

SPECIAL ANGUS LICENSING BOARD – 29 OCTOBER 2020

PREMISES LICENCES – REQUEST TO VARY UNDER THE LICENSING (S) ACT 2005

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this Report is to present an application to vary a premises licence under section 29 of the Licensing (Scotland) Act 2005 which requires to be determined by the Board.

1. RECOMMENDATION

It is recommended that the Board consider and determine the application to vary the premises licence as detailed in **Appendix 1**, in terms of one of the following options: -

- (i) to grant the application, subject to Statutory Conditions and any other variation to the conditions to which the licence is subject that the Board may wish to impose;
- (ii) to defer the application to the next Licensing Board; or
- (iii) to refuse the application on one or more of the grounds referred to in Paragraph 4.4.

2. BACKGROUND

The Board has received an application to vary premises licences under section 29 of the Licensing (Scotland) Act 2005 (“the Act”) which requires to be determined by the Board because the matters are not subject to delegation and shall only be discharged by the Licensing Board. The Board considered this application at their meeting on 17 September 2020 and determined to defer matters to a later meeting.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising from this Report.

4. LEGAL

4.1 The Act provides that a variation, in relation to a Premises Licence, means any variation of: -

- (a) any of the conditions to which the licence is subject (other than the Statutory Conditions);
- (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,

and includes an addition, deletion or other modification

4.2. If the variation sought is a minor variation, then the variation must be granted and powers have been delegated to the Clerk to approve these minor variation applications. Minor variations are: -

- (a) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan;
- (b) where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises;

- (c) any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and
 - (d) any other variation of such description as may be prescribed.
- 4.3. Section 30 of the Act provides that if the variation(s) being sought are not minor, the Board must hold a hearing to determine the application.

The Board must, in considering and determining the application, consider whether any of the grounds for refusal apply and: -

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

4.4. The grounds for refusal are: -

- (a) that the application must be refused under Section 32(2) of the Act (the Board had previously refused an application to vary a premises licence within the preceding one year), Section 64(2) of the Act (alcohol would be sold for a continuous period of 24 hours from the premises, unless there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period), or Section 65(3) of the Act (if alcohol is to be sold for off sales purposes before 10am or after 10pm, or both);
- (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:
 - (i) the nature of the activities carried on or 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 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 into account of the variation), in the locality.

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

4.6. Where the Licensing Board refuses the application, the Board must specify the ground for refusal and if the ground relates to a licensing objective, the Board must specify the objective or objectives in question.

- (a) The licensing objectives are: -
 - (i) preventing crime and disorder
 - (ii) securing public safety
 - (iii) preventing public nuisance
 - (iv) protecting and improving public health; and
 - (v) protecting children and young persons from harm

REPORT AUTHOR: Dawn Smeaton, Business Support Officer
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(a) LICENCE NO.53, LOCHSIDE BAR, 84-86 NORTHESK ROAD, MONTROSE, DD10 8TG

Name of Applicant – William Cumming

Type of Licence: On and Off Sales

Description of Variation

1. Layout amendments – the relocation of main bar, snug area changed to kitchen, original kitchen removed, disabled and ladies' toilets relocated, function/dining room removed, darts area relocated

2. Outdoor drinking facilities to be provided

- (a) within core hours
- (b) within a beer garden/covered area
 - (i) paved area to the front of the premises
 - (ii) rear beer garden area
- (c) Children and Young person to have access.

COMMENTS RECEIVED

Police Scotland provided a letter dated 10 August 2020, which shall be circulated to members.

Environmental and Consumer Protection provided an observation on 28 July 2020.

This service would have no objections to the proposals subject to the following conditions being applied to any licence granted:

- Patrons shall not be permitted to use the external drinking area beyond 21.00hrs.
- No music shall be provided in the external drinking area.
- No music of amplified sound should be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.

Please note, a noise management plan has been submitted and approved by this service.

