

P14-001 Commercial Trading in Public Places Policy

Approved by the Council on 18 March 2014.

POLICY BACKGROUND

The Council owns and manages parks and reserves principally for:

- Access to the natural environment.
- Providing venues for recreation and sporting activities; beautification of the district.
- Preserving the natural character and environment of the district's open spaces.

The Council holds and manages road reserve but primarily for transportation purposes. Road reserves include footpaths and formed roads for existing public use and unformed road for future roading network requirements.

Parks, reserves and road reserves are not generally spaces for private use or commercial activity but commercial activities and events can enhance the users' recreation experience. The park, reserve or road reserve may be utilised for private purposes as long as it meets the requirements of this policy, the Reserves Act 1977, other legislation and any other requirements as determined by the Council.

Commercial activities and events on Council owned public spaces can contribute to the vibrancy and attractiveness of the district by:

- Supporting outdoor recreation and physical exercise.
- Supporting economic vibrancy.
- Attracting visitors to the district.
- Improving residents' and visitors' quality of life by providing public places for social interaction.

Commercial operators using public space for generating private income have exclusive use of a defined area of a public place, which can modify the natural environment. Business operations that modify the natural environment potentially impose a cost to the Council in rectifying modifications. The establishment and management of commercial agreements carry cost and risk for the Council.

POLICY PURPOSE

The purpose of the policy is to set guidance for the use of public places for commercial activities in order to:

- Ensure that the activity fits with the open space recreation features of the park or reserve.
- Mitigate the negative aspects of commercial use.
- Ensure that commercial activity does not pose any nuisance or safety risk.

- Provide transparency about the licensing, fee and rental setting processes.

The policy includes criteria for the assessment of the application for a concession and general conditions that are applied. It also sets in place a structure for fees and charges.

POLICY DEFINITIONS

Approval or **Approved** means a written approval from an authorised officer.

Authorised Officer means an officer or other person appointed by the Council to perform duties required under this policy, irrespective of the designation given to that officer or person.

Busker means any person who plays, acts, sings or otherwise performs or entertains in a public place and who may solicit or invite or accept any donation, contribution or monetary reward.

Commercial trading agreements means a lease, licence, or permit granted to an individual or organisation that authorises a commercial activity.

Commercial use means any service, recreation facility or retail type activity that requires 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.

Community Group means a non-profit organisation or association of persons providing services, facilitating sport, recreation, leisure activities or events to the community. This includes non-profit marae, iwi or hapu groups, and sporting or recreation groups. This does not include individuals or businesses where event management is their primary source of income.

Event means an event is a celebration, activity or display, including organised meeting or gathering, demonstration, parade, procession, or competition that occurs within a defined time period.

Fundraising means seeking to obtain money for non-profit organisations or the charitable benefit of individuals.

Market means regular organised local market, i.e. farmers and art markets, which would regularly book a park or reserve for market purposes. It does not include one off events such as travelling gypsy fairs (these will be classified as events).

Park or **Reserve** means any land which is vested in or under the control of the Council and which is set aside for public enjoyment as a reserve, park, garden, or green space, whether or not that land has been vested as a reserve under the Reserves Act 1977.

Public place means a place that is under the control of the Council and open to or being used by the public, whether admission is free or on payment of a charge and includes a road.

Recreation means refreshment of mind or body by relaxation and enjoyment and includes an activity or pastime that promotes this.

Road means...

- a) A street.
- b) A motorway.
- c) A beach.
- d) A place to which the public have access, whether as of right or not.
- e) All bridges, culverts, ferries, and fords forming part of a road or street or motorway.
- f) But excludes a paper road.

School means an institution for educating children, (including pre-school centres), or tertiary education institutions.

Soliciting means directly approaching individuals to sell products or services, or give out information, products or services.

POLICY SCOPE

The Commercial Trading in Public Places Policy covers major, minor and short term commercial activities on public places (see Appendix One for classifications). The policy concerns seasonal and temporary retail business, and recreation service providers operating on parks and reserves and other types of open spaces.

