-year period, then there is a further Hearing, at which the Licence might be Suspended (for up to 6 months) or Revoked.

An Endorsement will be noted in Annex C to the Personal Licence.

6. Administration

Whether or not the Board take any action (a) (b) or (c), any conviction for a 'Relevant or Foreign Offence' will be updated in Annex B to the Personal Licence: Section 89(4). The Licensing Office will issue an updated document to the Licence Holder.

7. Appeal to the Sheriff

The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing:

- (a) The Board's decision stands during the appeal process and is not postponed pending the Sheriff's decision (Section 132(7));
- (b) the appeal procedure involves lodging a "Summary Application" at Kilmarnock Sheriff Court within 21 days of the Board's decision (Rule 3.34 of the Summary Application Rules 1999 No. 929 (as substituted by Article 9 of the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2010 No. 416); and
- (c) The Sheriff may order the Licence Holder to pay a deposit of up to 25 times the Court lodging fee (Rule 2.24).

8. Revocation or Suspension of a Premises Manager's Licence

If the Licence Holder is a Premises Manager and the Personal Licence is revoked or suspended, then the Premises Licence Holder has:

- (a) 7 days to notify the Board that the Licence Holder is no longer acting as the Premises Manager; and
- (b) 6 weeks to apply to the Board for a variation to appoint a new Premises Manager (Schedule 3, Paragraphs 4(1)(b) & (c), Section 54).

CASE 9

Unless both (a) and (b) are done, the Premises are liable to be closed by the Police because there is no Premises Manager.

Personal Licence Review Hearing - Section 83

Licence Holder	Margaret Pollock
Ref.	NA2602

1. Introduction

Within one month of conviction of a "Relevant or Foreign Offence" (offences which are on a statutory list - The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513) a Personal Licence Holder must tell the Board (Section 82(2)).

The Licence Holder here complied with this legal obligation.

The Police have confirmed details of the conviction and a copy of their letter will be in Members' Background Papers.

2. Circumstances

The Police have not made a Recommendation that the Board should Revoke, Suspend or Endorse the Personal Licence (Section 83(5)). The Police view is not binding on the Board.

3. Hearing Procedure

Under Section 83 the Board must hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

4. Board's Powers on Review

The Board must proceed in two stages:

Stage 1

The Board must answer this question:

"Is the Licence Holder not a fit and proper person to be the holder of a Personal Licence, having regard to the Licensing Objectives?"

The Licensing Objectives are:

- (a) preventing crime and disorder,
- (b) securing public safety,

- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting 'Children' or 'Young People' from harm (any persons aged under 18) (Section 4)

The statute uses the phrase "having regard to the Licensing Objectives" to direct the Board's attention to the relevance of the offender's conduct to the sale of alcohol. This is not the general 'fit and proper' test which applies in other types of Licensing. It would be possible for a Board to say:

"The offence here has no relevance to the sale of alcohol. The offender has already been dealt with by the Court, so it is inappropriate for the Licensing Board to do more."

What happens next depends on the Board's answer:

"yes, the Licence Holder is NOT a fit and proper person"

then:

- (a) the Board should decide which Licensing Objective(s) are relevant,
- (b) the Board **must** revoke the Personal Licence (the Board have no discretion) - the Licence is revoked altogether, rather than simply being suspended for a time (Section 83(9A), as added by Air Weapons and Licensing (Scotland) Act 2015, and S.S.I. 2017/119).

"no, the Board is not prepared to say that the Licence Holder fails THAT 'fit and proper' test"

then the Board must proceed to Stage 2.

Stage 2

If the Board reach Stage 2, it now has a **discretion**.

If the Board consider it is necessary for any of the Licensing Objectives, the Board **may**:

- (a) Revoke the Personal Licence,
- (b) Suspend the Personal Licence for up to 6 months, or
- (c) Endorse the Personal Licence.

The Board is not obliged to take any of these steps and may decide to take no further action.

5. Effect of Endorsement

An Endorsement lasts 5 years. If a Licence-Holder gets 3 Endorsements in a 5-year period, then there is a further Hearing, at which the Licence might be Suspended (for up to 6 months) or Revoked.

An Endorsement will be noted in Annex C to the Personal Licence.

6. Administration

Whether or not the Board take any action (a) (b) or (c), any conviction for a 'Relevant or Foreign Offence' will be updated in Annex B to the Personal Licence: Section 89(4). The Licensing Office will issue an updated document to the Licence Holder.

7. Appeal to the Sheriff

The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing:

- (a) The Board's decision stands during the appeal process and is not postponed pending the Sheriff's decision (Section 132(7));
- (b) the appeal procedure involves lodging a "Summary Application" at Kilmarnock Sheriff Court within 21 days of the Board's decision (Rule 3.34 of the Summary Application Rules 1999 No. 929 (as substituted by Article 9 of the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2010 No. 416); and
- (c) The Sheriff may order the Licence Holder to pay a deposit of up to 25 times the Court lodging fee (Rule 2.24).

8. Revocation or Suspension of a Premises Manager's Licence

If the Licence Holder is a Premises Manager and the Personal Licence is revoked or suspended, then the Premises Licence Holder has:

- (a) 7 days to notify the Board that the Licence Holder is no longer acting as the Premises Manager; and
- (b) 6 weeks to apply to the Board for a variation to appoint a new Premises Manager (Schedule 3, Paragraphs 4(1)(b) & (c), Section 54).

CASE 10

Unless both (a) and (b) are done, the Premises are liable to be closed by the Police because there is no Premises Manager.

Report
to
North Ayrshire Licensing Board
by
Solicitor (Licensing)

Subject:	Applications for 3 Occasional Licences requested by Thomas McGarrigle (Personal Licence NA/2974) for the Premises of "The Arran Gift Box Company", Brodick
Purpose	To summarise the Board's powers
Recommendation:	That the Board: (1) determine whether or not the circumstances merit a Policy exception; (2) if the Board considers that a Policy exception is justified: (a) to grant the Application for the first period; and (b) to authorise the Clerk to determine the remaining Applications.

1. Summary

Normally Applications for O.L.s are processed and granted by Board officers under Delegated Powers, and it is rare for the cases to be referred to the Board. The case here is being referred to the Board meeting because it is outside Deleted Powers so instead has to be decided by the Board. The Licence Applicant has been invited to attend.

