Item: 6

Orkney Islands Area Licensing Board: 5 March 2026.

Licensing (Scotland) Act 2005.

Application for Provisional Premises Licence.

The Orkney Wine Barn Ltd – The Orkney Wine Barn, Berstane Road, Kirkwall.

Clerk to the Licensing Board.

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1. Overview

1.1. On 18 December 2025, The Orkney Wine Barn Ltd submitted an application for a provisional premises licence in respect of The Orkney Wine Barn, Berstane Road, Kirkwall, details of which are provided at section 3 below.

2. Recommendation

2.1. It is recommended that members of the Board:

i. Determine the application from The Orkney Wine Barn Ltd for a provisional premises licence in respect of The Orkney Wine Barn, Berstane Road, Kirkwall.

3. Application for Provisional Premises Licence

3.1. The premises are described as a "specialist retail and distribution outlet for wine storage, sales, and small-scale tastings".

3.2. The application requests on-sale operating hours, as follows:

- 10:00 to 21:00 on Mondays to Saturdays inclusive.

3.3. The application requests off-sale operating hours, as follows:

- 10:00 to 21:00 on Mondays to Saturdays inclusive.

3.4. The requested activities include receptions (for example, weddings, funerals, birthdays, retirements), club or other group meetings, recorded music, live performances, outdoor drinking facilities and intimate wine tasting events.

3.5. The on-sale capacity of the premises is 12 persons.

3.6. The application requests that children and young persons be permitted on the premises between 10:00 and 21:00 on Mondays to Saturdays inclusive, whilst accompanied by a responsible adult.

3.7. A layout plan of the premises is attached as Appendix 1 to this report.

4. Consultation

4.1. The required notices were issued to the statutory consultees on 8 January 2026, and the application was published on Orkney Islands Council's website from 8 January 2026. The last date for objections or representations to be received was 29 January 2026. No objections or representations were received.

5. Policy Position

5.1. In accordance with section 6 of the Licensing (Scotland) Act 2005 (the "2005 Act"), the Board has published a Statement of Alcohol Licensing Policy which provides that decisions on premises licence applications (which includes provisional premises licences) shall be made by the Board.

5.2. In relation to overprovision, on 27 April 2023, the Board determined the following:

- There is no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.
- The Board concluded that, on a balance of probabilities, there was not a dependable causal link between the availability of alcohol in Orkney and alcohol-related harm, in that, based on the evidence of harm in the locality of Orkney as defined by the Board, it was unlikely, on balance, that alcohol availability was a cause of harm in Orkney, or that increasing the availability of alcohol in Orkney would increase that harm.

5.3. The Board's Statement of Alcohol Licensing Policy generally permits on sale operating hours as follows:

- Commencement on-sale operating hour of 10:00 each day.
- Terminal on-sale operating hours of 24:00 Sundays to Thursdays and 01:00 Fridays/Saturdays and Saturdays/Sundays.
- For local events such as annual agricultural shows, local festivals and private functions, a terminal on-sale operating hour of 01:00 in any morning.
- For weddings, a terminal on-sale operating hour of 01:30 in any morning.
- For the festive season, being 24/25 December until 2/3 January each year, a terminal on-sale operating hour of 01:00 any morning.

5.4. The on-sale operating hours requested in the application fall within the range of hours permitted in the Board's Statement of Alcohol Licensing Policy.

5.5. Sections 2.8 to 2.15 of the Board's Statement of Alcohol Licensing Policy set out the relationship between licensing legislation and other statutory health and safety requirements, such as planning, building standards and food hygiene. Section 2.8 of the Policy provides that the Board will avoid duplication with other regulatory regimes and will not use its powers under the Act to arrive at outcomes that can be achieved under other legislation or by other enforcement agencies.

5.6. The full policy document is available from the Related Downloads section here.

6. Legislative Position

6.1. The 2005 Act provides that the Licensing Board must hold a hearing for the purpose of considering and determining an application for a premises licence (which includes a provisional premises licence).

