

Cunninghame House,
Irvine.

16 February 2017

North Ayrshire Licensing Board

You are requested to attend a meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Cunninghame House, Irvine on **MONDAY 20 FEBRUARY 2017** at **10.00 am** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. 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).

Licensing Board

Sederunt: Ronnie McNicol (Convenor)
 Tom Marshall (Vice-Convenor)
 Robert Barr
 John Bruce
 John Easdale
 Grace McLean
 Catherine McMillan
 Donald Reid

Chair:

Attending:

Apologies:

Meeting Ended:

Agenda Item 1

20 February 2017

North Ayrshire Licensing Board

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

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

Recommendation: That the Licensing Board determines the applications.

1. Introduction

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

2. Current Position

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

Clerk to the Licensing Board

Reference : WO'B/MC

For further information please contact William O'Brien , on 01294 324305.

APPENDIX A

Premises Licence Applications or any other Applications requiring a Hearing

Case No.	Licence No.	Applicant/Licence Holder Premises	Comments	
1.	0492	Derek Finnigan 89 Livingstone Terrace Irvine KA12 9DL	Lyrics 13 Bridgegate Square Irvine KA12 8BQ	Application for Grant of Provisional Premises Licence - Section 45
2.	0489	Irvine Rangers Supporters Club 135 Rear High Street Irvine KA12 8AA	Irvine Rangers Supporters Club 135 Rear High Street Irvine KA12 8AA	Application for Grant of Provisional Premises Licence - Section 45
3.	0488	Motor Fuel Group Building 2, Abbey View Everard Close St Albans Hertfordshire AL1 2QU	Murco Girdle Toll Service Station Littlestone Road Long Drive Irvine KA11 2DJ	Application for Grant of Provisional Premises Licence - Section 45
4.	0490	Gavin James Cook Ladeside House 9 Mill Road Kibirnie KA25 7DZ	The Auld Hoose 9 Main Street Dalry KA24 5DL	Application for Grant of Provisional Premises Licence - Section 45
5.	0491	Burhan Javid 20 Corton Lea Ayr KA6 6GJ	Alpine Stores 2 Dalry Road Ardrossan KA22 8LQ	Application for Grant of Provisional Premises Licence - Section 45
6.	038/17 - 040/17	Linda Ross c/o Black Hay Solicitors 45/47 Main Street Prestwick KA9 1AF	Alpine Stores 2 Dalry Road Ardrossan KA22 8LQ	Applications for Occasional Licence - Section 56 Clerk to Report
7.	0012, 0070, 0105, 0136, 0165, 0203, 0209, 0219, 0349, 0415, 0445, 0471	Co-operative Group Food Limited 1 Angel Square Manchester M60 0AG	Various Premises	Premises Licence Review Proposal - Section 37

- | | | | | |
|-----|------------------------|---|--|--|
| 8. | 0088, 0117, 0154, 0423 | Martin McColl Limited
Martin McColl House
Ashwells Road
Brentwood
Essex
CM15 9ST | Various Premises | Premises Licence
Review Proposal -
Section 37 |
| 9. | NA/2232 | Michelle Karen Bamforth | | Application for Grant
of Personal Licence -
Section 74 |
| 10. | NA/1863 | Faith Amanda Carey | | Personal Licence
Review Hearing -
Section 83(7) |
| 11. | 097/17 | Signature Works
(Scotland) Limited
18 Bank Street
Irvine
KA12 0AD | Pitchers
18 Bank Street
Irvine
KA12 0AD | Application for
Extended Hours -
Section 68
Clerk to Report |

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Derek Finnigan
Premises	"Lyrics", 13 Bridgegate Square, Irvine, KA12 8BQ
Ref.	492

Preliminary

This Report was prepared provisionally before the end of the Site Notice display period, which ends on 10 January 2017. No information about any objections or representations is noted here. If there are any, these will be copied to the Applicant, and all letters will be handed to Members at the Meeting.

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

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL).

On 12 December 2016 the Board refused an Application made by the Applicant for these Premises (NALB 485). The Board granted a request for a Direction under Section 25, and accordingly the Applicant did not have to wait 12 months before making a further Application, without having to satisfy the Board that there had been a material change of circumstances since the earlier refusal.

The present proposal relates to a part of a building in Bridgegate Square. The Premises are accessed from Bridgegate Square. The Premises consist of

- two flights of stairs
- a basement area containing a bar, kitchen, dance-floor and stage, and
- a sub-basement area which is described in the Application as a "lounge/coffee area" and is marked on the accompanying plan as "proposed community theatre".

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 after Certificates as to Building Control (and if appropriate Food Hygiene) are issued. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

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

CASE 1

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

2. Detailed proposal

(a) Licensed Hours

The Premises sell on-sales only. The proposal is shown in the table below. Either the proposal is within NALB Policy on licensed hours, and is shown 'OK', or the Policy is shown.

	<i>Proposal</i>	<i>Policy</i>
Monday	11.00 - 24.00	
Tuesday	"	
Wednesday	"	OK on all
Thursday	11.00 - 1.00	7 days
Friday	"	
Saturday	"	
Sunday	12.30 - 24.00	

Although Sunday Core Hours start at 12.30, Application says Premises are to open at 11.00 for breakfasts "to accompany Kids Rock Programme".

