

## The Highland Licensing Board

Meeting – 29 March 2016

Agenda Item	8.1
Report No	HLB/026/16

### Application for the provisional grant of a premises licence under the Licensing (Scotland) Act 2005

Sun Dancer Bar and Restaurant, Harbour Street, Nairn IV12 4PH

#### Report by the Clerk to the Licensing Board

##### Summary

This report relates to an application for the provisional grant of a premises licence in respect of Sun Dancer Bar and Restaurant, Harbour Street, Nairn IV12 4PH by L J Restaurants Limited, Registered Office: Clava House, Cradlehall Business Park, Inverness IV2 5GH per the Partnership of M. A. Jack, M.E. Jack, J. Jack and L Jack.

#### 1.0 Description of Premises

1.1 These are new premises on two levels. The top level has a restaurant area with 106 cover seating, a bar area, a lounge area, a terrace and a private function area which would hold approximately 30 people. The lower level is a cafe area of 15 covers, toilets and kitchen area.

#### 2.0 Operating Hours

2.1 The applicant seeks the following **on-sale** hours:

**On sales:**

Monday to Sunday: 1100 hours to 0100 hours

**Off sales:**

Monday to Sunday: 1100 hours to 2200 hours

#### 3.0 Background

3.1 On 1 February 2016 the Licensing Board received an application for the provisional grant of a premises licence from by L J Restaurants Limited, Registered Office: Clava House, Cradlehall Business Park, Inverness IV2 5GH per the Partnership of M. A. Jack, M.E. Jack, J. Jack and L Jack.

The application was accompanied by the necessary section 50 Certification in terms of Planning.

- 3.2 The application was publicised during the period 08 February until 29 February 2016 and confirmation that the site notice was displayed has been received.
- 3.3 In accordance with standard procedure, Police Scotland, the Scottish Fire and Rescue Service and the Council's Community Services (Environmental Health) and Planning and Building Standards were consulted on the application.
- 3.4 Notification of the application was also sent to NHS Highland and the local Community Council, Nairn River.
- 3.5 Further to this publication and consultation process, the following timeous notices of **objection** have been received and are appended:
- Letter received 26 February 2016 from Mrs L M Mackintosh, 48B Park Street, Nairn IV12 4PW Appendix 1.
  - Letter received 29 February 2016 from Mr and Mrs Duncan, 40 Shore Street, Nairn IV12 4PX Appendix 2.
  - Letter received 29 February 2016 from Alan Watt, 22 Park Street, Fishertown, Nairn IV12 4PN Appendix 3.
  - Letter received 29 February 2016 from Mrs Janet Ross, 41a Park Street, Nairn IV12 4PP Appendix 4.
  - Letter received 29 February 2016 from Ms Faye CV Cameron, 46 Park Street, Nairn IV12 4PP Appendix 5.
  - Letter received 29 February 2016 from Nairn River Community Council, per Des Scholes, Secretary, c/o 5 Water Lane, Nairn, IV12 4BU, Appendix 6.
  - Letter received 28 February 2016 by email from Brian Stewart, 33 Albert Street, Nairn, IV12 4HF
- Representation:**
- Email received 29 February 2016 from Nan and Bruce Middleton, 48 Park Street, Fishertown, Nairn, IV12 4PP.

- 3.6 The applicant and objectors must be given the opportunity to be heard before the Board determines the application and they have accordingly been invited to the meeting. The applicant and objectors have been advised of the hearings procedure which may also be viewed via the following link:

[http://www.highland.gov.uk/downloads/download/428/liquor\\_licence\\_objections\\_appeals\\_notices\\_of\\_determination](http://www.highland.gov.uk/downloads/download/428/liquor_licence_objections_appeals_notices_of_determination)

- 3.7 A letter has been received from Nairn west and Suburban Community Council after the last due date for submitting objections or representations. The Board can only consider this letter if-
- (a) the failure is due to mistake, oversight or other excusable cause, and
  - (b) the Board considers it appropriate in all the circumstances to relieve the failure.

A representative of the Community Council has been invited to attend the meeting to address the Board on this point. The applicant should also be given the opportunity to comment. If the Board agrees to relieve the failure then the letter will be circulated to the meeting.

## **4.0 Legislation**

4.1 The Licensing Board must, in considering and determining the application, consider whether any grounds of refusal apply and, if none of them applies, the Board must grant the application.

Relevant grounds of refusal are: -

1. that the premises are excluded premises;
2. that the grant of the application would be inconsistent with one or more of the licensing objectives;
3. 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 the premises are unsuitable for use for the sale of alcohol, or
4. that having regard to the number and capacity of licensed premises of the same or similar description in the locality, the Board considers that if the application were to be granted, there would, as a result, be overprovision of licensed premises of that description in the locality.

4.2 If the Board would refuse the application as made, but a modification is proposed by them and accepted by the applicant, the application can be granted as so modified.

