

Comprehensive Report: Charging for Licensed Commercial Operators

1 Background

The purpose of this report is to present to Council, a proposal for allocating and charging for Licenced Commercial Operators on Reserve land and seek a decision from Council around its installation into the 2022/23 Annual Plan.

Council has previously considered the issue of charging for Licensed Commercial Operators on Reserves, with the intention of gaining a fairer revenue stream for ratepayers in the district. Council most recently discussed the issue in a Council Workshop on 12th November 2020 leading up to the adoption of the 2021/31 Long Term Plan. As a result of that Workshop, Council agreed on the following principles;

1. *Will charge a realistic rate for the commercial use for a public space.*
2. *Agree with the provision of long-term leases to give surety to occupiers for increased right to public space and that valuation of that space is undertaken.*

2 Discussion

The current Commercial Operators charging model draws relatively little income for Council, and due to officer and elected member time undertaken on processing and approving each application, the use of public space by licensed commercial operators costs the ratepayer more money than is gained. The considerations for increases to the charges are that the land that is being operated on is public land, which is primarily reserved for recreation purposes. Being able to utilise the land for commercial purposes is a privilege and, in many cases, a distinct commercial advantage, which is the rationale for levying any charge. Additionally, there is a large amount of work for both Officers and Elected Members that goes into approving a single license.

Commercial operators can add value for visitors to council reserves in terms of an improved visitor experience, particularly where there is high public utilisation of the reserve. Commercial operators can provide access to consumable products such as ice cream and coffee. Commercial operators can also deliver services for example by way of a business offering the hire of kayaks or stand-up paddle boards.

However, it should be noted that the land generally in question is held under the Reserves Act 1977, as described in Part 1 s3(1)(a) of said Act, which is held for the purpose of –

- (a) providing, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing—
 - (i) recreational use or potential, whether active or passive; or
 - (ii) wildlife; or
 - (iii) indigenous flora or fauna; or
 - (iv) environmental and landscape amenity or interest; or
 - (v) natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value:

The Licenses are issued under s54(1)(d) of the same Act which states-

- (d) grant leases or licences for the carrying on of any trade, business, or occupation on any specified site within the reserve, subject to the provisions set out in [Schedule 1](#) relating to leases or licences of recreation reserves issued pursuant to this paragraph:
provided that the trade, business, or occupation must be necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of persons using the reserve:
provided also that the prior consent of the Minister shall not be required to a lease or licence under this paragraph where the trade, business, or occupation is to be carried on in the reserve only temporarily and the term of the lease or licence does not exceed 6 consecutive days.

The majority of the commercial licensed operators are based in the Mercury Bay ward area, and it was the Mercury Bay Community Board that requested a workshop on this issue. At the workshop on 28 July, a range of different options were shared with the Board. All options, except one, had previously been presented to the Council in pre-Long Term Plan workshops. The new information shared was that of weighted tenders.

The previously proposed options were;

- Model A – similar to current charging regime with escalation in fees and no discount for multiple sites
- Model B – flat fee per site per month
- Model C – percentage of gross income
- Model D – annual fee per square meter occupied

Model D was the most favourable to Council at the workshop in November 2020, but the basic principles as identified was for a more realistic rate to be charged, and provision for longer term occupations to be issued.

At the 28 July Mercury Bay Community Board Workshop, a summary of different Council's approaches was given and the Weighted Tender model was discussed in depth. This option is when Council advertises the type and number of licenses available for commercial operators that it believes are feasible and suitable in a particular reserve while calling for tenders for their operation.

Upon seeking information about maximisation of revenue and providing for longer term occupations, Tauranga City Council (TCC) provided information on a weighted tender model that had not previously been considered. This was discussed with the Mercury Bay Community Board, who believed it had enough merit to be discussed by Council.

TCC have a policy 'Temporary Commercial Activities on Reserves Policy'. This policy outlines what reserves are available for commercial activities and the number of licences available at each of these reserves. It describes the weighted tender model used to allocate licences to these reserves and summarises the principles around allowing commercial activities to occur on public reserves.