POLICY PRINCIPLES

This policy provides guidelines on the commercial use of public places. Key principles are:

1. Commercial trading in public places is a secondary function of public places. Public Places are primarily:
 - a) For non-commercial uses such as recreation, sport and to provide an open space buffer for development.
 - b) To allow the movement of people from place to place.And as such, the above uses will generally take precedence over commercial use.
2. The Council recognises that commercial trading can enhance public places.
3. Commercial use will only be granted where there is benefit to both the community and the public place environment.
4. Enhancement of public places rather than revenue generation will be the key driver of this policy. However, there is an expectation that where there is a private commercial benefit the user will be charged and the cost of providing and administering a commercial use agreement will be met by the agreement holder.

5. Administration of this policy will be consistent with all existing bylaws, legislation, plans and policies.

POLICY EXCLUSIONS

1. Events and short term commercial activities associated with events.
2. Provision of utilities such as electricity, telecommunications, water, wastewater, rubbish collection, stormwater and gas.
3. On street dining or “sale tables” associated with a business adjoining a public place.
4. Any activity covered by an encroachment licence.
5. Leases or agreements for pipelines or similar activities.
6. Use of a public place for grazing, driveways or rights of way access.
7. Advertising material located in a public place.
8. Raffles or street collections.
9. One off fundraising activities such as sausage sizzles.
10. Sale of vehicles.
11. Commercial activities run or facilitated by a sports club where the target market is spectators and the activity is only open during club events and is addressed by a Community Concessional Lease.
12. Buskers.
13. Activities such as fundraising and selling of raffle tickets that have no commercial element and where no person is paid a wage or where no business makes a profit.
14. This policy does not cover food licensing of food businesses operating on public places, consent requirements or the requirements of any other policy, bylaw or legislation.
15. Any activity located on a state highway.
16. Commercial trading within stadiums, the Todd Energy Aquatic Centre, New Plymouth Airport or Puke Ariki.

POLICY STATEMENTS

Eligible activities

Subject to all other criteria outlined in this policy (and the appendices), any relevant legislation or Council Plan, the following activities will be considered under this policy:

- Commercial trading agreements for food and non-alcoholic beverages.
(Note: that the approval of alcoholic beverage sale will generally only be considered as part of one off events or in conjunction with a lease of a building on a park or reserve, or in exceptional circumstances with the permission of the Council, such permission will be subject to all relevant alcohol licensing rules and planning rules and regulations.)

- Commercial activity for the hire of recreation equipment, including using public places as a site for helicopter rides or similar.
- Commercial activities for recreation services or recreation activities.
- Commercial film and photography on parks and reserves.
- Markets.
- Other activities may be permitted, provided they meet the criteria in this policy.

Areas permitted for trading

So as to ensure that public places can be used for their primary purpose and to minimise the environmental impact of commercial trading on a public place, from time to time by resolution the Council may zone a public place, whereby the space is divided into zones, limiting the amount and types of commercial activity within each zone. The Council may permit a maximum number of each activity type within defined zones.

Application to undertake commercial trading on a park, reserve or road reserve

Any person wishing to apply to undertake a commercial operation on a park, reserve or road reserve must apply to the Council in accordance with Appendices 2 and either 3a (non tendered) or 3b (tendered).

Applications will be assessed and determined in accordance with the criteria set out in Appendix 4.

General terms and conditions applying to all commercial agreements

All commercial businesses trading on a public place will require a commercial trading agreement, unless excluded by this policy. The following general conditions will apply to any commercial use agreement issued:

- a) The commercial activity operator must apply for other licences, certification, road closures and consents as required under applicable laws and/or bylaws.
- b) Unless expressly allowed in the agreement, soliciting to the public will generally not be permitted.
- c) Agreement holders must ensure that no aspect of their operation obstructs the general public from using a public place. The holder may be required to provide public facilities e.g. rubbish bins and shall be responsible for disposing of waste at the end of each trading day.
- d) It is the responsibility of the agreement holder to ensure the site is suitable for the use they require it for.
- e) When an agreement ends, the agreement holder must reinstate the site to its original condition or may be liable for the cost of reinstatement as outlined in the agreement.
- f) The agreement holder will be required to carry public liability insurance cover.

