



Te Kaunihera-ā-Rohe o Ngāmotu

NEW PLYMOUTH DISTRICT COUNCIL

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REQUEST FOR TENDER

COMMERCIAL TRADING IN PUBLIC PLACES

Contract 14/P01

July 2014

New Plymouth District Council
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NEW PLYMOUTH 4342

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REQUEST FOR TENDER

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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 5 to this Request for Tender, 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, the Council's Coastal Reserves Management Plan 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:

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

The RFT process 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 RFT process **only** applies to Sites on the Coastal Walkway and in the Huatoki Plaza. Any person applying to conduct trading operations at any public place **other than** the Coastal Walkway or Huatoki Plaza must refer to the Application Process document.

The key differences between this RFT process and the Application Process are:

- This RFT process **only** applies to Sites on the Coastal Walkway and in the Huatoki Plaza.
- This RFT process is subject to strict timing requirements: tenders must be submitted no later than 4.00 pm on 6 August 2014. By comparison, applications under the Application Process may be submitted at any time up until the date on which the Council announces the Application Process is closed.
- Under this RFT 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 the Application Process on a case-by-case basis. If the Council determines (at 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 this RFT Process and the 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 TENDERERS

RFT Sites

New Plymouth's award-winning **Coastal Walkway** is an 11km path that forms an expansive sea-edge promenade stretching from Port Taranaki all the way to Hickford Park in Bell Block with numerous pedestrian access points dotted along the way.

The **Huatoki Plaza** is an open-plan public plaza located between Devon Street and Ariki Street in central New Plymouth.

There are a number of Sites ("Sites") on the Coastal Walkway, and up to two Sites in the Huatoki Plaza, for which the Council is willing to offer licences for commercial use. Any commercial activity taking place in the Huatoki Plaza is also likely to be subject to specific operating hours on specific days of the week (see below).

The Coastal Walkway Sites are split into six separate "zones" (see the plan attached at Appendix 4 to this RFT and page 16 of the Policy). Huatoki Plaza Sites will be assigned on a case-by-case basis depending on things such as structure size, and will be determined by Council at its sole discretion. The plan of Huatoki Plaza is attached at Appendix 4 of this RFT.

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

It will be the responsibility of the Tenderer 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 a tender, each Tenderer 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 (Tenderers should note, in particular, the proposed maximum activities for Coastal Walkway Sites on page 16 of the policy);
- The Council anticipates that a maximum of two commercial activities may be operated from the Huatoki Plaza, and that any permitted commercial activity (if any) in the Huatoki Plaza may only take place between the hours of 12.00am to 4.00am on Fridays, Saturdays and Sundays (subject to the Council's discretion);
- 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 Tenderer that is permitted to conduct a commercial activity on any Site pursuant to this RFT 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 into 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 at 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 Tenderer 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 a licence for a term of more than 12 months is attached to this RFT at Appendix 3. This is substantially the licence that the Council will require any successful Tenderer 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. Tenderers must familiarise themselves with the terms of the licence before submitting a tender.

Each Tenderer 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 Tenderer 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 Tenderer may result in that Tenderer's participation in the RFT process being terminated and the Council may instead elect to negotiate with any other short-listed Tenderer.

Anticipated Timetable

The following is an anticipated timetable for this RFT process. The Council may modify the steps and/or dates at any time at its discretion.

RFT Steps	Dates
Tender Opens	9 July 2014
Final date for questions on the RFT	3 working days before closing date
Closing Date (by which all tender application forms and conflict of interest declarations must be received by the Council)	6 August 2014

Evaluate tenders and select preferred Tenderers	Early-mid August 2014
Tenderers notified of tender outcome	Mid-late August 2014
Unallocated Sites offered to potential operators	Mid-late August / early September 2014
Negotiations with preferred Tenderers; conclude negotiations and terms of licences; sign licences; install infrastructure (where applicable)	September / October 2014

Preparing and Submitting a Tender

Each person that wishes to submit a tender must, on or before the Closing Date, 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 as Appendix 6 which Tenderers may use to assist them when completing the Application Form.

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

B. PURPOSE OF RFT AND CONDITIONS OF TENDERING

PURPOSE OF REQUEST FOR TENDER (“RFT”)

The purpose of this RFT is to enable the Council to select a number of operators to operate commercial businesses from a range of Sites on the Coastal Walkway and Huatoki Plaza.

The RFT 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; and
- A competitive approach to the selection of operators.

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

CONDITIONS OF TENDERING

1. ACCEPTANCE OF RFT RULES

1.1 Each Tenderer that submits a tender 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 RFT,

together, "the RFT Rules".

