



Licensing Board

Wednesday, 07 September 2022

NOTICE IS HEREBY GIVEN that a Meeting of the **Licensing Board** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Wednesday, 07 September 2022** at **14:00**.

BUSINESS

1. **Sederunt**
2. **Appointment of Chair**
3. **Declaration of Group Decisions and Members Interests ***
- 4a. **Minute of the Meeting of the Board 23 March 2022** 5 - 6
- 4b. **Minute of the Meeting of the Board 30 June 2022** 7 - 12
5. **Annual Review of Licensing Fees** 13 - 24
- Report by Clerk to the Board
6. **Review of Premises Licence** 25 - 28
- Report by Clerk to the Board
7. **Application List 7 September 2022** 29 - 44
- 7a. **22 00178 PRELIC - Dunphail Distillery**
- 7b. **22 01058 PREVMA - Lhanbryde Post Office**
- 7c. **22 01332 PREVMA - McKays Mini Market Portnockie**
- 7d. **22 01334 PRELIC - McKays Mini Market Cullen**
- 7e. **22 01371 PREVMA - Thistle Bar Forres**
- 7f. **22 01351 PRETHA - Club 59 Rothes**
- 7g. **22 01443 PREVMA - Hopeman and District Bowling and Social Club**

GUIDANCE NOTES

* **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

** **Written Questions** - Any Member can put one written question about any relevant and competent business within the specified remits not already on the agenda, to the Chair provided it is received by the Proper Officer or Committee Services by 12 noon two working days prior to the day of the meeting. A copy of any written answer provided by the Chair will be tabled at the start of the relevant section of the meeting. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than 10 minutes after the Council has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he or she can submit it in writing to the Proper Officer who will arrange for a written answer to be provided within 7 working days.

*** **Question Time** - At each ordinary meeting of the Committee ten minutes will be allowed for Members questions when any Member of the Committee can put a question to the Chair on any business within the remit of that Section of the Committee. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than ten minutes after the Committee has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he/she can submit it in writing to the proper officer who will arrange for a written answer to be provided within seven working days.

THE MORAY COUNCIL

Licensing Board

SEDERUNT

Councillor James Allan (Member)
Councillor Peter Bloomfield (Member)
Councillor Neil Cameron (Member)
Councillor Tracy Colyer (Member)
Councillor David Gordon (Member)
Councillor Scott Lawrence (Member)
Councillor Sonya Warren (Member)
Councillor Ben Williams (Member)

Clerk Name:	Lindsey Robinson
Clerk Telephone:	07966 120593
Clerk Email:	committee.services@moray.gov.uk

Minute of Meeting of the Licensing Board

Wednesday, 23 March 2022

Remote Locations via Video Conference,

PRESENT

Councillor James Allan, Councillor David Bremner, Councillor Frank Brown, Councillor Gordon Cowie, Councillor Ryan Edwards, Councillor Amy Taylor

APOLOGIES

Councillor Maria McLean, Councillor Louise Nicol

IN ATTENDANCE

Also in attendance were Sean Hoath, Depute Clerk to the Board, Tracey Sutherland Committee Services Officer, Moray Council and Sergeant Neil Grant, Police Scotland.

1. Declarations of Group Decisions and Members Interests

In terms of Standing Order 20 and the Councillors' Code of Conduct, there were no declarations from Group Leaders or Spokespersons in regard to any prior decisions taken on how Members will vote on any item on the agenda or any declarations of Member's Interests in respect of any item on the agenda.

2. Minute of the Meeting of the Board 9 February 2022

The minute of the meeting of the Licensing Board on 9 February 2022 was submitted and approved.

3. 22-00119 - PREVMA - Harbour Lights

The Legal Adviser introduced the application and advised the Board that all paperwork was in order and that there were no objections or representations.

The applicant addressed the Board and responded to questions.

Following consideration Councillor Allan moved to grant the application. This was seconded by Councillor Edwards and there being no one otherwise minded the major variation was granted.

4. 22-00231-PREVMA - Craigellachie Filling Station

The Legal Advisor introduced the application and advised the Board that all paperwork was in order and that there were no objections or representations.

The applicant addressed the Board and responded to the questions raised.

Following consideration, Councillor Cowie moved to grant the application. As there was no one otherwise minded, the variation was granted.

5. 22-00328-PREVMA - Cragganmore Distillery

The Legal Advisor introduced the application and advised the Board that all paperwork was in order and that there were no objections or representations.

The applicant's representative addressed the Board and responded to the questions raised.

Following consideration, Councillor Bremner moved to grant the variation. This was seconded by Councillor Edwards and there being no one otherwise minded, the variation was granted.

6. 22-00331-PREVMA - The Whisky Castle

The Legal Advisor introduced the application and advised the Board that all paperwork was in order and that there were no objections or representations to date. He further added that the consultation period did not end until 23 March 2022 however the Board could choose to grant the application on the condition that no objections or representations were made before the end of the consultation period.

The applicant addressed the Board and responded to the questions raised.

Following consideration, Councillor Edwards moved to grant the major variation subject to no adverse objections or representations being received. This was seconded by Councillor Bremner and there being no one otherwise minded, the major variation was granted subject to no adverse objections or representations being received.

