



Te Kaunihera-ā-Rohe o Ngāmotu

NEW PLYMOUTH DISTRICT COUNCIL

newplymouthnz.com

APPLICATION PROCESS

COMMERCIAL TRADING IN PUBLIC PLACES

July 2014

New Plymouth District Council
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NEW PLYMOUTH 4342

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APPLICATION PROCESS

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A. PRELIMINARY INFORMATION AND INSTRUCTIONS

1. BACKGROUND

On 14 March 2014 the New Plymouth District Council ("the Council") passed the Commercial Trading in Public Places Policy (reference number P14-001 – "the Policy"), attached at Appendix 4 to this document, to regulate and provide guidance on the use of public places for commercial activities.

"Public places" includes parks, reserves and road reserves within the New Plymouth District that are owned and managed by the Council. These areas are not generally used for private use or commercial activities. However, in keeping with the provisions of the Reserves Act 1977, the Local Government Act 2002 and the Council's General Policies for Council Administered Reserves 2006, the Council recognises that commercial activities on such Council owned spaces can enhance users' recreation experience, and contribute to the vibrancy and attractiveness of the Taranaki district.

In accordance with the Policy, the Council has issued:

- A Request for Tender, to seek competitive tenders for proposed trading operations at Sites on the Coastal Walkway and in the Huatoki Plaza; and
- This Application Process, to seek non-tendered applications for proposed trading operations at public places **other than** the Coastal Walkway and Huatoki Plaza.

The Request for Tender and the Application Process are **two separate processes** which are being run by the Council concurrently.

The information required from respondents under both processes is the same (i.e. the application form used in both processes is identical), and respondents will be assessed against the same evaluation criteria.

However, the Request for Tender process **only** applies to Sites on the Coastal Walkway and in the Huatoki Plaza. Any person applying to conduct trading operations on the Coastal Walkway or at Huatoki Plaza must refer to the Request for Tender document.

The key differences between this Application Process and Request for Tender process are:

- The Request for Tender process **only** applies to Sites on the Coastal Walkway and in the Huatoki Plaza.
- The Request for Tender process is subject to strict timing requirements: tenders must be submitted no later than 4.00 pm on 30 July 2014. By comparison, applications under this Application Process may be submitted at any time up until the date on which the Council announces the Application Process is closed.
- Under the Request for Tender process, the Council will evaluate all tenders simultaneously and licences for sites on the Coastal Walkway/Huatoki Plaza will only be offered at the Council's discretion to tenderers who, in the Council's opinion, present the best fit for those Sites (based on the evaluation criteria and the objectives of the Policy). By comparison, the Council will assess applications received pursuant to this Application Process on a case-by-case basis. If the Council determines (in its sole discretion) that an application satisfactorily meets the evaluation criteria and the objectives of the Policy, and no other applications for the same Site are received, the Council may enter into negotiations with the applicant for the execution of a licence to occupy a public Site. However, where more than one application is received in respect of the same Site, the Council may evaluate those applications simultaneously.

In both the Request for Tender process and this Application Process, the Council is under no obligation to negotiate with, or award a licence or any other agreement for any Site to, any tenderer or applicant whatsoever.

2. KEY INFORMATION FOR APPLICANTS

Sites

The Council is prepared to consider applications in respect of public places within the New Plymouth District ("Sites"), other than Sites on the Coastal Walkway or Huatoki Plaza.

Each person who submits an application ("Applicant") is permitted to apply for a specific Site at which their proposed commercial activity would be based. However, the Council reserves the right not to offer any Site to any Applicant, and to offer an alternative Site to any Applicant if the Council believes (in its sole opinion) that the proposed commercial activity is more suitable for another Site, or if multiple applications are received for the same Site.

It will be the responsibility of the Applicant to provide and pay for any utilities (water, power, sewerage etc) required for the proposed commercial activity. However, where utilities already exist at a Site or where the Council deems it advantageous for the Council to provide utilities infrastructure at any Site, use and/or provision of such utilities may be negotiated as part of any licence entered into with the Council.