(b) Capacity

On-Sales (persons)	200
Standing / Seated	80 / 120 (40% / 60%)

(c) Activities other than the sale of alcohol

	<i>Proposal</i>
Accommodation	
Conference facilities	
Restaurant facilities	x *
Bar meals	x *
Receptions (weddings, funerals, birthdays, retirements, etc.)	x *
Club or other group meetings	x *
Recorded music	x *
Live performances	x *
Dance facilities	x *
Theatre	
Films	x
Gaming	x
Indoor/Outdoor sports	x *
Televised sport	x

Outdoor Drinking	
Adult entertainment	

Activities marked 'x *' are proposed outside core licensed hours.

Applicant says 'indoor/outdoor sports' means "darts practice etc."

Other activities
Comedy nights and other pub activities/games. Kids Rock Programme - accessible music tuition programme for children. Proposed Community Cinema. Community Bingo afternoon. Family entertainment afternoon every Sunday. Charitable fundraisers.

(d) Access for Under-18s

Terms (OP 6(b) & (c))	Must be with adult.
Times (OP 6(d))	Under-18s allowed until 20.00 or, if taking a meal, till end of meal.
Parts (OP 6(e))	All parts of Premises (except near bar).

3. Issues

The Board have 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 the Application is inconsistent with any of the Licensing Objectives.

The Board should consider all the potential Ground(s) for Refusal set out below:

- (1) Overprovision may result if the Application is granted
- (2) The Premises may be Unsuitable for the sale of Alcohol

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 none apply, the Board must grant: Section 23(4)-(5).

Overprovision
<p>1. Section 23(5) is:</p> <p><i>"(5) The Grounds for Refusal are— ...</i></p> <p><i>(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."</i></p>

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 2013-2018, Annex E). 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)

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

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

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

(c) the Application should be refused.

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

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

7. Applying the Policy to the present case:

(a) The Subject Premises are in the "Irvine and Area" Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torran yard) (Locality 4);

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

(c) The Subject Premises are in Function Type 3 (On-sales other than entertainment venues, e.g. public houses);

(d) Additional Factor (Function Type): any Application for Premises in FT 3 (public houses) 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 Board has ensured that the statistical basis of the Policy remains up-to-date. The Board has considered in cases since the LPS was adopted that it continued to be a reliable guideline. Extensive statistics, both on health and other matters, were considered prior to it being adopted, and the Board has been kept informed on more recent developments. At its meeting on 19 January 2015 the Board had received a Report on two further health reports produced since the current LPS was prepared:

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

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

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

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

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

AFS had also published local authority factsheets, and the one for North Ayrshire noted that a significant positive relationship was found between outlet density (on-

sales premises) and alcohol-related deaths and hospitalisations. It stated:

"Alcohol-related harm

In North Ayrshire as a whole there is:

- An annual average of 35 alcohol-related deaths (26 deaths per 100,000 adults). This is similar to the Scottish average of 25 deaths per 100,000.*
- An average alcohol-related hospitalisation rate ratio of 148. This is 48% higher than the Scottish average of 100."*

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

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

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

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

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

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

11. The LPS, Annex E includes:

"4.5(d) ... the Board accepts that the consumption of alcohol in any circumstances has the potential to injure health, and endorses the view that "alcohol is not an ordinary commodity" ..."

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

12. The LPS includes a spreadsheet comparing 10 Health indicators (taken from the 'Health and Wellbeing Profiles Spine Pack'). This spreadsheet rates each of the

38 Intermediate Zones in North Ayrshire (grouped in the six Localities). Indicators are colour-coded by a 'Traffic Light' system which colours each indicator:

red : Statistically significantly 'worse' than Scottish average

white : Statistically not significantly different from Scottish average

blue : Statistically significantly 'better' than Scottish average

To summarise the position over the whole of North Ayrshire:

Locality	Red	Blue
1. North Coast	6	35
2. Three Towns	59	9
3. Kilwinning	22	9
4. Irvine etc.	67	16
5. Garnock Valley	24	0
6. Arran	0	5

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

Unsuitable Premises

Section 23(5) is:

"The Grounds for Refusal are— ...

(d) that, having regard to—

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

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

(iii) the persons likely to frequent the Premises,

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

The Board propose to visit the Premises on 16 February 2017.

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

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

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

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

4. Observations

(a) Rights to building and surrounding area

The Applicant's agent on 12 December 2016 told the Board that, if the Licence was granted, the Applicant would regenerate the Bridgegate Square area. The Applicant has made a similar statement to the Community Council.

If the Applicant makes this statement to the Board, he should show that he has rights to the area outside the Premises, and does not only have rights to the interior, e.g. that he is not simply the Tenant of the part of the building containing the Premises. The Applicant should show the Board his title to the outside area.

(b) Darts

Where are darts to be played? Will children be there too?

The presence of Children in a place where darts or pool is played infringes Board conditions C.10.3(d) and (e), which are based on the Licensing Objectives 'securing public safety' and 'protecting Children from harm'.

Applicant should either undertake to exclude children from any place where darts or pool is to be played, or ask the Board for a dispensation.