## **5.0 Licensing Standards Officer**

5.1 The LSO has provided the following comments:-

The premises concerned are a substantial new build property overlooking the harbour area at Nairn. The premises are located on two floors and are seeking a provisional premises licence.

The necessary section 50 certificate has been submitted with the application. The hours requested are within the policy hours of the Highland Licensing Board.

The premises will in the main be food led as opposed to purely wet sales.

The operating plan submitted has been viewed by the LSO who is satisfied that it meets all five of the licensing objectives. The premises were visited by the LSO during construction and are certainly suitable for the sale of alcohol. The applicants have substantial experience within the licensed trade having owned and operated the local Jacko's Bar in Nairn for several years.

Following the public consultation period in respect of the application a total of 8 objections or representations have been received expressing various degrees of concern that the operation of the premises may give rise to issues affecting public safety and potentially causing public nuisance to residents in nearby residential property in the heavily populated Fishertown area of Nairn.

Following receipt of these objections it is the opinion of the LSO that it would be helpful to furnish the objectors with first-hand information from the operators as to how the premises will function. Whilst the generic application form is helpful in many respects it does not give specific insight into the manner in which a premises will be conducted during its course of business. To this end an invitation has been sent to all the objectors to meet with the applicants at the premises on Wednesday 23 March 2016 at 19.00hrs to hear first-hand the specific practical application of the proposed operating plan. The LSO will be in attendance as will an officer from Environmental Health. The LSO will give a verbal update on the outcome(s) of this meeting to the Licensing Board.

Specifically in respect of helping to ensure that there is no public nuisance through noise disturbance the LSO has suggested a condition in respect of the outside drinking area to allow alcoholic and non-alcoholic drinks to be consumed up to 22.30 hours. Furthermore special local licensing conditions are recommended in respect of ensuring doors and windows are closed during the playing of live or recorded entertainment; glass disposal is governed and the premises are required to operate by way of a noise management plan to be approved by the Board.

The LSO is of the opinion that should the Board be minded to grant this licence with the proposed conditions the licensing objectives will not be infringed.

## **6.0 HLB Local Policies**

6.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-16
- (2) Highland Licensing Board Equality Strategy

## **7.0 Conditions**

### **7.1 Mandatory conditions**

If the application is approved the mandatory conditions set out in Schedule 3 of the Act will apply.

### **7.2 Local conditions**

The following local conditions are recommended by the LSO.

A) Children under the age of 16 are excluded from any room where there is a bar counter after 2200 hours except during private functions or for the purpose of viewing live entertainment or where the child is in the room for the purpose of

taking a meal. This condition does not apply to any child who is in the bar solely for the purpose of passing to or from some other part of the premises being a part to or from which there is no other conventional means of access or egress.(licensing objective 5)

B) Whilst in any room with a bar counter all children must be in the company of, or supervised by, an appropriate responsible adult. This condition does not apply to children of the licence holder or children who are resident on the premises when not in the bar areas.(licensing objective 5)

C) Notwithstanding conditions (A) and (B) children must not sit or remain at the bar counter at any time (licensing objective 5)

D) After 22.30 hours no alcoholic or non-alcoholic beverage shall be consumed within the designated outdoor drinking area (licensing objective 3)

Q) The licence holder shall submit to the Board and to Police Scotland, prior to 1 December each year, notice of the dates within the festive period on which it is intended that the premises remain open until the festive period terminal hour stated for that category of premises in the Board's Policy Statement. The premises may remain open until the festive period terminal hour only on those dates for which notice has been given by the licence holder to the Board and to Police Scotland in accordance with this condition. (licensing objective 2).

### 7.3 Special conditions

The Board may wish to consider attaching the following local specific condition(s):

1. During the playing of any live or recorded music all windows and doors will remain shut. (licensing objective 3)
2. No glass disposal shall take place after 23.00hrs or before 07.00hrs. (licensing objective 3)
3. A written noise management plan acceptable to the Highland Licensing Board must be in place for the premises and any relevant activity or service being provided must be conducted in accordance with that plan. (licensing objective 3).

On any occasion when the premises are permitted to be open after 0100 hours the following conditions shall apply:

- A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 0100 hours. (mandatory condition)
- A designated person who is the holder of a personal licence must be present on the premises from 0100 hours. (local condition).(licensing objectives 1 and 2)

**Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local/special condition(s) detailed at para(s) 7.2 and 7.3 above.

If the Board is minded to refuse the application, the Board must specify the ground for refusal and, if the ground for refusal is in relation to a licensing objective, the Board must specify the objective in question.

Reference: HC/INBS/ 587

Date: 9 March 2016

Author: Wendy Grosvenor

Background Papers: The Licensing (Scotland) Act 2005/Application Form.

488. Park Dr

Train 1V19 4PW.

