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## THE MORAY LICENSING BOARD

THURSDAY 13 MARCH 2014

**NOTICE IS HEREBY GIVEN** that the Meeting of **THE MORAY LICENSING BOARD** is to be held within the The Moray Council, Council Chambers, High Street, Elgin on Thursday 13 March 2014 at 10.00am.

Rhona Gunn  
CLERK

5 March 2014

### BUSINESS

1. Prior Minutes
  - (i) Minutes of the Meeting held on 16 January 2014 (copy attached)
  - (ii) Minutes of the Special Meeting held on 10 March 2014 (to be tabled)

### The Licencing (Scotland) Act 2005

2. Applications Section– Appendix 1
3. Personal Licence Hearing Following Disclosure of Relevant Conviction by Licence Holder (Case Number 2 of 2014 – Report by the Clerk (copy attached)

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**THE MORAY LICENSING BOARD****SEDERUNT****COUNCILLOR J ALLAN****COUNCILLOR G ALEXANDER****COUNCILLOR S CREE****COUNCILLOR M HOWE****COUNCILLOR B JARVIS****COUNCILLOR A MCLEAN****COUNCILLOR M McCONACHIE****COUNCILLOR R H SHEPHERD****COUNCILLOR C TUKE****CLERK TO THE BOARD: Mrs R Gunn****Telephone No: 01343 543451 Ext 3152 - Direct Line: 563152****Room No: 102**

# **APPENDIX 1**

## 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. 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.

**MORAY LICENSING BOARD LICENSING BOARD****MEETING, 13 MARCH 2014 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX****Licensing (Scotland) Act 2005****New Grant(s)**

	<b>Premises</b>	<b>Applicant</b>	<b>Date Received</b>	<b>Comments</b>
1	SPICE OF BENGAL 118 HIGH STREET FORRES IV36 1NP	MORAY RESTAURANTS LTD	13 February 2014	New on sales premises application. No objections/representations. Applicant cited to attend.
2	LOGIE WHISKY AND WINE SHOP LOGIE STEADING FORRES IV36 2QN	ROBERT GEORGE DUNCAN	14 February 2014	New off sales premises application. No objections/representations. S50 certs awaited. Applicant cited to attend.

**MORAY LICENSING BOARD LICENSING BOARD****MEETING, 13 MARCH 2014 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX****Licensing (Scotland) Act 2005****Variation (Major)(s)**

	<b>Premises</b>	<b>Applicant</b>	<b>Date Received</b>	<b>Comments</b>
3	VISITORS CENTRE MACALLAN DISTILLERY EASTER ELCHIES CRAIGELLACHIE AB38 9RX	THE MACALLAN DISTILLERS LIMITED	11 February 2014	To vary the operating plan to include on sales, provision of Sunday operating hours and add access to children and young persons. No objections/representations. Applicant cited to attend.

# **MORAY LICENSING BOARD LICENSING BOARD**

**MEETING, 13 MARCH 2014 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX**

## **Licensing (Scotland) Act 2005**

### **Variation (Major) on Transfer(s)**

	<b>Premises</b>	<b>Applicant</b>	<b>Date Received</b>	<b>Comments</b>
4	VICTORIA PARK FUNCTION HALL VICTORIA PARK BUCKIE AB56 1BG	ALEXANDER MURRAY DUNCAN	5 February 2014	Variation to convert from Members Club to Commercial premises. Public objections. Applicant cited to attend.



ITEM: 3

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**REPORT TO: THE MORAY LICENSING BOARD ON 13 MARCH 2014**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE HEARING FOLLOWING DISCLOSURE OF RELEVANT CONVICTION BY LICENCE HOLDER (CASE NUMBER 2 OF 2014)**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

- 1.1 The Licensing (Scotland) Act 2005 section 82 provides that where a personal licence holder is convicted of a relevant offence then he/she must give notice of the conviction to the relevant Licensing Board within a month of conviction.
- 1.2 This report is to notify the Board:
- 1.2.1 That notice of relevant convictions has been received from a personal licence holder;
  - 1.2.2 The Chief Constable has confirmed to the Clerk that the licence holder (reference case number 2 of 2014) has been convicted of a relevant offence and made a recommendation to revoke the licence for the purposes of preventing crime and disorder and securing public safety;
  - 1.2.3 That, 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 should be made in respect of the personal licence for the purposes of preventing crime and disorder and securing public safety.