- g) The Council may give notice to terminate agreements, if in the opinion of an authorised officer, the agreement holder breaches this policy or any terms and conditions of an agreement authorised by this policy.
- h) Rights of renewal will be at the discretion of an authorised officer.
- i) A site induction to familiarise an agreement holder with potential hazards associated with a site may be required.
- j) Any agreement will also include conditions relating to obligations to pay rentals, surrender of agreements etc.
- k) Applicants may apply for a specific site, but the Council reserves the right to offer an alternative site if it believes that the application is more suitable for another site.
- l) The term of the agreement will be subject to any legislation governing the leasing or licensing of a public place and appropriate to the type of trading contemplated.

Specific terms and conditions may also include any of the following:

- Restrictions on location (including limits on the operation in a fixed location in the case of mobile and travelling shops).
- Types of goods permitted for sale.
- Hours of trade.
- Persons entitled to sell.
- Safety and hygiene requirements including location of toilet facilities.
- Use of signage.
- Restrictions on the use of musical chimes or other audible devices for attracting customers.
- Removal of rubbish from the site.
- Name and address to be conspicuously displayed on stall, stand or vehicle.

Specific terms in relation to markets

1. Market agreements will specify the number of days the market is permitted to have exclusive use of the site.
2. One-off extensions for local market days, public holidays etc, may be permitted at the discretion of an authorised officer.
3. Markets regularly operating more than two days a week will be classified as commercial businesses and rental will be charged accordingly.
4. Markets will be required to form a single entity, which will sign the agreement with the Council and be responsible for ensuring payment is made to the Council.

5. Provided it does not conflict with any other aspect of this policy, a market entity may determine how many stalls holders it wishes to have and how it wishes to charge individual stall holders.
6. If a road closure is required, the market will be required to undertake all steps necessary to close the road, including payment of all road closure fees. Where a road closure is required no ground rental will apply.

Fees and charges

The Council may set fees and charges for the following, as is required for the specific commercial activity:

- a) Commercial agreement application fee.
- b) Start up rental fee.
- c) Short term rental fee.
- d) Standard rental fee.
- e) Market fee.

Rental amounts will be determined at the start of each season and paid on a pro-rata basis.

Tendered commercial agreements

A tender will require a fixed percentage return as part of the agreement (set at the time of tender).

Payment Frequency

All agreement holders may, with approval from the Council pay rent either:

- Monthly over a seven month (October-April) season, or:
- Monthly over an annual (October-October) period, or:
- As otherwise agreed with the Council.

(Note: All payments shall be made in advance and paid by direct debit).

Infrastructure

Generally it is the responsibility of the applicant to provide all infrastructure (water, power, and sewer) required for the commercial activity. However, from time to time the Council may deem it advantageous for the Council to own infrastructure and this will be negotiated as part of the commercial agreement. Where infrastructure exists, use of this may be negotiated as part of the commercial trading agreement.

When an agreement holder ceases operation the infrastructure will be:

- Removed and the site returned to the condition it was in prior to establishment for the commercial business, or:
- Should the Council wish to retain the infrastructure, the Council will negotiate with the owner.

Where the Council is supplying power to a site the Council may charge actual power use over and above the site rental.

POLICY CONTACT

The policy holder is the Infrastructure Group and Environment and Regulatory Group.

POLICY REVIEW

This policy shall be reviewed every five years.

APPENDIX ONE - CLASSIFYING COMMERCIAL ACTIVITY IN PUBLIC PLACES

The following table sets out three main types of commercial activities, and provides a guide to which types of proposals are likely to require which agreement and what information must be provided in an application.

Major Commercial Activity

Most commercial activity in this category will be those that require significant capital investment and permanent structures. They are more likely to require a long term lease rather than a licence to occupy.