7. 22-00208-PRELIC - Deli Next Door

The Legal Advisor introduced the application and advised the Board that all paperwork received was in order and that there had been no objections or representations received. He further added that the Section 50 from Building Standards was outstanding, however the Board could agree to grant a provisional licence until all necessary paperwork has been received.

The applicant addressed the Board and responded to the questions raised.

Following consideration, Councillor Brown moved to grant the new provisional premises licence. This was seconded by Councillor Allan and there being no one otherwise minded, the new provisional premises licence was granted.

Minute of Meeting of the Licensing Board

Thursday, 30 June 2022

Remote Locations via Video Conferencing

PRESENT

Councillor James Allan, Councillor Neil Cameron, Councillor Tracy Colyer, Councillor Scott Lawrence, Councillor Ben Williams

Councillor Peter Gordon, Councillor David Gordon and Councillor Sonya Warren were present as observers

IN ATTENDANCE

Also in attendance at the above meeting were Sean Hoath, Depute Clerk to the Board, Jennifer Smith, Solicitor, Emma Rapley, Licensing Standards Officer, Lindsey Robinson, Committee Services Officer, as Clerk to the meeting, all Moray Council, and Sergeant Neil Grant, Police Scotland.

1. Chair

As it was the first meeting of the Board, a Chair was to be elected. It was noted that there were a number of Board Members who had not completed the training and therefore unable to vote. It was therefore proposed that as he had been a previous member of the Board, Councillor Allan would Chair this meeting, and that a decision on the new Chair would be taken at the next meeting. This was unanimously agreed.

2. Declarations of Group Decisions and Members Interests

In terms of Standing Order 20 and the Councillors' Code of Conduct, there were no declarations from Group Leaders or Spokespersons in regard to any prior decisions taken on how Members will vote on any item on the agenda or any declarations of Member's Interests in respect of any item on the agenda.

3. Minute of the Meeting of the Board 9 February 2022

The Minute of the Meeting of the Licensing Board on 9 February was submitted and approved.

4. 22 00178 PRELIC Dunphail Distillery

The Depute Clerk to the Board introduced the application and advised the Board that as there was no Section 50 certificate from Building Standards in place the Board would be unable to grant the licence at this meeting.

The Board agreed to defer this application to the next meeting.

5. 22 00619 PREVMA Orrin

The Depute Clerk to the Board introduced the application and advised the Board that all of the paperwork was in order and that there were no objections or representation.

The applicant's representative addressed the Board and there were no questions from the Board.

Councillor Allan, seconded by Councillor Lawrence, moved to grant the application. There being no one otherwise minded, the application was granted.

6. 22 00488 PREVMA Spar Burghead

The Depute Clerk to the Board introduced the application and advise the Board that all paperwork was in order and that there were no objections or representations.

He further advised that the applicant's representative was unable to attend and read out a written submission on their behalf. There were no questions from members.

Councillor Allan, seconded by Councillor Lawrence, moved to grant the application. There being no one otherwise minded, the application was granted.

7. 22 00266 PRELIC Threaplands

The Depute Clerk to the Board introduced the application and advised the Board that as there was no Section 50 certificate from Building Standards the Board would be unable to grant the licence at this meeting.

The Board agreed to defer the application to the next meeting.

8. 22 00800 PRELIC Highland Whisky

The Depute Clerk to the Board introduced the application and advised the Board that all paperwork was in order and the police conditions have been accepted by the applicant.

The applicant addressed the Board and responded to the questions asked.

Thereafter, Councillor Allan, seconded by Councillor Cameron, moved to grant the application. There being no one otherwise minded, the application was granted.

9. Order of Business

The Board agreed to vary the order of business set down on the agenda and take Agenda Item 3g application "22 00566 PREVMA Buckie Service Station" as the next item to allow the applicant time to join the meeting.

10. 22 00566 PREVMA Buckie Service Station

The Depute Clerk to the Board introduced the application and advised the Board that all paperwork was in order and there were no representations or objections.

The applicant's representative addressed the Board. There were no questions from members.

The Chair moved to grant the application. This was seconded by Councillor Lawrence and there being no one otherwise minded, the application was granted.

11. 22 00838 PREVMA Keith Golf Club

The Depute Clerk to the Board introduced the application and advised the Board that all paperwork was in order and there were no representations or objections as the police conditions have been accepted by the applicant.

The applicant addressed the Board and responded to the questions asked.

Thereafter, Councillor Allan, seconded by Councillor Lawrence, moved to grant the application. There being no one otherwise minded, the application was granted.

12. Order of Business

The Board agreed to vary the order of business set down on the agenda and take Agenda Item 5 "Personal Licence Application - Case No.2 of 2022" as the next item on the agenda, as the applicant in respect to Agenda Item 4 "Personal Licence Review Hearing - Case No.1 of 2022" had not yet joined the meeting and both applications were to be held in confidence.

13. Personal Licence Application Hearing - Case No. 2 of 2022 [Para 14]

A report by the Clerk to the Board, notified the Board that notice of one or more relevant conviction(s) has been disclosed on an application for a personal licence. The Chief Constable's representative had confirmed to the Clerk that the applicant (reference case number 2 of 2022) had been convicted of one or more relevant offence(s) and the Chief Constable's representative had recommended that the application for the personal licence be refused. As a result, s.74(5) of the Licensing (Scotland) Act 2005 states the Board must hold a hearing to consider and determine whether the licence should be granted or refused.