(c) Seasonal Variations

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

The way for Premises to obtain extra hours is to apply to the Board for 'Extended Hours' under Section 68 (an Occasional Extension) as and when the hours are wanted. Applications should be lodged at least 28 days in advance of the proposed date (see Statement of Practice in Licensing Policy Statement 2013-18, Annex C - on Board's website). The individual requests are then copied to the Police, who can make representations. The Extension will be granted only if within Board Policy. Each year the Board decides the Policy for the forthcoming Christmas-New Year period.

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

(d) Films

The Operating Plan includes "Films" in a "proposed community cinema".

"proposed" - when will the Premises show films?

What sort of films - what will the audience be?

Will the audience need to pay?

The Applicant should advise Board what is intended, as the Applicant may require a Licence or Consent under the Cinema Act 1985. This Licence is granted by the Council's Licensing Committee, not the Licensing Board.

There may be exemptions depending on the type of film exhibition and the Premises used. The Applicant should discuss his requirements with staff.

(e) Gaming

The Operating Plan includes 'Gaming'. The provisions of the Gambling Act 2005:

- allowing "Equal Chance Gaming" (such as Poker) without a Permit
- allowing the use of Gaming Machines without a Permit (called "the Automatic Entitlement")
- allowing the playing of Bingo without a Licence
- Licensed Premises Gaming Machine Permits

only allow Gambling during the Core Licensed Hours.

If the Premises are open outside these hours then there must be no gaming and any Gaming Machines should be switched off.

The Applicant should discuss with the Licensing Standards Officer or other Licensing staff what permits will be needed, e.g. the "Authorised Entitlement" does not take effect until the Board are notified.

(f) Exclusion area around bar

Having regard to the Licensing Objectives "preventing crime and disorder" and "protecting children from harm", Applicant should confirm that these words can be added to the Operating Plan (OP 6(e)):

"No persons under 18 will be permitted to remain within 1 metre of the bar."

(g) Baby-changing Facilities

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

The Application does not indicate where these facilities would be.

Applicant should:

- (a) state where such facilities will be (Premises often meet the statutory requirement by providing facilities in a 'disabled toilet', although the Layout Plan

here shows only 'Gents' and 'Ladies');

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

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

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

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

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

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

5. Licence Conditions

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

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

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Irvine Rangers Supporters Club
Premises	135 Rear High Street, Irvine, KA12 8AA *
Ref.	489

* The Application describes the Premises as "135 Rear High Street, Irvine, KA12 8AA" but the accompanying plans show a building to the rear of 131/137 High Street, Irvine and the recent Planning Permission decision (16/01061/PP) described the Premises as "Outbuilding to rear of 131-137 High Street Irvine Ayrshire". The building does not have a frontage on High Street and is accessed from West Road.

Preliminary

This Report was prepared provisionally before the end of the Site Notice display period, which ends on 10 February 2017.

No information about any objections or representations is noted here. If there are any, these will be copied to the Applicant, and all letters will be handed to Members at the Meeting.

At the date of preparing this report, the Board does not have a Notice from the Chief Constable confirming whether or not the Applicant or any Connected Person has any Relevant or Foreign convictions (Section 21(3)). Until the Board has this Notice, the Board cannot decide the Application.

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

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL).

The proposal is for a non-profit making Club in a free-standing building. As well as supporting Rangers F.C. the Club shall also raise funds for local charities and good causes.

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 after Certificates as to Building Control (and if appropriate Food Hygiene) are issued. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

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

CASE 2

The Premises were a workshop and store. On 16 December 2016 NAC granted Planning Permission (16/01061/PP) for "Change of use and alterations of workshop to form social club". The Applicants have not applied for a Building Warrant but will need to do so for the conversion works. The Applicant does not yet need to lodge a Building Standards Certificate (at the PPL stage).

2. Detailed proposal

(a) Licensed Hours

The Premises sell on-sales only. The proposal is shown in the table below. Either the proposal is within NALB Policy on licensed hours, and is shown 'OK', or the Policy is shown.

	<i>Proposal</i>	<i>Policy</i>
Monday	11.00 - 24.00	
Tuesday	"	
Wednesday	"	OK on all
Thursday	"	7 days
Friday	"	
Saturday	11.00 - 1.00	
Sunday	11.00 - 24.00	

The Premises may open before 11.00 a.m. for teas, coffees and soft drinks for match days, funerals and members meetings, but alcohol will not be sold before 11.00 a.m..

(b) Capacity

On-Sales (persons)	100
Standing / Seated	20 / 80 (20% / 80%)

(c) Activities other than the sale of alcohol

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

Outdoor Drinking	
Adult entertainment	

(d) Access for Under-18s

No under-18s are allowed.

3. Issues

The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that (subject to the Board's views on the Licensing Objectives and 'unsuitable premises' issue and the - see below) there are no statutory reasons to refuse, and there is no breach of Board Policy.

Licensing Objectives

Any decision at the time of grant may be later reviewed if the Board is satisfied that the operation of the Premises is not consistent with any of the Licensing Objectives (Sections 36 - 39). The Board may then take such steps as it considers necessary or appropriate for the purposes of any of the Licensing Objectives. The available actions are:

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

Unsuitable Premises

Section 23(5) is:

"The Grounds for Refusal are— ...

(d) that, having regard to—

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

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

(iii) the persons likely to frequent the Premises,

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

The Board may wish to inspect the Premises or have a LSO report before determining this Application.

