
NORTH AYRSHIRE COUNCIL

14 July 2021

Licensing Committee

Title:

Policy on Land Trains and Rickshaws - Street Trader Licences under Civic Government (Scotland) Act 1982, Section 39.

Purpose:

1. To inform the Committee of two proposals:
 - (a) Land Train in Largs
 - (b) Rickshaws in Largs
 2. to inform the Committee of issues arising; and
 3. to suggest further action.
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Recommendation:

In relation to the "Land Train in Largs" proposal:

(1) that the Committee should decide either:

(a) that the proposed activity can be licensed under a Street Trader's Licence (here "STL"), or

(b) that consideration of the question should be continued to a later meeting, to allow for public consultation;

(2) if the decision is (a), that the Committee consider what Licence Conditions and Application procedures should be adopted;

(3) if the decision is (b), that the Committee decide what form public consultation that should take.

In relation to the "Rickshaws in Largs" proposal:

(4) that the Committee should decide either:

(a) that the proposed activity can be licensed under a STL, or

(b) that consideration of the question should be continued to a later meeting, to allow for public consultation;

(5) if the decision is (a), that the Committee consider what Licence Conditions and Application procedures should be adopted;

(6) if the decision is (b), that the Committee decide what form public consultation that should take.

1. Executive Summary

- 1.1 The Committee grant and renew Licences under the Civic Government (Scotland) Act 1982. These Licences include the "Street Trader's Licence" under Section 39 (here "STL"). Despite the title, this Licence is required for trading in a public place, so it would be needed for trading on a pavement or car park. The legislation relating to STLs deals with both traders selling goods and traders providing services, although until now the most common use of STLs has been to license vans and stalls selling food.
- 1.2. Recently, the possibility of activities in Largs have been raised although there have been no licence applications:
 - (a) the possibility of a "Land Train" was reported on Sunday 27 June 2021 on the website of the "Largs and Millport Weekly News" ("Largs Viking Festival attraction steams ahead") although the organisers had not raised this with the Council's Licensing Office;
 - (b) A Councillor enquired on behalf of an unidentified constituent in March/April 2020 about operating rickshaws on Largs Promenade but there was no specific proposal until Thursday 24 June 2021.
- 1.3. In order to discuss these proposals the Convenor agreed to a Special Meeting of the Licensing Committee being set. Unless and until licence applications are both made and granted by or on behalf of the Licensing Committee, both activities are illegal.

2. Background

- 2.1 If a person proposes to apply for a Licence to use premises, they must give public notice (by displaying a notice at or near the premises, e.g. tied to a lamp-post). When the Application is lodged, the Council copy it to Police, Scottish Fire and Rescue, and relevant NAC Departments. Where the proposal affects roads (carriageways, footways, footpaths or cycle tracks) the Council consults with the "Roads Authority" under the Roads (Scotland) Act 1984, which is NAC Roads in many cases but is Amey / Transport Scotland for Trunk Roads (such as the A78 in Largs).
- 2.2. The public have a right to make objections or representations where the Licence requested is for more than 6 weeks.
- 2.3. As with all licensing functions, many applications for STLs are determined by Council officers under Delegated Powers where the application is consistent with Council Policy, and the application is free from objections or adverse representations (such as from the Police, Council Departments, or neighbours).

- 2.4. However, in the case of the two activities here, there is no Policy and there have never been Licence Applications. Therefore, in order to determine whether or not Delegated Powers can be used:
- (a) the Committee must establish a Policy, e.g. is either activity acceptable anywhere? should there be Exclusion Zones where either activity should not happen?
 - (b) and if the Committee decide in principle that either activity might happen, the Committee must then establish:
 - safety standards which any vehicle to be used for carrying the public must meet;
 - application procedures; and
 - Standard Licence Conditions.
- 2.5. Even if the Committee decided in principle to allow either activity, Applicants would still have to apply for a Licence and they would only be entitled to operate if and when the Licence was granted. It might be that the Committee would have decided in principle to allow an activity in general, but then receive objections or adverse representations in relation to a particular proposal which would lead to a refusal (e.g. the Police and/or Roads Authority might object to the particular location or route proposed).
- 2.6. As instructed by the Convenor the Solicitor (Licensing) emailed the 4 Largs Councillors (Councillors Ian Murdoch, Alex Gallagher, Tom Marshall and Alan Hill) asking if they had any comments on the proposals, and if they had details of the proposals. A similar email was sent to the Police, Amey, Transport Scotland and NAC Roads. The emails and responses from Councillors Murdoch and Marshall and from NAC Roads are attached as Appendices A to E to this Report:
- A - email from Solicitor (Licensing) to the 4 Largs Cllrs (Fri 2 July 1335)
 - B - email from Cllr MURDOCH to Solicitor (Licensing) (Fri 2 July 1412)
 - C - email from Cllr MARSHALL to Solicitor (Licensing) (Sat 3 July 1029)
 - D - email from Solicitor (Licensing) to NAC(Roads), Police, Amey, Transport Scotland (Wed 30 June 0022)
 - E - email from NAC(Roads) to Solicitor (Licensing) (Wed 7 July 1000)
- If there are any further responses these will be included in the Committee's background papers.
- 2.7. It is appropriate for the Committee to consider the safety of vehicles carrying the public on roads and footways. and the possibility of public nuisance caused to pedestrians and road-users.
- under the Land Reform (Scotland) Act 2003 (commonly "the right to roam")
 - under the licensing legislation.
- 2.8. Under the Land Reform (Scotland) Act 2003:
- (a) there are Access Rights, but
 - (b) Access rights must be exercised 'responsibly' - without causing unreasonable interference with the rights of others;
 - (c) NAC have a duty to uphold Access Rights, but only so far as consistent with their other functions (Section 13).
- 2.9. Under the Civic Government (Scotland) Act 1982 one of the potential reasons for refusing a Licence is in Schedule 1, Paragraph 5(3)(c):
- "(c) where the Licence applied for relates to an activity consisting of or including the use of Premises or a vehicle or vessel, those Premises are not or, as the case may be,*