The Board noted that the applicant was present. The Chief Superintendent was represented by Sergeant Neil Grant, Police Scotland.

On the invitation of the Chair, Sergeant Grant presented the letter from the Chief Superintendent and explained the convictions. There were no questions from the members.

On the invitation of the Chair, the applicant addressed the Board and gave details on how his life has changed since the convictions.

During consideration, Councillor Cameron sought clarification on the length of time a personal licence could be granted for.

In response, the Depute Clerk to the Board advised that personal licences differ from civic licences as they are either granted or refused. A personal licence will last for 10 years with the licence holder undertaking training every 5 years. If there are any convictions, or the police or Licensing Standards Officer have concerns then the licence would be brought back to the Board to review.

Thereafter, Councillor Allan, seconded by Councillor Lawrence, moved that the licence be granted. There being no one otherwise minded, the application was granted.

13. Personal Licence Review Hearing - Case No.1 of 2022 [Para 14]

A report by the Clerk to the Board notified the Board that notice of relevant convictions has been received from a personal licence holder; that the Chief Constable had confirmed to the Clerk that the licence holder (reference case number 1 of 2022) had been convicted of one or more relevant offences and in terms of section 83 (5) (a)&(b) of the Act had made a recommendation that the Board consider all options open to them in respect of this personal licence. As a result, s. 83(7) of the Licensing (Scotland) Act 2005 requires the Board to hold a hearing to consider and determine whether any further order is necessary in respect of the personal licence.

The Depute Clerk to the Board introduced the report and confirmed to the Board the options available to them, as stated in paragraph 4.11 of the report.

The Board noted that the applicant was in attendance. The Chief Superintendent was represented by Sergeant Neil Grant, Police Scotland.

On the invitation of the Chair, Sergeant Grant addressed the Board and presented the letter and objections raised by the Chief Superintendent. There were no questions from members.

On the invitation of the Chair, the applicant addressed the Board and answered the questions raised.

During consideration, Councillor Lawrence sought clarification as to whether the Board were to just look at the convictions or if the Board were to take any mitigating circumstances into consideration.

In response, the Depute Clerk to the Board advised that the Board should take into account all of the evidence and any mitigating circumstances, and that these must be related back to the licensing objectives.

Councillor Lawrence further asked if it would be possible to add two endorsements on the personal licence as there were two convictions.

The Depute Clerk advised that as it was being heard as one review then it would be one endorsement, if that was what the Board decided.

Councillor Williams asked if there was an option to take the convictions as separate cases to allow the Board to apply two endorsements.

In response, the Depute Clerk to the Board advised that it was all classed as one case and could not be split.

Councillor Cameron, seconded by Councillor Colyer, moved that the licence should be endorsed, it being considered necessary to do so for the purpose of the licensing objective of preventing crime and disorder.

Councillor Lawrence moved an amendment that the licence be revoked, it being considered necessary to do so for the purpose of the licensing objective of

preventing crime and disorder. There being no seconder, Councillor Lawrence withdrew his amendment.

Councillor Allan, seconded by Councillor Lawrence, moved an amendment that the licence be suspended for 6 months, it being considered necessary to do so for the purpose of the licensing objective of preventing crime and disorder.

On a division there voted: -

For the Motion (2) Councillors Colyer and Williams

For the Amendment (3) Councillors Allan, Cameron and Lawrence

Abstentions (0)

Accordingly the Amendment became the finding of the Meeting and the Board agreed to suspend the licence for 6 months.



REPORT TO: MORAY LICENSING BOARD ON 7 SEPTEMBER 2022

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – ANNUAL REVIEW OF LICENSING FEES

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 To update the Board on the overall income versus expenditure for alcohol licensing for the last financial year by way of an annual financial report;
- 1.2 To make predictions in respect of likely future income and expenditure;
- 1.3 To determine whether the Board wishes to undertake a review of licensing fees as a result

2. RECOMMENDATION

2.1 It is recommended that the Board:

- i) **Note the current fees attached at Appendix 1;**
- ii) **Note the financial report on income and expenditure data at Appendix 2;**
- iii) **Agree to publish the financial report; and**
- iv) **Consider future fees i.e. whether the Board wishes to keep the current fee structure or revise the same and, in the latter case, proceed to consider proposals for change as the Board sees fit.**

3. BACKGROUND

Current Fees

- 3.1 The Licensing (Fees) (Scotland) Regulations of 2007 (referred to here as the “Fees Regulations”) were made in accordance with the Licensing (Scotland) Act 2005 (“the Act”). The Fees Regulations require each Licensing Board to set certain fees in respect of various applications under the Act. This includes application and annual premises licence fees that are set by Boards but within overall maxima prescribed by the Scottish Government

- 3.2 The current fee scale is attached at **Appendix 1**. It was agreed by the Board at the meeting on 11 August 2016 (Paragraph 4 of the Minute refers).
- 3.3 The current scale sets the premises licence **application** fees at the maximum level prescribed by the Scottish Government, which means that those fees cannot be increased but they could be reduced.
- 3.4 The current scale sets the premises licence **annual** fees at 20% below the maximum level prescribed by the Scottish Government, which means that those fees can either be increased by any amount up to the maxima or reduced.
- 3.5 In accordance with the Fees Regulations, the fee structure is designed around the principle that licensing is to be, as far as possible, self funding and that each Board was to broadly recover, through licensing fees, the overall cost to the Council and Board of providing licensing functions.
- 3.6 The expenses to be recovered are not limited to Licensing Board expenses. Expenses must include all those incurred by both the Board and the Moray Council in administering the Act in general. This includes expenses for all Board and Council licensing administration including that from other services within the Council contributing to the licensing procedure.

