

Agenda item	9.1
Report no	HLC/051/21

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 7 September 2021

Report title: Street trader's licence – Andrew Fraser (Ward 14 – Inverness Central)

Report by: The Principal Solicitor – Regulatory Services

1. Purpose/Executive summary

1.1 This report relates to the holder of street trader's licence.

This item is subject to a formal hearing procedure.

2. Recommendation

2.1 Members are asked to determine this matter in accordance with the Council's hearings procedure.

3. Background

- 3.1** The Highland Council has resolved that in terms of the Civic Government (Scotland) Act 1982 (the "Act") a licence will be required for carrying out the activity of street trading.
- 3.2** At the Licensing Committee meeting held on 30 March 2021 Members agreed to grant a street traders licence to Andrew Fraser, t/a Snack Shop' for a period of 12 months. The application was before the Committee as there had been objections received from Police Scotland and from the Council's Community Services (Roads).
- 3.3** The licence was issued on 5 May 2021 and expires on 4 May 2022.

4. Location of trader

- 4.1** Members will recall that Community Services (Roads) had objected to the application on the basis that the location where Mr Fraser's catering unit was situated at that time was not considered suitable.
- 4.2** On 20 May 2021 the Council received an enquiry from a member of the public who advised that Mr Fraser was trading from his catering unit in Gilbert Street, Inverness.
- 4.3** An officer from the Council's Environmental Health Services visited the unit and it was established that it was operating within the street trader's exclusion area (copy of plan showing this area is attached in Appendix 1).
- 4.4** Mr Fraser was advised by the Environmental Health officer that he was in breach of condition 1 of his street trader's licence and was asked to cease trading from that location. Mr Fraser was reminded of the requirement to comply with his licence conditions at all times.
- 4.5** On 21 June 2021 the Environmental Health Service received a complaint from a member of the public that Mr Fraser was trading from Nelson Street, Inverness which again is within the street traders licence exclusion area.

5. Timeline of actions

- 5.1** Below is a timeline of the visits, correspondence and contact with the licence holder in relation to this matter:

20/05/21 – Complaint received by a local resident that the Snack Shop was operating, from a fixed stance, in Gilbert Street, Inverness.

02/06/21 – Environmental Health (EH) visited the trader on site and handed him a letter advising him that he required to cease trading from this location as he was in breach of his licence conditions. Copy of this letter is attached in Appendix 2. The EH officer asked Mr Fraser to advise him when he was looking to start up trading again.

03/06/21 – Email received by EH from Mr Fraser confirming that he had ceased trading from Gilbert Street.

21/06/21 – Complaint received by EH from a local resident that Mr Fraser was trading from a location in Nelson Street, Inverness, which again is within the street traders licence exclusion area.

22/06/21 - EH officers visited the unit and confirmed that it was trading in Nelson Street. This can be corroborated by the two EH officer who attended.

28/06/21 – Licensing sent Mr Fraser a letter advising him of the continued breach of licence condition and that the matter would be reported to the Licensing Committee. Copy of letter attached in Appendix 2.

07/07/21 – EH officers carried out a follow up visit and witnessed Mr Fraser still trading. When the EH officers spoke to Mr Fraser he advised that he had not received the letter sent by Licensing on 28/06/21. The EH officers provided Mr Fraser with a copy of the letter. Mr Fraser then advised the EH officers that he would cease trading from this location.

09/07/21 - A complaint was received by EH from a resident who had previously complained, and resided in Nelson Street, stating that they had just returned from holiday and observed that The Snack stop was still operating.

20/07/21 – EH again visited the Mr Fraser on location. During discussion Mr Fraser advised that he had passed the hot food trailer to a Mr Kevin Swanson who is the Manager at For The Right Reasons premises who had given Mr Fraser the permission to trade from this location. Mr Fraser stated that he no longer had anything to do with the operation of this trailer and was working as a self-employed delivery driver delivering food orders from this trailer. He stated it was now Mr Swanson's responsibility and he had passed the gas and electrical certificates to him.

30/07/21 – EH emailed both Mr Fraser and Mr Swanson advising them to contact Licensing to discuss the requirements for Mr Swanson taking over the operation of the catering unit.

04/08/21 – Licensing emailed Mr Fraser and Mr Swanson asking them to get in contact.

12/08/21 – EH Officers visited the site again where it was established that the food trailer was still being operated by Mr Fraser. This also resulted in a Remedial Action being served on the business operator, Mr Fraser, for food safety concerns and prior to Mr Fraser being allowed to operate the business he would need to comply with food safety requirements to demonstrate he is producing safe food.