2. The circumstances

Thomas McGarrigle has applied to the Board for 3 Occasional Licences ("O.L.s"), each lasting 14 days, for a total period of 42 days:

Friday 13 Oct – Thursday 26 Oct 2023 (file "13-261023")

Friday 27 Oct – Thursday 9 Nov 2023 (file "27-091023")

Friday 10 Nov – Thursday 23 Nov 2023 (file "10-231123")

The Premises are described as "Retail unit within visitor centre on the Isle of Arran" and the operation is "Sale of local Arran based goods and Scottish homeware". The applications state "No under-18s are to be permitted" although this is a tourist shop.

3. Policy

These Applications are outside NALB Policy so, although they are not illegal (in the sense that they break a statutory rule) they cannot be decided by Board Officers. The Policy is stated in Paragraph 8.6 of the Board's Licensing Policy Statement:

"8.6. The Board considers that O.L.s should be used only for genuine 'occasions', and should not be used for the operation of commercial Premises.

There is one exception: where Premises which were licensed have within the past 12 months ceased to be so, and have not been used for any other purpose since, the Board will consider granting one or more O.L.s, totalling not more than three months, provided:

(a) the operator of the Premises has applied, or confirmed that he will be applying, for a full Premises Licence (not a Provisional Premises Licence) and the Application has not been determined, and

(b) the Board is satisfied that that new Application is likely to call at a scheduled meeting of the Board within that period.

Any exception allowed on one occasion is without prejudice to any future decision."

The exception does not apply.

4. Delegation to the Convenor

The Board's Scheme of Delegations includes an authority to the Convenor (whom failing the Vice-Convenor, whom failing any Board Member) to authorise departure in a particular case of that Application from the Board's Policy on hours or any other matter.

Accordingly, since the particular requests were outside officers' Delegated Powers, the requests were referred to the Convenor. The Convenor thought that the matter should be considered by the whole Board, and declined to exercise that delegation.

5. Pre-meeting procedure

All Applications will be ready for the Board to make a decision on 18 September 2023. The Licensing team will have prepared the case like any other O.L. that was due for the Board:

[1] advertise the applications

[2] consult Police and LSO,

[3] if there are any Objections or Representations ("O/R") – e.g. from neighbours - then:

[a] these are copied to the Applicant,

[b] the makers of the O/Rs are invited to the Board meeting to state their cases (although whether or not they attend, the Board must have regard to the written O/Rs unless the Board dismiss them as "frivolous or vexatious")

[c] the O/Rs go in the Members' Background Papers,

In addition, because of the Policy issue, the Board will tell the Applicant that there is a Policy, and say that the Hearing on 18 September will be their chance to persuade the Board that an exception is justified.

6. Options

On 18 September 2023 the Board will consider any submissions made by the Applicant (and any comments from the Police, LSO or O/Rs).

The Hearing on 18 September will be the Applicant's chance to persuade the Board that an exception is justified: the Board will ask the question:

"What you are asking for is against our Policy, so we will start from the position that your application should be refused. You should ask us to treat your case as an exception, and explain to us why your case merits special treatment."

The Board then answers this question:

"As a matter of principle, do the circumstances of this case merit the Board treating the case as being entitled to a policy exception?"

What happens next depends on the Board's answer:

"No, an exception is not merited"

The Board would refuse all 3 Applications.

"Yes, an exception is merited"

The Board would proceed with a 'staggered' approach (reasons below):

[a] The Board would grant the Application for the first period and

[b] authorise the Clerk to use a 'staggered' approach with the others. The Clerk would no longer be prevented from using Delegated Powers by the Policy.

Although, as with any other O.L. application, future Applications might be referred to the Convenor if there are issues apart from the Policy, such as complaints from the Police or neighbours.

7. The 'staggered' approach

The reason for the 'staggered' approach is so that the Board can retain some control.

The legislation for Occasional Licences does not envisage that they will be repeated so does not have any procedure to allow a Board to revoke, suspend or vary them. This is in contrast with a permanent Premises Licence, where the Board can always hold Review Hearings and, if the complaint is upheld, revoke, suspend or vary the Licence.

This means that if the Board granted all the Occasional Licences at the start, the Board would be unable to do anything if later there were complaints from the Police or neighbours.

So the practice would be this. Each Licence lasts 14 days. The first one is granted. The Board does not grant the second one until the half-way point of the 14 days, so that if there are complaints about the operation then the Convenor can consider whether or not to grant a second Licence. The same procedure is followed with the second Application, and so on.

8. No precedent is being set

Decisions are made on a case-by-case basis so if the Board decides to allow an exception, neither the Applicant nor anyone else can have a 'legitimate expectation' that such an exception would be allowed in future. It remains the case that traders planning a long-term operation should consider seeking a Premises Licence rather than rely on a series of Occasional Licences.

AGENDA ITEM 4

Report
to
North Ayrshire Licensing Board
by
Solicitor (Licensing)

Subject:	Licensing (Scotland) Act 2005 – Review of existing Licensing Policy Statement and consideration of consultation responses for the Licensing Policy Statement 2023-2027
Purpose	To continue the review process
Recommendation:	That the Board: (a) consider the consultation responses, (b) give directions to the Clerk as to the content of a draft Licensing Policy Statement 2023-2027, and (c) continue consideration to a Special Meeting to consider the draft and to adopt it, with or without amendment.

A. Health Board presentation to the Board on 18 September 2023

The Health Board have been asked to give a presentation to the North Ayrshire Licensing Board at the next meeting on Monday 18 September 2023. They will send an electronic version of their presentation so that Council officers can set it up on the big screens in the Chambers.

B. Background

B.1. All Boards must have a "Licensing Policy Statement" ("LPS") setting out the Board's approach to a wide range of licensing matters (such as the Core Hours allowed to on-sales and off-sales, and overprovision).

B.2. Under Section 6 the Board must revise its LPS every 4 years. The current calculation of the 4-year period sets the revision date as 18 months after the last Council election. The last Council election was on 5 May 2022, so the period ends on Sunday 5 November 2023.

B.3. NALB adopted its first LPS in 2007 and it had been revised every 3 to 5 years ever since (the interval has varied as the legislation has changed, although it is now 4-yearly).