A commercial activity is major if -	Information required as part of application	Occupation agreement	Policy application assessed against
<p>It is a long term, large-scale user or</p> <p>It requires the occupation of park or reserve land (as designated under the Reserve Act 1977)</p> <p>It may have an impact that is of economic, environmental, social and/or community significance or concern.</p> <p>It may involve the building of structures and/or significant modifications to the site.</p>	<p>A detailed outline of the proposal.</p> <p>An assessment of environmental and social effects and mitigations.</p> <p>A comprehensive business plan, including evidence of operator experience, qualifications and character references.</p> <p>A health and safety plan.</p>	<p>A lease (but could be or combination of lease, easement or licence).</p> <p>Have a term of between 2 and 33 years.</p> <p>Take several months to process.</p> <p>May be publicly notified.</p>	<p>Encroachments on Road Reserve Policy</p> <p>Reserve Management Plan (if one exists)</p> <p>District plan/resource consent requirements (where applicable)</p> <p>Trading in Public Places / Public Places Bylaw</p> <p>Licensing requirements</p>

Minor Commercial Activity

The majority of commercial use of public places will fall under this category.

A commercial activity is minor if -	Information required as part of application	Occupation agreement	Policy application assessed against
<p>It is a short term, small-scale operation e.g. food vendor operating on a reserve / road reserve on a limited basis.</p> <p>Is an operation that is not building substantial structures or facilities or modifying the site. Is generally a mobile or temporary structure.</p> <p>Has little impact on the site or beyond it.</p>	<p>A detailed outline of the proposal.</p> <p>An assessment of environmental and social effects and mitigations</p> <p>An outline of the business model, including evidence of operator experience, qualifications and character references.</p> <p>A health and safety plan.</p>	<p>A licence to occupy.</p> <p>Short term arrangement of up to five years.</p>	<p>Encroachments on Road Reserve Policy</p> <p>Reserve Management Plan (if one exists)</p> <p>District plan/resource consent requirements (where applicable)</p> <p>Trading in Public Places / Public Places Bylaw</p> <p>Licensing requirements</p>

Start Up – Short Term

A commercial activity is a start up businesses if	Information required as part of application	Occupation agreement	Policy application assessed against
<p>It is a new activity and demand for the good or service is uncertain.</p> <p>Short term, small-scale operation e.g. food vendor operating on a reserve / road reserve over a limited period (i.e. weekly and up to 12 months.</p> <p>It is an operation that is not building substantial structures or facilities or modifying the site.</p> <p>Has little impact on the site or beyond it.</p>	<p>A detailed outline of the proposal.</p> <p>An assessment of environmental and social effects and mitigation.</p> <p>An outline of the business model, including evidence of operator experience, qualifications and character references.</p> <p>A health and safety plan.</p>	<p>Licence to occupy</p> <p>Have a term of up to 12 months.</p> <p>Fixed fee.</p>	<p>Commercial activities on parks and reserve land Policy and Encroachments on Road Reserve Policy</p> <p>Reserve Management Plan (if one exists)</p> <p>District plan/resource consent requirements (where applicable)</p> <p>Trading in Public Places / Public Places Bylaw</p> <p>Licensing requirements</p>

APPENDIX TWO - APPLICATION FOR COMMERCIAL USE AGREEMENTS ON PUBLIC PLACES (including markets)

General terms for application for a commercial trading agreement

Proposals for commercial use of Council administered public places must be submitted to the Council in writing accompanied by the relevant application fee.

Applicants must provide all supporting information outlined in Appendix One and details of the proposed operation (type, location, proposed frequency, duration and impact on the surrounding environment).

Tendered application for a commercial trading agreement

The Council may from time to time tender commercial trading opportunities on the Coastal Walkway and any other site it determines.

Terms and conditions of individual tenders will generally be included as part of the tender documentation.

Under normal circumstances, all sites will be tendered at the same time.

However, from time to time the Council may assign individual tender sites.

Tender allocation is generally based on a 3 year cycle. However vacant spots may be assigned or tendered outside of these time frames if suitable agreement holders are found.

The Council may grant a commercial use agreement for a trial period, prior to determining whether a longer term agreement is entered into.