6. Determining issues

- 6.1** In terms of paragraph 11(2)(a) of Schedule 1 of the 1982 Act, a licensing authority may suspend or revoke a licence if, in their opinion, the holder of the licence is no longer a fit and proper person to hold the licence. In terms of paragraph 11(2)(c) of Schedule 1 of the 1982 Act, a suspension or revocation may also be ordered on the ground that the carrying on of the activity to which the licence relates has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety. In terms of paragraph 11(2)(d) of Schedule 1 of the 1982 Act, a licensing authority may suspend or revoke a licence if, in their opinion, a condition of the licence has been contravened.
- 6.2** In terms of paragraph 11(10) of Schedule 1 of the 1982 Act, if in deciding to order the suspension or revocation of a licence, a licensing authority determine that the circumstances of the case justify immediate suspension or revocation, they may order that the licence shall be suspended or revoked immediately.

6.3 In terms of paragraph 11(11) of Schedule 1 of the 1982 Act, a suspension can be for the unexpired portion of the duration of the licence, or such shorter period as the licensing authority may fix; and the effect of the suspension shall be that the licence shall cease to have effect during the period of the suspension. A suspension may be recalled at any time if the ground of suspension no longer applies. A revocation may not be recalled.

6.4. A copy of this report has been sent to the licence holder who has been invited to attend and will be provided with an opportunity to be heard by the Committee. He has also been advised of the procedure which will be followed at the meeting.

7. Policies

7.1 The following policies are relevant to this case:

Standard street trader's licence conditions. A copy of these can accessed at https://www.highland.gov.uk/directory_record/738770/street_trader/category/499/shop_and_trader or a hard copy can be supplied where requested.