Businesses To Be Operated From The Sites

In accordance with the Policy, the Council is willing to consider a range of major, minor and short term commercial activities to be operated from the Sites.

Commercial activities may include services, recreation facilities or retail type activities that require payment greater than the cost of provision of the activity with the intention of making a commercial gain involving the sale of goods or services. This may include a commercial business operating on a seasonal or semi-permanent basis where profits are used for fundraising purposes.

Prior to submitting an application, each Applicant must note that:

- Any proposed commercial activity must fit within the scope and principles of the Policy, and not fall within any of the Policy exclusions (see page 4 of the Policy);
- Commercial trading in public places is a secondary function of public places and the Council will only permit commercial use of public places where there is a benefit to both the community and the public place environment;
- The Council may permit (at its sole discretion) a maximum number of commercial activities and/or type of commercial activity to be operated from any Site;
- If the proposed commercial activity is a **market**, specific terms may apply to any licence entered into (see page 6 of the Policy);
- Any facility from which the commercial activity operates will be required to comply with all applicable regulatory requirements (including, in the case of food and beverage businesses, all applicable food hygiene requirements);
- Notwithstanding appendix 1 of the Policy, no permanent structures or permanent facilities will be permitted at any Site (subject to the Council's sole discretion); and
- All commercial activities will be required to comply with the Policy, the Reserves Act 1977, the Local Government Act 2002 (if the activity is operated in a park), and the relevant provisions of the Council's General Policies for Council Administered Reserves 2006 and the Coastal Reserves Management Plan November 2006, as amended or substituted from time to time.

Licence To Occupy

Any successful Applicant that is permitted to conduct a commercial activity on any Site pursuant to this Application Process will be required to enter into a commercial trading agreement with the Council, which will be in the form of a licence to occupy ("Licence") the relevant Site.

Notwithstanding the definition of "commercial trading agreement" in the Policy, the Council's preference is to enter Licences in respect of the Sites, as opposed to leases or any other form of agreement. The Council will only offer a lease in respect of any Site in its sole and absolute discretion.

The term of, and fees payable under, any Licence offered by the Council will vary between Sites as required by the Council.

Prior to submitting a tender, each Applicant must note the general terms and conditions that will apply to any Licence (set out on page 5 of the Policy).

A draft form of Licence for a term of more than 12 months is attached to this document as Appendix 3. This is substantially the Licence that the Council will require any successful Applicant to enter into. However, the Council may require any successful Tenderer to enter into a licence for a maximum term of 12 months or less. Applicants must familiarise themselves with the terms of the Licence before submitting an application.

Each Applicant is entitled to make high level comments on the form of Licence. However, the Council reserves its rights to vary, in detail, the terms of the Licence prior to signing and to negotiate with any Applicant as to the terms of the Licence including, without limitation, the term of the Licence and the licence fees payable to the Council.

Any failure to reach agreement between the Council and any Applicant may result in that Applicant's participation in the Application Process being terminated, and the Council may instead elect to negotiate with any other Applicant.

Preparing and Submitting an Application

Each person that wishes to submit an application must submit:

- A completed Application Form (set out at Appendix 1) , including all documents required to be provided with the Application Form (see the checklist on page [5] of the Application Form);
- A non-refundable application fee of \$130 including GST (for this financial year), which must be paid at, or posted to, the front desk at the Council Offices on Liardet Street, New Plymouth; and
- A signed Conflict of Interest Declaration (set out at Appendix 2),

in accordance with clauses 3 and 7 of Part B.

An Application Guide is attached at Appendix 5 which Applicants may use to assist them when completing the Application Form.

All communication between Applicants and the Council regarding this Application Process (including requests for clarification or additional information) will be conducted in accordance with clause 5 of Part B.