Feb. 24<sup>th</sup> 2016.

Clerk to the Board  
Maideair MacKenzie  
Chief Executive's Office  
The Town House.

Investment: 1V1 154 **RECEIVED**

26 FEB 2016

Dear Sir

The Licensing (Scotland) Act 2005  
Application for Provisional Premises  
hence.

SUN DANCER, BAR and Restaurant  
THE HARBOUR, HAIRN.

I object to that part of the application  
regarding Entertainment, including  
Recorded music (Sg), live Performances  
(Sg).

These premises are near highly  
populated residential areas and  
noise pollution would be intolerable

2

especially in the high density Hairn town  
Adequate sound control must be a  
Priority — no open window or doors for  
example.

Also adequate stewardship at the  
end of opening hours. All agrees to  
these premises are through residential  
areas.

Also to operate in any period or extended  
hours offered by the Highland Licensing  
Board

Please accept my objection on the  
above conditions  
Yours sincerely,





RECEIVED

29 FEB 2016

**REPRESENTATIONS OR OBJECTIONS IN RELATION TO A PREMISES LICENCE  
APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005**

Please read the Board's Guidance Notes on How to Object or make Representations in relation to a Premises Licence Application before completing this form. This form when completed should be returned to the nearest office of the Licensing Board using the contact details in the guidance notes. Remember, if an objection is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the objector or person making representations

**1. Full Name and Address of person making objection/representation:**

MR + MRS DUNGAN 40 SHORE STREET, NAIRN, IV12 4PX.	
Telephone Number:	
Email Address:	o.uk.

**2. Address of Premises in respect of which objection / representation is made:**

SUN DANCER RESTAURANT, HARBOUR STREET, NAIRN.
--

**3. Details of any OBJECTION:** (complete only if you consider one of the ground for refusal apply)

<b>State ground of objection (refer to ground of objection by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1. Excluded Premises	PLEASE SEE SEPERATE SHEET.
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision	

**4. Details of any REPRESENTATION:** (complete only if you wish to make a representation in respect of the application)

<b>State details of any representation (refer to representation by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1. in support of application	
2. seeking an amendment to the operating plan, or	
3. seeking to add additional conditions to the licence	

Signature: .....

Date: 25/2/16 .....



Clerk to the Licensing Board,  
Inverness, Nairn, Badenock and Strathspey Area,  
Town House,  
High Street,  
Inverness,

25<sup>th</sup> February 2016

**RE: Sun Dancer Bar and Restaurant, Harbour Street, Nairn – Application for Provisional Premises License**

Dear Sir/Madam,

I wish to object to the granting of a provisional license to the above premises on the following grounds:

- 1 The applicant is seeking licensing hours up to 1am, seven days a week. This would result in people leaving the premises in the early hours of the morning within 30 metres of the bedrooms of adjoining residential properties, resulting in a disturbed sleep for homeowners/tenants.
- 2 It is also apparent that the applicant wishes to provide outdoor drinking facilities for patrons. This would result in prolonged periods of noise disturbance to nearby residents and detract from the enjoyment of their own private outdoor area.
- 3 It is also a concern that there are plans to hold marquee functions where there is a likelihood of live/recorded music, this would result in similar prolonged disturbance.
- 4 The location of the premises also raises fears over safety of those using the bar/restaurant given its close proximity to the harbour and beach, with possible trip/fall hazards.
- 5 It is a concern that the off sale license could encourage prolonged drinking outside the restaurant and in the surrounding area of promenade and leaving empty bottles/can in neighbouring gardens and streets. This is an area for tourism and locals, where people take their families.
- 6 It should also be noted that the applicant's business model appears to have changed from that of the original planning application which was granted for a replacement (licensed) restaurant building, while the application is now headed Sun Dance Bar and Restaurant, indicating that any restaurant operation is now a secondary consideration.

I hope that the board will consider the above objections when making its final decision.

Yours Faithfully

Mr & Mrs Duncan

RECEIVED  
29 FEB 2016



**REPRESENTATIONS OR OBJECTIONS IN RELATION TO A PREMISES LICENCE APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005**

Please read the Board's Guidance Notes on How to Object or make Representations in relation to a Premises Licence Application before completing this form. This form when completed should be returned to the nearest office of the Licensing Board using the contact details in the guidance notes. Remember, if an objection is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the objector or person making representations

**1. Full Name and Address of person making objection/representation:**

ALAN WAT, 22 PARK ST, FISHERTOWN NAIRN IV12 4PN	
Telephone Number:	
Email Address:	

**2. Address of Premises in respect of which objection / representation is made:**

SUNDAY BAR + RESTAURANT, HARBOUR STREET NAIRN. (REF MB/HC/IN BS/527)
--

**3. Details of any OBJECTION:** (complete only if you consider one of the ground for refusal apply)

<b>State ground of objection (refer to ground of objection by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1. Excluded Premises	CONCERNED ABOUT THE POTENTIAL NOISE FROM LIVE MUSIC, EARLY MORNING SO IN A MARKET.
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision	

**4. Details of any REPRESENTATION:** (complete only if you wish to make a representation in respect of the application)

<b>State details of any representation (refer to representation by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1. in support of application	
2. seeking an amendment to the operating plan, or	
3. seeking to add additional conditions to the licence	

.. Date 25/2/16 ..