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

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

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

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

Overprovision

The Applicant is a Club which is entitled to the 'special treatment' under Section 125. This means that the Club is not counted for Overprovision purposes and Overprovision is not a possible ground of refusal.

4. Observations

(a) Seasonal Variations

The Application states that the Premises will take advantage of any seasonal variations available under Board Policy.

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

The way for Premises to obtain extra hours is to apply to the Board for 'Extended Hours' under Section 68 (an Occasional Extension) as and when the hours are wanted. Applications should be lodged at least 28 days in advance of the proposed date (see Statement of Practice in Licensing Policy Statement 2013-18, Annex C - on Board's website). The individual requests are then copied to the Police, who can make representations. The Extension will be granted only if within Board Policy. Each year the Board decides the Policy for the forthcoming Christmas-New Year period.

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

(b) Gaming

The Operating Plan includes 'Gaming'. The provisions of the Gambling Act 2005:

- allowing "Equal Chance Gaming" (such as Poker) without a Permit
- allowing the use of Gaming Machines without a Permit (called "the Automatic Entitlement")
- allowing the playing of Bingo without a Licence

- Licensed Premises Gaming Machine Permits

only allow Gambling during the Core Licensed Hours.

If the Premises are open outside these hours then there must be no gaming and any Gaming Machines should be switched off.

The Applicant should discuss with the Licensing Standards Officer or other Licensing staff what permits will be needed, e.g. the "Authorised Entitlement" does not take effect until the Board are notified.

(c). Club ("3 Guests Rule")

The Premises Licence would be subject to Standard Condition 1.2(g):

"The Club shall have, and while the Premises Licence has effect, shall maintain, a written constitution making the following provisions: ...

(g) That a maximum of 3 visitors per member shall be permitted in the Club premises provided they are signed into the Club by that member into a book kept for that purpose by the Club.

Where the Board determines that either

(i) the primary object of the Club is participation in golf, football, bowling or another sport, or

(ii) that the special circumstances of the Club's operation merit a departure from the 'three visitors' requirement,

and that the supply of alcohol would be merely ancillary to the primary object or special circumstances,

the Board may, on the written Application of the Club, dispense with the limitation to three visitors, but it shall remain the case that all visitors must be signed-in by a Member in a book kept for the purpose. From time to time, on one or more occasions, the Board may reconsider the question of dispensation and may withdraw or vary it."

The purpose of the condition is to ensure that Clubs maintain the character of "Members' Clubs" - that their facilities should be primarily for their own Members, and that non-Members should not regularly be allowed. A single Member should not be able to sign-in numerous 'guests'. If the Applicant wishes a waiver of the 'three visitors' condition, the Applicant should satisfy the Board that a departure from the condition would not undermine the character of the Club:

- how often would the Premises admit people who were not truly guests of members?
- why would they do this?

5. Licence Conditions

CASE 2

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

- A (All Premises)
- C (On-sale Premises)
- F (Entertainment)
- I (Clubs qualifying for special status under Section 125)

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Motor Fuel Group (trading as "Murco")
Premises	Girdle Toll Service Station, Littlestane Road, Long Drive, Irvine KA11 2DJ.
Ref.	488

Preliminary

This Report was prepared provisionally before the end of the Site Notice display period, which ends on 10 February 2017.

No information about any objections or representations is noted here. If there are any, these will be copied to the Applicant, and all letters will be handed to Members at the Meeting.

The Board are entitled, but not obliged, to request a report from the Chief Constable detailing all cases of Antisocial Behaviour, and all complaints or other representations made to Police, which have taken place on, or in the vicinity of, the Premises, in the previous year. (The Board's power is under Section 24A, as added by the Criminal Justice and Licensing (Scotland) Act 2010).

Before proceeding to determine the Application itself, the Board should decide whether or not to request a Report. If they do, they must defer further consideration until the Report is produced.

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

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL).

The proposal is for an off-sales convenience store on the same site as the petrol filling station at Hill Roundabout (between the A736 and Littlestane Road). 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 10.06 square metres.

A similar Application for this site, requesting 5.04 square metres, was made by B.P. Oil UK Ltd. to the Board. This was refused on 21st August 2013. A Statement of Reasons was issued and is attached to this Report. The Board's decision was not appealed against.

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 after Certificates as to Building Control (and if appropriate Food Hygiene) are issued. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

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

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

2. Issues

The Board should hear from the Applicant and all parties making comments on the Application, in relation to the 'issues' set out below.

There are 3 potential Grounds for Refusal:

- (a) Excluded Premises
- (b) Public Health
- (c) Overprovision

Ground (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)). However, it does not prevent all garages from selling alcohol, due to Section 123(5):

"Despite subsection (2)(b) [which makes 'garages' 'excluded premises'], 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)."

As interpreted by the Court of Session in BP Oil (UK) Ltd. v the Licensing Boards of Edinburgh and Glasgow ([2011] CS1H 29, 2011 SLT 491), the appropriate approach to the question "are the Subject Premises 'Excluded Premises' or not?" is to ask:

"are they already, or likely to become, the source of groceries for a number of local residents:

(a) where that number is not so small that it can be disregarded as a mere 'handful'; and

(b) who see the Premises as their principal source of either groceries or fuel?"