**2. RECOMMENDATIONS**

**It is recommended that the Board:-**

- 2.1 **Note the existence of a relevant conviction and the requirement to hold a review hearing following confirmation of the conviction by the Chief Constable;**



- 2.2 Note any recommendations from the Chief Constable, hear from the parties, consider the matter and determine whether one of the possible orders set out in paragraph 3.11 is necessary for the purposes of the preventing crime and disorder and securing public safety objectives;**

**3. BACKGROUND**

- 3.1 The Licensing (Scotland) Act 2005 section 82 provides that where a personal licence holder is convicted of a relevant offence then he/she must give notice of the conviction to the relevant Licensing Board within a month of conviction.
- 3.2 On the 17 January 2014 the Clerk received notice from the licence holder, that they had been convicted of a relevant offence.
- 3.3 By virtue of s.81 the Court was also obliged to notify the Board of any relevant conviction but, to the date of writing of this report, nothing has been received from the Court.
- 3.4 The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513) prescribe which offences are relevant offences for the purposes of the Licensing (Scotland) Act 2005. The list of relevant offences within the Regulation includes, amongst others, the offence disclosed by the licence holder.
- 3.5 Accordingly the personal licence holder has been convicted of a relevant offence.
- 3.6 Upon receipt of notice of the relevant convictions from the licence holder, and in accordance with statutory procedure, the Clerk sent notice of the same to the Chief Constable's representative. In return, on the 24 January 2014, the Chief Constable's representative issued a notice that confirmed the existence of the relevant convictions.
- 3.7 A copy of the notice referred to in paragraph 3.6 above has been separately circulated to members.
- 3.8 The Licensing (Scotland) Act 2005 further provides at s.83(5) that where the Chief Constable proposes to give a notice confirming a conviction and considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of any of the licensing objectives that the licence holder's personal licence should be revoked, suspended or endorsed, the Chief Constable may include in the notice a recommendation to that effect.
- 3.9 It should be noted that in this case the Chief Constable has included a recommendation for revocation for the objectives of preventing crime and disorder and securing public safety.

3.10 This report is to notify the Board of the requirement under s. 83(7) of the Licensing (Scotland) Act 2005 to hold a hearing as a result of receipt of the Chief Constable's notice.

3.11 At the hearing the Licensing Board may, having regard to the conviction and any recommendation contained in the chief constable's notice, after giving the licence holder concerned and the Chief Constable an opportunity to be heard and if satisfied that it is necessary to do so for the purposes of the licensing objectives make one of the following orders:

3.11.1. revoking;

3.11.2. suspending for such period, not exceeding 6 months, as the Board considers appropriate; or

3.11.3. endorsing;

the personal licence held by the licence holder concerned.

3.12 The Licensing (Scotland) Act 2005 provides for a system akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence.

#### **4. IMPLICATIONS**

##### **(a) Council/Community Planning Priorities**

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

##### **(b) Policy and Legal**

Legal implications have been explained above.

**(c) Financial Implications**

None.

**(d) Risk Implications**

The Board is to have regard to any of the licensing objectives, particularly the crime prevention objective and decide whether the risk justifies intervention on such grounds.

**(e) Staffing Implications**

None.

**(f) Property**

None.

**(g) Equalities**

There are no issues in this case.

**(h) Consultations**

Consultation is not required.

**5. CONCLUSION**

**5.1 It is proposed that the Board note the existence of a relevant conviction and the requirement to hold a hearing following confirmation of the conviction and the making of a recommendation by the Chief Constable;**

**5.2 It is proposed that the Board, having regard to the notice from the Chief Constable, hear from the parties, consider the matter and determine whether one of the possible orders set out in paragraph 3.11 is necessary for the purposes of the preventing crime and disorder and securing public safety objectives.**

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

Background Papers: There are no background papers

Ref: SAH/TT

Signature \_\_\_\_\_

Date 5 March 2014

Designation Head of Legal and Democratic Services, Clerk to the Board

Name Rhona Gunn