B. PURPOSE OF PROCESS AND CONDITIONS OF APPLYING

PURPOSE OF APPLICATION PROCESS

The purpose of this Application Process is to allow Applicants to submit applications to operate commercial businesses from public places within New Plymouth District.

The Application Process will enable the Council to ensure the provision of appropriate commercial activities that fit within the open space recreation features of the relevant Sites, which will enhance the recreational experience of users of those Sites.

The Council will consider and evaluate each application received on its merits, and on a case-by-case basis. However, where more than one application is received in respect of the same Site, the Council may evaluate those applications simultaneously and competitively.

The Council is under no obligation to negotiate with, or award a licence or any other agreement in respect of any Site to, any Applicant.

CONDITIONS OF APPLYING

1. ACCEPTANCE OF RULES

1.1 Each Applicant that submits an application acknowledges and agrees that it is bound by:

- the terms and conditions set out in this Part B; and
- the other rules and requirements set out in this document,

together, "the Application Rules".

1.2 Each Applicant's agreement to be bound by the Application Rules is in consideration for the Council providing the Applicant with the opportunity to submit an application (this obligation and the obligation in paragraph 10.3 of this Part B being the Council's sole obligations in connection with this document and the process described in this document ("Application Process")).

1.3 Without limiting any other right or remedy of the Council, the Council reserves the right to refuse to allow an Applicant to participate (or participate any further) in the Application Process if the Council determines (in its sole discretion) that the Applicant has failed to comply with any of the Application Rules. The Council will be entitled to exercise such right at any time.

1.4 Neither this document nor the Application Process constitutes an offer by the Council to negotiate with or enter into any Licence or other agreement with any Applicant and, except as expressly provided in paragraph 1.2 of this Part B, does not impose any legal, equitable, contractual or other obligation whatsoever (including any implied obligation or duty, including as to fairness, good faith or otherwise) on the Council.

2. APPLICATION DOCUMENTS

2.1 The "Application Documents" comprise:

- this document (including all Appendices to this document); and
- any other documents provided to an Applicant.

2.2 Applicants are required to pay a non-refundable application fee of \$130 including GST.

- 2.3 The Applicant acknowledges and agrees that the Application Documents, and all intellectual property rights in the Application Documents, belong to, and remain, the property of the Council and cannot be copied or reproduced in any way (other than for the purposes of preparing and submitting an application) without first obtaining the prior written approval of the Council. All information contained in the Application Documents is for the sole purpose of allowing Applicants to prepare and submit an application. No information contained in the Application Documents or regarding this Application Process may be used by an Applicant in any other context, nor divulged to any third party without the specific written authority of the Council.
- 2.4 At the request of the Council, Applicants will immediately return all copies of the Application Documents that they hold.
- 2.5 Intellectual property rights in an Applicant's application or any other information provided in response to this Application Process will not pass to the Council. However, each Applicant grants the Council a non-exclusive, irrevocable and perpetual licence to use, copy, adapt, modify and reproduce its application or any other information provided by the Applicant:
- For the purpose of considering, analysing and evaluating the information provided;
 - In any future discussions, negotiations or other engagement with an Applicant; and
 - For any other purpose related to this Application Process.

3. SUBMISSION OF APPLICATIONS

- 3.1. Applications may be submitted, and the application fee must be paid, at any time up until the date on which the Council announces the Application Process is closed
- 3.2. Applications must be submitted at the New Plymouth District Council Offices, Civic Centre, Liardet Street, New Plymouth 4310.
- 3.3. Applications must be sealed in an envelope marked on the outside **"Application: Commercial Trading in Public Places"** and addressed to:
- Manager Parks
New Plymouth District Council
Private Bag 2025
NEW PLYMOUTH 4342
- 3.4. Applications shall be prepared in the format, and contain all information, described in paragraph 7 and as otherwise required by the Application Documents.

