



North Ayrshire Council  
Comhairle Siorrachd Àir a Tuath

## **Licensing Committee**

A meeting of the **Licensing Committee** of North Ayrshire Council will be held remotely on **Wednesday, 18 August 2021** at **10:00** to consider the undernoted business.

### **Arrangements in Terms of COVID-19 - Licensing (partially excluded)**

In light of the current COVID-19 pandemic, this meeting will be held remotely in accordance with the provisions of the Local Government (Scotland) Act 2003. As the business under consideration at the meeting is likely to necessitate the passing of a resolution to exclude from the meeting the press and public in terms of Section 50A(4) of the Local Government (Scotland) Act 1973, the meeting will not be live streamed/recorded for access by the public.

#### **1 Declarations of Interest**

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

#### **2 Minutes**

The accuracy of the Minutes of the Meeting held on 2 June 2021 (Ordinary), 7 June 2021 (Special) and 14 July 2021 (Special) will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

- 3      Largs Land Train - Application for a Temporary Street Trader Licence under Civic Government (Scotland) Act 1982, Section 39 by 'Largs Viking Festival' (Registered Company SC225852, Registered office: Duff and Co. Solicitors, 30 Main Street, Largs) for a Land Train in Largs to operate from Saturday 28th August 2021 to Sunday 5th September 2021**  
Submit report by the Head of Democratic Services informing the Committee of a Licence proposal, and informing of issues arising (copy enclosed).
- 4      Civic Government (Scotland) Act 1982 and other Licensing statutes: Licensing Matters**  
Submit report by the Head of Democratic Services on Applications for the grant or renewal of licences and permits under the Civic Government (Scotland) Act 1982 and other statutes within the Committee's remit (copy enclosed).
- 5      Landlord Registration under the Antisocial Behaviour etc (Scotland) Act 2004, Part 8**  
Submit report by the Head of Democratic Services informing the Committee of Landlord Registration matters (copy enclosed).
- 6      Urgent Items**  
Any other items which the Chair considers to be urgent.

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## **Licensing Committee Sederunt**

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Ronnie McNicol (Chair)  
Todd Ferguson (Vice Chair)  
Robert Barr  
John Easdale  
Scott Gallacher  
Jean McClung  
Davina McTiernan  
Donald L. Reid  
Angela Stephen  
Vacancy

Chair:

Apologies:

Attending:



At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m. involving participation by remote electronic means.

**Present**

Ronnie McNicol, Todd Ferguson, Robert Barr, Jean McClung, Davina McTiernan and Donald L. Reid.

**In Attendance**

A. Craig, Senior Manager (Legal Services), W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant (Licensing) and D. McCaw, Committee Services Officer (Chief Executive's Service).

**Chair**

Councillor McNicol in the Chair.

**Apologies**

John Easdale, Scott Gallagher and Angela Stephen.

**1. Chair's Remarks**

The Chair agreed, in terms of Standing Order 9.4, to vary the order of business to allow consideration of Agenda Item 4.1: Street Trader Operator's Licence: STL/O/512 (New): The French Fox Food Co Ltd prior to Agenda Item 3: Street Trader's Licences under the Civic Government (Scotland) Act 1982, Section 39: Review of Policy and Licence Conditions, as the applicant was already in attendance in the virtual meeting lobby.

**2. Declarations of Interest**

There were no declarations of interest by Members in terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors.

**3. Minutes**

The Minutes of the Ordinary Meeting held on 21 April 2021 were confirmed and signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

**4. Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters**

Submitted report by the Head of Democratic Services on hearings to be determined and applications for the grant or renewal of licences, consents and permits, on hearings and on other matters, under the Civic Government (Scotland) Act 1982 and other Licensing legislation.

#### **4.1 Street Trader Operator's Licence: STL/O/512 (New): The French Fox Food Co Ltd**

The applicants, having been duly cited to attend, joined the meeting at this point.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicants. Thereafter the applicants addressed the Committee on the issues raised and responded to questions.

The applicants then withdrew to allow the Committee to deliberate. Thereafter the applicants re-joined the meeting, with the same Members and Officers present and in attendance, to hear the Committee's decision.