1.2 Each Tenderer's agreement to be bound by the RFT Rules is in consideration for the Council providing the Tenderer with the opportunity to submit a tender (this obligation and the obligation in paragraph 11.3 of this Part B being the Council's sole obligations in connection with this RFT and the process described in this RFT ("RFT Process")).

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

1.4 Neither this RFT nor the RFT Process constitutes an offer by the Council to negotiate with or enter into any Licence or other agreement with any Tenderer 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. TENDER DOCUMENTS

2.1 The "Tender Documents" comprise:

- This RFT (including all Appendices to this RFT); and
- Any other documents provided to a Tenderer.

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

2.3 Electronic copies of the Tender Documents are available from the Council's E-Procurement Portal at www.tenderlink.com/npdc.

2.4 The Tenderer acknowledges and agrees that the Tender Documents, and all intellectual property rights in the Tender 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 a tender) without first obtaining the prior written approval of the Council. All

information contained in the Tender Documents is for the sole purpose of allowing Tenderers to prepare and submit a tender. No information contained in the Tender Documents or regarding this RFT may be used by a Tenderer in any other context, nor divulged to any third party without the specific written authority of the Council.

- 2.5 At the request of the Council, Tenderers will immediately return all copies of the Tender Documents that they hold.
- 2.6 Intellectual property rights in a Tenderer's tender or any other information provided in response to this RFT will not pass to the Council. However, each Tenderer grants the Council a non-exclusive, irrevocable and perpetual licence to use, copy, adapt, modify and reproduce its tender or any other information provided by the Tenderer:
 - For the purpose of considering, analysing and evaluating the information provided;
 - In any future discussions, negotiations or other engagement with a Tenderer; and
 - For any other purpose related to this RFT or the RFT Process.

3. CLOSE OF TENDERS

- 3.1. Tenders must be submitted, and the application fee must be paid, at the New Plymouth District Council Offices, Civic Centre, Liardet Street, New Plymouth 4310 by 4.00 pm on 6 August 2014 ("the Closing Date").
- 3.2. Tenders must be sealed in an envelope marked on the outside "**Tenders: Commercial Trading in Public Places - Contract No. 14/P01**" and addressed to:

Manager Parks
New Plymouth District Council
Private Bag 2025
NEW PLYMOUTH 4342
- 3.3. Tenders are to be placed in the Tenders Box situated near the Customer Services Counter on the ground floor adjacent to the main entrance of the New Plymouth District Council Offices no later than the date and time set for the closing of tenders. Tenderers may, at their own risk, courier or post tenders to the New Plymouth District Council, Private Bag 2025, New Plymouth 4342, but they must arrive no later than the date and time set for the closing of tenders. Where tenders are delivered by courier rather than normal post the courier service must be instructed to deposit the tender in the Tenders Box.
- 3.4. Alternatively, tenders may be submitted by eTender at www.tenderlink.com/npdc but they must be transmitted by the Closing Date.
- 3.5. Tenders shall be prepared in the format, and contain all information, described in paragraph 7 and as otherwise required by the Tender Documents.

4. TENDERERS TO INFORM THEMSELVES

- 4.1. Each Tenderer shall inspect and examine, and in any case will be deemed to have inspected and examined, the Sites, the Tender Documents and any other information supplied to the Tenderer by the Council, and submission of a tender shall be evidence that the Tenderer fully understands their obligations under the Tender Documents.
- 4.2. The Council makes no representations and gives no warranties in or in relation to this RFT or the RFT Process.
- 4.3. Each Tenderer shall rely on all information provided by the Council at their own risk and each Tenderer 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 Tender Documents or otherwise provided to Tenderers in connection with this RFT; and

- Will have no liability on account of any errors or omissions in the Tender Documents, in the RFT Process or in any subsequent discussions, negotiations or correspondence with any Tenderer.