4. APPLICANTS TO INFORM THEMSELVES

- 4.1. Each Applicant shall inspect and examine, and in any case will be deemed to have inspected and examined, the Site, the Application Documents and any other information supplied to the Applicant by the Council, and submission of an application shall be evidence that the Applicant fully understands their obligations under the Application Documents.
- 4.2. The Council makes no representations and gives no warranties in or in relation to this Application Process.
- 4.3. Each Applicant shall rely on all information provided by the Council at their own risk and each Applicant acknowledges and agrees that the Council:
- Makes no representation and gives no warranty as to the accuracy, completeness or correctness of any information supplied in the Application Documents or otherwise provided to Applicants in connection with this Application Process; and
 - Will have no liability on account of any errors or omissions in the Application Documents, in the Application Process or in any subsequent discussions, negotiations or correspondence with any Applicant.

5. COMMUNICATION, ADDITIONAL INFORMATION AND CLARIFICATION

- 5.1. All communications with the Council as to this Application Process, or requests for clarification or further information, must be directed to the Council's Authorised Representative who is authorised to represent the Council in all matters regarding this Application Process. The Authorised Representative is:

Steve McGill
Manager Parks Programmes
06 759 6060
mcgills@npdc.govt.nz

- 5.2. Requests for clarification or additional information must be made in writing (including via email) and submitted to the Authorised Representative.
- 5.3. Subject to paragraph 10.4, responses to requests for information or clarification sought by an Applicant relating solely to that Applicant's application and containing commercially sensitive information will be provided to that Applicant only.
- 5.4. The Council may issue clarifications or changes to this Application Process by way of a written Notice to Applicants ("NTA"). Those who have received a copy of this document will be notified of any NTAs issued. Any NTAs will become part of this document.
- 5.5. No person other than the above-mentioned Authorised Representative or his nominee has any authority to provide information to Applicants or answer questions in relation to the Application Process, and the Council will not be bound by any statement, written or verbal, made by any other person other than the Authorised Representative or his nominee.
- 5.6. All communications concerning this Application Process shall be with the Authorised Representative only or as directed by the Authorised Representative. Applicants must not, directly or indirectly, provide any form of personal inducement or reward, approach, lobby, threaten or attempt to influence any Councillor or employee, officer, contractor, subcontractor, agent or representative of the Council in relation to this Application Process. Should an Applicant directly or indirectly make such an approach then the Council may (in its sole discretion) disqualify that Applicant's application from this Application Process.
- 5.7. No claims that an Applicant was disadvantaged by lack of information, or inability to resolve ambiguities, will be considered.
- 5.8. Each Applicant authorises the Council to:
- Collect any information from the Applicant and directly from any relevant third parties (including but not limited to referees) and to use that information as part of the analysis and evaluation of the Applicant's application;
 - Carry out a financial/credit check on the Applicant or any of its personnel; and
 - Take into account any knowledge the Council already has regarding the Applicant or its personnel and to use that information as part of the analysis of the Applicant's application.

6. PREPARING AN APPLICATION

- 6.1. The application shall be signed by or on behalf of the Applicant.
- 6.2. An application must be unconditional in all respects and must not contain any terms or conditions that impose, or purport to impose, any obligation or duty on the Council. Applications must not contain any changes to the terms of the Licence. No alternative applications will be accepted.

- 6.3. By submitting an application, each Applicant warrants to the Council that:
- All information provided by them to the Council and/or the Authorised Representative in, or in relation to, their application, is true, complete and accurate in all material respects, is not misleading by reason of omission of information, and may be relied upon by the Council; and
 - The provision of that information to the Council, and the use of it by the Council for the purpose of considering, analysing and evaluating applications or for any other purpose related to this Application Process, will not breach any third party intellectual property rights.
- 6.4. Without limiting paragraph 6.3, each Applicant must notify the Council immediately upon becoming aware of any errors, omissions or inaccuracies in its application.
- 6.5. Each Applicant is responsible for all costs and expenses incurred by them (or the costs and expenses of any other person acting in connection with the application) in relation to the Application Process, including without limitation: Site inspections; meetings or interviews with the Council; the preparation and lodgement of the application; and any communication and/or negotiation with the Council.
- 6.6. Each Applicant warrants that they did not directly or indirectly provide any form of inducement or reward to any representative of the Council in respect of this Application Process, or otherwise act in breach of paragraph 5.6.
- 6.7. Each Applicant assumes the risk that the Council, may at any time and in its sole discretion, exercise any or all of the rights and discretions reserved to the Council in this document.
- 6.8. The Applicant agrees that their application will be retained by the Council and remain open for acceptance by the Council, is irrevocable and may not be withdrawn or modified, except with the written consent of the Council (or as clarified at the request of the Council), until the expiry of 30 working days commencing from the date the application is submitted.