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 Subject 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 the Premises as their principal source of petrol/derv or groceries;

The answer to that question may decide the Application:

- (i) If the Board considers that the Subject Premises are 'Excluded Premises', then the Application must be refused. The Board would have no discretion, but
- (ii) If the Board considers that the Subject Premises are not 'Excluded Premises', then the Board would have the same discretion as it would when considering any other Application: it would have to consider whether or not any other Grounds for Refusal existed:

- (b) Public Health
- (c) Overprovision

and if either or both of those reasons existed, the Board should refuse. If neither existed, the Board should grant.

Ground (b) - The Application is inconsistent with Licensing Objective (d) ("protecting & improving public health")

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

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

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

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

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

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

Ground (c) - Overprovision may result if the Application is granted

1. Section 23(5) is:

"(5) The Grounds for Refusal are— ...

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

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

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2018, Annex E). 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)

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

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

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

(c) the Application should be refused.

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

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

7. Applying the Policy to the present case:

(a) The Subject Premises are in the "Irvine and Area" Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torransyard) (Locality 4);

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

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

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

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

9. The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted. 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 Board has ensured that the statistical basis of the Policy remains up-to-date and reliable. Extensive statistics, both on health and other matters, were considered prior to it being adopted, and the Board has been kept informed on more recent developments.

At its meeting on 19 January 2015 the Board had a Report on two further health reports produced since the current LPS was prepared:

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

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

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

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

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

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

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

"Alcohol-related harm

In North Ayrshire as a whole there is:

- An annual average of 35 alcohol-related deaths (26 deaths per 100,000 adults). This is similar to the Scottish average of 25 deaths per 100,000.*
- An average alcohol-related hospitalisation rate ratio of 148. This is 48% higher than the Scottish average of 100."*

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

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

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

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

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

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

The Board has determined many cases raising Overprovision since the LPS was adopted and considered that the LPS continued to be a reliable guideline.

11. The LPS, Annex E includes:

"4.5(d) ... the Board accepts that the consumption of alcohol in any circumstances has the potential to injure health, and endorses the view that "alcohol is not an ordinary commodity" ..."

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

12. The LPS includes a spreadsheet comparing 10 Health indicators (taken from the 'Health and Wellbeing Profiles Spine Pack'). This spreadsheet rates each of the 38 Intermediate Zones in North Ayrshire (grouped in the six Localities). Indicators are colour-coded by a 'Traffic Light' system which colours each indicator:

red : Statistically significantly 'worse' than Scottish average

white : Statistically not significantly different from Scottish average

blue : Statistically significantly 'better' than Scottish average

To summarise the position over the whole of North Ayrshire:

Locality	Red	Blue
1. North Coast	6	35
2. Three Towns	59	9
3. Kilwinning	22	9
4. Irvine etc.	67	16
5. Garnock Valley	24	0
6. Arran	0	5

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

Earlier decision

The August 2013 decision was made a few months prior to the Board adopting the present LPS (in November 2013). The earlier LPS was similar in many ways to the present one, although:

the previous LPS considered that each of the 38 Intermediate Zones in North Ayrshire were "Localities", but

the present LPS considered larger "Localities" (the whole of North Ayrshire is divided into six "Localities", corresponding to the areas used by the Community Planning Partnership).

Conclusion

The Board should consider all the potential Grounds of Refusal set out above. If any apply, the Board must refuse. If none apply, the Board must grant: Section 23(4)-(5).

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).

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)

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Gavin James Cook
Premises	"The Auld Hoose", 9 Main Street, Dalry, KA24 5DL
Ref.	490

Preliminary

This Report was prepared provisionally before the end of the Site Notice display period, which ends on 10 February 2017.

No information about any objections or representations is noted here. If there are any, these will be copied to the Applicant, and all letters will be handed to Members at the Meeting.

At the date of preparing this report, the Board does not have a Notice from the Chief Constable confirming whether or not the Applicant or any Connected Person has any Relevant or Foreign convictions (Section 21(3)). Until the Board has this Notice, the Board cannot decide the Application.

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

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL).

The proposal is for a Bar-Restaurant in Dalry Town Centre, with a Public Bar, Lounge Bar, and Outdoor Drinking Area.

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 after Certificates as to Building Control (and if appropriate Food Hygiene) are issued. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

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

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

2. Detailed proposal

CASE 4

(a) Licensed Hours

The Premises sell on-sales only. The proposal is shown in the table below. Either the proposal is within NALB Policy on licensed hours, and is shown 'OK', or the Policy is shown.

	<i>Proposal</i>	<i>Policy</i>
Monday	11.00 - 24.00	
Tuesday	"	
Wednesday	"	OK on all
Thursday	"	7 days
Friday	11.00 - 1.00	
Saturday	"	
Sunday	11.00 - 24.00	

(b) Capacity

On-Sales (persons)	126
Standing / Seated	The Applicant has not answered the questions in the form, and the Layout Plan does not show the positions of seats and tables, so Board staff cannot estimate the position.

(c) Activities other than the sale of alcohol

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

Activities marked 'x *' are proposed outside core licensed hours. Applicant wishes to operate before Licensing Hours to cater for breakfasts.