8. Implications

8.1 Not applicable.

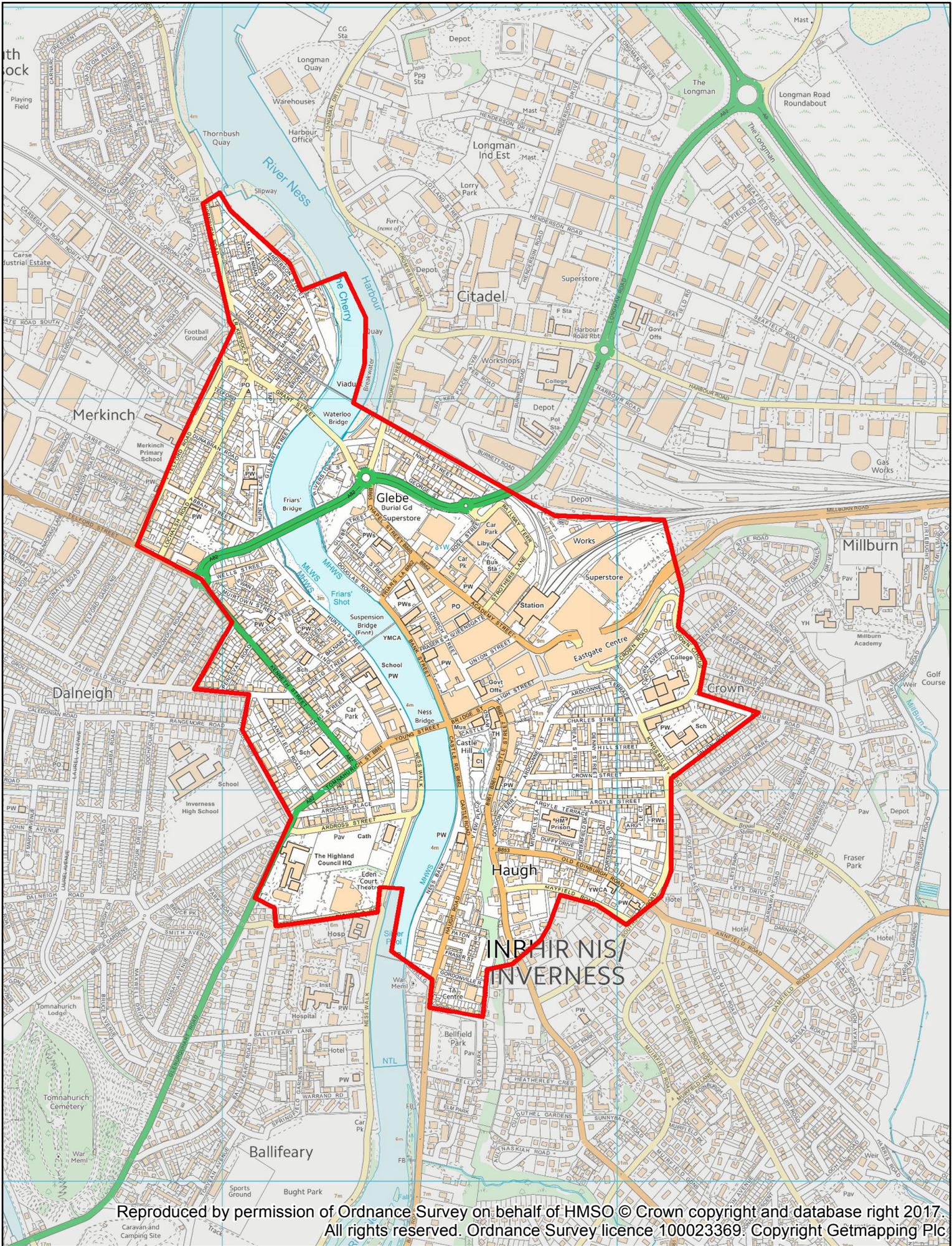
Date: 18 August 2021

Author: Michael Elsey

Appendix 1: Plan showing street traders exclusion zone

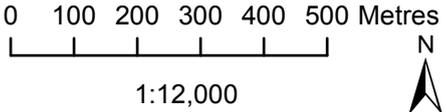
Appendix 2: Letter from EH dated 1 June 2021

Appendix 3: Letter from Licensing dated 28 June 2021

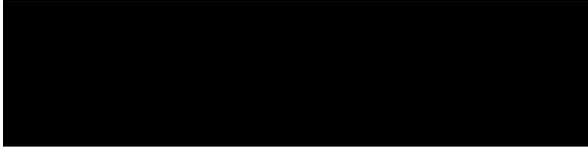


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**Highland Council
 Civic Government (Scotland) Act 1982
 Street Traders Licence - Schedule of Conditions
 Condition 1 - Inverness - Exempted Area**



Mr Andrew Fraser



Please ask for: **Mr Barry Parkins**

Direct phone: (01463) 644606

Direct Email: Barry.Parkins@highland.gov.uk

Your ref:

Our ref: BP/I/160362

Date: 1/6/2021

Dear Sir

CIVIC GOVERNMENT (SCOTLAND) ACT 1982
PREMISES: COMPLAINT – STREET TRADING – GILBERT STREET, INVERNESS

I refer to the above complaint received from a member of the public, into allegations of you trading in the layby at the above address.

The complainant is alleging that you are trading in the above location and this was confirmed at the time of my visit on the 2nd June 2021.

I would draw your attention to the attached Highland Council – Street Traders notes for guidance, in particular section 3 trading locations and appendix 2 of this guidance which clearly indicates that Gilbert Street, Inverness is part of the exclusion zone, and no street traders are allowed to trade in these areas.

I must advise you that you must cease trading in this area, and not trade in an area identified in this guidance as an excluded zone, as this would be in breach of your licensing conditions.

I have copied the Licensing team into this correspondence to make them aware that any further trading in the above location is in breach of your street traders licence conditions, with the Highland Council and any continuing breach could result in the revocation of your licence.

I trust that the above course of action will not be necessary, and you will seek other areas to trade from in accordance with the current street traders licensing scheme.

Yours faithfully

Barry Parkins
Environmental Health Officer

CC: Licensing , Highland Council, Town House, Inverness, IV1 1JJ

Mr Andrew Fraser,


Please ask for:

Direct Dial:

Your Ref:

Our Ref:

Date:

Mr Michael Elsey
(01463) 785098

12/2/4

28 June 2021

Dear Mr Fraser,

STREET TRADERS LICENCE

I refer to the above and would bring to your attention condition 1 of the standard street trader's licence conditions which relate to the areas in which it is permitted to trade and which were attached to your licence when it was issued.

A copy of these are attached together with the map showing the abovementioned areas. With regard to Inverness, trading is not permitted within the boundary of the red line indicated on the map.

Please also find attached a copy of the Council's street traders licence guidance notes. Section 7 which addresses the issue of trading within the exclusion zone referred to above.

In view of the above I would ask that you adhere to the licence conditions at all times.

Failure to do so may result in a report being submitted to the Council's Highland Licensing Committee who have the power to suspend or revoke a licence.

If you have any queries in relation to the above please do not hesitate to contact this office.

Yours sincerely



IAIN MEREDITH
PRINCIPAL SOLICITOR – REGULATORY SERVICES