7. REQUIRED INFORMATION

Application Form

- 7.1. Applicants must provide the information set out in the Application Form (including all documents required to be provided with the Application Form (see the checklist on page [5] of the Application Form), attached at Appendix 1.
- 7.2. The information provided in the Application Form must be limited in total to no more than 20 A4 pages of normal 10-pitch size. Should more than 20 pages of information be provided, the extra pages will only be considered at the sole discretion of the evaluation committee.
- 7.3. In preparing an application, each Applicant must have regard to:
- The Policy attached at Appendix 4; and
 - The Council's General Policies for Council Administered Reserves (which may be downloaded at <http://www.newplymouthnz.com/CouncilDocuments/Policies/GeneralPoliciesforCouncilAdministeredReserves2006/>),
 - The relevant provisions of Council's *Coastal Reserves Management Plan* November 2006, <http://www.newplymouthnz.com/CouncilDocuments/PlansAndStrategies/ParksandReservesManagementPlans/CoastalReservesManagementPlan2006.htm>,

and each Applicant acknowledges and agrees that their application will be consistent in all respects with the above policies.

Conflict of interest declaration

7.4. The Council is mindful of the risk of conflicts of interest. All Applicants must declare all possible conflicts of interest that they may have including with the Mayor, Councillors and/or Council officers, by submitting a completed *Conflict of Interest Declaration* (set out at Appendix 2) with their application, and on a continuing basis throughout the Application Process as soon as the Applicant becomes aware of the conflict. If Applicants are in doubt as to whether a relationship should be disclosed, the Applicant should seek independent advice. If a conflict of interest arises and in the Council's opinion has not been, or cannot be, appropriately managed by the Applicant, the Council may (at its sole discretion) terminate the participation of the Applicant in the Application Process.

8. COUNCIL'S DISCRETION

8.1. Notwithstanding any other provision of this document, the Council expressly reserves the right, at its sole discretion, to:

- Terminate or suspend (in whole or in part) any aspect of the Application Process at any time;
- Not progress the Application Process through to the evaluation of applications or enter into any Licence with any Applicant;
- Meet and/or have direct discussions with any Applicant at any stage during the Application Process and prior to the award of a Licence (if any);
- Negotiate with any Applicant (to the exclusion of any other Applicant) at any time during or after the Application Process and upon any terms and conditions;
- Exclude, or terminate the participation of, any Applicant at any time from the Application Process for any reason (or no reason), including (but not limited to) capability, price, operational requirements, failure to reach an agreement during negotiation, or otherwise;
- Reject or not consider all or any of the applications, including one which complies with the Conditions of Applying specified in this document;
- Waive any irregularities or formalities in an application or in the Application Process;
- Amend/change (in whole or in part) the Application Process and/or this document (including without limitation any Application Rule or date specified in this document), or any associated documents at any time, by the issue of a NTA;
- Apply, change, and/or give whatever weighting it wishes (including zero weighting) to any policy or criteria (including, without limitation, the evaluation method and attributes set out in Part C of this document);
- Exercise its own discretion and judgement when considering, analysing and evaluating any requirement, matter or criteria set out in, and/or addressed in, any application;
- Seek further details or clarification from an Applicant of any aspect of information in its application or other information provided to the Council, provided that the Council will not be obliged to seek the same details or clarification from each Applicant;
- Conduct a financial/credit check on any Applicant at any stage during the Application Process;
- Take account of any other relevant information that the Council may have in its possession, including in relation to any Applicant and make enquiries of any person to assist it in the evaluation process;