#### **Decision**

Councillor Barr, seconded by Councillor McTiernan, moved that the Committee grant a Temporary Street Trader's Licence for 12 sites under the Civic Government (Scotland) Act 1982, Section 39 and Schedule 1, Paragraph 7, with the Council's Standard Conditions. There being no amendment the motion was declared carried.

The applicant left the meeting at this point.

#### **5. Street Trader's Licences under the Civic Government (Scotland) Act 1982, Section 39: Review of Policy and Licence Conditions**

Submitted report by the Head of Democratic Services on a review of the existing Street Trader Policy and Licence conditions. A summary of the review process with suggested options was set out at Appendix A to the report. Appendices B and C set out the Council's current Standard Street Trader's Licence Conditions and suggested Draft Standard Conditions for discussion, respectively.

The Committee unanimously agreed to (a) review the current Policy and Licence Conditions; (b) instruct the Solicitor (Licensing) to proceed to public consultation as detailed in paragraph 3.2 of the report; and (c) continue consideration of the Review to a future meeting pending the outcome of the public consultation.

The meeting ended at 12 noon.

At a Special Meeting of the Licensing Committee of North Ayrshire Council at 9.30 a.m. involving participation by remote electronic means.

**Present**

Ronnie McNicol, Todd Ferguson, Robert Barr, John Easdale, Jean McClung, Davina McTiernan and Donald L. Reid.

**In Attendance**

W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant (Licensing) and C. Stewart and D. McCaw, Committee Services Officers (Chief Executive's Service).

**Chair**

Councillor McNicol in the Chair.

**Apologies**

Scott Gallacher and Angela Stephen.

**1. Declarations of Interest**

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor Todd Ferguson declared a personal interest in Agenda Item 2.1: Street Trader Operator's Licence (temporary licence): STL/O/522: Seaview Coffee and Cakes in that the applicant was known to him, and took no part in the discussion or decision thereon.

**2. Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters**

Submitted report by the Head of Democratic Services on hearings to be determined and applications for the grant or renewal of licences, consents and permits, on hearings and on other matters, under the Civic Government (Scotland) Act 1982 and other Licensing legislation.

**Appendix A: Hearings**

**2.1 Street Trader Operator's Licence (temporary licence): STL/O/522: Seaview Coffee and Cakes**

The applicant, having been duly cited to attend, joined the meeting at this point.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicants. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

## Decision

Councillor McNicol, seconded by Councillor Easdale, moved that the Committee grant a Temporary Street Trader's Licence under the Civic Government (Scotland) Act 1982, Section 39 and Schedule 1, Paragraph 7, with the Council's Standard Conditions and substitute for Condition C.3 (Movement) the following:

*“When the Licence-Holder parks or sets-up the vehicle or stall in one location:*

- (a) he may remain there for a maximum period of 60 minutes;*
- (b) he must then move to another location at least 200 metres away which the trader has not traded from that day. This period of 60 minutes does not include:*
  - parking and setting-up before trading starts, and*
  - dismantling and clearing-up afterwards,**but no trading can take place in that extra time.”*

There being no amendment the motion was unanimously declared carried.

The applicant left the meeting at this point.

The meeting ended at 9.50 a.m.



At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m. involving participation by remote electronic means.

**Present**

Ronnie McNicol, Robert Barr, John Easdale, Jean McClung, Davina McTiernan and Donald L. Reid.

**In Attendance**

W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant (Licensing), D. Robertson, Enforcement Officer (Democratic Services) and H. Clancy and C. Stewart, Committee Services Officers (Chief Executive's Service).

**Apologies**

Todd Ferguson, Scott Gallagher and Angela Stephen.

**Chair**

Councillor McNicol in the Chair.

**1. Declarations of Interest**

There were no declarations of interest by Members in terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors.

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

Submitted report by the Head of Democratic Services on the Policy on Land Trains and Rickshaws with possible consultation questions set out at Appendix F to the report.

The Committee agreed to continue to a future meeting to allow a public consultation to be undertaken.

**3. Exclusion of the Public**

The Committee resolved, under Section 50A(4) of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public, for Agenda Item 5 (Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters) on the grounds that they involved the likely disclosure of Exempt Information as defined in Section 50J of, and Schedule 7A to, the Local Government (Scotland) Act 1973.