that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—

- (i) the location, character or condition of the Premises or the character or condition of the vehicle or vessel;*
- (ii) the nature and extent of the proposed activity;*
- (iii) the kind of persons likely to be in the Premises, vehicle or vessel;*
- (iv) the possibility of undue public nuisance;*
- (v) public order or public safety"*

3. Proposals

3.1. The Committee should decide whether or not consideration of this matter should be continued pending public consultation.

3.2. If the Committee decide "Yes, there should be public consultation", then the Committee should give directions as to what form that should take. It is suggested that this might consist of:

- (a) a page being added to the Council's website, containing a summary of the consultation process and a document listing a number of questions ("Possible Consultation Questions" - Appendix F); people responding to the consultation might suggest different issues for consideration;
- (b) a post on the Council's social media account informing the public of the review and inviting them to state their views by a Closing Date at least 28 days
- (c) the matter would be continued to an unspecified further meeting of the Committee occurring at least 8 weeks after today ("unspecified" - the Clerk intends to place the matter back on the earliest available Agenda, but this is subject to the needs of other business).
- (d) the Agenda then would include an item relating to the Review, and Members' Background Papers would include copies of any representations received in response to the consultation;
- (e) the Committee would then conclude the Review.

3.3. If the Committee decide "No, there is no need for public consultation and a licensing scheme for one or both of the activities should be adopted in 2021" then it is suggested that the Committee should:

- (a) consider the "Possible Consultation Questions" (Appendix F) and
- (b) instruct the Clerk in consultation with the Convenor to prepare Licence Standard Conditions to reflect the Committee's decision.

The Clerk would inform the person who has expressed an interest that a Licensing scheme would be established and that Applications would be accepted when it was ready.

4. Implications/Socio-economic Duty

Financial

4.1 At the preliminary stage where the Committee is considering a Policy decision, but is not making a decision on a particular licence application, the financial consequences of the proposed Policy review are not likely to be substantial.

Human Resources

4.2 None. The additional procedures involved in setting-up and administering a new licensing system will be conducted by existing staff.

Legal

4.3 There are unlikely to be any immediate legal implications of a Policy decision, but whatever Policy is eventually adopted will be reflected in Licence conditions, which can be challenged in Court. This is very unlikely - the legislation permits Licensing Authorities to have 'reasonable' Standard Conditions, and the Courts traditionally allow Licensing Authorities a wide discretion, so the prospects of appeal are very slight.

Equality/Socio-economic

4.4 The Clerk has considered the Council's duties under the Equality Act 2010 in preparing this Report and does not consider that the present proposals will have any specific impacts. The proposal to employ children is not consistent with the Council's obligations on child welfare.

Environmental and Sustainability

4.5 None.

Key Priorities

4.6 An effective licensing system, for example monitoring the 'fit and proper' status of applicants for licences, and the safety and suitability of vehicles supplying services to the public, helps progress towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024: "People and communities are safe".

Community Benefits

4.7 Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

5.1 Consultation has taken place as above. The Licensing Committee may carry out consultation to ensure that the eventual Policy review is well-informed. It will remain the case that if there are individual Licence Applications these will have appropriate consultation.

Andrew Fraser
Head of Democratic Services

For further information please contact **William O'Brien, Solicitor (Licensing)**, on email <wobrien@north-ayrshire.gov.uk>.