4. FINANCIAL REPORT ON INCOME AND EXPENDITURE

- 4.1 A review of licensing fees is undertaken annually.
- 4.2 With the assistance of officers in the Finance service, the Clerk has now collated income and expenditure figures for the financial year 1 April 2021 to 31 March 2022.
- 4.3 The figures and calculations are summarised at **Appendix 2**.
- 4.4 The figures reveal the following indications:
 - 4.4.1 There was a notional loss of £26,663.00 for the last financial year. There was also a loss reported for the previous financial year. These losses more than offsets notional surpluses in recent years prior to those.
 - 4.4.2 Income is fairly fixed. It is correct that in the 2020/2021 financial year overall application numbers, and so income, was adversely affected by COVID. The 2021/2022 financial year has seen some recovery from the pandemic and application numbers have improved. However, going forward, it therefore seems unlikely that income will dramatically increase in the absence of a change to fees.
 - 4.4.3 In terms of expenditure, the largest changes in the past two years have come about as a result of the calculation of internal recharges and so the cost to the council of providing the licensing function.

4.4.4 Legal Services allocated overheads have increased. The service has been through a number of changes and the Licensing and Regulatory section has now experienced the loss of a solicitor. A full complement of staff would include a senior solicitor, two solicitors, two LSOs and access to administrative support. Recruitment is underway for a further solicitor who will be mostly taking on work not related to licensing. It is therefore expected there will be relatively little impact on this calculation next year.

4.4.5 The largest changes have been an increase to the internal recharges to licensing from other services. The overall internal recharges have increased by a large margin and during the financial year being reported the sum of approx. £51,100.00.

Publication of the Financial Report

4.5 It should also be noted that The Air Weapons and Licensing (Scotland) Act 2015 introduced requirement for Boards to publish both a functions report (relating to the objectives, decisions etc) and a financial report (relating to income and expenditure) no later than three months after the end of each financial year i.e. by the end of June each year. The financial information detailed in this report serves as the required financial report. There will be a separate report to the next meeting relating to the required functions that will include details of the licensing applications processed.

4.6 The Board is asked to note and agree to publication of the financial report on the Board's web page.

5. FUTURE FEES

5.1 As part of trying to predict the future we look to the past:

5.1.1 In 2018/2019 fee income was stated to be £119,260.00;

5.1.2 In 2019/2020 there was no review due to the pandemic;

5.1.3 In 2020/2021 application numbers (variations, occasional licences etc) were down considerably due to the pandemic and that affected income. Nevertheless, it was determined at the time not to alter fees as it was hoped that the income for 2021/2022 would be more back to normal.

5.1.4 In 2021/2022 income has recovered to be slightly above the level reported in 2019. Therefore, it is not anticipated that income will rise further for 2022/2023 in the absence of a rise in fees.

5.2 As income is primarily made up of annual fees and as the number of premises licences is largely stable, overall income going forward is predicted to be quite consistent. It is encouraging that premises licence numbers have remained stable however income is falling short of expenditure and that is not sustainable.

5.3 Annual fees fall due on 1 October each year in advance for the year. The Board is obliged to send a reminder to licensed premises for the payment of

annual fees no later than 30 days before the fee is due. Those reminders (invoices) therefore go out at the end of August each year. In light of the review at this meeting the fees invoices for the period 1/10/22 to 30/9/23 have been held back. The trade has been notified that invoices will be delayed. Should the Board determine not to revise fees then the invoices will be issued as planned. If, however, fees are to change then the roll out of invoices will be delayed by the need to first update all the records on the financial system.

- 5.4 Throughout the pandemic, the Scottish Government did not intervene with the process of payment of annual fees and the law did not change. Therefore fees were and are legally due as normal. The Licensing Board is fully financed by the Moray Council and fee income is passed to the Council to cover the cost to the Council of providing the licensing function. That cost to the Council did not go away and annual fees represent the vast majority of the licensing budget.
- 5.5 The overarching legal requirement is for the Board to “have regard to the desirability of ensuring that the total fees payable under these Regulations to that Board in respect of any period are likely to be broadly equivalent to the expenses incurred by that Board, and the council for the area of that Board, in administering the Act generally...”.
- 5.6 Fee setting is not an exact science. It is fair to say that recent financial years have been unprecedented and going forward will simply have to be recorded as unusual and written off. Looking forward it seems likely that keeping things as they are will result in income being broadly consistent with pre-COVID levels. However, as with all costs, licensing costs have increased substantially on pre COVID levels and licensing staff are working with finance staff on the issue of recharges. As things stand currently it is an issue that impacts on the overall budget situation.
- 5.7 Since the introduction of the current fee scale in 2016, fees have not changed. They have not even been included in the annual inflationary increases applied to Council charges. So fees have been a full 20% below the statutory maximums for that period and among the lowest, if not the lowest, fees in Scotland for the last 6 years.
- 5.8 It now seems that whilst income is back to normal, costs have caught up with and are now exceeding income. We have come through the COVID years and not increased fees at a time when the trade suffered. It was predicted last year that, owing to many unknown variables, the budget could be left in a shortfall in this financial year. Unfortunately this has come to pass and the Council has incurred the losses of the last two years to the benefit of the trade. The figures now indicate an increase is warranted.
- 5.9 As it happens in analysis the income appears 20% short of expenditure. As the vast majority of income comes from premises licence annual fees it is therefore recommended that the Board look at increasing fees.
- 5.10 It should be noted that figures for both projected income and expenditure can only ever be estimates and may not be a true reflection of actual amounts. The estimates are based on historical data about income, expenditure and transactions.