The 'Exempt Information' concerned is information of the type described in one or more of Paragraphs 3, 6, 14 and 15 of Part 1 of Schedule 7A to the Act:

3. "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

6. "Information relating to the financial or business affairs of any particular person (other than the authority)."
14. "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."
15. "The identity of a Protected Informant" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance."

#### **4. Landlord Registration under the Antisocial Behaviour etc (Scotland) Act 2004, Part 8**

##### **4.1 J.K.**

The Solicitor (Licensing) addressed the Committee setting out the background to the case. The applicant, having been duly cited to attend, joined the meeting at this point.

The applicant addressed the Committee on the issues raised and responded to questions.

#### **Decision**

Councillor Barr, seconded by Councillor Easdale, moved that the Committee continue consideration of the application to a future meeting for further investigation and clarification by Officers.

The meeting ended at 11.55 a.m.

## **NORTH AYRSHIRE COUNCIL**

**18 August 2021**

### **Licensing Committee**

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**Title:** Largs Land Train - Application for a Temporary Street Trader Licence under Civic Government (Scotland) Act 1982, Section 39 by 'Largs Viking Festival' (Registered Company SC225852, Registered office: Duff and Co. Solicitors, 30 Main Street, Largs) for a Land Train in Largs to operate from Saturday 28th August 2021 to Sunday 5th September 2021.

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**Purpose:** 1. to inform the Committee of a Licence proposal, and

2. to inform the Committee of issues arising.

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**Recommendation:** 1. That the Committee decide whether or not to suspend Standing Orders in order to consider the Licence Application made;

2. If the Committee decide to suspend Standing Orders:

(a) that the Committee decide whether to grant or to refuse the Application.

(b) If the Committee determine to grant the application, to consider what Licence Conditions and Application procedures should be adopted;

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### **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. The Council have not been asked before to license Land Trains.

- 1.2. The proposal is for a Temporary Licence for a "Land Train" in Largs. The details of the proposal are set out below ("2. Background")
- 1.3. The Committee must first decide whether or not Standing Orders should be suspended. This is because making a decision on a Licence Application will involve the effective revocation or variation of a Committee decision taken on 14 July 2021 when the Committee determined that a consultation should be undertaken to inform policy on future licence applications for land trains and rickshaws. Only if the Committee decide that Standing Orders should be suspended should the Committee consider and determine the Largs Land Train Licence Application itself.
- 1.4. The relevant Standing Orders are set out in the Appendix to this Report. The Standing Orders apply to the Committee as they apply to the whole Council (S.O. 26 and 31: "Provost" and "Vice-Provost" mean "Convenor" and Vice-Convenor respectively).
- 1.5. Standing Order (S.O.) 23 is to the effect that no decision of the Committee may be reconsidered which is the same or substantially the same as one previously determined by the Committee within the past six months of the date of the making of the previous decision or determination.
- 1.6. There are exceptions to this rule (S.O. 23.1, paragraphs i to iv). In the opinion of the Solicitor to the Council the only exception relevant here is exception (i):

"i. Two thirds of the Members for the time being present and voting agree to suspend Standing Orders in accordance with Standing Order 21 above;"

1.7. If the Committee decide not to suspend Standing Orders, the Licence Application would remain undetermined pending conclusion of the consultation period, whereupon the application would be put to the next Committee for determination. It should be noted that the consultation period closes after the period during which the licence is requested and after the conclusion of the Viking Festival itself.

1.8. 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 and the Committee had not been asked to grant a licence for this.

1.9. Due to this media report, and another proposal for the use of rickshaws on Largs Promenade, the Convenor arranged a Special Meeting. This was held on 14 July 2021, when the Committee considered a Report titled:

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

1.10. The Report raised many policy questions for the Committee.

1.11. The Committee decided to continue consideration of the numerous issues pending public consultation, with stakeholders such as the Police and other authorities being invited to comment. The Consultation was then published on the Community Planning Partnership at:

<http://northayrshire.community/public-carriages-consult/42496>

The Closing Date for that consultation is Friday 10 September 2021 at 4.00 p.m., and afterwards the Committee will consider the question of Policy.