Background Papers

Appx A - email from Solicitor (Licensing) to the 4 Largs Cllrs (Fri 2 July 1335)

Appx B - email from Cllr MURDOCH to Solicitor (Licensing) (Fri 2 July 1412)

Appx C - email from Cllr MARSHALL to Solicitor (Licensing) (Sat 3 July 1029)

Appx D - email from Solicitor (Licensing) to NAC(Roads), Police, Amey, TransportScotland (Wed 30 June 0022)

Appx E - email from NAC(Roads) to Solicitor (Licensing) (Wed 7 July 1000)

Appx F - Possible Consultation questions

From: William O'brien (Solicitor / Legal Services)

Sent: 02 July 2021 13:35

To:

**Ian Murdoch (Elected Member / Members) <ianMurdoch@north-ayrshire.gov.uk>;
Alex Gallagher (Cabinet Member / Members) <agallagher@north-ayrshire.gov.uk>;
Tom Marshall (Chair - Planning / Members) <tommarshall@north-ayrshire.gov.uk>;
Alan Hill <adhill@robertduff.co.uk>**

Cc:

**Ronnie McNicol (Chair - Licensing / Members) <rmcnicol@north-ayrshire.gov.uk>;
Todd Ferguson (Elected Member / Members) <ToddFerguson@north-ayrshire.gov.uk>;
Craig Hatton (Chief Executive / North Ayrshire Council) <chatton@north-ayrshire.gov.uk>;
Aileen Craig (Head of Service / Chief Officer) <acraig@north-ayrshire.gov.uk>;
pressinquiry_SM (shared mailbox) <press@north-ayrshire.gov.uk>**

Subject: Largs - proposals for Land Train and Rickshaws (GEN95)

Councillors

The Largs and Millport Weekly News on Sunday 27 June 2021 carried a story:

"Largs Viking Festival attraction steams ahead"

<https://www.largsandmillportnews.com/news/19389723.full-steam-ahead-exciting-land-train-plan-largs-viking-festival/>

The story reports a proposal for a "Land Train" operating between the Promenade and the Pencil Monument, but no route is mentioned, and the story quotes Mr. Douglas Blair, one of the Festival's directors, as saying "We are hoping it can be used for a little tour of Largs" which suggests that the hope is to operate outside the Promenade-Pencil route.

Separately, earlier in 2021 a Councillor asked on behalf of a constituent who asked about operating a rickshaw service, offering rides to the public, on Largs Promenade. I gave the Councillor advice on 7 April and heard no more about it until Thursday 24 June 2021 when the constituent emailed asking how to get a Licence.

For these activities to proceed, both would need a Street Trader's Licence under Section 39 of the Civic Government (Scotland) Act 1982.

The Licensing Committee have not considered the basic question of principle of whether these activities should be permitted anywhere in North Ayrshire and will require to do so before they could be permitted to proceed.

To take matters forward, Councillor McNicol has agreed that the Committee will hold a Special Meeting during recess to look at the questions of principle and subject to achieving a quorum of Members, the meeting will be held on Wednesday 14 July 2021. The Committee will consider:

1. The principle of whether the proposed activities are permissible, and (if so).

2. The Licence conditions and Application procedure to be applied.

If the Committee agrees to set up a licensing system for these types of activities in North Ayrshire, the parties involved in the current proposals will be invited to apply for a licence. Licences will then not be granted until we have comments from the Police and NAC Departments. If there are no adverse comments, the licences would be granted through delegated powers applying the approved policy and conditions. If there are any adverse comments, then delegated powers will not be available and the individual application will be considered by the next Licensing Committee.

In the meantime I am approaching NAC Roads, Amey (Traffic Scotland), and the Police asking for their views about the proposals, whether in relation to the Promenade alone or the rest of Largs.

Should you require any further information in the meantime or have any comments you would wish me to refer to the committee, please let me know.

If the Committee agree in principle that either type of activity can be permitted, it may be possible to set up a new licensing system in time for Summer 2022.

Can I ask Largs Elected Members if they have any comments on the proposals, and if they have details of the proposals - see questions below.

The Committee would encourage tourism in Largs but public safety is a priority.

William

Solicitor (Licensing)

Questions

- what is the route of the "Land Train"/Rickshaw ?
- what roads will it travel on ?
- have the Police been told ?
- what footpaths and footways will it travel on ?
- at what days and times will it operate ?
- where will the vehicle be kept when not in use ?
- how many people will it carry ?
- who will provide the vehicle ?
- who carries out mechanical services to the vehicle ?
- what standards are applied to the mechanical services ?
- how often is the vehicle inspected to those standards ?

- who drives the vehicle (each driver will need a ST Employee Licence as well as the Operator needing a ST Operator's Licence) ?
- what is the drivers' age, competence and experience (by Law, no-one under school age can carry out Street Trading) ?
- is the vehicle insured for use on roads ?
- is the vehicle insured for use on footpaths and footways ?
- what insurer provides the policy in each case ?
- what is the extent of cover in each case ?
- does this insure -
 - passengers
 - people not riding in the Road Train/Rickshaw
 - in each case, their property ?