RECEIVED  
29 FEB 2016

APPENDIX 4

Mrs Janet Ross  
41a Park Street  
Nairn  
IV12 4PP  
24<sup>th</sup> February, 2016

Mr Alaisdair MacKenzie  
Chief Executive's Office  
The Town House  
Inverness  
IV1 1JJ

RECEIVED  
29 FEB 2016

Dear Sir,

**Provisional Licence for Sun Dancer Bar and Restaurant, Harbour Street, Nairn**

I wish to draw to the attention of the Licensing Board the original plans were for a restaurant licence. It has now become a bar and off licence with entertainment with outside drink area.

As I live nearby in what is supposed to be a conservation area I am appalled to see an application for licencing from 11.00 am to 01.00am seven days a week. I was really looking forward to the licence restaurant and ice-cream parlour opening. The whole concept has now changed to a restaurant bar with entertainment and alcohol being sold for on and off the premises.

In the summer time when you have your windows are open in the evening our sleep is going to be disturbed with the noise of music not what you expect when you live in a quite conservation area.

A licence for 01.00am closing Friday and Saturday would be more acceptable with stewards being in attendance.

Y

Janet Ross

Faye C.V. Cameron,  
46 Park Street,  
NAIRN IV12 4PP

APPENDIX 5

Sun Dancer Bar & Restaurant,  
Harbour Street,  
NAIRN. IV12 4PH.

1 F

1 F

Dear Sir,

I wish to present my serious concerns / objections to the licence application by the above company under the Licensing (Scotland) Act 2005.

My objections are based on the following grounds (as set out in sections 3 and 4 of the official guidelines.)

- o Preventing crime and disorder — rowdiness and vandalism.
- o Securing public safety — premises is adjacent to both beach and harbour.
- o Preventing public nuisance — noise and public drunkenness, both late at night and, because of off-sales, during the day.
- o Protecting and improving public health — off-sales in a recreation area is not appropriate. Noise and

disturbances to near neighbours.

o Protecting children from harm — off-sales business would take place in a public area (beach, the Links) which is regularly used by families, both local and holiday-makers.

o Nature of proposed activities

and

o Persons likely to frequent the premises —  
Both are likely to cause nuisance to residents and visitors.

In addition, the premises is located within a conservation area and is very close to residential properties.

The initial purpose intended for the building was that of a licensed restaurant and take-away food outlet.

It now appears that it is to be a pub, function suite and off-licence, which is an entirely different proposition, in terms of clientele, nuisance value to neighbours, as well as to locals and holiday makers. who wish to enjoy the beach, the

Links, the harbour area for recreation.

Yours faithfully,

24<sup>th</sup> March 2016.





# Nairn River Community Council

## Comhairle Coimhearsnachd Abhainn Narann

Des Scholes  
Secretary  
Nairn River Community Council  
c/o 5 Water Lane  
Nairn  
Nairnshire  
IV12 4BU

Your Ref MB/HC/INBS/587

Alaisdair MacKenzie  
Clerk of the Licensing Board  
Highland Council  
Town House  
High Street  
Inverness,  
IV1 1JJ

RECEIVED

26 February 2016

Dear Mr MacKenzie,

### APPLICATION FOR PROVISIONAL PREMISES LICENCE SUN DANCER, BAR AND RESTAURANT, HARBOUR STREET, NAIRN, IV12 4BU

The wording of this application "application for provisional premises licence, Sun Dancer, bar and restaurant" would indicate that there has been a shift of emphasis of the business plan for the premises. The planning application decided on the 5<sup>th</sup> of November 2014 under delegated powers of a Highland Council planning official had been entitled: "14/03159/FUL|Erection of Replacement (Licensed) Restaurant Building|Former Sandancer Building Harbour Street Nairn.

We have moved from a "(Licensed) Restaurant" in the planning application to a "bar and restaurant" in the licence application.

As this is a new application that could have a large impact on the amenity and environment of the Harbour area we, as a community council, feel that we have to take into account the views of the Fishertown residents that have contacted us. There are concerns on three issues: 1) the off licence, 2) the late licence every night 3) potential playing of live or recorded music.

1. We would wish to object to the off licence sales on the premises as we feel that there is potential that the alcohol may be consumed within the nearby area including the beach and the harbour. The possibility for anti-social behaviour has been highlighted to us.