AGENDA ITEM 4

B.4. The policy only sets out guidelines, and not rigid rules – for example, at present NALB has an 'overprovision' policy that says that in most of North Ayrshire there is a presumption against either:

- new premises, whether on-sales or off-sales, or
- an increase in capacity.

But that is only a presumption. It just means that the Applicant is told in advance "The Board is likely to refuse". The Board cannot say "refuse" before hearing the Applicant. The Applicant might persuade the Board that the particular proposal is not destructive of the aims of the policy, so that the Board might agree to treat the particular case as an exception to Policy.

For example:

- the Board might well say "no" to a proposal for a new off-sales shop,
- the Board might be more sympathetic to a proposal for a new restaurant.

And even with the off-sales proposal no-one can say, in advance, "this is certain to be refused".

C. Revision Procedure

C.1. The procedure for revision involves public consultation. The procedure approved by the Board at its meeting on 26 June 2023 was that there should be a public notice placed on the website of either:

- NALB itself or
- the North Ayrshire Community Planning Partnership (NACPP),

in either case coupled with posts put on NAC's Facebook and Twitter accounts.

C.2. The social media posts were to the following effect:

"Do you have an opinion about the sale of alcohol in pubs, shops and other licensed premises? If you do, read this [link to website] "

C.3. The website notice published is Appendix A below ("Consultation document published on Website"). It:

- explained the purpose of a LPS,
- said where the current NALB one is (it is on the NALB website, along with the many supporting documents from the Health Board, Police and Fire),
- gave the NALB email address so that the public can send comments.

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C.4. The website notice asked the public to give opinions, e.g.

"Do you think that the policy on any matter should be different?"

Do you think the LPS should cover any matter it does not yet cover?

Why do you think that?"

C.5 Copies of the consultation document were sent to:

- (a) NHS Ayrshire & Arran,
- (b) Police Scotland,
- (c) Scottish Fire and Rescue,
- (d) all active Community Councils in North Ayrshire
- (e) North Ayrshire Drug and Alcohol Partnership,
- (f) North Ayrshire Council's Protective Services Department.
- (g) Unite Scotland (scotland@unitetheunion.org)
- (h) Scottish Beer & Pub Association (contact@beerandpub.com)
- (i) Scottish Grocers' Federation Healthy Living Programme (healthylivingeast@sgfscot.co.uk)

C.6 The Consultation document included "Examples of matters for discussion" (Part 6):

- (a) Overprovision
- (b) Occasional Licences
- (c) Trade Union "Safely Home" campaign

and stated:

*"These are **only** examples and the Board welcomes comments on **any** aspect of Licensing policy."*

C.7 The consultation period closed on Friday 25 August 2023. There were two responses, one from the Health Board and one from a member of the public. These are summarised in Appendix B below ("Summary of consultation responses").

D. Procedure

D.1. On Monday 18 September 2023 the Board can consider:

- the current LPS

AGENDA ITEM 4

- the responses to the consultation
- a presentation from the NHS

and give directions to the Clerk as to the preparation of a revised draft LPS. Appendix C contains "Suggested matters for consideration" which the Board might give directions on.

D.2 The Board will convene later, at a Special Meeting prior to the revision deadline on 5 November 2023, and adopt the draft, with or without changes.

Appendix A: Consultation document published on Website

North Ayrshire Licensing Board Licensing (Scotland) Act 2005, Section 6 Licensing Policy Statement 2023-2027

Members of the public and consultees are invited to make written comments (by letter or email) on the proposed Licensing Policy Statement 2023-2027, to arrive no later than Friday 25 August 2023.

1. How to give us your comments

If you believe any of the existing Policies should be changed, added to or deleted, please say why and how. If you have any statistics to support your opinion please send them.

Please send any comments by letter or email to:

Raymond Lynch

Clerk to the Licensing Board:
North Ayrshire Council
Democratic Services
Cunninghame House
Irvine
KA12 8EE

licensing@north-ayrshire.gov.uk

The Board will be told of all responses. Please note that all responses may be made public.

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[2. The present position](#)

The Licensing (Scotland) Act 2005 regulates the sale of alcohol in Scotland. It is administered by Licensing Boards. Every Licensing Board must publish a Licensing Policy Statement ("LPS") setting out its policy for the exercise of its functions under the Act. This must be reviewed and adopted every 4 years. The next LPS must be adopted before Sunday 5 November 2023. Boards must have regard to the LPS when exercising their functions, although the LPS is only a set of guidelines and each individual case is dealt with on its merits.

[3. The content of the LPS](#)

This is left up to individual Boards, but the Policies must seek to promote the Licensing Objectives (LOs). These are stated in Section 4:

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children and young people from harm.

The current North Ayrshire Licensing Board LPS is on the North Ayrshire Council website:

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

This page has several links to the documents from the Health Board, Police Scotland and the Scottish Fire and Rescue Service which were used in the preparation of the LPS.

The webpage also has the Board's Standard Conditions for Premises Licences (the current version of the Conditions is Edition 5).

To see these documents, right-click the mouse, and select 'Save Target As ...'. This will save the chosen document onto your own computer, so that you can then read it as a WORD or EXCEL document.

[4. Consultation](#)

The Board must consult before it decides on a LPS. As well as inviting members of the public to comment, the Board is inviting the following to make representations as to what the next LPS should contain:

- (a) NHS Ayrshire & Arran,

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- (b) Police Scotland,
- (c) Scottish Fire and Rescue,
- (d) all active Community Councils in North Ayrshire
- (e) North Ayrshire Drug and Alcohol Partnership,
- (f) North Ayrshire Council's Protective Services Department.
- (g) Unite Scotland (scotland@unitetheunion.org)
- (h) Scottish Beer & Pub Association (contact@beerandpub.com)
- (i) Scottish Grocers' Federation Healthy Living Programme (healthylivingeast@sgfscot.co.uk)

When the Board considers what the next LPS should contain, the Board will be told of any responses received.