- Offer an alternative Site (or not offer any Site) to any Applicant if the Council believes (in its sole opinion) that the Applicant's proposed commercial activity is more suitable for another Site, or if multiple applications are received for the same Site;
- Enter (or not enter) into any Licence with any Applicant and amend/change (in whole or in part) any aspect of the draft Licence attached at Appendix 3 (including the term and fees payable to the Council), prior to execution;
- Re-advertise for applications (on the same or an alternative basis); and
- Otherwise conduct the Application Process in such manner as it sees fit.

8.2. The Council shall not be bound to give reasons for any rights exercised by it under paragraph 8.1.

9. ERRORS AND OMISSIONS IN APPLICATION

9.1. The Council is under no obligation to check any application for errors, omissions or inaccuracies. Without limiting paragraphs 6.3 or 6.4, if the Council discovers errors and/or omissions in any application the Council may, at the Council's sole discretion, allow the Applicant to correct such error and/or omission so long as by the correction of such error and/or omission there would be no material prejudice to any other applicant.

10. CONFIDENTIALITY

10.1. The Application Documents and all other information supplied by the Council to any Applicant in connection with this Application Process, or any Licence that arises out of it, is confidential information. Applicants shall not release or disclose any of the confidential information to any other person (other than their employees or advisors) without the prior written consent of the Council.

10.2. Except as required by or under any Licence subsequently entered into with the Council, the Applicant must ensure that any sub-contractor engaged and/or person employed, either by the Applicant or the Applicant's sub-contractor, does not disclose to any person the contents of, or information relating to, any document or material which comes to their knowledge or into their possession in connection with this Application Process or as a result of any engagement or employment which relates to the affairs of the Council.

10.3. If an Applicant wishes any information provided as part of their application to be withheld from the public, it must clearly identify such information as "Confidential" and must indicate the reasons why it should not be disclosed. It will not be acceptable for an Applicant to identify its entire application as such. Subject to its legal obligations, the Council will not provide such confidential information to any person other than to its personnel, advisers and contractors who are involved in the Application Process. Nothing in this paragraph, or otherwise, will prohibit the Council's use of such confidential information for the purposes of considering, analysing and evaluating applications, and for any other purpose related to this document or the Application Process. By submitting an application, each Applicant agrees to such use.

10.4. Applicants acknowledge and agree that the Local Government Official Information and Meetings Act 1987 ("LGOIMA") gives members of the public rights to request official information held by the Council. Although the Council will use reasonable efforts to maintain the confidentiality of the information supplied by Applicants, the Council may still make certain information available to the public if required to do so by the LGOIMA or otherwise by law. Each Applicant acknowledges and agrees that the Council has the unfettered right to carry out its statutory obligations and functions in accordance with all relevant legislation, including the LGOIMA, notwithstanding the Application Process.

10.5. Notwithstanding the above, the following information may be made publicly available by the Council:

- The name of any Applicant;
- A description of the general nature of services and/or products an Applicant is proposing to provide; and/or
- Details of the Application Process and any changes to the Application Process.

11. INDEMNITY AND LIABILITY

11.1. If an Applicant breaches any Application Rule or any other part of this document and, as a result of that breach, the Council incurs costs, losses, expenses, damages and claims (whether direct or indirect and including wasted costs, reputational damage, loss of profits or loss of business opportunity and including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the Application Process or enforcement of intellectual property rights or confidentiality obligations), then the Applicant shall indemnify the Council against such costs, losses, expenses, damages and claims.