# **Nairn River Community Council**

*Comhairle Coimhearsnachd Abhainn Narann*

2. We would ask that the board restrict the later hours of the bar initially, particularly during the week, until it can be determined what effect the presence of the bar has on the amenity of the harbour area and whether any disturbance is caused to the nearby high-density residences and the Fishertown.
3. We would urge the board to reject any permission to play live or recorded music unless evidence of adequate sound proofing measures and staff procedures to minimise noise could be provided.

We would also like to draw the Board's attention to the geographical areas outlined in the Highland Council's document "LOCAL GOVERNMENT (SCOTLAND) ACT 1973, EXTENDED BYELAWS TO PROHIBIT CONSUMPTION OF ALCOHOL IN PUBLIC PLACES IN NAIRN TOWN CENTRE" dated 14<sup>th</sup> December 2006 (copy attached), in their determination of the elements of this application.

Yours sincerely

Des Scholes

Secretary on the behalf of  
Nairn River Community Council

THE HIGHLAND COUNCIL

14 DECEMBER 2006

Agenda Item	
Report No	

LOCAL GOVERNMENT (SCOTLAND) ACT 1973  
EXTENDED BYELAWS TO PROHIBIT CONSUMPTION OF ALCOHOL IN  
PUBLIC PLACES IN NAIRN TOWN CENTRE

Report by Director of Corporate Services

**SUMMARY**

This report advises Members that the Nairnshire Committee has recommended the introduction of new Byelaws prohibiting the consumption of alcohol in public places within an extended Nairn Town Centre area, subject to confirmation by the Scottish Executive.

**1. INTRODUCTION**

- 1.1 On 24<sup>th</sup> June 1996 the then Secretary of State for Scotland confirmed Byelaws promoted by the then Nairn District Council prohibiting the consumption of alcohol in public places within Nairn Town Centre.
- 1.2 On 23<sup>rd</sup> May 2006, following public consultation, the Nairnshire Committee agreed to recommend to the Council that new Byelaws for an extended Nairn Town Centre be promoted.

**2. PROPOSALS**

- 2.1 The present Byelaws cover the Nairn Town Centre area including Fishertown and Viewfield. The extended area in the new Byelaws would also include the Maggot, the Riverside and Riverside Playing Fields area as far South as Whinnieknowe, the Cemetery including the lands to the North of the Auldearn Burn and the lands as far West as Nairn Swimming Pool. A map of the whole area including the extension area was exhibited and approved at the Nairnshire Committee Meeting.

Attached as an Appendix is the draft Byelaws order, with the relative Plan (large scale copy exhibited outside the Council Chamber).

**3. PROCEDURE**

- 3.1 If the Council agrees to make the new Byelaws a draft Notice to that effect will be published in the Nairnshire Telegraph. A copy of the draft Byelaws will be available for public inspection. A period of one month will be allowed for objections to the Scottish Executive.
- 3.2 On expiry of the one month period and assuming there are no objections, the Council can make the new Byelaws and submit them to the Scottish Executive for confirmation. If they are confirmed the Scottish Executive will fix a date for the new Byelaws to come into effect and for the existing ones to be revoked.
- 3.3 The effective and revocation dates will be published in the Nairnshire Telegraph. A 28 day period for representations concerning the revocation will be allowed.
- 3.4 The new Byelaws will subsist for a period of 10 years. They will then be reviewed in accordance with statutory requirements.

**RECOMMENDATIONS**

The Council is asked to authorise the making of the new Byelaws, involving the revocation of the existing Byelaws, and the carrying out of the statutory procedure necessary for confirmation of the new Byelaws by the Scottish Executive.

Signature:

Designation: **Director of Corporate Services**

Date: 14 December 2006

Author: **David A Lyle, Solicitor, Nairn**

## **Appendix**

Draft Byelaws, with Plan

.....  
Background Papers:

1. Nairn District Council Byelaws Prohibiting the Consumption of Alcoholic Liquor in Designated Places 24<sup>th</sup> June 1996.
2. Report to, and Minute of, the Nairnshire Committee on 23<sup>rd</sup> May 2006.

## THE HIGHLAND COUNCIL

### THE HIGHLAND COUNCIL BYELAWS PROHIBITING CONSUMPTION OF ALCOHOLIC LIQUOR IN DESIGNATED PLACES - NAIRN TOWN CENTRE 2006

The Highland Council constituted under the Local Government (Scotland) Act 1994 (hereinafter referred to as "the Council") in exercise of the powers conferred upon it by Sections 201, 202 and 203 of the Local Government (Scotland) Act 1973 and of all other powers enabling it in that behalf, hereby makes the following Byelaws:-

#### Interpretation, Application and Citation

1. [1] In these byelaws, unless the context otherwise requires -  
  
"alcoholic liquor", "licensed canteen", "licensed premises" and "registered club" have the same meaning as in the Licensing (Scotland) Act 1976;  
  
"designated place" means any place to which the public have access within the areas specified in the Schedule to these Byelaws and shown outlined by a red line on the Plan annexed and signed as relative hereto.
- [2] These byelaws shall not apply -  
  
[a] on 31st December, from 6.00pm until the end of that day; and  
[b] on 1st January, until 6.00am.
- [3] These byelaws may be cited as "The Highland Council Byelaws Prohibiting Consumption of Alcoholic Liquor in Designated Places – Nairn Town Centre 2006".