5. Summary of the Alcohol Licensing System

Unlike the previous system (based on the Licensing (Scotland) Act 1976), where the only Licences related to individual Premises, the 2005 Act system has both 'Premises Licences' and 'Personal Licences':

Premises Licences:

- (a) These are roughly equivalent to the 1976 Act Licences. The Board now regulates Members Clubs in addition to the Public Houses, Restaurants, Hotels, Off-sales and other Premises that had Licences under the 1976 Act system. The 2005 Act replaced the 1976 Act system where Members Clubs were registered at the Sheriff Court rather than licensed by the Board;
- (b) There are over 300 Premises Licences in North Ayrshire;
- (c) The legislation applies some 'mandatory' conditions - these conditions apply across Scotland, and local Boards cannot change them. In addition, local Boards are entitled to apply their own conditions to reflect the LPS and Licensing Objectives, and in North Ayrshire this is done by 'Standard Conditions';
- (d) A Premises Licence lasts indefinitely, although with an Annual Fee (unlike the 1976 Act system, where Licences had to be renewed every three years).

Personal Licences:

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- (a) These Licences were introduced by the 2005 Act. Many people working in Licensed Premises have Personal Licences, and those who do not must have statutory training. Most Licensed Premises have at least one Personal Licence holder - many have two or more;
- (b) There are about 1,600 Personal Licences in North Ayrshire;
- (c) Unlike Premises Licences, there are no conditions (mandatory or local) for Personal Licences;
- (d) A Personal Licence lasts 10 years, but can be renewed indefinitely;
- (e) Holders must do 'refresher training' every 5 years to make sure that their knowledge of Licensing Law is up-to-date. If they do not do so then the Licence is automatically revoked.

Occasional Licences:

Premises which are not otherwise licensed (such as Community Halls) may apply for temporary "Occasional Licences". These last for the duration of a function (such as a wedding reception or party). Each year about 900 Occasional Licences are granted in North Ayrshire.

The Licensing Board cannot refuse an Occasional Licence or Personal Licence due to "Overprovision".

6. Examples of matters for discussion

These are **only** examples and the Board welcomes comments on **any** aspect of Licensing policy.

(a) Overprovision

The Board has an "Overprovision" Policy for "Premises Licences" which reflects a recognition that in some parts of North Ayrshire the link between drinking and crime and social problems make it inappropriate to grant new Premises Licences (or to allow an increase in size for existing Premises). This policy operates as a "presumption against", which means that when the Board look at a proposal for a new licence (or a request for an increase in size) the Board starts from the assumption of 'this proposal should be refused', and it is then for the Applicant to try to persuade the Board that the particular case can be treated as an exception to the policy.

Currently:

the policy operates a 'presumption against' all Premises Licences, but the 'presumption against' is stronger for some types of Premises, such as off-sales and public houses, and not as strong against Premises where the main activity is food or accommodation (restaurants and hotels).

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the policy is 'strongly against' in 4 of the 6 Localities in North Ayrshire:

“Three Towns” Locality (Ardrossan, Saltcoats & Stevenston)

“Kilwinning” Locality (including Pennyburn, Blacklands, Whitehurst Park, Woodside)

“Irvine and Area” Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torran yard)

“Garnock Valley” Locality (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton)

but not so 'strongly against' in 2 Localities:

“North Coast” Locality (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride)

"Isle of Arran" Locality

These variations

Questions

Do you think there should be any "Overprovision" Policy at all?

Do you think there should be an "Overprovision" Policy in some parts of North Ayrshire, but not in others?

Do you think there should be an "Overprovision" Policy for some types of Premises, but not for others?

(b) Occasional Licences

What sort of activities should Occasional Licences be used for?

(c) Trade Union "Safely Home" campaign

Should the Board recommend that On-Sales licence-holders should provide free transport for their staff after hours? (On-Sales like public houses and restaurants might stay open till midnight or later, but by Law all Off-sales must be shut by 10.00 p.m.).

The Board can only recommend that Licence-Holders should implement policies like "Safely Home" or "Ask for Angela". The Board cannot threaten to revoke or suspend Licences if Licence-Holders don't implement these recommendations.

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Appendix B: Summary of consultation responses

Two responses:

1. Ayrshire and Arran Health Board
2. Resident in Irvine

1. Ayrshire and Arran Health Board (25 August 2023)

BACKGROUND

The Licensing (Scotland) Act 2005 places a duty on Licensing Boards to publish a statement of their licensing policy outlining how they will protect the public's interests with regards to the supply of alcohol by promoting the five licensing objectives of:

- **Preventing crime and disorder;**
- **Securing public safety;**
- **Preventing public nuisance;**
- **Protecting and improving public health; and**
- **Protecting children and young persons from harm.**

The Public Health Department in NHS Ayrshire & Arran has considered the proposed Statement of Licensing Policy 2023- 2027 and provides the following comments relating to the promotion of the licensing objectives. We have given particular consideration to the objectives of: preventing crime and disorder; protecting and improving public health; and protecting children and young people from harm. We appreciate that the licensing objectives are a consideration throughout the Policy Statement not least in Section 4: Management of Premises, however have elected to make comment on each of the above separately.

We have also included comment on specific issues such as: overprovision; alcohol home deliveries; outside drinking areas; and occasional licenses which, we feel, require further consideration due to their potential contribution to alcohol-related risks and harms.

We submit these comments along with a data report illustrating alcohol deaths and alcohol-related hospital admissions in North Ayrshire and across its 6 localities. Data on alcohol-related hospital admissions is also available at the level of smaller communities or intermediate zones. This illustrates which communities are experiencing the greatest risks and harms to health and also how this is changing over time.

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COMMENTS

❖ **The Licensing Objectives: Preventing Crime and Disorder**

There is evidence of the impact that alcohol has on crime and anti-social behaviour. 44% of violent crime in Scotland is alcohol-related; and 41% of prisoners report being under the influence of alcohol at the time of their arrest.

It is welcomed that the Board supports a strategy aimed at making the area a safe place to live and visit and that it is committed to *'ensuring so far as possible that Licensed Premises are run in such a way as not to contribute to crime and disorder.'* It may also be helpful for the Board to consider how it might use its knowledge and influence to work with partnerships such as the Safer North Ayrshire Partnership and the Alcohol and Drug Partnership to maximise their collective impact given the effect that alcohol can have on crime and disorder and the role of licensing within this.