Other activities
Karaoke, quiz nights, dominoes

(d) Access for Under-18s

Terms (OP 6(b) & (c))	Must be with adult, for meals. No children under 5 allowed.
Times (OP 6(d))	Until 22.00.
Parts (OP 6(e))	All parts of Premises

3. Issues

The Board have 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 the Application is inconsistent with any of the Licensing Objectives.

The Board should consider all the potential Ground(s) for Refusal set out below:

- (1) The Application may be inconsistent with Licensing Objective(s)
- (2) Overprovision may result if the Application is granted

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 none apply, the Board must grant: Section 23(4)-(5).

Licensing Objectives

The Application includes an enclosed Outdoor Drinking Area. The Premises are in the centre of Dalry. Therefore one of the Licensing Objectives is engaged: L.O. (c): 'preventing public nuisance'

The Board is entitled to ask the Applicant to vary the proposal, e.g. to alter the times or locations of activities which might lead to noise or other nuisance.

Board may consider that its Standard Conditions are sufficient:

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

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

If the Board wish to prohibit all use of the Area (e.g. even for smoking), it may amend the Layout Plan and attach Condition X.4.

Even if the Board permit the Outdoor Drinking Area initially, it may review that decision later if satisfied that the operation of that Area is not consistent with that L.O..

Overprovision

1. Section 23(5) is:

"(5) The Grounds for Refusal are— ...

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

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

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2018, Annex E). 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)

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

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

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

(c) the Application should be refused.

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

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

both Additional Factors occur.

7. Applying the Policy to the present case:

(a) The Subject Premises are in the "Garnock Valley" Locality (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton) (Locality 5);

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

(c) The Subject Premises are in Function Type 3 (On-sales other than entertainment venues, e.g. public houses);

(d) Additional Factor (Function Type): any Application for Premises in FT 3 (public houses) is especially unlikely to be granted (regardless of the Locality). Even if the Board consider that the Premises are in FT4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), the Board would still be entitled to refuse the Application, but not bound to do so by its Overprovision Policy.

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 Board has ensured that the statistical basis of the Policy remains up-to-date. The Board has considered in cases since the LPS was adopted that it continued to be a reliable guideline. Extensive statistics, both on health and other matters, were considered prior to it being adopted, and the Board has been kept informed on more recent developments. At its meeting on 19 January 2015 the Board had received a Report on two further health reports produced since the current LPS was prepared:

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

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

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

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

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"Alcohol-related harm

In North Ayrshire as a whole there is:

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

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

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

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

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

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

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

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

11. The LPS, Annex E includes:

"4.5(d) ... the Board accepts that the consumption of alcohol in any circumstances has the potential to injure health, and endorses the view that "alcohol is not an ordinary commodity" ..."

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

12. The LPS includes a spreadsheet comparing 10 Health indicators (taken from the 'Health and Wellbeing Profiles Spine Pack'). This spreadsheet rates each of the 38 Intermediate Zones in North Ayrshire (grouped in the six Localities). Indicators are colour-coded by a 'Traffic Light' system which colours each indicator:

red : Statistically significantly 'worse' than Scottish average

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To summarise the position over the whole of North Ayrshire:

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2. Three Towns	59	9
3. Kilwinning	22	9
4. Irvine etc.	67	16
5. Garnock Valley	24	0
6. Arran	0	5

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

4. Observations

(a) Seasonal Variations

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

The way for Premises to obtain extra hours is to apply to the Board for 'Extended Hours' under Section 68 (an Occasional Extension) as and when the hours are wanted. Applications should be lodged at least 28 days in advance of the proposed date (see Statement of Practice in Licensing Policy Statement 2013-18, Annex C - on Board's website). The individual requests are then copied to the Police, who can make representations. The Extension will be granted only if within Board Policy. Each year

the Board decides the Policy for the forthcoming Christmas-New Year period.

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

(b) Gaming

The Operating Plan includes 'Gaming'. The provisions of the Gambling Act 2005:

- allowing "Equal Chance Gaming" (such as Poker) without a Permit
- allowing the use of Gaming Machines without a Permit (called "the Automatic Entitlement")
- allowing the playing of Bingo without a Licence
- Licensed Premises Gaming Machine Permits

only allow Gambling during the Core Licensed Hours.

If the Premises are open outside these hours then there must be no gaming and any Gaming Machines should be switched off.

The Applicant should discuss with the Licensing Standards Officer or other Licensing staff what permits will be needed, e.g. the "Authorised Entitlement" does not take effect until the Board are notified.

(c) Exclusion area around bar

Having regard to the Licensing Objectives "preventing crime and disorder" and "protecting children from harm", Applicant should confirm that these words can be added to the Operating Plan (OP 6(e)):

"No persons under 18 will be permitted to remain within 1 metre of the bar."

5. Licence Conditions

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

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

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Burhan Javid
Premises	"Alpine Stores", 2 Dalry Road, Ardrossan, KA22 8LQ
Ref.	491

Preliminary

This Report was prepared provisionally before the end of the Site Notice display period, which ends on 10 February 2017.

No information about any objections or representations is noted here. If there are any, these will be copied to the Applicant, and all letters will be handed to Members at the Meeting.

At the date of preparing this report, the Board do not have a Notice from the Chief Constable confirming whether or not the Applicant or any Connected Person has any Relevant or Foreign convictions (Section 21(3)). Until the Board have this Notice, the Board cannot decide the Application.