- 5.11 The options open to the Board are:
- 5.11.1 To do nothing and income, expenditure and fees will be reviewed again in 2023: OR
- 5.11.2 To increase annual fees up to the maximum statutory figures which are shown in the information at **Appendix 1** for comparison. **This is the recommended option;****
- 5.11.3 In addition to, or instead of, changing annual fees, to change other fees that the Board has control over. Again those are shown in the information at **Appendix 1**;
- 5.11.4 To implement another combination of the above as the Board sees fit, for example, an incremental increase in annual fees with or without a change to certain other fees.
- 5.12 In respect of any review it should be noted that where, in accordance with legislation, fees are set by the Board there is no requirement to consult upon those fees before any variation is brought into effect. Nevertheless there will always be pressure from the licensed trade not to place any increased financial burden on them.
- 5.13 There is a requirement that fees may not be varied so that the variation comes into effect less than a year after the date with effect from which the fee in question was first determined or last varied. As the fees were last varied on 11 August 2016, they can be varied again at any time
- 5.14 Finally, it has been noted before that the Scottish Government was reviewing licensing fees and exploring options for a possible change to the fee structure. In particular the Scottish Government consulted some time ago on the statutory fee for occasional licences. Any major change to the cost of an occasional licence may radically alter the income and expenditure balance and necessitate a further fee review. However, from information currently available to officers, including attendance at a national group organised by the Scottish Government, it is extremely unlikely that legislation will be brought forward to amend occasional licence fees. This is disappointing as the fee charged for an Occasional Licence does not meet the cost of processing those. Recommendations in this report therefore proceed on the assumption of the statutory fee structure remaining the same.

6. SUMMARY OF IMPLICATIONS

(a) Moray 2026 A Plan for the Future/Service Plan

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

(b) Policy and Legal

Policy and Legal implications have been explained above.

(c) Financial implications

Financial implications relating to fee levels have been explained above.

(d) Risk Implications

As explained above, the projected figures for future income are only estimates. Accordingly there is a risk that the actual income differs from the projected income. The risk in connection with the setting of fees is that if fees are set too low then the cost of administering the licensing system may not be recouped. Conversely if fees continue to produce a surplus then the Board's decisions in respect of fees may be open to judicial review.

(e) Staffing Implications

Preparation of fee projections has involved considerable staff time and fees are reviewed annually. No additional resources are required. It is anticipated that going forward fee income will ensure full cost recovery in terms of providing the licensing function. There will be some staff time in amending invoice amounts on the system if the fees are increased.

(f) Property

None.

(g) Equalities/Socio Economic Impact

In considering this matter the Board should have regard to issues of equality and the subject's (licence holders) rights under the European Convention on Human Rights (and the Human Rights Act 1998). It is not considered necessary to undertake an equalities and human rights impact assessment in connection with this report.

The Board should have regard to all the circumstances.

(h) Climate Change and Biodiversity Impacts

None.

(i) Consultations

As far as possible, the figures within this report have been prepared in consultation with Alistair Milne, Accountant of the Council's Finance Service.

7. CONCLUSION

- 7.1 It is proposed that the Board note the contents of this report and determine what further action is required.**

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Board
Background Papers:
Ref: SH

Appendix 1

Moray Licensing Board Current Fee Scale

Recommended changes in Red

Fees set by the Board and so subject to change are detailed in Green

Premises Licence Application Categories and Annual Fees

*Application fees are already set at 100% of maximum

Category	Rateable Value	Application Fee*	Annual Fee	Proposed Annual Fee
Category 1	nil rateable value or within certain defined exemptions described above	200	144	180
Category 2	rateable value between £1 and £11,500	800	176	220
Category 3	rateable value between £11,501 and £35,000	1100	224	280
Category 4	rateable value between £35,001 and £70,000	1300	400	500
Category 5	rateable value between £70,001 and £140,000	1700	560	700
Category 6	rateable value over £140,000	2000	720	900

Type of Application and Fee

The fees in this table are statutory fees so cannot be altered.