#### Offence

2. [1] Subject to paragraphs 2 and 3 of this byelaw, any person who consumes alcoholic liquor in a designated place shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- [2] It shall not be an offence against these byelaws to do anything in any designated place which is a licensed canteen, licensed premises or a registered club, or to do anything which is specifically authorised by any of the provisions of the Licensing (Scotland) Act 1976 as amended.
- [3] It shall not be an offence against these byelaws to do anything in any designated place in respect of which there is in operation:  
  
[a] an occasional licence in terms of Section.33(1) or (2) of the Licensing (Scotland) Act 1976; or  
[b] an occasional permission in terms of Section.34(1) of that Act

during any period when alcoholic liquor may be sold there by virtue of that licence or, as the case may be, permission and for 15 minutes after the expiry of such period.

### Presumptions

3. [1] This byelaw applies for the purposes of any trial for an offence against these byelaws.
- [2] Any liquid found in a container shall, subject to the provisions of this byelaw, be presumed to conform to the description of the liquid on the container.
- [3] A container which is found to contain -
- [a] no liquid, or
  - [b] insufficient liquid to permit analysis
- shall, subject to the provisions of this byelaw, be presumed to have contained at the time of the alleged offence liquid which conformed to the description of the liquid on the container.
- [4] A person shall not be entitled to lead evidence for the purpose of rebutting a presumption mentioned in paragraphs 2 or 3 of this byelaw unless, not less than 7 days before the date of the trial, notice has been given to the prosecutor of the intention to so do.

### Public Notices of Effect

4. [1] The Council shall erect one or more signs at or reasonably adjacent to each designated place for the purpose of giving notice of the effect of these byelaws.
- [2] It shall be no defence in proceedings against a person for an offence under these byelaws that the Council failed to comply with paragraph 4 [1] of these byelaws.

IN WITNESS WHEREOF

SCHEDULE /

## SCHEDULE

### **BYELAWS PROHIBITING CONSUMPTION OF ALCOHOLIC LIQUOR IN DESIGNATED PLACES – NAIRN TOWN CENTRE 2006**

#### **DESCRIPTION OF DESIGNATED PLACES**

The area specified below is situated within the town of Nairn which is part of the Highland local government area per Section 1 of the Local Government etc (Scotland) Act 1994 and is the specified aarea for the purposes of these Byelaws

the Town Centre of Nairn including but not exclusively

some or all of Academy Street, Acre Street, Ballark Place, Balvenir Place, Barking Yard Lane, Barrogill Terrace, Belivat Terrace, Bridge Street, Burnett Place, Burntisland Street, Caledonian Street, Castle Lane, Cawdor Place, Cawdor Road, Cawdor Street, Church Road, Church Street, Courthouse Lane, Crescent Road, Cumming Street, Douglas Street, Durban Place, Fairlie Lane, Falconers Lane, Firth Street, Gordon Street, Grant Street, Harbour Area Road, Harbour Street, Harbour Street (North), High Street, King Street, Knowles Gardens, Leopold Street, Links Place, Links Road, Lodgehill Road, Marine Road, Mill Road, Millbank Crescent, Millbank Street, Grantown-on-Spey Road, Park Street, Queen Street, Rose Street, Roseneath Terrace, Royal Walk, Seafield Street, Shambles Road, Shore Street, Simpson Street, Smiths Lane, Society Street, St Ninian Place, St Ninian Road, Tower Court, Union Street, Viewfield Drive, Water Lane, Watson's Place, Wilson Street

and all other roads and streets, public footpaths and bridges, public vehicular accesses, public vehicular parks, burial grounds and cemeteries, public gardens, public parks and open spaces, play areas, playing fields, war memorial sites, all as they lie within the area on the Plan outlined in Red and annexed and executed as relative hereto.