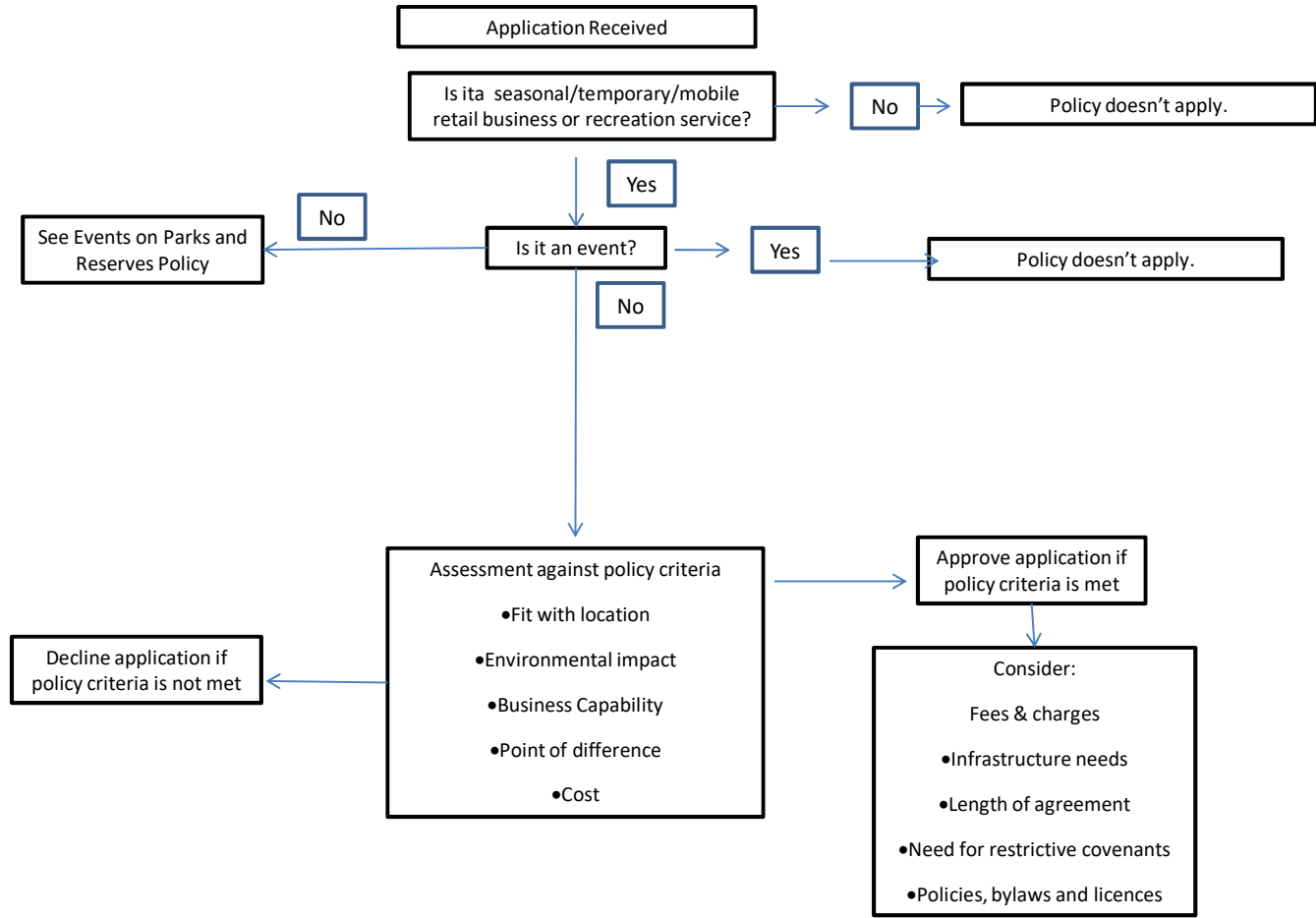
For sites not subject to a tender process, a first in first served basis applies to the assessment and allocation of agreements and the Council reserves the right to decline any application if it does not meet the criteria or conditions outlined in this policy.

See Appendix 3b for tender process.