Type of Application	Fee - £
An application to vary a premises licence where the variation sought is the substitution of a premises manager and any other variation is a minor variation	31
An application to vary a premises licence where the variation sought is a minor variation and there is no substitution of the premises manager	20
Application for an occasional licence	10
Application for extended hours	10
Application for a personal licence	50

Type of Application and Fee

Type of Application	Fee - £ Category 1-3	Fee - £ Category 4-6
Any variation of a premises licence that is not within the definition of the prescribed fees below i.e. that is a major variation	350	500

Type of Application and Fee

Type of Application	Fee - £ Category 1-3	Fee - £ Category 4-6
Application by the licence holder to transfer and vary a licence	375 for major variations and 145 for minor ones	600 for major variations and 220 for minor ones
Application by the licence holder to transfer a licence (no variation)	125	200
Application by another person to transfer and vary a licence	450 for major variations and 220 for minor ones	675 for major variations and 295 for minor ones
Application by another person to transfer a licence (no variation)	200	275
Application for a provisional premises licence £Variable (to be the same as a category 1 premises)	180	180
Application for confirmation of a provisional premises licence £Variable (this will vary between premises. The confirmation fee will be the fee that would have been payable for a premises licence application (based on the rateable value as above) LESS the amount paid on application for the provisional premises licence as a category 1)	Variable	Variable
Application for a temporary premises licence	200	200
Application for a replacement personal licence	25	25
Application for a replacement premises licence	40	40

<u>Summary figures as per Glasgow City Council I&E Template</u>	
	£
Income	(134,142)
Expenditure	
Direct Staff Costs	98,720
Other Direct Costs	3,017
Indirect Costs	<u>59,068</u>
Net Expenditure	160,805
Net Expenditure	26,663

Notes

Income

Direct Staff Costs

Other Direct Costs

Indirect Costs

(for internal use only)

Excludes gambling income

Excludes Gambling staff recharges. Includes Legal, Environmental Health and Building Control staffing

Includes Training, Supplies & Services as shown in green above

Indirect costs include Apportioned costs, less Legal staffing, add indirect overheads for Legal, Environmental Health and Building Standards.



REPORT TO: MORAY LICENSING BOARD ON 7 SEPTEMBER 2022

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF PREMISES LICENCES

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 To ask the Board to conduct a hearing to further consider and determine the premises licence review proposal in respect of each of the remaining premises previously listed on a schedule circulated to members separately at the February meeting.

2. RECOMMENDATION

- 2.1 **It is recommended that the Board consider and determine the premises licence review proposal having regard to the powers available to the Board under s.39(2) of the Licensing (Scotland) Act 2005.**

3. BACKGROUND

- 3.1 On 22 July 2010 (paragraph 4 of the minute refers) the Board delegated authority to the Clerk and his staff to make a premises licence review proposal in terms of s.37(1) of the Act for any premises where the annual fee remained outstanding for a period of six weeks after the due date.
- 3.2 Annual fees are due each year on the 1 October. Fees are payable in advance for the period 1 October to the 30 September the following year. Invoices are issued on the 27 August each year, in advance of the 1 October, to serve as written reminder to licence holders, as is required by Regulations.
- 3.3 By the delegated authority detailed in paragraph 3.1 a premises licence review proposal was made in respect the premises known as the Taste of Speyside in Dufftown. A review proposal must state the grounds for review. Section 36(3) of the Act states the grounds for review, which are (a) that one or more of the conditions to which the premises licence is subject has been breached, or (b) any other ground relevant to one or more of the licensing objectives.
- 3.4 A review proposal having been made, the Board was obliged to hold a hearing, in terms of s.38(1), to consider and determine the proposal. On the 9 February 2022 a hearing took place. The Board determined (paragraph 5 of the minute refers) that grounds for review were made out both in terms of

ss.36(3)(a) and (b) of the Act. The Board therefore resolved to make the following interim order:

That the licence would be suspended with immediate effect unless and until the fee is paid and the suspension would automatically be revoked upon payment of the fee failing which the suspension would be reviewed at a further meeting of the Board to take place after 6 months.

- 3.5 The current hearing is therefore the review of the suspension of the licence and, if the Board chooses, final determination of the premises licence review.
- 3.6 The fee remains unpaid and there has been no contact from the licence holder despite all efforts to make contact.
- 3.7 The Board has already established that grounds for review exist on which basis section 39 confers the power on the Board to. On review the Board has the power to:
- (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.
- 3.8 The Board is therefore invited to make a final determination of the premises licence review in this case.

4. SUMMARY OF IMPLICATIONS

(a) Moray 2023 A Plan for the Future/Service Plan

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Moray 2023) in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

(b) Policy and Legal

The Legal implications have been explained above.

(c) Financial Implications

Loss of unpaid fees.

(d) Risk Implications

None.

(e) Staffing Implications

Additional administration is required in pursuing unpaid annual fees.

(f) Property

None

(g) Equalities/Socio Economic Impact

In considering this matter the Board should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

(h) Climate Change and Biodiversity Impacts

None

(i) Consultations

None required.

5. CONCLUSION

- 5.1 The Board should consider and determine the premises licence review proposals in respect of the remaining premises previously listed in a schedule circulated separately to members at the February meeting having regard to the powers available to the Board under s.39(2) of the Licensing (Scotland) Act 2005.**

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board

Background Papers:

Ref: SAH

MORAY LICENSING BOARD

MEETING, 7 September 2022 at 2:00pm in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date received	Comments
New Premises	Dunphail Distillery Ltd Wester Greens Dunphail Forres IV36 2QR	Wester Greens Dunphail Forres IV30 2QR	01.02.2022	New premises licence application All paperwork in order Provisional Planning sec 50 Cert No representations No site visit No Police conditions
Major Variation	Lhanbryde Post Office 32 St Andrews Road Lhanbryde Elgin Moray IV30 8NZ MO/PRM/0185	Dipendra Yadav 46 Brunswick Place Aberdeen AB11 7TF	09.06.2022	New variation of premises licence application Paperwork in order No objections or representations No site visit The variation requested consists of, increasing the opening hours on Sundays from 1230 - 2200 hours to 1000 - 2200 hours.
Major Variation	McKay's Mini Market Ltd 5 Church Street	Stephen McKay 16 Seafield Street Cullen	26.07.2022	Major variation application.