**REPRESENTATIONS OR OBJECTIONS IN RELATION TO A PREMISES LICENCE APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005**

Please read the Board's Guidance Notes on How to Object or make Representations in relation to a Premises Licence Application before completing this form. This form when completed should be returned to the nearest office of the Licensing Board using the contact details in the guidance notes. Remember, if an objection is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the objector or person making representations

**1. Full Name and Address of person making objection/representation:**

BRIAN STEWART 33 ALBERT STREET, NAIRN IV12 4HF	
Telephone Number:	
Email Address:	

**2. Address of Premises in respect of which objection / representation is made:**

THE "SANDANCER" (OR SUN JANCER?) HARBOUR STREET, NAIRN IV12 4BU
--

**3. Details of any OBJECTION:** (complete only if you consider one of the ground for refusal apply)

State ground of objection (refer to ground of objection by number, see guidance notes, and give details): (Continue on separate sheet if necessary)		
1.	Excluded Premises	NO. 5 : OVER-PROVISION
2.	Off-Sales Hours/24 hour drinking	NO. 4 : ACTIVITIES/PREMISES/CUSTOMERS
3.	Licensing Objectives	NO. 3 : LICENSING OBJECTIVES
4.	Activities/Premises/Customers	- DETAILS IN ACCOMPANYING LETTER
5.	Over Provision	

**4. Details of any REPRESENTATION:** (complete only if you wish to make a representation in respect of the application)

State details of any representation (refer to representation by number, see guidance notes, and give details): (Continue on separate sheet if necessary)		
1.	in support of application	NO 2 AND / OR NO 3 : LIMITS ON TYPE AND EXTENT OF LICENCE, AND ADDITION OF SPECIAL CONDITIONS - DETAILS IN ACCOMPANYING LETTER
2.	seeking an amendment to the operating plan, or	
3.	seeking to add additional conditions to the licence	

Signature: ..... Date: 27 FEB 2016 .....



RECEIVED

1 MAR 2016

27 February 2016

"Holmside"  
33 Albert Street  
Nairn IV12 4HF  
Scotland

Clerk to the Licensing Board  
Inverness, Nairn, Badenoch and Strathspey Area  
Town House  
High Street  
Inverness IV1 1JJ

e-mai

*Dear Mr Mackenzie*

**LICENCE APPLICATION – OBJECTION/REPRESENTATION:  
The "Sun Dancer" (or Sandancer), Harbour Street, Nairn IV12 4PH**

1. This application is to be considered at the Board meeting on 29 March. I attach a completed form raising objections and proposing conditions on this application. This accompanying letter sets out the details, for which insufficient space is provided on the form.
2. I object to the application on the following three grounds:

**Overprovision (No 5)**

The premises are a new building, on the site of a former amusement arcade. The statement in support of the planning application asserted that as the previous structure (now demolished) had "*current/historical use as a Class 3 restaurant cafe..... the application is for a replacement (licensed) restaurant without the requirement for change of use*".

The previous premises – as an amusement arcade – may have provided some food. It was not a restaurant; and it was not licensed.

This new establishment – if licensed – would therefore be a new, additional, licensed premises in the area. Nairn already has more licensed premises relative to the population than other comparable towns/areas (eg Cromarty Firth, Black Isle) in the area. There is already a substantial licensed restaurant and function venue at the Parkdean caravan site in the immediate vicinity of the harbour serving the visitors/residents at that site. The Nairn Sailing Club has a licence to serve its members in the clubhouse. There are a number of other licensed premises in the Fishertown area (including the Brackla 'canteen', and Jackos) and overlooking the Links (Havelock, Braeval/Bandstand and Sunnybrae). While there is merit in meeting the expectations of tourists and visitors for a choice of restaurants, the application for a "Bar" and off-sales raises questions about overprovision.

**Activities/Premises/Customers (No 4)**

This follows from, and is based on, the same principle. The proposal is for a restaurant. Under the terms of para 2.1 of the Highland Licensing Board Policy Statement, the operation being proposed is by definition, and unquestionably, a "food-led operation". It is not a public house, a hotel bar or a members' club. As such, the policy statement is clear: "*These are premises at which the sale of alcohol is ancillary to the provision of food and is only sold to persons taking table meals.*".

It follows that the serving of alcoholic drink (without food), and the sale of liquor for consumption off the premises, are not provided for under this category.

It is also relevant that Article 3 of the Town & Country Planning (Use Classes) Scotland Order 1997 which defines Class 3 (Food and Drink) premises, explicitly excludes from this Class "...use as a public house" [Art 3 (5) (h)], and, also relevant, use of premises "...for the sale of hot food for consumption off the premises" [Art 3 (5)(j)]. This would appear to rule out a public "Bar", and the sale of "takeaway" hot food from the proposed pizza/ice-cream parlour, and would certainly also preclude off-sales of alcohol from this operation.

### Licensing Objectives (No 3)

Among the stated objectives are "*securing public safety*", "*preventing public nuisance*", and "*preventing crime and disorder*".

There is already a specific Bye-law, adopted by Highland Council on 14 December 2006 under the 1973 Local Government (Scotland) Act, which prohibits the consumption of alcohol in certain public areas in Nairn. This Byelaw applies to the whole of the area surrounding the Sandancer premises, and signs are displayed accordingly on the lamp-posts and elsewhere.