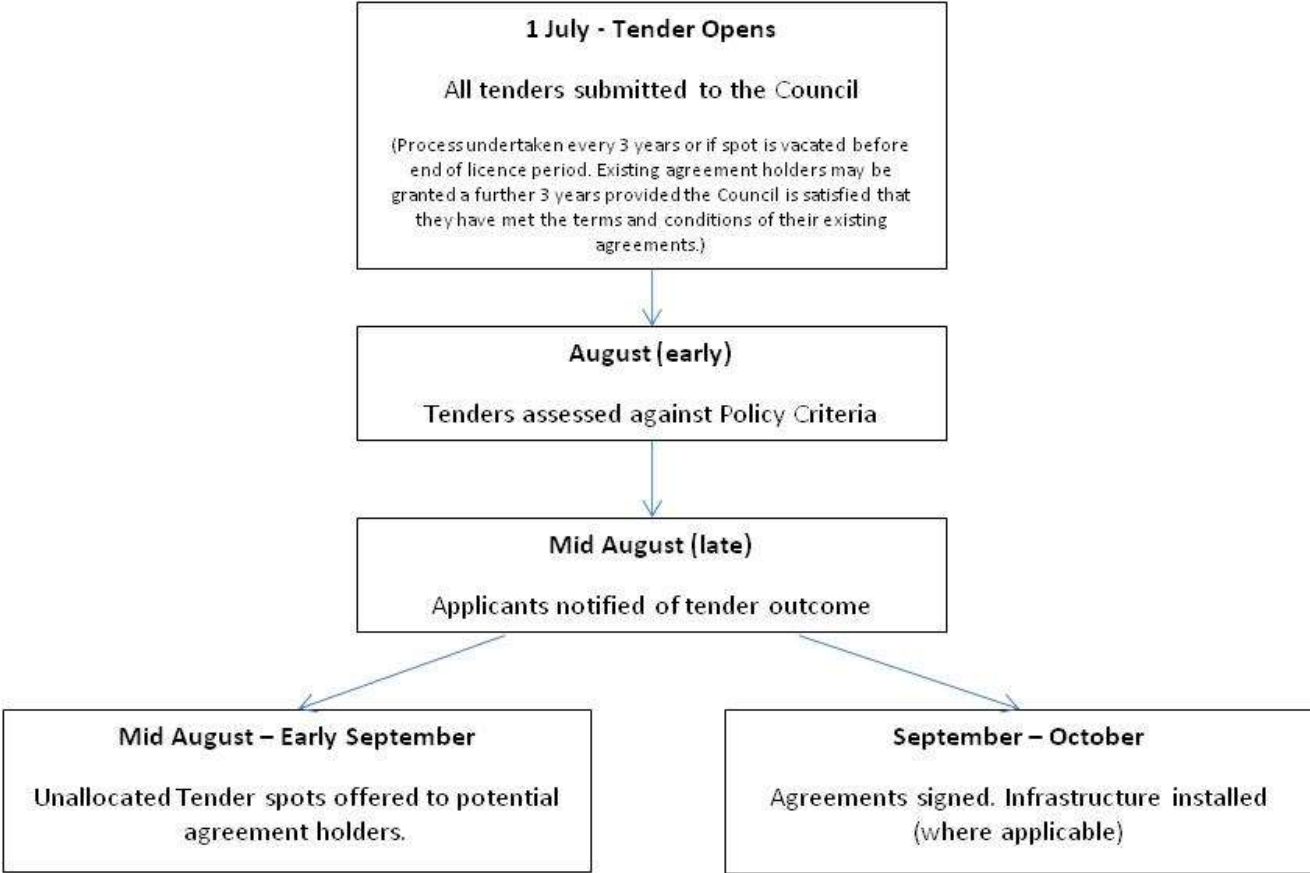
Assessment of Commercial Use Application on Parks and Reserves

Tendered and non-tendered applications will be assessed in accordance with the criteria set out in Appendix 4.

Application Process Flow Chart



Tender Process Flow Chart



APPENDIX 4 – CRITERIA FOR THE ASSESSMENT OF APPLICATIONS

When assessing applications and tenders the following criteria are proposed to be used in the assessment:

Fit with location and enhancement of recreation (weighting: 25 per cent) or use of a public place

- 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.
- 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.

Impact on the environment (weighting: 25 per cent)

- 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.

Business capability - (weighting: 20 per cent)

The business plan and overall sustainability of the proposal, including:

- 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.