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	Portknockie Buckie Moray AB56 4LN MO/PRM/0151	Buckie Moray AB56 4SH		Waiting for Confirmation of site notice No other objections or representations No site visit The variation requested consists of changing the core hours to operate between 1000 and 2000 Monday through Sunday and changing the layout, moving alcohol products behind the till as per the plan provided.
New Premises	McKays Mini Mart 14 Seafield Street Cullen Buckie Moray AB56 4SH	McKays Mini Market Ltd 26-30 Marine Place Buckie Moray AB56 1UT	26.07.2022	New Premises Licence application. Waiting for Confirmation of site notice No other objections or representations No site visit No Police conditions
Major Variation	Thistle Bar 168 High Street	George Sewell 6 Roseisle Place	02.08.2022	Major variation application

MORAY LICENSING BOARD

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	<p>Forres Moray IV36 1NP</p> <p>MO/PRM/0165</p>	<p>Elgin Moray IV30 4NX</p>		<p>Waiting for Confirmation of site notice Capacity to be increase 90 persons (75 inside and 15 external area)</p> <p>Police conditions accepted by applicant. The variation requested consists of a change in core hours on Sunday, with on sales starting at 1100, the operating plan to include outdoor drinking in the licensed area until 2200 and the premises capacity to be adjusted.</p>
Major Variation	<p>15 Seafield Square Rothes Aberlour Moray AB38 7AZ</p> <p>MO/PRM/298</p>	<p>Club 59 Ltd 15 Seafield Square Rothes Aberlour Moray AB38 7AZ</p>	27.07.2022	<p>Major variation application</p> <p>Waiting for Confirmation of site notice No other objections or representations No site visit</p> <p>Police conditions accepted by applicant The variation requested consists of the following:</p>

MORAY LICENSING BOARD

MEETING, 7 September 2022 at 2:00pm in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

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				<ol style="list-style-type: none">1. Changing the premises from a private members club to a commercial premises;2. Changing the on sales core hours from;<ul style="list-style-type: none">• 1700-2300 Monday to Thursday• 1400-0030 on Friday• 1100-0030 on Saturday• 1230-2230 on SundayTo;<ul style="list-style-type: none">• 1100-2300 Monday to Thursday and Sunday• 1100-0030 on Friday and Saturday3. The inclusion of off sales;4. Changes to the Operating Plan to include the following additional activities;<ul style="list-style-type: none">• Restaurant facilities and bar meals
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				<ul style="list-style-type: none">• Receptions• Club meetings• Live music• Recorded music• Dance facilities• Theatre• Gaming• Indoor and outdoor sports• Films• Televised sport <p>All to be potentially conducted out with core hours</p> <p>5. A change of the premises manager;</p> <p>6. Children and Young person's access as follows;</p> <ul style="list-style-type: none">• Children 15 and under being accompanied by a responsible adult and being allowed access until 2000 hours unless attending a function for which they can
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MEETING, 7 September 2022 at 2:00pm in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

				<p>remain until its terminal hour</p> <ul style="list-style-type: none">• Unaccompanied access for 16 and 17 year olds until 2200 hours unless attending a function for which they can remain until its terminal hour• All children and young people not to sit at the bar serving area• All children and young people are allowed to pass through restricted areas to gain access to the toilets but not remain there <p>In terms of Section 29(5) of the Act this request can be considered a variation.</p> <p>In terms of Section 22(1)(b)(ii) and (iii) of the Licensing (Scotland) Act 2005, I make the following</p>
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MORAY LICENSING BOARD

MEETING, 7 September 2022 at 2:00pm in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

				<p>representation;</p> <p>In respect of point 6, in line with the licensing objective protecting children and young people from harm, it would be requested that the access be changed as follows:</p> <p>All children and young persons to be granted access whilst accompanied by a responsible adult over the age of 18 and within the public bar area, for the purposes of partaking in a meal until the terminal hour of 2200, or if attending a function until its terminal hour.</p> <p>The public bar has a general culture of drinking and with the addition of televised sports, the proposed change above to children and young person access, in our view, would coincide with the licensing objectives.</p>
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MORAY LICENSING BOARD

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Licensing (Scotland) Act 2005

Major Variation	Hopeman And District Bowling And Social Club Forsyth Street Hopeman Elgin Moray IV30 5SY MO/PRM/270	Thomas Murray 66 Farquhar Street Hopeman Elgin Moray IV30 5SL	11.08.2022	Major variation application Waiting for Confirmation of site notice No objections or representations No site visit No police conditions The variation requested consists of 1. Allowing sport to be shown on TV; 2. Allowing premises to hold meetings.
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Key to Colour Coding of Applications within Appendices to the Agenda of Business for the Moray Licensing Board

All matters are to be heard by the Moray Licensing Board and the Moray Licensing Board has the final decision. However, in accordance with Government Guidance and locally agreed procedure, applications may be submitted to the Board with a general recommendation.

Please note that colour coding may be subject to change given the nature of the licensing procedure. Documents may be received and/or negotiations resolved following publication of the agenda.