1.12. However, after the Committee decision to continue for consultation, and in advance of that consultation being concluded, an Application for a "Temporary Licence" was made

relating to the proposed Largs Land Train. Since the Committee had already determined that consultation on the general question of Policy was required, and given the Standing Orders, the Clerk declined to exercise delegated powers and referred the Application to the Committee.

## **2. Background**

### **2.1 The Licence requested is:**

- from Saturday 28th August 2021 to Sunday 5th September 2021 – the length of the ‘Largs Viking Festival’.

- The proposal is 2 journeys per hour 10.00 - 18.00 (except Saturdays and Sundays, when the times are 09.00 - 18.00).

- The proposed route is:

The Land Train starts on the Promenade at the Festival site,  
heads north and leaves the Promenade at the RNLI station,  
enters the A78 road and drives north along the A78,  
crosses over the southbound lane of the A78 & enters the north access road at Vigingar!

leaves by the south access road at Vikingar!

heads south along the A78 to Bath Street,

turns across northbound traffic in High Street into Bath Street,

along Bath Street to Makerston Place,

leaves the road at the playpark and enters Promenade, rejoining road at May Street.

Stops there,

Returns along Promenade to rejoin road at playpark,

then north along Bath Street, and into Fort Street,

past the Ferry Terminal,

on the Promenade and north to the Festival site.

2.2 As well as the prescribed consultation procedure (which, for "Temporary Licences", does not include the public) the Council have taken steps to engage the public and seek their views. The consultation document on the CPP website contains two consultations, to which the public may respond:

(a) per the Committee decision on 14 July 2021, there is public consultation on the wider issue of policy:

- for the whole of North Ayrshire

- for 2022 and later years, and

- for all public carriages – Land Trains, Rickshaws, Pedicabs and Tuk-Tuks.

The public are invited to respond by email by Friday 10 September 2021 at 4.00 p.m..

(b) concerning the Largs Land Train proposal. The public are invited to respond by email by Friday 13 August 2021 at 4.00 pm..

2.3. In addition, the Policy consultation was drawn to the attention of relevant authorities:

- Police Scotland

- The Council's Roads Department

- Amey/Transport Scotland (the "Roads Authority" for the A78 Trunk Road)

When the Largs Land Train application was lodged, the Clerk asked those parties to give earlier responses, so that the Committee on 18 August 2021 could have their views.

2.4. The Committee Members' Background Papers will contain copies of all submissions received.

2.5. 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 called "the right to roam")
- under the licensing legislation.

2.6. 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) The Council have a duty to uphold Access Rights, but only so far as consistent with their other functions (Section 13); "other functions" includes "Licensing functions".

### **3. Proposals**

3.1 Under the Civic Government (Scotland) Act 1982, the relevant Licensing legislation, the Committee are directed to have regard to the Grounds for Refusal. These are stated in 1982 Act, Schedule 1, Paragraph 5(3), and the relevant parts are:

*"5(3) ... a Licensing Authority shall refuse an Application to Grant or Renew a Licence if, in their opinion— ...*

*(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;*

*(d) there is other good reason for refusing the Application;*

*and otherwise shall Grant the Application."*

3.2. The Committee would have to consider the following questions. If the answer to question (a) is "yes", the Application must be refused. If the answer is "no", consider question (b), and continue in the same way, if necessary to question (c). If all questions are answered "no", the Application must be granted.

(a) "are the Premises - the proposed route and turning-points - 'suitable or convenient' having regard to the criteria in (i) to (v) ?"

(b) "is the vehicle - its weight, size, speed and manoeuvrability - 'suitable or convenient' having regard to the criteria in (i) to (v) ?"

(c) "is the route suitable or are there any modifications proposed that would make it suitable?"

#### **4. Implications/Socio-economic Duty**

##### **Financial**

4.1 None.

##### **Human Resources**

4.2 None.

##### **Legal**

4.3 If the Licence is refused the unsuccessful Applicants will have no right of appeal. This is a Temporary Licence, and therefore the usual appeal rights are excluded (1982 Act, Schedule 1: the appeal provisions of Paragraph 18 are excluded by Paragraph 7(5)). The Licence will be in the name of all parties named on the Licence Application

(including the Day-to-Day Manager). Each will be a Joint-Holder with all the rights and obligations of the Licence-Holder: 1982 Act, Schedule 1, Paragraph 5(8).