The Board have requested a report from the Chief Constable detailing all cases of Antisocial Behaviour, and all complaints or other representations made to Police, which have taken place on, or in the vicinity of, the Premises, in the previous year. (The Board's power is under Section 24A, as added by the Criminal Justice and Licensing (Scotland) Act 2010, Section 183(2) and SSI 2010-413).

If the Report is not available the Board must defer further consideration until the Report is produced: Section 24A(3).

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

1. Summary of Proposal

(a) The Applicant has applied for the Grant of a Provisional Premises Licence (PPL). The proposal is for a Convenience Store. They were previously Licensed (Core Hours 10.00 - 22.00, 7 days a week, capacity 18.08 square meters). The current proposal seeks the same.

(b) The Premises were licensed (NALB 448), but the Licence lapsed in early 2015 as the Registered Company which held the Licence was dissolved on 6 February 2015. This meant that the Licence itself ceased (Section 28). The only way it could be saved would be if it was transferred by the Administrator or Liquidator of the defunct company within 28 days. This did not happen.

(c) This meant that the Premises were trading illegally ever since. The situation was identified by Board staff on 9 January 2017, and that day they contacted the operator (Mr. Ahmad) to explain the situation and to advise him to seek independent legal advice with a view to applying for a new Licence.

(d) Mr. Ahmad understood the situation and told the Solicitor (Licensing) that

- all alcohol will be removed from display immediately
- no alcohol will be sold unless and until a Licence is in force, and

- an Application for a new Premises Licence will be lodged shortly.

The new Licence Application was lodged soon after. Instead of naming a Registered Company, the Licence is to be held by an individual. Burhan Javid is already the Licence Holder of the shop at 3/7 New Street, Dalry (NALB 404).

- (e) If the ASB Report which the Board requested from the Police is not available on 20 February, so that the case has to be continued to 20 March, the Applicant may ask the Board to alter its practice on the granting of Occasional Licences.

The Board's Policy is stated in the Licensing Policy Statement:

"8.5. 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, 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."

Before making a decision on whether or not the present case should be treated as another exception, the Board may wish to know the views of the Police.

- (f) The Application requests a Provisional Premises Licence, rather than a 'full' Premises Licence, but this was done only to lodge the Application as soon as possible, without waiting for the usual Certificates as to Building Control and Food Hygiene to be issued. These Certificates are now available, so if the Applicant pays the balance of the fee (to 'upgrade' the Application from 'provisional' to 'full') then the Premises can start selling alcohol as soon as the Board determines the Application.

2. Issues

Although the Premises were Licenced until early 2015, and were in fact operating until January 2017, the Board is entitled to approach the present Application on the basis that this is a new application.

The Board's Licensing Policy Statement includes:

"4.7. Subsequent Events

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

(LPS 2013-2018, Annex E, Paragraph 4.7)

The Board should consider:

- (a) Licensing Objective 'preventing crime and disorder'
- (b) Licensing Objective 'protecting & improving public health'
- (c) Overprovision

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

(a) The Premises operated illegally for almost two years.

(b) This Report was prepared before the ASB Report requested from the Police was available. If this Report indicates that there is criminal conduct associated with the Premises, e.g. under-age selling, 'agency' sales on behalf of under-18s, or disorder, the Board would be entitled to take that into account.

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

The L.O. expressly states 'improving'. The creation of a new facility to sell alcohol is not likely to improve public health. Opinions may differ as to whether:

- (i) it damages public health, or
- (ii) makes no difference (e.g. it might be said that adding a facility here does not increase the overall amount of alcohol consumed in society, but all that will happen is that the market will re-distribute supply);

but it is unlikely to improve it.

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

(c) Overprovision

1. Section 23(5) is:

"(5) The Grounds for Refusal are— ...

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

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

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2018, Annex E). 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)

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

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

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

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

7. Applying the Policy to the present case:

- (a) The Subject Premises are in Locality 2 : "Three Towns" (Ardrossan, Saltcoats & Stevenston).
- (b) Additional Factor (Locality): The Premises are in a Locality where Applications are especially unlikely to be granted (regardless of the Function Type).
- (c) The Subject Premises are in Function Type 1 (Off-sales).
- (d) Additional Factor (Function Type): any Application for Premises in FT 1

(Off-sales) is especially unlikely to be granted (regardless of the Locality);

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

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

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)

Premises Licence Review Proposal - Section 37

Premises	Ritchie Street, West Kilbride (NALB 136) Cardiff Street, Millport (471) The Promenade, Largs (445) Main Street, Kilwinning (165) Holmhead, Kilbirnie (209) Caldon Road, Irvine (415) Townfoot, Dreghorn (070) New Street, Dalry (203) Medine Avenue, Beith (219) Main Street, Lamlash (012) Main Street, Invercloy (349) Shore Road, Brodick (105)
Premises Licence Holder	Co-operative Group Limited

1. Background

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

Date:	8 March 2013
Court:	Sussex (Northern) Magistrates Court
Offence:	Breach of Section 3 (1) Health and Safety at Work Act 1974 (Breach of H & S Regulations)
Disposal:	Fine £23,300

Date:	14 May 2016
Court:	Bath Magistrates Court
Offence:	Breach of Section 3 (1) Health and Safety at Work Act 1974 (Breach of H & S Regulations)
Disposal:	Fine £20,000

These are "Relevant Offences" (as prescribed by The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513).