RED	Indicates that the application will normally require to be heard, whether by virtue of general procedural rules or as a result of problems arising. This should apply to all new premises/provisional licence applications. There may be ongoing negotiations to resolve problems.
YELLOW	Indicates changing circumstances with the application. It is not ready to be granted at the time of publication but there are not normally major problems e.g. procedural issues or ongoing negotiations. Applications will normally be submitted with recommendation for grant or deferral.
GREEN	Indicates that all is in order with the application. All documents have been received and checked. All procedures have been followed. There are unlikely to be any representations, objections or problems or the same have been resolved. It is being submitted with a recommendation for grant but members are free to make enquiries as they see fit.

Licensing (Scotland) Act 2005

Licensing Objectives

Section 4 sets out the licensing objectives:

- “(1) For the purposes of this Act, 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 and young persons from harm.”

Applications for a Premises Licence or Provisional Premises Licence

Section 20 Application

By section 20 any person (over 18) may apply to the appropriate Licensing Board for a premises licence in respect of any premises.

An application under subsection must—

- (a) contain a description of the subject premises, and
- (b) be accompanied by—
 - (i) an operating plan for the subject premises,
 - (ii) a “layout plan” of the subject premises, and
 - (iii) the certificates required by section 50(1).

Notice of Application

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

Objections / Representations

By section 22 any person may, by notice to the Licensing Board—

- (a) object to the application on any ground relevant to one of the grounds for refusal (detailed below)
- (b) make representations to the Board—
 - (i) in support of the application,
 - (ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
 - (iii) as to conditions which the person considers should be imposed.

A representation is not an objection to a licence being granted. It means the representer would like to see a changes or changes to the licence or conditions on the licence before it is granted.

Where a Licensing Board receives a notice of objection or representation the Board must—

- (a) give a copy of the notice to the applicant, and
- (b) have regard to the objection or representation in determining the application,

unless the Board rejects the notice as being frivolous or vexatious.

Where a Licensing Board rejects a notice of objection or representation as frivolous or vexatious, the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

Consideration and determination of a Premises Licence Application

Section 23(4) states that:

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

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

Possible Courses of Action

1. Grant the licence as applied for;
2. Grant the licence with a condition(s) under s.27(6). Determine the licensing objective and how the situation can be improved and the exact terms of a condition.
3. Grant the licence with a modification to the operating plan under s.23(7) which states that
“(7) Where the Licensing Board considers that—
 - (a) they would refuse the application as made, but
 - (b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,the Board must, if the applicant accepts the proposed modification, grant the application as modified.”
4. Refuse - In section 23(5) of Act:
 - (5) The grounds for refusal are—
 - (a) that the subject premises are excluded premises,
 - (b) that the application must be refused under section 25(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*),
 - (ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of the premises licence,

- (c) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
- (d) that, having regard to—
 - (i) the nature of the activities proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,the Board considers that the premises are unsuitable for use for the sale of alcohol,
- (e) that, 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.

5. Defer – if for example the Board wanted to arrange a further site visit.

Consequences of Refusal

Section 25 says that where a Licensing Board has refused a premises licence application the Board must refuse any subsequent premises licence application in respect of the same premises before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.

Applications to Vary a Licence

Section 29 Application

By section 29(1) a premises licence holder may apply to the appropriate licensing Board for a variation of the licence. Such an application must be accompanied by

- (a) the premises licence to which the application relates, or
- (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

Meaning of Variation

Section 29(5) defines a variation as meaning any variation (which includes addition deletion or other modification) of:

- (a) any of the conditions to which the licence is subject (*other than those to which the licence is subject by virtue of section 27(1) which are Schedule 3 mandatory conditions and cannot be changed*);
- (b) any of the information contained in the operating plan contained in the licence;
- (c) the layout plan contained in the licence; or
- (d) any other information contained or referred to in the licence.

Generally a variation that involves a change to the information contained within the operating plan is not a minor variation and it requires to be determined by the Licensing Board.

Any variation that involves:

- (i) a change to the layout plan that does not affect the operating plan
- (ii) a restriction on the access for children/young persons
- (iii) a change of premises manager
- (iv) reduction in the alcohol display area or capacity
- (v) reduction in the core hours

can be considered to be a minor variation which must be granted and so is dealt with under delegated powers.

Notice of Application

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

Section 22 applies the same as it does to a premises licence application and so any person may, by notice to the Licensing Board object to the application on any ground relevant to one of the grounds for refusal or make representations to the Board concerning the application.

Determination of the Variation Application

Section 30(3) provides that the Licensing Board must hold a hearing for the purpose of considering and determining the application. The Board must consider whether any of the grounds for refusal applies and:

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

Section 30(5) provides that the grounds for refusal are:

- (a) that the application must be refused under section 32(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*);
- (b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives;
- (c) that, having regard to the nature of the activities carried on or proposed to be carried on in the subject premises, the location, character and condition of the premises, and the persons likely to frequent the premises,

the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation;
(d) 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 (taking account of the variation), in the locality.

Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

Where the Licensing Board refuses the application the Board must specify the ground for refusal, and where relevant the Board must specify the licensing objective or objectives in question.

Subsequent Applications Following Refusal

Section 32 says that where a Licensing Board has refused a premises licence variation application the Board must refuse any subsequent premises licence variation application in respect of the same premises licence, and seeking the same variation made before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.