**PROPOSED ALTERATIONS TO PREMISES AT
'LOCHSIDE BAR', 84 NORTH ESK ROAD, MONTROSE
FOR Mr. & Mrs. W. CUMMING**

dra. no. 01b (Mar. 17)

74 North Street
Brisbane Queensland
Australia 4000
Phone 3251
Tel. 07 3251 8787 Fax 07 3251 8788
email bob@gsdesign.com.au



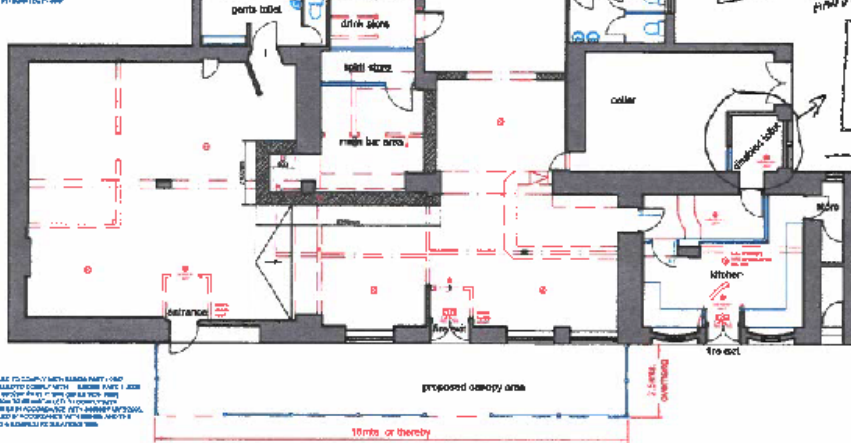
GENERAL NOTES

ALL WORKMANSHIP TO BE IN ACCORDANCE WITH THE STRAITS BUILDING ACT AND REGULATIONS AND THE STRAITS BUILDING BY-LAWS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.

**PROPOSED GROUND FLOOR PLAN
scale 1:100**

MATERIALS AND FINISHES

WALLS - 125mm AAC BLOCKS WITH 12.5mm GYP BOARD
DOORS - 45mm GYP BOARD WITH 12.5mm GYP BOARD
FLOORS - 100mm CONCRETE WITH 12.5mm GYP BOARD



NOTES

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LICENSING STANDARDS OFFICER VISIT REPORT

A premises licence application has been received from William Cumming in respect of:

The Lochside Bar, 84-88 Northesk Road, Montrose, DD10 8TG

Premises Licence Holder: William Cumming, 90 Northesk Road, Montrose, DD10 8TG

Background:

A major variation application from William Cumming was received on 22 July 2020. The Licensing Board at their meeting on the 17 September 2020 will consider this application.

Licensing Standards Officer's Report:

I had visited the premises as part of a Premises Licence Review application on 18 August 2020. I used the opportunity to view the proposed outdoor drinking area. I have provided photographs of the proposed outdoor drinking area at **APPENDIX 1** of this report. I had a Microsoft Teams meeting with the applicant and his agent on 1 September 2020 to address some aspects of the application and the Police Scotland objection to the application.

Proposed Licenced Hours

The applicant originally applied for a termination hour of 1am on Sundays-Thursdays. This request has since been withdrawn and the Board was advised of this through the applicant's agent.

Building Standards Issues

Building Standards asked for clarification of the following points:

- 1) Occupancy capacity –

The last occupancy capacity for the 'Bar' was 90. This application originally sought to increase this number to 100 persons. This request has since been withdrawn and the Board was advised of this through the applicant's agent.

- 2) Lighting

As the external areas are applied to be licensed throughout the year until 21:00hours there should be adequate emergency and escape route lighting supplied in the event of power failure.

After discussion with the applicant, this issue in relation to lighting was resolved in the following way:

- 1) Lighting will be provided and until such time it will only be used in daylight hours

The Building Standards Manager has confirmed on 3 September 2020 that Building Standards have no issues.

Police Scotland Objection

Police Scotland have objected to the granting of this Major Variation. Police Scotland are of the view that granting this application would be inconsistent with the following Licensing Objectives:

- 1) Preventing Crime and Disorder
- 2) Securing Public Safety
- 3) Protecting and improving public health

Police Scotland have described at length in the Premises Licence Review their concerns in respect of Mr Cumming's ability to manage a licensed premises. I have outlined Mr Cummings response to this in my Premises Licence Review report.

There have been two complaints in the time Mr Cumming has been licence holder (since 2011). One was in respect of noise nuisance and another in respect of children playing the darts league. Both matters were resolved with co-operation from the licence holder.

I duly submit this report for consideration by Board Members.

Daniel J. Coleman
Licensing Standards Officer
Angus Council

Appendix

Photo 1



This is the proposed outdoor area at the rear of the building where the maximum capacity will be 40.

There are four wooden benches which sit four people and four sets of tables and chairs.

As can be seen, there is a hatch that would allow service of patrons in the outdoor area without entering the building.