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Depute Clerk to the Licensing Board  
Legal and Democratic Services  
Corporate Governance  
Aberdeen City Council  
Ground Floor  
Town House  
Broad Street  
ABERDEEN  
AB10 1AQ

FOR THE ATTENTION OF MR ERIC ANDERSON

Dear Sir

**LICENSING (SCOTLAND) ACT 2005**  
**APPLICATION FOR THE VARIATION OF A PREMISES LICENCE**  
**TONIK, UNIT 11, THE GALLERIA, LANGSTANE PLACE, ABERDEEN, AB11 6FB**

I refer to the above application for the variation of a premises licence under terms of Section 29(5) of the Licensing (Scotland) Act 2005.

The variation consists of a request to include a separate existing unlicensed cafe bar/coffee shop situated at unit 6 in The Galleria as an 'annexed' part of the existing premises licence.

The new licensed area will comprise of the floor space within unit 6 along with an outside seating area which will extend into the public concourse of the shopping mall. Both the interior floor space and exterior seating area are to be included within the licensed area, as delineated by a red line within the layout plan accompanying the application. It is proposed that the additional licensed area will operate as a cocktail lounge bar with table service. Non alcoholic drinks and food will be available from unit 6 from 0800 to 1700 hours daily, with alcohol only being served after 1800 hours. Children and young persons are to be allowed entry to the new area from 0800 to 1700 hours only.

In addition, the variation requests that the existing Tonik outside seating area be included within the licensed area as delineated by a red line in the layout plan. Non alcoholic drinks and food will be available from 1200 hours.

For both the existing and sought after new licensed areas, the variation states that patrons will not be permitted to take alcohol from the new licensed area to the existing Tonik premises. It is assumed that this restriction has been proposed to ensure full compliance with the Aberdeen City Council (Drinking in Public Places) Byelaws 2009.

In terms of Section 29(5) of the Act this request can be considered a variation.

In terms of Section 22(1)(a) of the same Act, I make the following objection on behalf of the Chief Constable.

At present the premises licence relates solely to Tonik at Unit 11 The Galleria. The existing layout plan shows that the licensed area, as delineated by a red line, extends only to the perimeter of unit 11 and not beyond the building line. There is no natural curtilage extending into the shopping mall itself. The licensed area does not include the outside courtyard seating area.

The use of the existing unlicensed outside courtyard seating area, and consumption of alcohol by customers within it, has been subject of dialogue between Grampian Police, the Clerk to the Licensing Board and the agent for the premises. In order to avoid patrons of the premises committing an offence in terms of the Aberdeen City Council (Drinking in Public Places) Byelaws 2009 by drinking alcohol in the area, an agreement was reached whereby this could only be done from 1800 hours onwards daily, provided that all other businesses in the shopping mall were closed and that Door Stewards employed by Tonik were in place to manage entry and egress from the mall, effectively making it temporarily a private place and not a 'designated place' as defined in the Byelaw.

The crux of this agreement was the acceptance by the premises licence holder and their agent that without this arrangement that customers would be committing offences at all other times and that the premises licence holder would fall foul of the Prevention of Crime objective as a result.

This agreement has worked well in practice but is not currently specified in the existing premises licence or the variation sought.

The Chief Constable questions the competency of the variation application as a whole, particularly the notion of 'annexing' an existing premises licence to allow the sale of alcohol from another separate premises, location or place.

The applicant premises are also situated in the 'Justice Mill area', which is within an area of overprovision as detailed within the Aberdeen City Licensing Board Statement of Licensing Policy. The Chief Constable therefore notes the terms of section 23(5)(e) of the 2005 Act.

For the reasons detailed in this letter, and in terms of Section 22(1)(a) of the Licensing (Scotland) Act 2005, the Chief Constable objects to the variation application specifically in relation to the grounds for refusal at sections 23(5)(c) and (e) of the same Act.

If the variation is to be granted, in terms of section 22((2)(b) of the Licensing (Scotland) Act 2005, the Chief Constable recommends that the variation application, and therefore the operating plan accompanying the application, be modified at section 3(b) as follows:

The addition of the words 'Existing outside drinking courtyard area also only to be used for the sale and supply of alcohol after 1800 hours onwards'. This will ensure that both licensed areas operate under the same conditions and will formalise the existing informal agreement allowing the use of this area after 1800 hours.

Deletion of the words 'PLH staff' to be replaced with 'PLH staff, trained bar staff or door supervisors'. This change will allow the premises more flexibility in relation which staff are to be utilised to monitor both the existing and new licensed areas.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Martin Mackay', with a stylized flourish at the end.

Martin Mackay  
Chief Inspector