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

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

The Health and Safety at Work Act 1974 is the basis of many Regulations about things like the safety of customers and employees. These Regulations have little or nothing to do with the sale of alcohol.

2. Action

Given

- (a) that the convictions relate to Premises outside North Ayrshire and are unlikely to have a bearing on Premises within the Board's area, and
- (b) the likelihood that the convictions relate to the operation of a food shop as opposed to the selling of alcohol,

the Board may wish to conclude the Review by taking no action. If the Board considers that Revocation or the other steps otherwise available may be appropriate, and wishes to be addressed by the Licence Holder, the case should be continued to a later meeting.

Premises Licence Review Proposal - Section 37

Premises	45/47 Moorburn Road, Largs (NALB 88) 23 West Doura Court, Kilwinning (117) 21-27 Old Raise Road, Saltcoats (154) 16-18 Central Avenue, Ardrossan (423)
Premises Licence Holder	Martin McColl Limited

1. Background

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

Date:	15 March 2016
Court:	Ipswich Magistrates Court
Offence:	(i) 2 x Breach of Licensing Act 2003, Section 146(1) & (7) (Sale of alcohol to persons under the age of 18) (ii) Under age sale
Disposal:	(i) Fine - £3,000 for each offence (ii) Fine - £4,000

The offence does not itself apply to Scotland, but the offence is treated as a "Foreign Offence" under Section 129(2) of the 2005 Act, since it is an offence under the law of any place other than Scotland which is similar in nature to any "Relevant Offence" as prescribed by The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513. Those Regulations cover an offence under the Licensing (Scotland) Act 2005.

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

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

2. Action

Although the above convictions relate to the sale of alcohol the Board may consider that, as that Premises concerned are based outside North Ayrshire, the offences are unlikely to have a bearing on Premises within the Board's area.

The Board may therefore wish to conclude the Review by taking no action. If, however, the Board considers that Revocation or the other steps otherwise available may be appropriate, and wishes to be addressed by the Licence Holder, the case should be continued to a later meeting.

Application for Grant of Personal Licence - Section 74

Applicant	Michelle Karen Bamforth
Ref.	NA/2232

1. Summary

The Applicant has applied for a Personal Licence. The Application is not advertised and the only consultation involves the Chief Constable, who is to provide the Board with a letter confirming whether or not the Applicant has been convicted of 'relevant or foreign offences'.

A copy of the letter will be given to Members.

The Chief Constable has reported that this Applicant has been convicted of one or more such offences.

The information was not supplied by the Applicant, who replied "none" to the relevant question in the Application form.

2. Police Recommendation

If the Chief Constable considers that it is necessary for the purposes of any of the Licensing Objectives that the Application should be refused, he may recommend this under Section 73(4). He has not done so.

3. Procedure

A copy of the Police letter and of this Report has been sent to the Applicant, together with Intimation of the Board Hearing.

At the Hearing, the Board must have regard to

- (a) the Chief Constable's letter
- (b) any comments made by the Applicant.

4. Board's Powers

If the Board is satisfied that it is necessary to refuse the Application for the purposes of any of the Licensing Objectives, it must do so. Otherwise, it must grant the Application.

All Personal Licences are valid for 10 years, and can be renewed indefinitely at 10 year intervals. The Board cannot limit the length of the grant or attach conditions.

5. Subsequently

The Applicant can appeal to the Sheriff if the Application is refused. The Chief Constable cannot appeal if the Application is granted.

After a decision to grant, if any of these occur:

- (a) the Licence Holder is convicted of an offence during the currency of the Licence, or
- (b) the Board, while dealing with a Premises Licence Review, makes a finding that the Holder has acted in a manner which was inconsistent with any of the Licensing Objectives, or
- (c) the Chief Constable considers that the Holder has acted in a manner which is inconsistent with any of the Licensing Objectives,

the Board will be entitled to hold a Hearing which may lead to the Revocation, Suspension for up to 6 months, or the Endorsement of the Licence. If 3 Endorsements are imposed within a 5-year period, the Board may Suspend or Revoke the Licence.

The Holder must obtain a fresh Licensing Qualification every 5 years, failing which the Licence is automatically revoked, without Board discretion or Appeal to the Sheriff.

Personal Licence Review Hearing - Section 83(7)

Licence Holder	Faith Amanda Carey
Ref.	NA/1863

1. Background

The Board has received confirmation from the Chief Constable that the Personal Licence Holder has been convicted of a 'relevant or foreign offence'. Copies of the letter will be distributed to Members at the Meeting.

The information was also supplied by the Holder within one month after the date of the conviction, as required by statute.

The Chief Constable is entitled to make a recommendation that the Personal Licence should be Revoked, Suspended or Endorsed, but has not done so.

2. Procedure

Under Section 83(7) the Board must, on receipt of that confirmation, hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

At the Hearing, the Board must have regard to

- (a) the conviction
- (b) any comments made by the Personal Licence Holder,
- (c) any comments made by the Chief Constable.

3. Board's Powers on Review

If the Board considers 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,
- (c) Endorse the Personal Licence. An Endorsement lasts 5 years. If a 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.

The Board is not obliged to take any of these steps, and may decide to take no further action. The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing.