From: Ian Murdoch (Elected Member / Members) <IanMurdoch@north-ayrshire.gov.uk>

Sent: 02 July 2021 14:12

To: William O'brien (Solicitor / Legal Services) <wobrien@north-ayrshire.gov.uk>; Alex Gallagher (Cabinet Member / Members) <agallagher@north-ayrshire.gov.uk>; Tom Marshall (Chair - Planning / Members) <tommarshall@north-ayrshire.gov.uk>; Alan Hill <adhill@robertduff.co.uk>

Cc: Ronnie Mcnicol (Chair - Licensing / Members) <rmcnicol@north-ayrshire.gov.uk>; Todd Ferguson (Elected Member / Members) <ToddFerguson@north-ayrshire.gov.uk>; Craig Hatton (Chief Executive / North Ayrshire Council) <chatton@north-ayrshire.gov.uk>; Aileen Craig (Head of Service / Chief Officer) <acraig@north-ayrshire.gov.uk>; pressinquiry_SM (shared mailbox) <press@north-ayrshire.gov.uk>

Subject: RE: Largs - proposals for Land Train and Rickshaws (GEN95)

Official-Protect

Good Afternoon William,

We have discussed a train running on Largs Prom for years as a possible 'Park & Ride'.

However, in order for an articulated train to travel along past Bowencraig, the Prom would need to be widened. I had a Class I HGV Licence for many years and I can't see how it would be possible to drive an articulated train on this section. I have no problem with the proposal on the rest of the Prom as long as it does what the rest of us do while driving on the Prom. (Travel between 5 & 10 MPH with hazard lights on, give way to pedestrians at all times and be mindful of young children and dogs off the lead.

If the proposal is to use it on the road, I am happy to leave it up to our Roads Department, Amey and Police Scotland. There is a train that travels around the roads in Sorento in Italy and it is very popular and seems to run with no problems.

I would be interested to hear what Protective Services think about the proposal. How would it work with Social Distancing?

On the second proposal, the applicant does not wish to start the Rickshaw Service until the start of next season and certainly does not want to risk losing around £700 in fees. I was the Councillor that raised this on my constituents behalf.

I have several thoughts on this proposal but I won't say any more as members of the Licensing Committee are copied in on this email. I am willing to discuss this at any other time.

Kind Regards
Councillor Ian Murdoch
Ward 8 North Coast and Cumbraes
Mobile number 07976657324
Email address ianmurdoch@north-ayrshire.gov.uk

From: Tom Marshall (Chair - Planning / Members) <tommarshall@north-ayrshire.gov.uk>

Sent: 03 July 2021 10:29

To: Ian Murdoch (Elected Member / Members) <IanMurdoch@north-ayrshire.gov.uk>; William O'brien (Solicitor / Legal Services) <wobrien@north-ayrshire.gov.uk>; Alex Gallagher (Cabinet Member / Members) <agallagher@north-ayrshire.gov.uk>; Alan Hill <adhill@robertduff.co.uk>

Cc: Ronnie Mcnicol (Chair - Licensing / Members) <rmcnicol@north-ayrshire.gov.uk>; Todd Ferguson (Elected Member / Members) <ToddFerguson@north-ayrshire.gov.uk>; Craig Hatton (Chief Executive / North Ayrshire Council) <chatton@north-ayrshire.gov.uk>; Aileen Craig (Head of Service / Chief Officer) <acraig@north-ayrshire.gov.uk>; pressinquiry_SM (shared mailbox) <press@north-ayrshire.gov.uk>

Subject: Re: Largs - proposals for Land Train and Rickshaws (GEN95)

William,

Thanks for the email.

I object to any proposal for a Land Train and Rickshaws on any pedestrian or shared use paths in North Ayrshire.

I detail below my specific objections which are based on Largs promenades but will be applicable in other situations..

1. I live close to the South Promenade and regularly walk all promenades in Largs and do meet pedestrians who are distressed by cyclists which pass them by at speed without any audible notification. I have on occasion being verbally abused when remonstrating with speeding cyclists. I did raise the matter with Active Travel who have erected some notices to state that although it is a shared pathway that cyclists must give way to pedestrians (and dogs and children). However these notices are ignored !! Ideally non pedestrian users of the Promenades should have their own dedicated path as is common elsewhere and particularly on the Continent.
2. There is no scope at all to run a train or a rickshaw on the promenades because they are either far too busy and congested with people in the town centre in the summer or at the south end of the prom , far too narrow being only 3 m wide. Additionally no one should be driving on the Promenade.
3. There is ample evidence that shared use promenades etc will potentially give rise to injury, either physical or psychological, to pedestrians and this is unacceptable never mind the legal liability of such interactions.