TCC Parks and Reserves team work closely with their Bylaws team. Advice is that due to the robust tendering process, TCC has found the need to monitor the operators is low. Their bylaws officers monitor commercial operators however, minimal additional attention is assigned to this activity except when requests/complaints are received from the public. It is not often found that an operator is not meeting the standards agreed to in the license, as most operators are clear on the rules and abide by them.

As part of their process, TCC set a minimum tender price. It is then up to individuals to decide if they submit the same price or go higher. Lower tenders are not accepted. TCC have found that individuals provide a tender higher than the minimum price, especially if they are a first-time applicant, to ensure they have the best chance of a successful application.

Although price is a consideration when assessing applications, the weighted score used to determine the successful applicants looks at several areas of the business. It also considers the enhancement of visitor experience as a result of the commercial operation, relevant to the site and previous experience of operators.

TCC currently issue licences for a period of one year. By doing this, it makes the process as competitive as possible as the tender prices continually escalate year on year. However, it creates a volume of work for staff, as the application process usually takes in excess of three months and doesn't provide businesses with security. TCC are currently exploring the option to increase their licence period to two years. TCDC currently issues its licences for a two year period. One of the desires of the Thames-Coromandel District councillors at the workshop in November was to ensure longevity of tenure. A number of different options are available to Council to increase longevity. If a weighted tender model is accepted by Council, then it is suggested that a term of three, five or 10 years is granted for licenses. The term granted will be the same for all licenses.

TCC does not provide water, electricity or gas supplies, and all waste must be collected and removed from the area at the end of each trading day. There are a small number of sites that are able to be supplied with some services. If a weighted tender model is chosen it is thought that these sites can either have services on-charged direct, or that the tenders have the utility prices built into their model, potentially driving the tender price up.

This Councils' current Fees and Charges for Commercial Operators is as follows.

Commercial Operators		
Commercial Operator - operate during the summer period and holiday weekends	Per operator/per annum	\$360.00
Commercial Operator - operate all year and in one location	Per operator/per annum	\$520.00
Commercial Operator - operate all year and in 2-4 locations	Per operator/per annum	\$775.00
Commercial Operator - operate all year and in 4+ locations	Per operator/per annum	\$1,000.00

Council currently has four different yearly charges for commercial operators. With a weighted tender model, this would be reduced to potentially one tendered sum, and possibly an application fee, should Council deem this as suitable. This will remove the ability for operators to apply for a summer only licence. It will also remove the ability for operators to apply for multiple sites of operation in the one application. They will instead have to submit a different application for each site they wish to occupy. If following the TCC model entirely, the proposed tender process means there would be no predetermined fees and charges.

How a Weighted Tender Model works:

1. Council provides a publicly available list of reserves in each ward that are suitable for commercial operators to operate their business on/over and how many operators are allowed at each reserve. This option allows for the certainty about which sites will be impacted by commercial operators. Sites suggested would be derived from currently occupied sites as well as from guidance within the Reserve Management Plans.
2. For each site Council indicates the number of food/beverage and/or activity operators which are permitted.
3. Council runs an application window of 4 – 6 weeks, allowing the tenderers to submit their application and supporting documents for consideration. In this application, tenderers state how much they are willing to pay to use the particular site for a pre-determined period. An application can only cover one site (reserve). If an applicant wishes to tender for multiple sites, they must complete one application per site.
4. As applications are received, staff will review applications to ensure all the required documentation has been included. The 4 – 6 week application period allows for further clarifying information or corrections to be made.
5. Once the application period has closed. A panel of staff meet to evaluate applications and assign a percentage score based on the content in the application. One potential panel makeup is made up of the Community Facilities Manager, Community Facilities Planner, relevant Community Facilities Field Representative, the relevant Area Manager as well as administration support.
6. The results of the evaluation process are then taken to the respective Community Boards for consideration.
7. Once the Community Boards have made their recommendations, this will go to Council for final sign off.
8. Applicants are informed if they have been successful/unsuccessful.