5. COMMUNICATION, ADDITIONAL INFORMATION AND CLARIFICATION

- 5.1. All communications with the Council as to this RFT, 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 RFT. 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. Tenderers should note that questions must be received by 4.00 pm, three (3) working days before the Closing Date. Subject to paragraph 5.3, enquiries made by Tenderers and the Council's replies to significant enquiries will be publicised to all Tenderers.
- 5.3. Subject to paragraph 11.4, responses to requests for information or clarification sought by a Tenderer relating solely to that Tenderer's tender and containing commercially sensitive information will be provided to that Tenderer only.
- 5.4. The Council may issue clarifications or changes to this RFT by way of a written Notice to Tenderers ("NTT"). Those who have received a copy of this RFT will be notified of any NTTs issued. Any NTTs will become part of this RFT.
- 5.5. No person other than the above-mentioned Authorised Representative or his nominee has any authority to provide information to Tenderers or answer questions in relation to the RFT 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 RFT shall be with the Authorised Representative only or as directed by the Authorised Representative. Tenderers 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 RFT. Should a Tenderer directly or indirectly make such an approach then the Council may (in its sole discretion) disqualify that Tenderer's tender from this RFT Process.
- 5.7. No claims that a Tenderer was disadvantaged by lack of information, or inability to resolve ambiguities, will be considered.
- 5.8. Each Tenderer authorises the Council to:
- Collect any information from the Tenderer 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 Tenderer's tender;
 - Carry out a financial/credit check on the Tenderer or any of its personnel; and
 - Take into account any knowledge the Council already has regarding the Tenderer or its personnel and to use that information as part of the analysis of the Tenderer's tender.

6. PREPARING TENDERS

- 6.1. The tender shall be signed by or on behalf of the Tenderer.

- 6.2. A tender 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. Tenders must not contain any changes to the terms of the Licence. No alternative tenders will be accepted.
- 6.3. By submitting a tender, each Tenderer warrants to the Council that:
- All information provided by them to the Council and/or the Authorised Representative in, or in relation to, their tender, 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 tenders or for any other purpose related to this RFT or the RFT Process, will not breach any third party intellectual property rights.
- 6.4. Without limiting paragraph 6.3, each Tenderer must notify the Council immediately upon becoming aware of any errors, omissions or inaccuracies in its tender.
- 6.5. Each Tenderer is responsible for all costs and expenses incurred by them (or the costs and expenses of any other person acting in connection with the tender) in relation to the RFT Process, including without limitation: Site inspections; meetings or interviews with the Council; the preparation and lodgement of the tender; and any communication and/or negotiation with the Council.
- 6.6. Each Tenderer 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 RFT, or otherwise act in breach of paragraph 5.6.
- 6.7. Each Tenderer 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 RFT.
- 6.8. The Tenderer agrees that their tender 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 Closing Date.

7. REQUIRED INFORMATION

Application Form

- 7.1. Tenderers 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 a tender, each Tenderer must have regard to:
- The Policy attached at Appendix 5;
 - The Council's General Policies for Council Administered Reserves (which may be downloaded at <http://www.newplymouthnz.com/CouncilDocuments/Policies/GeneralPoliciesforCouncilAdministeredReserves2006/>); and
 - The relevant provisions of Council's *Coastal Reserves Management Plan* November 2006, <http://www.newplymouthnz.com/CouncilDocuments/PlansAndStrategies/ParksandReservesManagementPlans/CoastalReservesManagementPlan2006.htm>,

and each Tenderer acknowledges and agrees that their tender 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 Tenderers 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 tender, and on a continuing basis throughout the RFT Process as soon as the Tenderer becomes aware of the conflict. If Tenderers are in doubt as to whether a relationship should be disclosed, the Tenderer 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 Tenderer, the Council may (in its sole discretion) terminate the participation of the Tenderer in the RFT Process.

8. LATE TENDERS

- 8.1. Any tender lodged after the Closing Date will be taken to be late and will not be considered by the Council.

9. COUNCIL'S DISCRETION

- 9.1. Notwithstanding any other provision of this RFT, the Council expressly reserves the right, at its sole discretion, to:

- Terminate or suspend (in whole or in part) any aspect of the RFT or the RFT Process at any time, and/or issue an new RFT (on the same or an alternative basis);
- Not progress the RFT Process through to the evaluation of tenders or enter into any Licence with any Tenderer;
- Meet and/or have direct discussions with any Tenderer before and/or after the closing date or prior to the award of a licence (if any);
- Negotiate with any Tenderer (to the exclusion of any other Tenderer) at any time during or after the RFT Process and upon any terms and conditions;
- Exclude, or terminate the participation of, any Tenderer at any time from the RFT 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 tenders, including one which complies with the Conditions of Tendering specified in this RFT;
- Waive any irregularities or formalities in a tender or in the RFT Process;
- Amend/change (in whole or in part) the RFT Process and/or this RFT (including without limitation any RFT Rule or date specified in this RFT), or any associated documents at any time, by the issue of a NTT;
- 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 RFT);
- Exercise its own discretion and judgement when considering, analysing and evaluating any requirement, matter or criteria set out in, and/or addressed in, any tender;
- Seek further details or clarification from a Tenderer of any aspect of information in its tender or other information provided to the Council, provided that the Council will not be obliged to seek the same details or clarification from each Tenderer;
- Conduct a financial/credit check on any Tenderer at any stage during the RFT Process;