It is helpful to see set out clearly the issues the Board expects applicants to address in license applications. It is noted that examples are given in Section 4 of the existing Policy Statement of control measures expected by the Board such as dispersal policies and use of CCTV. It may be helpful to extend these examples further where possible in the revised Policy to include: staff training on policies and procedures for managing incidents; and installing lighting and safety infrastructure measures as a minimum.

It is welcome that examples of good practice are also provided in the existing Policy Statement under Section 4 such as Radiolink, Pubwatch and bottle marking. However, there may also be an opportunity to promote further examples in the revised Policy Statement such as: facilitating safe journeys home; conflict management training for staff; and participating in initiatives and campaigns such as 'Ask for Angela' aimed at keeping patrons safe.

❖ **The Licensing Objectives: Protecting and Improving Public Health**

The harmful impacts alcohol can have on health are well known and we have provided data to the Licensing Board on alcohol-specific deaths in North Ayrshire and more detail on alcohol-related hospital admissions across each locality and intermediate data zone¹.

At the most extreme end, alcohol specific deaths have increased in North Ayrshire over the last decade at a steeper rate than in East and South Ayrshire. From 2011-15 to the current period for which data are available (2017-2021), the increase in North was 51% compared to 22% for Ayrshire and Arran as a whole. The current rate is significantly higher than Scotland as a whole at 27 per 100,000 compared to 21 per 100,000 population. These deaths are essentially preventable and the impacts are felt more acutely in the most deprived areas in North Ayrshire which are experiencing a 4.5 times higher alcohol specific death rate than the least deprived communities.

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We are seeing an increase in more severe alcohol-related harms. In 2021/22 North Ayrshire had the 6th highest recorded figure (of 32 council areas) in Scotland that year for general hospital rates of alcoholic liver disease at 94 patients per 100,000 population compared to 71 per 100,000 in Scotland. This has more than doubled since 1997/98 from 39 patients per 100,000 population to 94 per 100,000 in 2021/22 – a 140% increase. Hospital admissions for alcohol dependence have also gradually risen over the last two decades in North Ayrshire from 54 patients per 100,000 population in 1997/98 compared to 95 per 100,000 in 2021/22, constituting a substantial increase of 76% over that period. This was the 4th highest recorded of the 32 Scottish council areas in 2021/22.

Evidence indicates that drinking habits polarised as a result of the pandemic, with an overall decrease in consumption for lighter drinkers and an increase for heavier drinkers. Combined with reduced access to services during this period, these changing drinking patterns may translate into increased harm.

As illustrated in the health data report accompanying this submission; there are number of specific communities in North Ayrshire who are experiencing alcohol related hospitalisations which are significantly higher than the Scottish average and it is likely that the pandemic and economic crisis are also being experienced differently by different parts of the population, widening existing inequalities and creating new ones. It can also take 20 years to see the full effects of changes in alcohol consumption on other health-related conditions, such as cancers. More detail on these communities is summarised under the section on overprovision below.

We welcome the fact that the Board is concerned about the link between the consumption of alcohol and public health and appreciates the statement that *'whilst the Board wishes to see premises thriving in the area, this cannot be at the expense of the health and wellbeing of patrons or the wider community'*.

We also appreciate the opportunity we have to engage in dialogue and present data and information to the Board in order to help inform its Statement of Licensing Policy and it is helpful to see intentions set out in the Policy Statement for working in partnership with and consulting the NHS on relevant licensing applications. It would also be useful to set out what other bodies and partnerships the Board might engage with in North Ayrshire moving forward to continue to inform this dialogue as well as formulate further suggestions of how the licensing objectives (including Protecting and Improving Public Health) might be promoted. This might include the NHS, Police Scotland, North Ayrshire Alcohol and Drug Partnership and local communities including those with lived or living experience of problematic alcohol use as well as licensees.

We also welcome the measures that the Board would expect to see when an applicant or license holder is formulating and implementing their operating plan in order that public health may be protected and can see these measures woven though Section 4 of the existing policy including its position on adult entertainment and the use of plastic glasses in late opening premises. We

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also welcome the reference in the current Policy Statement to gambling as we recognise the risks of co-locating gambling facilities and alcohol at the same premises given the relationship between and impact of both on health .

We would, however, like to see the revised Policy Statement go further with more detail against this objective of additional measures that the Board would like to see licensees consider and for this to be promoted to licensees in their everyday practice as well as when they are preparing operating plans.

Alcohol Focus Scotland (AFS) has produced a helpful resource which sets out suggested measures to promote all of the licensing objectives for both Licensing Boards and licensees. This refers to some of the measures the Licensing Board may wish to also reference against other licensing objectives. For example: measures to prevent crime and disorder can also be utilised to protect and improve public health; such as promoting designated driver campaigns and incentivising this with reduced cost or free soft/alcohol-free drinks. Other, more innovative measures to promote to applicants and licensees aimed at protecting and improving public health, which go beyond information provision and campaigns, include the following (more examples can be found in the AFS resource):

- **Making available low/non-alcoholic products and providing a greater range e.g. alcohol-free beer on tap**
- **Ensuring adequate staff training regarding the refusals policy and the effects of alcohol on the body (beyond the statutory minimum requirements for bar staff)**
- **Supporting customers to be aware of the number of units they are consuming through information provision and staff being aware, and being able to advise, on the strength of products they are dispensing**
- **Training and supporting staff to be vigilant and introducing standard approaches to responding to patrons who have consumed too much alcohol or are at risk;**
- **Development and promotion of workplace alcohol policies;**
- **Providing food on the premises, so that patrons may eat at the same time as consuming alcoholic beverages if they wish.**

It would also be beneficial for the Board to be mindful of those individuals who are experiencing or in recovery from problematic alcohol use and propose measures in the Policy Statement which may be supportive to their health and wellbeing. For example, we know from engagement with individuals with lived experience that locating alcohol displays at the entrance/exit/ centre of general retail premises create unnecessary pressure for individuals as they are forced to enter the alcohol display area to carry out their shopping.

❖ **The Licensing Objectives: Protecting Children and Young People From Harm**

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The clear expectations and measures set out under Section 4 in particular of the current Policy that licensees require to consider in relation to protecting children and young people are particularly positive and welcome.