This does not constrain the serving of alcohol within premises in these areas. But it clearly has a bearing on the matter of off-sales. It would be both inconsistent and hypocritical for the Licensing Board to agree to off-sales in an area subject to restrictions under a bye-law.

A further consideration in terms of public safety is the fact that the Sandancer premises are immediately adjacent to the harbour and river-mouth. These are not, and cannot be, surrounded completely by protective barriers. There have already been incidents of people falling into the water (and indeed possible drowning). It would be irresponsible to permit off-sales of alcohol, or indeed the sale of alcoholic drink independently from meals, and especially during the hours of darkness, at premises located so near to an evident hazard.

3. In the light of these points, my representation are in category 2 and/or 3. I would wish the Board to decline to grant a licence for off-sales. I would recommend that the Board grant the proposed restaurant a licence whose terms and conditions reflect the stated purpose of the premises as a restaurant and thus as a food-led operation. This would permit the serving of alcohol to those taking meals, during the hours (daytime and evening) of meal-service and kitchen operations. *Prima facie* this would not normally extend until 0100 hours every night.

4. Insofar as there may be any possibility of food-service outdoors (on veranda, balcony or decking), then in view of the fact that the entire surrounding area is public-amenity green space used by families and children for recreation and picnicking, the licence should also have special local conditions attached requiring the use of plastic/polycarbonate glasses outside the building.

5. Since the premises are immediately adjacent to residential flats, the licence should also include special local conditions to limit noise (eg of rubbish disposal etc) during unsocial hours. The question of music performance or entertainment is not mentioned in the current application. It is self-evident that this would require separate consideration.

6. I should be grateful if these detailed representations could be submitted to the Board.

*Yours sincerely,*

*Brian Stewart*

B E Stewart



Appendix 8

-----Original Message-----

From: Nan Middleton [redacted]  
Sent: 29 February 2016 10:33  
To: Alaisdair Mackenzie  
Subject: New Bistro at Nairn Harbour

Dear sir

As Fishertown residents my husband and I were really looking forward to a high class venue at this prominent site at Nairn Harbour but after receiving a copy of the Licensing Application from a neighbour we have grave concerns regarding the opening and closing hours.

For the past 16 years we have enjoyed the ambiance of this quiet conservation spot with our other mostly pensioner neighbours.

What promised to be an asset now seems to be a glorified pub.

Opening to 1am with cars and (with a wedding and sports venue probably buses) exiting the only suitable road in Harbour Street in the wee small hours is not in keeping with this quiet suburb famous for attracting tourists.

It is our understanding that the harbour is to be improved upon with more platoons wifi etc to make it more family friendly. This is great news but can we please point out the difficulties at present at this site with speeding cars lack of parking litter and no pavements at the harbour itself.

I hope you can allay our fears and keep the above in mind as you debate the application Nan and Bruce Middleton  
48 Park Street

Fishertown

Nairn

IV12 4PP

Sent from my iPhone



## Nairn West & Suburban Community Council

8 March 2016

Ian Cox  
Licensing Standards Officer  
Highland Council  
The Town House  
Inverness IV3

*(sent by email)*

*Dear Ian*

### **PROVISIONAL LICENCE APPLICATION: THE SUN DANCER/SANDANCER, NAIRN**

The two Community Councils in Nairn (Nairn River CC and Nairn West & Suburban CC) liaise closely over matters which are of interest and concern to the town and community as a whole.

As almost all Nairn residents (as well as tourist visitors) regularly frequent the Harbour and Links area, the subject of the new “Sandancer” restaurant and its licence application are relevant to all members of the local community.

We were aware that Nairn River CC (in whose 'parish' the building stands) has submitted formal representations to the Board, reflecting the views in particular of nearby residents. As you may have noticed, there has also been a certain amount of public discussion and comment.

The matter was therefore on the agenda of our regular monthly meeting last night (the first since the licence application was submitted). I made a point of drawing attention to the planned open meeting at 1900 hours on Wednesday 23 March, as notified in your letter of 3 March. There was some discussion at the meeting of the licence application, and it was agreed that the comments made should be relayed to the local authorities. Hence this letter.

The point at issue in the NW&SCC meeting was that the application goes beyond a 'restaurant' licence. In general there is support for a restaurant – with a “table licence” - in that location. But the prospect of a bar, late-night licensing hours, and off-sales was less welcome. The main concern was public safety (especially after dark and late at night) in the harbour area, which cannot be fenced off. The question of public order and nuisance was also raised, given that the area is already subject to a bye-law prohibiting public drinking. It was also recognised that neighbouring residents might have anxieties about noise and disturbance, especially if the premises were to become the venue for functions or “night-club” style entertainment.

I should be grateful if the views expressed at this Community Council meeting could be conveyed as appropriate to the members of the Board.

*Yours sincerely,*

*Brian*

**B E Stewart**  
Secretary, NW&SCC