Finally! An alternative candy positive suggestion would be to provide a water based service from Barrfields Slip to the Marina

Regards

Tom

Cllr Tom Marshall
Chair - Planning
Conservative & Unionist Group Leader
North Ayrshire Council
North Coast & Cumbraes Ward 8
M 07971198628

[fw email from Cllr. Murdoch to WOB Friday, July 2, 2021 2:12 pm]

From: William O'brien (Solicitor / Legal Services)

Sent: 30 June 2021 00:22

To: Campbell Dempster (Snr Manager / Roads) <cdempster@north-ayrshire.gov.uk>; Phil.Hinchliff@transportscotland.gsi.gov.uk; OCCR-southwest@amey.co.uk; Alan.Paterson3@scotland.pnn.police.uk; Scott.Barrie@scotland.pnn.police.uk; ayrshirelicensing@scotland.pnn.police.uk

Cc: Aileen Craig (Head of Service / Chief Officer) <acraig@north-ayrshire.gov.uk>; Andrew (AndrewFraser@north-ayrshire.gov.uk) <AndrewFraser@north-ayrshire.gov.uk>; Nicola Shearer (Team Manager / Legal Services) <nshearer@north-ayrshire.gov.uk>; Ruth Wilson (Team Manager / Legal Services) <ruthwilson@north-ayrshire.gov.uk>

Subject: Use of "Land Trains" and rickshaws in North Ayrshire (GEN95)

Everyone

This email is to explain that North Ayrshire Council Licensing Committee are considering proposals and want the views of stakeholders before they make policy.

The Committee will first be considering the issues at a Special Meeting to be held in the week commencing Monday 12 July 2021. There are many details to be looked at, but for the moment the Committee want general views.

The Special Meeting will not be considering whether or not to grant individual Licences, but only considering policy questions, such as "Should either of these activities be allowed anywhere in North Ayrshire?"

There are two proposals for Largs, but if the proposals are allowed there they might arise anywhere in North Ayrshire.

The proposals are:

(a) "Land Train"

The Largs and Millport Weekly News on Sunday 27 June 2021 carried a story:

"Largs Viking Festival attraction steams ahead"

<https://www.largsandmillportnews.com/news/19389723.full-steam-ahead-exciting-land-train-plan-largs-viking-festival/>

The story reports a proposal for a "Land Train" operating between the Promenade and the Pencil Monument, but no route is mentioned, and the story quotes Mr. Douglas Blair, one of the Festival's directors, as saying "We are hoping it can be used for a little tour of Largs" which suggests that the hope is to operate outside the Promenade-Pencil route.

The organisers had not asked the NAC Licensing section if there were any licensing implications and I didn't know about the "Land Train" plan until I saw the Press Report.

(b) Rickshaws

Separately, in April 2021 Cllr. Murdoch asked about a constituent proposing running a rickshaw business, using her children, on Largs Promenade. I sent him an email with advice and heard no more. My email included:

"A point to be emphasised is that NAC have never been asked to license anything like this before. There have been occasional inquiries over the years but no-one has gone as far as applying for a Licence.

I think that it is likely that the first Application would have to be considered by the Licensing Committee. There would have to be discussions to agree appropriate standards for an activity which involves carrying the public, and the preparation of new Licence conditions. It would also have to be agreed how the safety of the vehicle was to be established: traditional Taxis and Private Hire Cars are regularly inspected at the NAC Garage in Kilwinning, and I do not know what capacity they would have to take on the inspecting of rickshaws.

Your constituent proposes to operate on the Prom in Summer 2021. This is unlikely to be possible."

That was on 7 April 2021. On Thursday last week (24 June) the constituent contacted us directly to ask about getting a licence. Her proposal is to run rickshaws between "Fishworks" (near the ferry terminal) and Aubery Park, using her children aged 14, 15 and 16.

In both cases:

Both activities would need a "Street Trader's Licence" under Section 39 of the Civic Government (Scotland) Act 1982. The employment for Street Trading of children below school leaving age is illegal: Children and Young Persons (Scotland) Act 1937, Section 30(1). There are no Byelaws in North Ayrshire permitting parents to employ children of 14 and over for street trading.

No such Licence has been granted or even applied for. No Licence will be available before the Festival runs 28th August to 5th September 2021.

The Licensing Committee have not even considered the basic question of principle - "should these activities be permitted anywhere in North Ayrshire?"

At the Special Meeting to be held in about 2 weeks the Committee will consider that question. As well as sending this email to

- NAC Roads
- Amey / Transport Scotland
- Police Scotland

to seek views, an email will shortly go to the four Councillors representing Largs inviting their views.

With each activity, there are at least 2 points of decisions open to the Committee:

- (1) it should not be allowed anywhere; or
- (2) it can be allowed, except in "Exclusion Zones" set by the Committee, such as specified population centres or particularly congested areas.