- Take account of any other relevant information that the Council may have in its possession, including in relation to any Tenderer and make enquiries of any person to assist it in the evaluation process;
- Offer an alternative Site (or not offer any Site) to any Tenderer if the Council believes (in its sole opinion) that the Tenderer's proposed commercial activity is more suitable for another Site, or if multiple tenders are received for the same Site;
- Enter (or not enter) into any Licence with any Tenderer 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 tenders (on the same or an alternative basis); and
- Otherwise conduct the RFT Process in such manner as it sees fit.

9.2. The Council shall not be bound to give reasons for any rights exercised by it under paragraph 9.1.

10. ERRORS AND OMISSIONS IN TENDER

10.1. The Council is under no obligation to check any tender for errors, omissions or inaccuracies. Without limiting paragraphs 6.3 or 6.4, if the Council discovers errors and/or omissions in any tender the Council may, at the Council's sole discretion, allow the Tenderer 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 tender.

11. CONFIDENTIALITY

11.1. The Tender Documents and all other information supplied by the Council to any Tenderer in connection with this RFT, or any Licence that arises out of it, is confidential information. Tenderers 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.

11.2. Except as required by or under any Licence subsequently entered into with the Council, the Tenderer must ensure that any sub-contractor engaged and/or person employed, either by the Tenderer or the Tenderer'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 RFT or as a result of any engagement or employment which relates to the affairs of the Council.

11.3. If a Tenderer wishes any information provided as part of their tender 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 a Tenderer to identify its entire tender 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 RFT 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 tenders, and for any other purpose related to this RFT or the RFT process. By submitting a tender, each Tenderer agrees to such use.

11.4. Tenderers 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 Tenderers, the Council may still make certain information available to the public if required to do so by the LGOIMA or otherwise by law. Each Tenderer 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 RFT Process.

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

- The names of the Tenderers;
- A description of the general nature of services and/or products the Tenderers are proposing to provide; and/or
- Details of the RFT Process and any changes to the RFT Process.

12. INDEMNITY AND LIABILITY

12.1. If a Tenderer breaches any RFT Rule or any other part of this RFT 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 RFT Process or enforcement of intellectual property rights or confidentiality obligations), then the Tenderer shall indemnify the Council against such costs, losses, expenses, damages and claims.

12.2. 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 Tenderer or other person and arising out of or in connection with this RFT or any aspect of the RFT Process, including, without limitation in connection with:

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

12.3. By submitting a tender, each Tenderer 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 RFT or the RFT Process.

12.4. If, notwithstanding paragraph 12.2, 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 RFT, such liability shall be limited to the actual direct costs reasonably incurred by a Tenderer in preparing and submitting its tender, up to a maximum of \$1,000.

13. ADVERTISING/PUBLICITY

13.1. No advertisement, public announcement or other information relating to this RFT, the RFT 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.

14. NOTIFICATION OF SUCCESSFUL/UNSUCCESSFUL TENDERS

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

15. GENERAL

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

C. BASIS OF TENDER EVALUATION

1. EVALUATION METHOD

1.1. The Council will evaluate tenders using a weighted attribute tender method. The Council intends to take into consideration the following attributes and respective weightings, as further detailed in the table at paragraph 3 below (Attributes, Elements and Weightings):

- 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%).

Each Tenderer 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 tender.

The Council is under no obligation to negotiate with, or award a Licence or any other agreement for any Site to, any Applicant whatsoever.

2. EVALUATION PROCESS

2.1. Tenders will not be opened in public.

2.2. The Council intends to conduct the tender evaluation process in stages, as follows:

Stage 1 – Evaluating attributes and assigning a grade

Tenders are assessed against the five attributes. Each attribute is graded on a points basis, from 0 (unacceptable) to 100 (excellent). Any tender 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 1 is completed for all tenders before starting stage 2.

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 tender. The overall index is rounded to the nearest whole number.

2.3. Tenderers may be asked to revise or clarify their tender or provide additional information during the tender 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 a tender.

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 Tenderer: _____ ("Tenderer")

I/we hereby declare that, to the best of my/our knowledge, **except as set out below**, no one significantly associated with this tender 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 tender process, or any of their immediate families, that could influence, or be perceived to have the potential to influence, the evaluation of my/our tender.

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 Tenderer (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 tenders.