It may be helpful if the Board sets out how it might engage with other bodies and partnerships on any application where concerns are raised regarding access for children and young persons. This might include the North Ayrshire Child Protection Committee or the Alcohol and Drug Partnership. Future engagement may also include dialogue with organisations, public stakeholders and licensees who may be able to suggest other measures which could be put forward to keep children and young people safe.

Home drinking also poses potential risks for children and young people, such as neglect or modelling of parental drinking . It would, therefore, be favourable if the Statement of Licensing Policy also takes account of alcohol-related risks to children occurring in private spaces as well as public. The risks to children resulting from parental alcohol consumption also include Foetal Alcohol Spectrum Disorder (FASD). This is an umbrella term that is used to describe a range of lifelong disabilities caused by prenatal alcohol exposure. It may, therefore, be pertinent for the Board to consider how best to support licensees to: increase staff awareness of the impact of parental alcohol consumption on children; how to recognise risk; and when and how to alert a relevant professional if they have concerns about the wellbeing of a child.

❖ **Annex D: Overprovision**

Although it is appreciated that the Board will be considering the impact of the COVID-19 Pandemic and other pressures particularly impacting on the hospitality sector in North Ayrshire we feel the evidence of alcohol risks and harms being experienced in North Ayrshire warrants the need to consider how controlling availability using an overprovision policy may help impact positively on this.

Evidence suggests that neighbourhood areas with a higher number of alcohol outlets have higher rates of alcohol-related deaths, alcohol-related hospitalisations and crime rates than those neighbourhoods with the least number of alcohol outlets . NHS Ayrshire & Arran is generally supportive of the Licensing Board's existing policy position of a 'presumption against' the granting of all new Premises Licences or a request for an increase in size to existing premises- placing the emphasis on the Applicant to make the case to the Board that a particular request should be treated as an exception to the policy.

Prior to the COVID-19 pandemic, the majority of alcohol (73%) was sold in off-sales premises. The pandemic further shifted alcohol sales and drinking from the on-trade to the off-trade with this proportion increasing to 90% in 2020 before decreasing slightly to 85% in 2021. We are therefore supportive of the position that 'presumption against' granting a license is stronger for off-sales in particular. In addition, as individuals are likely to travel to purchase alcohol

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it seems sensible that any action to limit the availability of alcohol should be taken across the Licensing Board area. This also requires to be considered in the context of alcohol deliveries which is explored further below.

As indicated in the information NHS Ayrshire & Arran has provided to the Licensing Board along with this response, alcohol related hospital admissions are higher in the communities also experiencing higher income deprivation. The most recent hospital data (2017-2021) highlights that 4 of the 6 areas in North Ayrshire where alcohol related hospitalisations are significantly higher than the Scottish average are in the 3 Towns locality (Saltcoats Central; Ardrossan Central; Stevenston Hayocks and Stevenston Ardeer). The other two areas are Kilwinning West and Blacklands (Kilwinning locality) and Largs Central and Cumbrae (North Coast and Cumbraes locality). All are areas which also experience significantly higher levels of income deprivation than the Scottish average. It is therefore worth considering whether Largs Central and Cumbrae may require some specific consideration when identifying additional areas to be included in the list where the presumption against granting an alcohol license is stronger.

❖ Paragraph 2.20 :Home Delivery

Alcohol deliveries are a growing area of retail associated with an increase in online shopping which has further developed in the context of COVID-19 restrictions. The types of businesses that sell alcohol online and deliver alcohol now is diverse and it is appreciated that many will operate out with the local authority area of the Licensing Board. There is also a dearth of data relating to the distribution areas of these retailers or the volumes and types of alcohol they sell. Given the lack of information about alcohol deliveries and online sales would it be possible for the Board to request that relevant licensees in their area provide data on the volume of alcohol being ordered for delivery, what type and where alcohol is being delivered to, as a minimum to support collective understanding of this area?

Given the recognition that the home is an unregulated environment, and that the continued shift to home drinking may result in negative impacts; it is positive that the Board has described measures in their Policy Statement, which retailers must adhere to. For example, steps taken to ensure age verification; and adequate record keeping. It would be helpful to retain this in the revised Policy Statement and consider strengthening these to include other measures which are consistent with promoting the licensing objectives such as: ensuring that alcohol deliveries are not left in nominated spaces; and protecting the safety of those delivering alcohol.

In addition, it is somewhat unclear why *orders* for delivery of alcohol can only be taken during licensed hours however, *deliveries* may take place out with these times, albeit not between the hours of midnight and 6am. It would perhaps be clearer and more consistent to stipulate that alcohol deliveries are also only permitted in line with licensed hours (i.e. between 10am and 10pm) providing the same 12 hour window.

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❖ Section 4: Management of Premises- Outside Drinking Areas

The guidance contained in the existing Policy Statement around the management of outdoor drinking areas remains positive. It may be worth considering in the revised policy if there are now more permanent outside drinking areas in place in North Ayrshire than before, perhaps as a result of COVID, and whether this has had a significant increase in the overall capacity of venues. It may be helpful to consider if a separate occupancy capacity may be required for external drinking areas. This would seem important in the interest of public safety and in preventing crime and disorder as well as protecting public health and ensuring access to adequate facilities. This requirement would also help with monitoring overall provision. In addition, it is worth acknowledging that outdoor drinking areas have the potential to increase the visibility of alcohol to those not necessarily accessing the premises including children and people in recovery which may have a detrimental effect.

❖ Section 8: Occasional Licences

Whilst we recognise the complexity of regulating the temporary sale or supply of alcohol it may be worth noting that the granting of occasional licences can have an impact on the general availability of alcohol and the cultural norm that alcohol is available in the majority of social situations. It would be useful for the Board to keep the number of occasional licenses granted under review with this in mind.

In the interests of protecting children and young people from harm, it may be helpful to consider if the revised Policy Statement could set out a presumption that an occasional licences will not be granted for events that are aimed primarily at children or young people or events where children and young people will be present where there are no other activities other than the sale of alcohol. It would be of interest for applicants to clearly set out how children and young people will be protected from harm and that they consider the reason for an occasional licence for an event to which children and young persons will have access.