If the Committee select (2), the Committee will consider some other policy questions, and then will instruct the Clerk:

- (a) to prepare a set of Licence Conditions, and
- (b) to establish a procedure for Licence Applications.

and to wait until the Convenor approves these. Normally both (a) and (b) would be presented to the whole Committee for discussion, but because of the pressure of time we are moving more quickly so that we can have a system ready for 2022.

In addition to rickshaws, we should also consider pedicabs and tuk-tuks. We have had a few inquiries over the years but until now the inquiries have never progressed beyond the initial questions.

Other questions

If the answer to the question of principle is "yes", there would then be further questions, for example:

"where can these things happen?"

When the inquiry was only about rickshaws on the Promenade, Campbell Dempster in NAC Roads told a Councillor in April 2021:

"That said, I do have safety concerns with the potential conflict between the rickshaw and pedestrians particularly around the ferry that would need to be addressed.

For something of this nature to work I think there would need to be a dedicated cycle lane and the operating limits would need to be clearly defined to minimise any potential conflict. I do not think starting at the Ferry Terminal would necessarily be a good location due to high pedestrian footfall here"

Perhaps there should be Exclusion Zones where Land Trains, rickshaws etc. cannot be used.

One of the potential reasons for refusing a Licence is in Civic Government (Scotland) Act 1982, Sch. 1, Para. 5(3)(c):

"(c) where the Licence applied for relates to an activity consisting of or including the use of Premises or a vehicle or vessel, those Premises are not or,

as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—

- (i) the location, character or condition of the Premises or the character or condition of the vehicle or vessel;*
- (ii) the nature and extent of the proposed activity;*
- (iii) the kind of persons likely to be in the Premises, vehicle or vessel;*
- (iv) the possibility of undue public nuisance;*
- (v) public order or public safety"*

If there was a specific proposal to use a particular area for Land Trains, rickshaws etc., is it likely that you would object? Conversely, are there any areas where you would not object, in which case please give the Committee your views on what conditions and arrangements the new licensing scheme should include.

"what standards for mechanical safety apply to rickshaws etc, and how are these checked?"

If this was a Taxi or Private Hire Car carrying the public, there would be Committee-approved inspection standards and the vehicle would be regularly checked at the NAC garage; a vehicle which would carry the public and which drives on pedestrian walkways would need good brakes and steering.

The rickshaw licensing system operated by Edinburgh City Council depends on self-certification.

I suppose that "Land Trains" will be licensed as "Motor Vehicles" and they, and their drivers, will be licensed under the Road Traffic legislation, but this is something for the Police to look into.

"should there be conditions preventing rickshaws etc. with passengers from using carriageways?"

Maybe limiting rickshaws to pedestrian footpaths and footways? It's not enough to say "bicycles can go on the road": it's one thing to look at a cycle where the only load is the rider, and another thing to look at a rickshaw carrying two adults (I had an inquiry years ago from a hotelier in Brodick who wanted to send his son to pick up guests from the ferry, so possibly the rider would be pulling luggage too). Land Trains elsewhere drive on the road.

Maybe require rickshaws to have seat-belts for passengers?

Maybe have crash helmets available to passengers, so it's their choice if they use them but at least they're available?

"what should there be a minimum age of operators/employees be?"

A regular feature of the inquiries over the years is that the would-be Licence-Holders are not proposing to ride the vehicles themselves, but rather they plan engage their children to do so (e.g. the Brodick hotelier; the initial inquiry about Rickshaws on Largs Prom included "... I'd be starting it mainly to create work for my boys. John is autistic and will struggle to interview well. ...").

By law the minimum age would be at least 16 (no person who is not 'over school age' can be engaged in street trading - Children and Young Persons (Scotland) Act 1937, Sections 30(1) and 37(a)), although maybe it should be higher here because the 'employees' are responsible for the safety of the public - both their passengers and other road-users (comparing with another Licence to carry the public, the effective minimum age of Drivers of Taxis or Private Hire Cars is 18, because they must first have held a DVLA Driving Licence for at least 12 months: 1982 Act, Section 13(3)).

A child may not have the same perception of risk as an adult. What if the child takes a shortcut across a busy road, not appreciating that a laden rickshaw is not as agile as an ordinary bicycle? What competence and experience do children have to bring onto a footpath/footway a vehicle which is potentially a danger to other road-users?

A child has no legal capacity either to apply for a Licence or to undertake contractual obligations. The general rule is that transactions by children under 16 are null and void - Age of Legal Capacity (Scotland) Act 1991, Sections 1(1) and 2(5). The exception which would allow children to buy toys and sweets (Section 2(1)) is not satisfied:

"A person under the age of 16 years shall have legal capacity to enter into a transaction of a kind commonly entered into by persons of his age and circumstances, ..."