11.2. The Council and its employees, officers, contractors, subcontractors, agents, representatives and/or advisors will not be liable in contract or tort or in any other way for any direct or indirect damage, loss, cost or expenses (including wasted costs, loss of profits or loss of business opportunity and/or lost expectation of profits) incurred by any Applicant or other person and arising out of or in connection with this document or any aspect of the Application Process, including, without limitation in connection with:

- a) The preparation or submission of any application;
- b) The evaluation of applications;
- c) Any investigations of, or by, any Applicant (including any financial/credit check carried out on any Applicant);
- d) The rejection of any application;
- e) The variation, suspension or cancellation of the Application Process; or
- f) Any information given, or not given, to any Applicant.

11.3. By submitting an application, each Applicant acknowledges and agrees that it waives any rights it may have to make a claim against the Council or any employee, officer, contractor, subcontractor, agent or representative of the Council, of any nature whatsoever, arising out of or in connection with this document or the Application Process.

11.4. If, notwithstanding paragraph 11.2, a court of competent jurisdiction holds the Council, (or its employees, officers, contractors, subcontractors, agents, representatives or advisers personally) liable in respect of any matter arising under or incidental to this Application Process, such liability shall be limited to the actual direct costs reasonably incurred by an Applicant in preparing and submitting its application, up to a maximum of \$1,000.

12. ADVERTISING/PUBLICITY

12.1. No advertisement, public announcement or other information relating to this document, the Application Process, or any Licence that may arise out of it, shall be published in any newspaper, magazine, journal and/or other advertising medium, or broadcast/disseminated by radio, television, internet (including social media Sites or services) or other electronic media, without the express prior written approval of the Council.

13. NOTIFICATION OF SUCCESSFUL/UNSUCCESSFUL APPLICATIONS

- 13.1. The Council will notify the successful Applicants (if any) in writing that their application has been accepted, or if modifications are required (e.g. if the Council believes an alternative Site is more suitable for the Applicant's proposed commercial activity).
- 13.2. The Council will notify unsuccessful Applicants in writing that their applications have been unsuccessful.
- 13.3. Upon acceptance by the Council of a successful Applicant's application, a Licence (as determined by the Council in its sole discretion) may be entered by the Council and the Applicant.

14. GENERAL

- 14.1. This document and the Application Process are governed by the laws of New Zealand and each Applicant submits to the exclusive jurisdiction of the New Zealand Courts as to all matters relating to this document and the Application Process.
- 14.2. All monetary amounts set out in this document are stated in New Zealand dollars.

C. BASIS OF EVALUATION

1. EVALUATION METHOD

- 1.1. The Council will evaluate applications on a case-by-case basis, using a weighted attribute method. The Council intends to take into consideration the following attributes and respective weightings, as further detailed in the table below:
 - 1) Fit with location and enhancement of recreation or use of a public place (25%).
 - 2) Impact on the Environment (25%).
 - 3) Business Capability (20%).
 - 4) Point of difference (10%).
 - 5) Price (20%).
- 1.2. Each Applicant acknowledges and agrees that the Council may exercise its own discretion and judgement when considering, analysing and evaluating any requirement, matter or criteria set out in, and/or addressed in, any application.
- 1.3. The Council is under no obligation to negotiate with, or award a Licence or any other agreement for any Site to, any Applicant whatsoever.
- 1.4. Applicants may be asked to revise or clarify their application or provide additional information during the evaluation process. These requests will require immediate action and must be responded to in writing within two (2) working days or the time specified in the request. Otherwise, the Council reserves the right not to consider an application.
- 1.5. Where multiple applications are received in respect of the same Site, the Council may evaluate those applications simultaneously.

2. EVALUATION PROCESS

- 2.1. The Council intends to evaluate applications as follows:

Stage 1 – Evaluating attributes and assigning a grade

Applications are assessed against the five attributes. Each attribute is graded on a points basis, from 0 (unacceptable) to 100 (excellent). Any application that receives a grade of 49 or less in respect of attributes 1) to 3) above, or a grade of 35 or less in respect of attributes 4) or 5) above, is excluded from further consideration.