6.2. The 2005 Act provides that a premises licence application may be made in relation to any premises despite the fact that, at the time the application is made, the premises are yet to be, or are in the course of being, constructed or converted for use as licensed premises. Such an application is referred to as a "provisional premises licence application".

6.3. A provisional premises licence does not take effect unless and until it is confirmed by the Licensing Board. The Clerk to the Board has delegated authority to confirm provisional premises licences. If it is not confirmed before the end of the provisional period, then, at the end of that period, the licence is treated as revoked. The provisional period is four years from the date of issue of the provisional premises licence. The provisional period can be extended by the Board where completion of the construction or conversion of the premises has been delayed and the delay has been caused by factors outwith the provisional premises licence holder's control.

6.4. While provisional premises licence applications must be accompanied by a certificate in relation to planning, they do not require to be accompanied by certificates in relation to building standards or food hygiene, and there is no requirement to name a premises manager. These items must be submitted at a later date with the application for confirmation. Applications are not accepted unless all preliminary requirements are satisfied.

6.5. Any person may, by notice to the Board, object to an application on any of the grounds for refusal specified in the Act or may make representations to the Licensing Board, including representations in support of the application, as to modifications which the person considers should be made to the operating plan accompanying the application, or as to conditions which the person considers should be imposed.

6.6. The grounds for refusal under the 2005 Act are as follows:

i. The application must be refused if, generally, it is an application within one year of a previous refusal, or seeks generally banned 24 hour opening or prohibited off-sale hours.

ii. The Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives, namely:
   - Preventing crime and disorder.
   - Securing public safety.
   - Preventing public nuisance.
   - Protecting and improving public health.
   - Protecting children and young persons from harm.

iii. Having regard to:
   - The nature of the activities proposed to be carried on in the subject premises,
   - The location, character and condition of the premises, or
   - The persons likely to frequent the premises.

   The Board considers that the premises are unsuitable for use for the sale of alcohol.

iv. 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.

6.7. Anyone lodging an objection on the ground detailed at section 6.6 (iv) above must specify the locality on which they are basing their objection.

6.8. Where the Board refuses an application, the Board must specify the ground for refusal. If the ground for refusal is one of the grounds detailed at section 6.6 (ii) above, the Board must specify the licensing objective or objectives in question.

6.9. The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies. If none of them applies, the Board must grant the application. If any of them applies, the Board must refuse the application.

For Further Information please contact:

Gavin Mitchell, Clerk to the Board, extension 2233, email gavin.mitchell@orkney.gov.uk

Implications of Report

1. **Financial:** The appropriate application fee of £200 has been paid.
2. **Legal:** The legal aspects are contained within the body of this report.
3. **Corporate Governance:** In terms of Section 23 of the Licensing (Scotland) Act 2005, a Provisional Premises Licence Application is to be determined by the Licensing Board.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.
7. **Environmental and Climate Risk:** None.
8. **Risk:** None.
9. **Procurement:** None.
10. **Health and Safety:** None.

List of Background Papers

Application for Provisional Premises Licence by The Orkney Wine Barn Ltd.

Appendix

Appendix 1 – Layout plans of the premises.

Appendix 1

KEY

FIRE

- SD Smoke Detector
- Manual call point
- Sounder
- FIre Alarm Panel
- E Emergency lighting

ACTIVITIES

1. Off sales
2. Consumption of alcohol
3. Wine tasting events
4. Live and recorded music where the music will not exceed 85dB
5. Outdoor drinking
6. Weddings, Birthday parties etc
7. Children and young people permitted
8. Club or other group meetings

Licensing

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Macphail
Berstane Wine Barn
A3

Drawing
Proposed

Scale:	Drawn:	Date:	Ref:		No:	Amd:
1:100	jlb		2303	A	L01	B

This drawing is copyright of Leslie Burgher Chartered Architect and may not be reproduced without permission.