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<b>Report To:</b>	<b>General Purposes Board</b>	<b>Date:</b>	<b>12 April 2017</b>
<b>Report By:</b>	<b>Head of Legal and Property Services</b>	<b>Report No:</b>	<b>LP/030/17</b>
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<b>Subject:</b>	<b>Civic Government (Scotland) Act 1982 Licensing of Street Traders</b>		

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## 1.0 PURPOSE

- 1.1 The purpose of this report is to advise the Board of the judgement of Sheriff Smith in the case of Karen McCluskey and others against North Lanarkshire Council relating to street traders and their proximity to schools; and to consider removing the following conditions currently attached to all street trader licences issued by Inverclyde Council:-

“The Licenceholder is prohibited from trading within 500 metres of any school premises at any time when the premises are open for use as an educational establishment”

“The Licenceholder is prohibited from trading within 150 metres as the crow flies of any shop or building in which are sold or offered for sale any goods or articles or services of the same or similar class and description as those to be sold or offered for sale by the Licenceholder”

## 2.0 SUMMARY

- 2.1 In a recent decision Sheriff Smith held that the condition imposed by North Lanarkshire Council in street traders' licences was ultra vires. The condition was as follows:-  
“the street trader will be prohibited from operating within a distance of 250 metres from the defined perimeter as constituted by the physical boundaries in place of all secondary schools in the North Lanarkshire area from 8am and 5pm on any school day during term time”. The prohibition will apply to all snack vans selling or offering for sale hot or cold food, fish and chip vans and ice cream vans.
- 2.2 Sheriff Smith held that conditions attached to the licence must be for a licensing purpose and not for any ulterior purpose. He referred to previous cases where it was stated:-  
“the authority is not at liberty to use it for an ulterior object, however desirable that object may seem to be in the public interest.”
- 2.3 Given the decision of Sheriff Smith to the effect that such a condition attached by North Lanarkshire Council is ultra vires, it is more than likely that the current practice of Inverclyde Council to restrict the street trader from trading within 500 metres of any school premises at any time when the premises are open for use as an educational establishment and the condition to restrict the street trader from trading within 150 metres of premises selling the same or similar items as the trader himself would also be considered ultra vires. Within the judgement there was some discussion about the ability of a licensing authority to refuse a licence on the ground on limiting competition or protecting any other types of business, or to attach any conditions to the grant of a licence for such purposes.

## 3.0 RECOMMENDATIONS

- 3.1 The Board are asked, that following the judgement of Sheriff Smith, the following conditions attached to all street trader licences issued by Inverclyde Council, be deleted:-

“The Licenceholder is prohibited from trading within 500 metres of any school premises at any time when the premises are open for use as an educational establishment”

“The Licenceholder is prohibited from trading within 150 metres as the crow flies of any shop or building in which are sold or offered for sale any goods or articles or services of the same or similar class and description as those to be sold or offered for sale by the Licenceholder”

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## 4.0 BACKGROUND

- 4.1 The law requires that each person trading, that is, dealing with the public by handling cash, must hold a Street Trader's Licence for this purpose.
- 4.2 There are two broad types of Street Trader's Licence :-  
The first type of licence permits the trader to travel around Inverclyde, stopping to trade at a particular stance for a limited period and then moving on to a different stance. The second type of Street Trader's Licence is one which authorises the licence holder to take up position at a particular stance and trade from it throughout the hours permitted by the licence.
- 4.3 Two of the conditions attached to all street traders licences issued by the Council are noted below:-
- “The Licenceholder is prohibited from trading within 500 metres of any school premises at any time when the premises are open for use as an educational establishment”
- “The Licenceholder is prohibited from trading within 150 metres as the crow flies of any shop or building in which are sold or offered for sale any goods or articles or services of the same or similar class and description as those to be sold or offered for sale by the Licenceholder”
- 4.4 In a recent decision Sheriff Smith held that the condition imposed by North Lanarkshire Council in street traders' licences was ultra vires i.e. the Council had exceeded the powers bestowed on it by the Civic Government (Scotland) Act 1982. The condition was as follows:-  
“the street trader will be prohibited from operating within a distance of 250 metres from the defined perimeter as constituted by the physical boundaries in place of all secondary schools in North Lanarkshire area from 8am and 5pm on any school day during term time. The prohibition will apply to all snack vans selling or offering for sale hot or cold food, fish and chip vans and ice cream vans.
- 4.5 Sheriff Smith held that conditions attached to the licence must be for a licensing purpose and not for any ulterior purpose. He referred to previous cases where it was stated:-  
“the authority is not at liberty to use it for an ulterior object, however desirable that object may seem to be in the public interest.”
- 4.6 Given the decision of Sheriff Smith to the effect that such a condition attached by North Lanarkshire Council is ultra vires, it is more than likely that the current practice of Inverclyde Council to restrict the street trader from trading within 500 metres of any school premises at any time when the premises are open for use as an educational establishment and the condition to restrict the street trader from trading within 150 metres of premises selling the same or similar items as the trader himself would also be considered ultra vires
- 4.7 Currently all street traders licences issued by Inverclyde Council include the conditions referred to previously.
- 4.8 Given Sheriff Smith's judgement these conditions would be considered ultra vires if appealed. Therefore it is appropriate to remove the conditions from future licences and not to enforce the condition attached to existing licences.

## 5.0 IMPLICATIONS

### Finance

- 5.1 N/A

### Legal

5.2 The risk to the Council is that if it tries to enforce a licensing condition which is ultra vires it could result in court proceedings which could cost the Council substantial sums of money.

### **Human Resources**

5.3 There are no Human Resources implications.

### **Equalities**

5.4 There are no equalities implications.

### **Repopulation**

5.5 There are no repopulation implications.

## **6.0 CONSULTATIONS**

6.1 None

## **7.0 LIST OF BACKGROUND PAPERS**

7.1 None