Stage 2 – Converting a grade to an index

The weighting of each attribute is multiplied by the grade of that same attribute. This is then divided by 100 to give an index for each attribute. The indices are then added to give an overall index for the application. The overall index is rounded to the nearest whole number.

3. ATTRIBUTES, ELEMENTS AND WEIGHTINGS

- 3.1. The attributes, elements and weightings to be assessed in the tender evaluation process are set out in greater detail in the table below.

Attribute	Elements of Attribute	Weighting
Fit with location and enhancement of recreation or use of a public place	<ul style="list-style-type: none"> a) The degree in which the activity is consistent and compatible with public places' primary purpose and the values and objectives as may be outlined in a Reserve Management Plan or other plan and the reserve classification (if applicable). Commercial trading must enable the public to obtain the benefit and enjoyment of public place or be for the convenience of persons using a reserve in accordance with the Reserves Act 1977. b) Public access during the commercial activity's operation, including hours/days of operation. c) The degree to which the activity benefits the public's use or enjoyment of the public place. d) Fit with a recreation need identified in any local, regional or national plan or strategy 	25%
Impact on the Environment	<ul style="list-style-type: none"> a) The impact on the physical and social environment and steps proposed to mitigate the impacts. b) The impact of the film and photography project on the park or reserve, the extent of occupation and the intent of the film or photography project. 	25%
Business Capability	<p>The business plan and overall sustainability of the proposal, including:</p> <ul style="list-style-type: none"> a) The applicant's and/or operator's suitability, experience, and where applicable proven track record of a good business relationship with the Council (if applicable). b) The applicant's financial management capability, including the history of any existing arrangements with the Council. A credit check will be mandatory. If the applicant has no prior financial relationship with the Council, testimonials may be required from previous or existing landlords. c) Any relevant qualifications (i.e. food handling, health and safety etc.). d) The health and safety plan and the risk mitigation process and procedures identified in the plan. e) The views of identified affected parties. In circumstances where an agreement is being renewed, this will include previous feedback to the Council from reserve users and evidence of customer satisfaction. 	20%
Point of Difference	<ul style="list-style-type: none"> a) The fit with existing businesses in the public place, so as not to duplicate an existing activity or commercial operation. b) The extent to which the point of difference contributes to the vibrancy and well-being of the area. 	10%
Price	<ul style="list-style-type: none"> a) The likely annual gross revenue generated (based on previous years' financial statements/performance). 	20%
Total		100%

APPENDIX 1 - APPLICATION FORM

(as attached)

APPENDIX 2

CONFLICT OF INTEREST DECLARATION

Name of Applicant: _____ ("**Applicant**")

I/we hereby declare that, to the best of my/our knowledge, **except as set out below**, no one significantly associated with this application has any relationship with elected members (i.e. Councillors and the Mayor) of the Council or any Council employee, officer, contractor, subcontractor, agent or representative participating in this application process, or any of their immediate families, that could influence, or be perceived to have the potential to influence, the evaluation of my/our application.

I/we understand that if I/we have had any doubt about whether any relationship should be declared, I/we was/were advised to seek independent advice on the matter.

Actual or potential conflicts (including plan to manage that conflict):

Authorisation and Signature:

I/we confirm that:

- a. I/we am/are authorised to sign this declaration on behalf of the Applicant (delete as applicable);
- b. If anything changes that affects this declaration, I/we will immediately make a fresh declaration and provide it to the Authorised Representative at the address for submission of applications.

Name: _____ Signature: _____

Name: _____ Signature: _____

Date: _____

Position(s): _____

APPENDIX 3

DRAFT LICENCE TO OCCUPY

(as attached)

APPENDIX 4

POLICY P14-001: COMMERCIAL TRADING IN PUBLIC PLACES

(as attached)

APPENDIX 5

APPLICATION GUIDE

(as attached)