### **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.

### **Environmental and Sustainability**

- 4.5 None. Opinions will vary on whether the Land Train improves or impedes access.

### **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 The Report does not relate to tendering or procurement exercises. There are no Community Wealth Building issues.

## **5. Consultation**

- 5.1 Consultation has taken place as above.

Aileen Craig  
Head of Democratic Services

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

### **Background Papers**

Appendix: Standing Orders 21 - 23, 26 and 31 excerpted from "Standing Orders relating to Proceedings and Meetings of the Council" approved on 16<sup>th</sup> December 2020.

## **Appendix: Standing Orders 21 - 23, 26 and 31**

"Standing Orders Relating to Meetings and Proceedings of the Council and Committees" were approved by Council on 16<sup>th</sup> December 2020. The following are excerpts as they relate to the application before the Committee.

### **"21. Suspension of Standing Orders**

21.1 Any one or more of the Standing Orders in any case of urgency as determined by the Provost upon a motion made, may be suspended at any meeting provided that two thirds of the Members of the Council present and voting shall so decide. It shall not be competent for the Council to suspend any Standing Order which gives effect to any provision of Schedule 7 to the Local Government (Scotland) Act 1973 or any other statutory provision. (This covers the arrangements for meetings and proceedings of Local Authorities).

21.2 Any Member competently moving the suspension of Standing Orders shall be entitled to speak for a period of not more than five minutes and shall confine his/her remarks to the reasons for the proposed suspension. The seconder of any such motion shall not speak other than to formally second the motion (no other Member shall be entitled to speak to the motion or to the amendment).

21.3 If any amendment is made against suspension of Standing Orders the mover of any such amendment shall again be entitled to speak for not more than five minutes and shall similarly confine his/her remarks to the reasons against suspension. The seconder of an amendment shall not speak other than to formally second the amendment.

### **22. Variation and Revocation of Standing Orders**

22.1 It shall not be competent at any meeting of the Council to revoke or vary any of the Standing Orders except:

- i. Upon a resolution to that effect at an Ordinary meeting of Council following a notice given at a previous Ordinary Meeting of the Council; or
- ii. Upon the Chief Executive submitting to any meeting of the Council a report on any new Standing Order or alteration of any existing Standing Order which appears to be required in consequence of any decision regarding the conduct of business which has been taken by the Council or which is otherwise required for the good governance of the Council.

22.2 Any motion to revoke or vary these Standing Orders will, when voted on, be approved by a majority of the Members present and voting.

22.3 In the case of a pandemic or other public health emergency where Council is unable to meet, and in consultation with the Leader of the Council, and the Leader of all Groups, an Independent Member nominated by the Independent Members, and the Monitoring Officer, and if required to enable effective decision making or otherwise in relation to the emergency, the Chief Executive has power to amend these Standing Orders.

## **23. Rescinding/Revocation of Previous Decision/Resolution**

23.1 Except where required by statute, no Decision of Council may be reconsidered and no item of business reconsidered which is the same or substantially the same as one previously determined by the Council within six months of the date of the making of the previous decision or determination, except where:

- i. Two thirds of the Members for the time being present and voting agree to suspend Standing Orders in accordance with Standing Order 21 above; or
- ii. In the opinion of the Solicitor to the Council not doing so would, result in a decision which is likely to give rise to a contravention by the Council of any enactment or rule of law or of any code of practice made by or approved by or under any enactment.
- iii. The original Council Decision cannot be implemented due to reasons outwith the control of the Council; or
- iv. Where, as a matter of urgency, having regard to the potential loss of life, risk of substantial economic loss to the Council or any third party, (including potential loss or material underutilisation of funds or resources not available at the time of the Decision of Council), it is deemed by the Chief Executive that the matter ought to be reconsidered by the Council.

For the avoidance of doubt this Standing Order does not apply to Questions raised under Standing Order 12. No such Question shall require the suspension of Standing Orders in order to be considered or reconsidered.

This Standing Order does not limit the discretionary power of the Council as planning authority to decline to determine repeat planning applications.