Name: _____ Signature: _____

Name: _____ Signature: _____

Date: _____

Position(s): _____

APPENDIX 3

DRAFT LICENCE TO OCCUPY

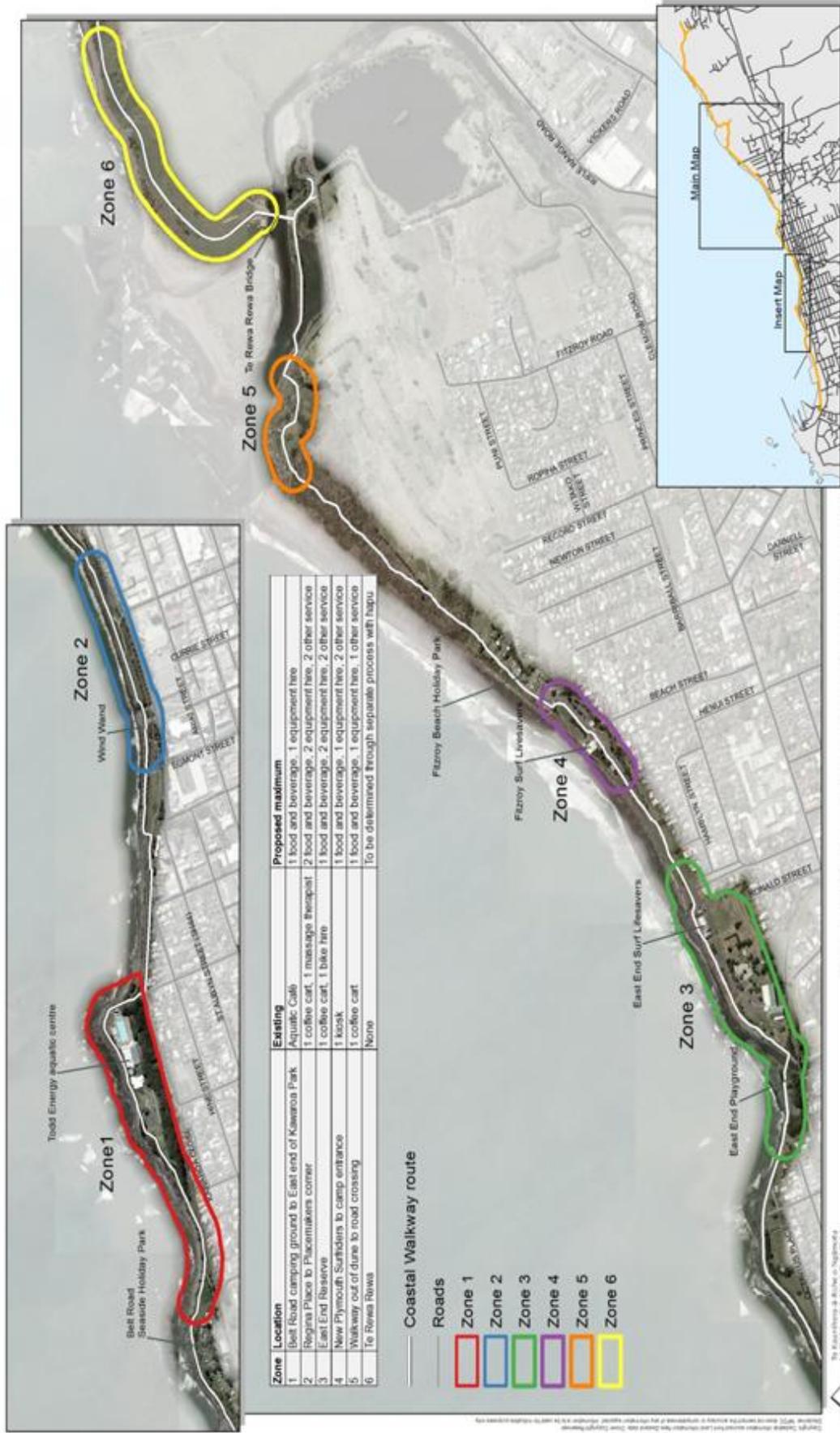
(as attached)

APPENDIX 4

HUATOKI PLAZA PLAN AND COASTAL WALKWAY PLAN



The maximum number of activities on the coastal walkway is as set out in the map below.



Coastal Walkway Proposed Commercial Zones

17/07/2013

APPENDIX 5

POLICY P14-001: COMMERCIAL TRADING IN PUBLIC PLACES

(as attached)

APPENDIX 6

APPLICATION GUIDE

(as attached)