Children do not commonly haul passengers on rickshaws or enter into contracts for the carriage of persons.

There are further questions set out below.

The Committee would be interested on your views on these issues, and on any other issues you may want to raise.

Thank you for your consideration and I look forward to receiving your preliminary views by Friday 9 July 2021.

Can I ask you to reply to the general Licensing INBOX, rather than my own email:

licensing@north-ayrshire.gov.uk;

William O'Brien

Solicitor (Licensing)
North Ayrshire Council

Further questions

- what is the route of the "Land Train"/Rickshaw ?
- what roads will it travel on ?
- what footpaths and footways will it travel on ?
- at what days and times will it operate ?
- where will the vehicle be kept when not in use ?
- how many people will it carry ?
- who will provide the vehicle ?
- who carries out mechanical services to the vehicle ?
- what standards are applied to the mechanical services ?
- how often is the vehicle inspected to those standards ?
- who drives the vehicle (each driver will need a ST Employee Licence as well as the Operator needing a ST Operator's Licence) ?
- what is the drivers' age, competence and experience (by Law, no-one under school age can carry out Street Trading) ?
- is the vehicle insured for use on roads ?
- is the vehicle insured for use on footpaths and footways ?
- what insurer provides the policy in each case ?
- what is the extent of cover in each case ?
- does this insure -
 - passengers
 - people not riding in the Land Train/Rickshaw
 - in each case, their property ?

From: Campbell Dempster (Snr Manager / Roads) <cdempster@north-ayrshire.gov.uk>
Sent: 07 July 2021 10:00
To: William O'brien (Solicitor / Legal Services) <wobrien@north-ayrshire.gov.uk>
Subject: RE: Use of "Land Trains" and rickshaws in North Ayrshire (GEN95)

William,

In principle the Roads Service does not object to the proposal for the use of a Land Train or Rickshaws within Largs or anywhere within North Ayrshire. However, for these or any other similar proposals, a comprehensive package of detailed information is necessary and should be supplied with the proposal for the Service to carry out an accurate safety assessment.

This is not an exhaustive list for the type of information required,

- what is the route of the "Land Train"/Rickshaw?
- what is the weight, length, and width of the "Land Train"/Rickshaw?
- what roads will it travel on?
- what footpaths and footways will it travel on?
- at what days and times will it operate?
- has a full Risk Assessment Method Statement been provided?

With the limited information supplied, the proposal for a Land Train or rickshaw, either in part or whole, would suggest use of the Largs Promenade from Aubery Crescent to the Pencil Monument.

The Promenade from the Pencil Monument to Aubery Crescent measures approximately 3km and the width varies in places from 15m to 1.5m. The promenade is extremely popular and frequented by residents and non-residents of all ages daily from early morning to late evening for various outdoor leisure activities and pursuits. The peak period for pedestrian footfall, although generally weather dependant, would be expected on weekends from April – October, with a substantially higher footfall expected on any given day for the duration of authorised events, public holidays, and school holidays.

Additionally, the Seafront Car Park generates 75-80,000 vehicle visits per annum, and it is expected that these volumes will be attained or exceeded in the next year as Covid restrictions are eased further. The Cumbrae Ferry also accounts for a large volume of pedestrian traffic on the promenade and vehicular traffic on Fort Street & the Pierhead.

Areas of concern – there is no physical segregation on the promenade between the 'Land Train / Rickshaw' and pedestrians, controlled / uncontrolled dogs, or young children, this represents a potentially high risk of contact or collision irrespective of the proposed speed of either 'vehicle'. The previously marked out experimental cycle lanes were largely ignored and became more of a hazard for those using them and therefore the Roads Service is not considering their re-introduction.

Along its length the promenade has several pinch points and sightline issues, primarily these are created by people or by the physical limitations or geometry of the promenade itself.

Aubery Crescent to Fort Street / Union St – there are various commercial food and drink outlets and a mini funfair that regularly attract a significant volume of pedestrians, often creating ‘dense bubbles’ of queuing & waiting customers. These ‘bubbles’ frequently extend the full width of the promenade and it can be challenging for pedestrians, even on foot, to negotiate a way through. The footway also narrows to 2-3m in sections from the Pierhead to Mackerston playpark.

Fort St to May St - Mackerston playpark and the adjacent skatepark again attracts a large volume of adults with prams and young children creating similarly dense pedestrian ‘bubbles’.

May St to Pencil Monument – This section of promenade is significantly compromised in both width and sightlines due to its varied geometry and proximity to the beach.

The promenade has been designed and constructed to withstand the rigours of pedestrian traffic, Motability scooters, bicycles etc, use by any other vehicle type would need to be investigated by the Service.

Ultimately, more information is required on both proposals for the Roads Service to make an informed decision.

If permission is granted the applicant should provide details of appropriate public party insurance indemnifying the Council against any incident.