## **26. Proceedings of Committees and Sub-Committees**

26.1 The business of Committees or Sub-Committees will be conducted as follows:-

i. The business of the Committee or Sub-Committee will be conducted in accordance with the provisions of Standing Orders and any statutory or regulatory provisions in respect of such business;

ii. ...

## **31. Definitions**

31.1 In these Standing Orders the following words and phrases will have the following meanings respectively ascribed to them:-

i. "Provost" or "Chair" will mean the person appointed to Chair the Council, Committee or Sub-Committee;

ii. "Vice-Provost" or "Vice- Chair" will mean the person appointed to Chair the Council, Committee or Sub-Committee in the absence of the Provost or Convener;

..."



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## NORTH AYRSHIRE COUNCIL

18 August 2021

### Licensing Committee

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**Title:** Civic Government (Scotland) Act 1982 and other Licensing statutes: Licensing Matters

**Purpose:** To advise the Committee of:  
a) Applications for the grant or renewal of licences and permits under the Civic Government (Scotland) Act 1982 and other statutes within the Committee's.

**Recommendation:** 1) That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which any of the matters in this Report are to be considered;  
2) That the Committee consider and determine the matters before them.

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### 1. Executive Summary

1.1 The Licensing Committee's remit is to exercise the Council's licensing functions. These functions arise under many statutes, mainly the Civic Government (Scotland) Act 1982. Depending on the legislation and the circumstances of each individual case, the Committee is entitled to grant, refuse, renew, vary, suspend and revoke Licences.

### 2. Background

2.1 The Committee's business under the 1982 Act is as follows:

Appendix B - Applications for the grant or renewal of Licences and Permits

#### Exempt Information

2.2. The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

Paragraph 14: "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."

Paragraph 15: "The identity of a Protected Informant" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.

2.3. The details of the cases in the Appendix, with any relevant documents (such as letters from the Police or objectors) are in the background papers given to Committee Members and will be sent to the respective Applicants or Licence-Holders before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

2.4. The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).

2.5. For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment).

Paragraphs 14 or 15 could apply where it was alleged that there was criminal conduct or anti-social behaviour committed by or against a Licence-Holder or Applicant for a Licence, or where the Committee was told that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

2.6. Accordingly, if a Resolution is made:

- (a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);
- (b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

### **3. Proposals**

3.1 It is proposed that the Committee consider and determine each of the listed cases in accordance with the required procedure.



## **4. Implications/Socio-economic Duty**

### **Financial**

4.1 There are possible financial implications in relation to any Licensing decision.

### **Human Resources**

4.2 None.

### **Legal**

4.3 There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.

### **Equality/Socio-economic**

4.4 Equality Act 2010 imposes duties on the Council:

Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council  
"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

Section 149(1) ("Public sector equality duty"): the Council

"must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];
- (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;
- (c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."

The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant impacts to be considered

### **Environmental and Sustainability**

4.5 None

### **Key Priorities**

4.6 An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders, the safety of vehicles, and the suitability of premises, helps progress

towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024:  
"North Ayrshire's residents and communities are safe."

### **Community Wealth Building**

4.7 There are no Community Wealth Building issues.

## **5. Consultation**

5.1 Consultations have been undertaken where appropriate with Police Scotland, Scottish Fire and Rescue, and Council Directorates.

Aileen Craig  
Head of Democratic Services

For further information please contact **William O'Brien, Solicitor (Licensing)**, on  
**[licensing@north-ayrshire.gov.uk](mailto:licensing@north-ayrshire.gov.uk)**.

### **Background Papers**

None

**Applications for Licences/Renewal of Licences (Appendix B)**

Agenda Item 4

Type of Licence/Reference Number	Details of Applicant
TDL/00064 (New)	Samuel Dean
TDL/02022 (Renewal)	Connie Dunn
TL/430 (New)	Colin Bennett
TL/431 (New)	Hugh O'Neill

**Note**

TDL – Taxi Driver's Licence

TL – Taxi Licence



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## NORTH AYRSHIRE COUNCIL

18 August 2021

### Licensing Committee

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**Title:** Landlord Registration under the Antisocial Behaviour etc (Scotland) Act 2004, Part 8

**Purpose:** To inform the Committee of Landlord Registration matters.

**Recommendation:**

1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report and its Schedules is to be considered;
2. For each Application or Review Proposal described in the Schedules: That the Committee should consider each case and
  - (a) decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;
  - (b) if appropriate, decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house, or to delegate authority to the Clerk to issue such a Notice.