Should Council wish for a Weighted Tender model the actions needed to work towards this are as follows;

1. Council approves this paper
2. An agreement by Council and/or Community Boards on the weighted tender makeup
3. An agreement by Council and/or Community Board on a minimum price guide should one be required
4. An agreement by Council and/or Community Board on a licence period
5. Council staff work together with Community Boards to workshop suitable reserves for commercial operators to use and how many licences to put up for tender at each reserve as well as what mix of licences are on offer
6. Council staff create a new application form for commercial operators.
7. A new Temporary Commercial Activities on Reserves Policy is developed and adopted
8. An information campaign will be needed to inform the public and existing License holders of the new process for applying for a commercial operators license.
9. The robust tender process needs to be confirmed, including the creation of a panel to evaluate applications.

3 Assessment of Options

Council needs to decide whether the current model charging for licensed commercial operators, or one of the others previously considered on the 12 November 2020 is more preferable to the weighted tender model with the original agreed principles in mind;

- *Will charge a realistic rate for the commercial use for a public space*
- *Agree with the provision of long-term leases to give surety to occupiers for increased right to public space and that valuation of that space is undertaken.*

The previously proposed options were;

- Model A – similar to current charging regime with escalation in fees and no discount for multiple sites
- Model B – flat fee per site per month
- Model C – percentage of gross income
- Model D – annual fee per square meter occupied

The Weighted Tender model has the ability for Council to set an importance on the application criteria it is seeking from applicants to run a commercial operation on reserve land. The current application allows Council to ensure that obligations such as insurances, food licenses and health & safety are up to the required standards. With the Weighted Tender model, all of those items previously assessed will continue to be a requirement for operation. But Council will be able to rate tenders against such criteria as the following:

- Price
- Track Record/Relevant Experience
- Enhancement of Visitor Experience & relevance to site
- Cultural & Environmental Appropriateness

Price

TCC have put a 15% weighting on price. They have reached this figure after some other modelling and via trial and error. This percentage remains an option for this Council. Disadvantages of setting the price at 15% are that the highest price tenderer may still not win the tender and is dependant upon the other attributes being assessed. Conversely, this can also be an advantage. Weighting options from 15% to 35% are suggested.

Track Record/Relevant Experience

This is the tenderers track record and previous experience of delivering the activity/ operation tendered. TCC have set a 15% weighting on this attribute, and it is suggested that this attribute retain that weighting.

Enhancement of Visitor Experience and Relevance to Site

This attribute refers to the fact that Council is looking for a range of activities that will add variety, entertainment, amenity and access to food, beverage and other services that make the area a more attractive place to visit. Whether the appearance of the operation is appropriate for the relevant reserve will also be considered as well as the space required. This is the most heavily weighted attribute according to TCC at 70%. Options available to this Council are to consider differences in weighting, if viewed as appropriate, in a range of options from 70% to 40%.

Cultural and Environmental Appropriateness

This attribute refers to the consideration that the tenderer has toward cultural sensitivity and environmental appropriateness. TCC have not made space for this attribute as it is believed that they have included this attribute into *Enhancement of Visitor Experience and Relevance to Site*. If it is included as a separate attribute, it could be weighted at 10%, if Council sees fit.

In the assessment of options, it is suggested that Council considers the weighted tender model to assess licensed commercial operators. A weighted tender model with a license period of three, five or 10 years would satisfy Council's criteria of;

- *Will charge a realistic rate for the commercial use for a public space*
- *Agree with the provision of long term leases to give surety to occupiers for increased right to public space and that valuation of that space is undertaken.*

4 Significance and engagement

As rated against criteria in Council's Significance and Engagement Policy, the impact of this issue is rated as "Low", as per the scoring table developed below.

Criteria	Low	Medium	High
Legal requirement to engage community	Low		
Level of financial consequence		Medium	
Number of people affected	Low		
Level of impact of those affected by decision			High
Level of community interest	Low		
Level of impact upon Maori and cultural values	Low		
Likely impact upon social, economic, environmental & cultural well-being	Low		
Affect on level of service	Low		
Are consequences controversial	Low		
Previous engagement undertaken	Low		
Impact upon capacity		Medium	
Can decision be reversed	Low		
Strategic assets affected	Low		