The views of Transport Scotland should also be considered in respect of an activity on the A78 trunk road.

I trust this information is of assistance.

Campbell Dempster
Senior Manager – Network
North Ayrshire Council, Commercial Services (Roads)
Cunninghame House, Irvine, KA12 8EE



Consultation questions

The questions below are asked for the purpose of promoting discussion, but if there are any other matters you think the Licensing Committee should consider then please include these.

Concerning the proposal to allow Street Trader's Licences to be applied for:

- (a) Land Trains, and
- (b) Rickshaws (the Committee are also looking how pedicabs and tuk-tuks should be licensed, but here they are all referred to as "rickshaws").

1. where can these things happen?

The Council might decide that Land Trains, rickshaws etc.

- (a) can be used everywhere
- (b) can be used everywhere, except in specified Exclusion Zones
- (c) can only be used in specified Permitted Zones
- (d) cannot be used on pedestrian footways or footpaths.
- (e) cannot be used on carriageways.

2. If there are to be Exclusion Zones or Permitted Zones, where should these be?

3. Should there be different Zones for Land Trains & rickshaws?

4. should NAC set standards for mechanical safety for Land Trains & rickshaws?

If this was a Taxi or Private Hire Car carrying the public, there would be Committee-approved inspection standards and the vehicle would be regularly checked at the NAC

garage; a vehicle which would carry the public and which drives on pedestrian walkways would need good brakes and steering.

5. Who should check that vehicles meet these standards?

6. should there be conditions preventing rickshaws from using carriageways?

It is not enough to say "bicycles can go on the road": it's one thing to look at a cycle where the only load is the rider, and another thing to look at a rickshaw carrying two adults (and possibly their luggage)

7. Should rickshaws have to have seat-belts for passengers?

8. Should rickshaws have crash helmets available to passengers?

It would be the passenger's choice if they use them but at least they'd be available.

9. what should there be a minimum age of operators/employees be?

By law the minimum age would be at least 16 (no person who is not 'over school age' can be engaged in street trading - Children and Young Persons (Scotland) Act 1937, Sections 30(1) and 37(a)), although maybe it should be higher here because the 'employees' are responsible for the safety of the public - both their passengers and other road-users (comparing with another Licence to carry the public, the effective minimum age of Drivers of Taxis or Private Hire Cars is 18, because they must first have held a DVLA Driving Licence for at least 12 months: 1982 Act, Section 13(3)).

A child may not have the same perception of risk as an adult. What if the child takes a shortcut across a busy road, not appreciating that a laden rickshaw is not as agile as an ordinary bicycle? What competence and experience do children have to bring onto a footpath/footway a vehicle which is potentially a danger to other road-users?

A child has no legal capacity either to apply for a Licence or to undertake contractual obligations. The general rule is that transactions by children under 16 are null and void - Age of Legal Capacity (Scotland) Act 1991, Sections 1(1) and 2(5). The exception which would allow children to buy toys and sweets (Section 2(1)) is not satisfied:

"A person under the age of 16 years shall have legal capacity to enter into a transaction of a kind commonly entered into by persons of his age and circumstances, ..."

Children do not commonly haul passengers on rickshaws or enter into contracts for the carriage of persons.

10. What insurance cover should a Land Train/Rickshaw have?

11. Should there be a limit on the number of passengers a rickshaw can carry?

12. Should there be a limit on the ages of passengers a rickshaw can carry?

e.g. - should there be a ban on unaccompanied children under 16?

Particular questions

Apart from the general policy questions above, do you agree that any Licence Applicant should give the following information to the Council so that the particular Licence Application can be assessed?

Where, when etc.

- what is the proposed route of the "Land Train"/Rickshaw ?
- where will it travel:
 - what Carriageways? (other vehicles may use the Road)
 - what Footways? (mixed pedestrian and vehicle use)
 - what Footpaths? (pedestrians only)
 - what Cycle Tracks? (pedal cycles)
- at what days and times will it operate ?
- where will the vehicle be kept when not in use ?
- how many people will it carry ?
- who will provide the vehicle ?
- who carries out mechanical services to the vehicle ?
- who is to drive the vehicle ? (each driver will need a ST Employee Licence as well as the Operator needing a ST Operator's Licence)
- what is the drivers' age, competence and experience ? (by Law, no-one under school age can carry out Street Trading)

Insurance

- is the vehicle insured for use on
 - Carriageways? (other vehicles may use the Road)
 - Footways? (mixed pedestrian and vehicle use)
 - Footpaths? (pedestrians only)
 - Cycle Tracks? (pedal cycles)

- what insurer provides the policy in each case ?

- what is the extent of cover in each case ?

- does this policy insure -
 - passengers
 - people not riding in the Land Train/Rickshaw
 - in each case, their property ?