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## 1. Executive Summary

- 1.1 The Licensing Committee has delegated authority from the Council to administer the Council's functions under the Landlord Registration Scheme regulated by the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.

## 2. Background

- 2.1 The persons named in the attached Schedules are Landlords who are either applying for Registration or who are registered. The Clerk has information suggesting that there may be a basis for the Committee concluding that the Landlords are not 'fit and proper', and that either the Application should be refused or the Registration already granted should be removed (each person has one Schedule). The rented houses concerned are listed in the Schedules. The Schedules are marked "Not for Publication".

2.2 The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

Paragraph 14: "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."

Paragraph 15: "The identity of a Protected Informant" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.

2.3 The Schedules are in the background papers given to Committee Members and will be sent to the respective Landlords before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

2.4 The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).

2.5 For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment, or where a Landlord lets a house).

Paragraphs 14 or 15 could apply where it was alleged:

- (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or
- (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his/her legal obligations, or

- (c) that the Landlord had defaulted in another obligation applying to Landlords, or
- (d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

2.6. Accordingly, if a Resolution is made:

- (a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);
- (b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

### **3. Proposals**

- 3.1 The Committee should consider each case and decide whether or not to grant the Application, or remove the Registration.
- 3.2. If the Committee decides to refuse an Application, or to remove a Registration, and if it is satisfied that the house is presently occupied by a Tenant, it should then decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice' or 'RPN') in respect of any house referred to in the Application or Registration.
- 3.3. If it is are not so satisfied, it may delegate authority to the Clerk to issue a RPN if and when the Clerk is so satisfied. Given that there would be nothing to stop the Landlord receiving Housing Benefit even if he/she was unregistered, the Committee may wish to delegate authority to the Clerk to issue a RPN if the Clerk later receives information that any house which is currently covered by the Registration is occupied by a Tenant under a Lease or an Occupier under an Occupancy Arrangement.

### **4. Implications/Socio-economic Duty**

#### **Financial**

- 4.1 There are possible financial implications in relation to any Licensing decision. If a RPN is made, the Benefit Authorities will be informed, so that the Landlord will no longer receive Housing Benefit or Universal Credit, if any is claimed for the house.

#### **Human Resources**

- 4.2 None.

## **Legal**

- 4.3 There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.

If the Council makes a RPN, only the Tenant's liability to pay rent will cease. The other rights and obligations of the Lease will be unaffected (Section 94(3) & (8)).

For example:

- (a) the Tenant will continue to have whatever security of tenure he/she already had (and cannot be evicted for non-payment of rent where that non-payment is due to the RPN);
- (b) the Landlord will only be entitled to evict the Tenant if the First-Tier Tribunal grants an Eviction Order;
- (c) the Landlord will continue to have repairing obligations.

If a RPN is revoked by the Sheriff or Tribunal on appeal by the Landlord, the Tenant only has to pay 'arrears' of rent if, and to the extent, ordered. If a RPN is revoked by the Council then 'arrears' are not due (Section 95(3)).

## **Equality/Socio-economic**

- 4.4 Equality Act 2010 imposes duties on the Council:

Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council

"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

Section 149(1) ("Public sector equality duty") the Council

"must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];
- (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;
- (c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."

The "Relevant Protected Characteristics" are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant impacts to be considered.



## **Environmental and Sustainability**

4.5 None

## **Key Priorities**

4.6 An effective licensing system, for example monitoring the 'fit and proper' status of landlords and the suitability of premises, helps progress towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024: "North Ayrshire's residents and communities are safe."

## **Community Wealth Building**

4.7 There are no Community Wealth Building issues.

## **5. Consultation**

5.1 No consultations are required by the legislation. Depending on the circumstances, the Schedules contain information supplied by the Police, other Council officers, or other agencies.

Aileen Craig  
Head of Democratic Services

For further information please contact **William O'Brien, Solicitor (Licensing)**, on **01294 324305**.

## **Background Papers**

None