It may also be helpful to give applicants examples of suitable measures that might be helpful in protecting children and young people from harm such as being vigilant about underage sales and proxy purchasing; giving consideration to the impact of adult alcohol consumption on children and young people who are present; and ensuring there are sufficient staff or responsible adults on hand to offer support where required. These measures would be equally appropriate for events granted occasional licenses as licensed premises. It is welcome that a number of positive measures are set out in Section 4 of the current Policy Statement specifically around children and young people on licensed premises. Many of these would be equally applicable in the context of occasional licenses.

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Notes

- i Scottish Crime and Justice Survey 2019 20
- ii NHS Ayrshire & Arran Public Health Research Team (2023) Alcohol Trends 2023 North Ayrshire
- iii Fraser C, Giles L. The impact of the COVID-19 pandemic on alcohol consumption and harm in Scotland and England: an evidence summary. Public Health Scotland; 2023 the-impact-of-the-covid-19-pandemic-on-alcohol-consumption-and-harm-in-scotland-and-england/
- iv Holmes, J. et al. (2012). The temporal relationship between per capita alcohol consumption and harm: a systematic review of time lag specifications in aggregate time series analyses. Drug and Alcohol Dependence, 123(1-3), 7-14.
- v Do 'environmental bads' such as alcohol, fast food, tobacco, and gambling outlets cluster and co-locate in more deprived areas in Glasgow City, Scotland? - ScienceDirect
- vi measures to promote the licensing objectives (alcohol-focus-scotland.org.uk)
- vii Alcohol Focus Scotland (2019) -parental-drinking-in-scotland discussion paper
- viii Cresh (2018) Alcohol Outlet availability and harm in East Ayrshire. <https://www.alcohol-focus-scotland.org.uk/media/310738/alcohol-outlet-availability-and-harm-in-east-ayrshire.pdf>
- ix Ponce Hardy, V. & Giles, L. Public Health Scotland 2002. MESAS Monitoring Report 2002 <https://www.publichealthscotland.scot/publications/mesas-monitoring-report-2022/#:~:text=Description,found%20in%20the%20workbooks%20below.>

2. Resident in Irvine

He wants the Board to alter policy for Outdoor Drinking Areas ('beer gardens') to reduce opening to 5pm or 6 pm (from the current 10 p.m.). He refers specifically to a public house in Irvine. This comment concerns a Board decision in 2021, when the Board granted a variation for a public house to allow an ODA. There was one objection, from neighbours (not the present LPS respondent). The Board's decision to grant was unanimous.

It is open to the Board to change the policy, but this would only immediately affect future decisions. Existing licences would continue to have 10 pm. On a case-by-case basis the Board could, after Review procedure, vary the Licence, but this change would only affect the particular premises.

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Board-wide retroactive variations are not allowed. In 2010 the Scottish Parliament allowed Boards to propose changes to conditions, but this power cannot be used because the Scottish Government has never made Regulations prescribing the variations which Boards may impose (Licensing (Scotland) Act 2005, Section 27A, inserted by a provision of the Alcohol (Scotland) Act 2010 commenced in 2011).

There would have to be a Board Hearing if anyone objected (which presumably Premises Licence Holders would do if the Board proposed to restrict their Licences).

Appendix C: Suggested matters for consideration

A. Overprovision Policy

The Board could review its policy on Overprovision, for example

- abandoning it altogether
- limiting its application to Premises which sell off-sales only
- limiting its application to areas where health and other statistics are substantially worse than the Scottish average
- setting out in the LPS factors which might lead it to allow an exception

Overprovision: "correlation v causation"

The Overprovision Policy is the practical application of the Board's Policy on the Licensing Objective "Protecting and Improving Public Health" (the "PHLO").

The Board must have regard to the 5 Licensing Objectives in all its functions. These are stated in the Licensing (Scotland) Act 2005, Section 4, and are:

- (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.

Of the 5 Licensing Objectives, with 4 of them there is no problem with linking the two concepts because the Board will have information which is specific to particular

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Premises. The exception is the 'Protecting and Improving Public Health' Licensing Objective. This is the " correlation v causation problem".

The Health Board can produce a lot of statistics on a 'whole area' basis (see their submission to the LPS consultation) but it's unlikely that anyone can produce specific evidence enabling the Board to point to particular Premises and say:

"The operation of those Premises is inconsistent with the Licensing Objective 'Protecting and Improving Public Health' ".

This is why the legislation has an alternative approach. Instead of requiring Boards to have specific evidence for the particular Premises, the Board can have an Overprovision Policy covering all or part(s) of its area, creating a presumption of refusal.

So, when a Board has to make a decision on:

- an Application for a new Licence, or
- an Application to increase the Capacity (display space in a shop, or the number of customers on on-sales premises),

the Board can say to the Applicant:

"Your premises are in an area with a 'presumption of refusal' due to poor health etc. figures, so we start from a presumption of refusal. Why should the Board grant your proposal – how will it help the Board meet the 'Protecting and Improving Public Health' Licensing Objective?"

Overprovision: Factors

It is for the Board to decide whether or not what the Applicant says justifies an exception from the Board's Policy. For example, Applicants have said:

"If my shop is granted a licence or expands its display:

- *I'll be able to employ X new staff,*
- *if I can stock a wider range of goods then it will benefit the public, because if they have more choice they can get all their shopping locally*
- *my business will be more profitable so it's more likely that the public will retain access to a local groceries outlet, and*
- *I myself will benefit because the business will be more profitable."*

The Board could take the view that the Licensing Objective refers specifically to 'Public Health' so:

- any supposed benefits to staff and/or Applicant are irrelevant, and

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- since 'Public Health' is unlikely to be improved by adding a new alcohol outlet or increasing an existing one,

the Application should be refused. But it can be suggested that that would be too strict a reading of the legislation. The whole of the Licensing (Scotland) Act 2005 is about regulating drinking, not stopping it: just looking at 'Public Health' is not enough.