Point of difference (weighting 10 per cent)

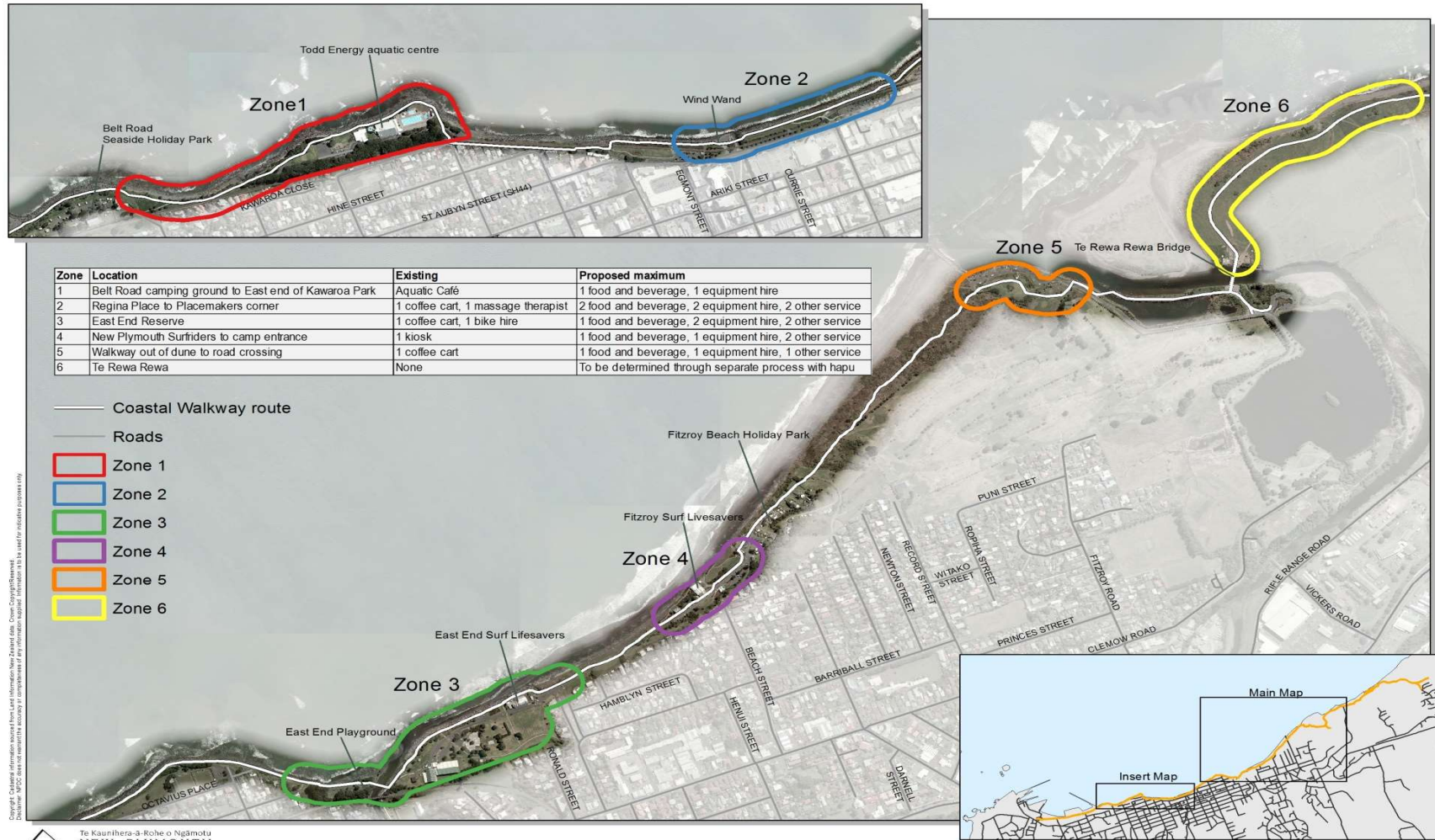
- a) The fit with existing businesses in the public place, so as not to duplicate an existing activity or commercial operation.
- b) The extent to which the point of difference contributes to the vibrancy and well-being of the area.

Price – (weighting: tender allocation 20 per cent)

- a) The likely revenue generated.

APPENDIX 5 - COMMERCIAL USE ZONING

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



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Coastal Walkway Proposed Commercial Zones

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