Overprovision: Scottish Government Guidance

Previous LPSs were based on Guidance that was published in 2007. This was updated on 13 January 2023 and now includes:

"Assessing overprovision

5.31 There are a number of underlying principles that the Licensing Board should take into account as they approach the development of their statement of overprovision:

- *Licensing Boards should use alcohol-harm information (or potential alcohol-harm information) to identify localities and then proceed to consider the number, type and capacity of premises in those areas.*
- *It is the potential for undesirable consequences which is intended to be addressed through overprovision assessments as a requirement within the 2005 Act. This can be thought of as the cumulative effect of more and more licences being granted in a locality and what this means in respect of the effect on life in that area. It is the cumulative effect rather than the actions of any single operator that is key.*
- *If a Licensing Board considers there is at least potential for, or a reasonable basis for, concluding that there will be a risk of adverse impact on the objectives (should more premises licences be granted), it is entitled to come to the view that there is a state of overprovision.*
- *Consideration should be given as to whether aggregate information and evidence from a number of sources demonstrates a link between the availability of alcohol in an area and alcohol-related harm.*
- *To demonstrate a "dependable causal link", the proof of the link must be on a balance of probabilities. What this means in practice is that based on the evidence of harm in a locality, it is more likely than not that alcohol availability is a cause, or that increasing the availability of alcohol in that area will increase that harm.*
- *There is no simple numerical formula for pinpointing the threshold between provision and overprovision. Determining overprovision involves the application of reason and judgement in the interests of the community."*

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Overprovision: Basis of assessment - 6 Localities or 38 Intermediate Zones?

An issue with the data supplied in Board reports was raised by a Board Member who questioned why data was based on the 6 Localities in North Ayrshire.

This was the instruction of the last Board, and is used in the current LPS. The previous Board determined that the Overprovision Policy should be based on 6 'Localities', coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership (the Licensing (Scotland) Act 2005 leaves it to individual Boards to determine 'localities', which may include the whole Board area).

The Localities are:

- (1) "North Coast" Locality (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride)
- (2) "Three Towns" Locality (Ardrossan, Saltcoats & Stevenston)
- (3) "Kilwinning" Locality (including Pennyburn, Blacklands, Whitehurst Park, Woodside)
- (4) "Irvine and Area" Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranyard)
- (5) "Garnock Valley" Locality (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton)
- (6) "Isle of Arran" Locality

as opposed to the 38 Intermediate Zones in North Ayrshire.

An earlier LPS did present data based on the 38 Intermediate Zones, but the Board considered that that was an unnecessary complication and encouraged an approach that might be mathematically accurate but was unrealistic, given that people might well travel to buy alcohol.

For example, the "Three Towns" is a single locality but covers 9 Intermediate Zones:

- 1 Ardrossan North West
- 2 Ardrossan Central
- 3 Ardrossan North East
- 4 Saltcoats Central
- 5 Saltcoats North East
- 6 Saltcoats North West
- 7 Stevenston Ardeer
- 8 Stevenston Hayocks
- 9 Stevenston North West

There is a vast amount of data available but to assist comparison the Solicitor (Licensing) asked the NHS this time (2023) to use only the same 3 'health indicators' which we used in the two previous LPSs:

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Life expectancy: males

Life expectancy: females

Alcohol-related hospital stays

So the data is $3 \times 38 = 108$ items, provided as a colour-coded "Traffic Light" spreadsheet:

- red: Statistically significantly 'worse' than Scottish average
- amber: Statistically not significantly different from Scottish average
- green: Statistically significantly 'better' than Scottish average

Looking just at the 'Three Towns' Locality, the 'reds' predominate, but if the examination goes down to Intermediate Zone level one sees that in '**Ardrossan North West**' all the indicators are 'green' whereas in the neighbouring '**Ardrossan Central**' all the indicators are 'red'. So if there were effectively 38 different Overprovision Policies:

- an applicant in '**Ardrossan North West**' might say

"the Overprovision Policy doesn't need to apply to me"

whereas

- the Board would say to an Applicant in '**Ardrossan Central**' – perhaps only 100 metres from the boundary –

"We're starting from the presumption of refusal. You persuade us why we shouldn't refuse."

When the Board did have an Overprovision Policy based on Intermediate Zones, we could get round the 'near the boundary' issue by also giving the Board data for the surrounding Intermediate Zones, but Members may have felt that they were being swamped with detail.

There's an even smaller statistical unit called the "Data Zone" (which can cover areas of only a few streets). NAC consists of 138 Data Zones: a lot of official data is supplied at the "Data Zone" level, e.g. in the "Scottish Index of Multiple Deprivation" (SIMD). The Board has never used "Data Zones" before, and the advice offered by officers is that it should not do so now, as this would lead to more "It's largely a mathematic exercise and it's unrealistic" comments.

[Overprovision: National Records of Scotland: annual report "Alcohol-specific deaths":](#)

This was published on 29 August 2023 and is on the internet at:

<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/deaths/alcohol-deaths>

The website includes a summary of the report:

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"Small increase in alcohol-specific death statistics

Tuesday, 29 Aug 2023

The number of deaths from alcohol-specific causes rose in Scotland in 2022 by 2%, according to figures published today by National Records of Scotland.

In total 1,276 deaths were attributed to alcohol-specific causes last year, 31 more than in 2021; the highest number since 2008.

Male deaths continue to account for around two thirds of alcohol-specific deaths. Female deaths increased by 31 to 440, with the number of alcohol-specific male deaths unchanged at 836.

Taking into account the changing size and age-structure of the population, the rate of death had changed from 22.3 per 100,000 to 22.9 per 100,000 over the last year. This is not considered statistically significant.

Daniel Burns, Head of Vital Events Statistics, said:

"Looking at the long term trend the number of deaths from alcohol-specific causes fell between 2006 and 2012 but has risen since and is now about the same as 2010 levels.

"In 2022, the average age at death for females from an alcohol-specific cause was 58.7 years and for males it was 60.0 years."

There are 4.3 times as many deaths from these causes in the most deprived communities as in the least deprived communities but this equality gap has been narrowing. This compares to a ratio of 1.8 times for all causes of death."

B. "Safely Home", "Ask for Angela" and other initiatives

As the Law stands the Board can't do anything more than recommend to Licence Holders that they adopt the various initiatives.

The "Safely Home" initiative was at a meeting of North Ayrshire Licensing Board on 22 November 2021. While the Board were sympathetic to the aims, they considered that the matters raised were beyond the legal competence of Licensing Boards and would require legislation, so instead of adopting a requirement on Premises to provide travel for their staff the Board instructed the Convenor to write to the Scottish Government, and this was done.

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ⁱ NHS Ayrshire & Arran Public Health Research Team (2023) Alcohol Trends 2023 North Ayrshire