

6. WORLD BUSKERS FESTIVAL - ESTABLISHMENT OF CHARITABLE TRUST

General Manager responsible:	General Manager Regulation and Democracy Services DDI 941-8462
Officer responsible:	Legal Services Manager
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PURPOSE OF REPORT

1. The purpose of this report is to request that the Council adopts, in accordance with section 56 of the Local Government Act 2002, the special consultative procedure to consult with the public on the proposal to establish a charitable trust as part of the legal and financial structure to operate the World Buskers Festival ("the Buskers Festival").

EXECUTIVE SUMMARY

2. At the Council meeting held on 19 December 2008 the Council authorised the purchase of the Buskers Festival from the Festival City Trust and settlement of the purchase of the Buskers Festival by the Council was completed on 12 May 2009.
3. In the report considered by the Council at the 19 December 2008 meeting staff advised that the previous owner operated the Buskers Festival through the medium of a charitable trust with the profits (if any) being applied to specified charitable objects. The reason for this arrangement is that 87 per cent of the revenue generated by the Buskers Festival takes the form of grants, sponsorship and other donated support which would not be available unless the operator was a charitable trust.
4. At its meeting of 19 December 2008 the Council specifically resolved, inter alia:
 - “4 That ... the Chief Executive be authorised to take the appropriate steps to establish a trust or such other entity, as he shall consider necessary or appropriate for the purpose of ensuring that outside funding sources can be obtained.
 - 5 That the Chief Executive be authorised to establish and put in place the financial and legal structures that he considers appropriate for the establishment and operation of the World Buskers Festival by the Council.”
5. The Council has received advice from Kerry Ayers of the law firm of Helmore Ayers on the appropriate legal structure to adopt in relation to the Buskers Festival. Mr Ayers is a legal practitioner with substantial experience in the trusts law area and is currently a government appointee to the Charities Commission. Mr Ayers assisted the Council in the recent formation of the Gardens Event Trust which forms part of the operating structure of the Ellerslie International Flower Show.
6. It has been determined that, to ensure that the Buskers Festival continues to be eligible to receive the 87 per cent of its revenue received from grants, sponsorship and other donated support, a charitable trust be established to operate the Buskers Festival. This would replicate the operating structure adopted by the previous owner, the Festival City Trust.
7. As the proposed charitable trust will constitute a Council controlled organisation, to implement the Council's resolution of 19 December 2008 it will be necessary to comply with the consultation requirements of the Local Government Act 2002. It is therefore necessary for the Council to adopt the special consultative procedure before the Council formally makes its decision to establish the proposed charitable trust.
8. The name of the proposed Trust is proposed to be the 'World Buskers Festival Trust', subject to formal approval of that name by the Registrar of Charitable Trusts and subject to formal Council adoption of that proposal following completion of the special consultative procedure. At that time, the Council will also be asked to approve the appointment of the first trustees of the Trust.
9. Until a new trust can be formed, the Council has licensed the previous owner/operator of the World Buskers Festival, the Festival City Trust, to use the Council owned intellectual property and related assets to continue to operate the Festival up to 31 March 2010. It is expected that the Council will then licence the new charitable trust to operate the World Buskers Festival using the Council owner intellectual property and other related assets from 1 April 2010.

FINANCIAL IMPLICATIONS

10. The establishment of the proposed charitable trust will ensure that the Buskers Festival remains eligible to source external funding which would not otherwise be available to the Council. As 87 per cent of the revenue generated by the Buskers Festival takes the form of grants, sponsorship and other donated support it is essential that the Buskers Festival remains eligible for this support.
11. As it will be necessary for the proposed Trust to operate the Buskers Festival, and as the Trust will be a stand-alone charitable trust, any profit that it may make will not be able to returned to the Council, but will, subject to retaining sufficient reserves, need to be distributed to specified charitable beneficiaries. My Ayers has advised that it will be necessary, in order to maintain the Trust's charitable status, that at reasonably regular intervals a trading surplus is applied by the Trust to clearly charitable objects. These charitable objects need to be specified in the Trust Deed.

Do the Recommendations of this Report Align with 2009-2019 LTCCP budgets?

12. Yes. The establishment of the Trust will have no effect on current LTCCP budgets. The Buskers Festival budget aims to at least break even, with no funding additional to that currently committed being required from the Council's Events and Festivals Fund.

LEGAL CONSIDERATIONS

13. Until a new trust can be formed, the Council has licensed the previous owner/operator of the World Buskers Festival, the Festival City Trust, to use the Council owned intellectual property and related assets to continue to operate the Festival up to 31 March 2010. It is expected that the Council will licence the new charitable trust to operate the World Buskers Festival using the Council owner intellectual property and other related assets from 1 April 2010.
14. Mr Ayers has advised that, subject to a "need to produce at reasonably regular intervals, a trading surplus that is applied to clearly charitable objects ... then a charitable trust could be set up which would run the Buskers Festival for the purpose of producing a surplus to be distributed for clearly charitable purposes".
15. Establishing a charitable trust to operate the Buskers Festival is expressly authorised by the resolution of the Council at its meeting of 19 December 2008 as detailed in paragraph 4 above.
16. As it is proposed that the Council will have the right to appoint the trustees, the proposed charitable trust will be a Council controlled organisation in terms of Section 6 and Part 5 of the Local Government Act 2002. This will enable the Council an element of control to ensure that the charitable trust functions, as far as is legally possible, in concert with the Council's objective to ensure the continued operation of the Buskers Festival in Christchurch.
17. The draft Deed of Trust for the proposed Trust has been prepared by Mr Ayers.
18. As a charitable trust, any profit that it may make will not be able to returned to the Council, but will, subject to retaining sufficient reserves, need to be distributed to specified charitable beneficiaries. Mr Ayers has advised that it will be necessary, in order to maintain the Trust's charitable status, that at reasonably regular intervals a trading surplus is applied by the Trust to clearly charitable objects. These charitable objects need to be specified in the Trust Deed. The draft Trust Deed **attached** to this report describes the proposed charitable beneficiaries in a very generalised way in order to allow the trustees flexibility as to which entities to benefit from time to time.
19. Mr Ayers has advised the Council that the draft Deed of Trust will meet the necessary statutory requirements to enable the proposed Trust, if formed, to be registered under the Charitable Trusts Act 1957 and the Charities Act 2005.
20. Section 56 of the Local Government Act 2002 requires the Council to adopt the special consultative procedure before it can make a decision on whether or not to establish a Council controlled organisation. A Statement of Proposal and a Summary of Information has been prepared and are **attached** to this report.

Have you considered the legal implications of the issue under consideration?

21. Yes – see above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

22. The Buskers Festival is aligned with the current Events and Festivals Activity Management Plan and the draft 2009 – 2019 Events and Festivals Activity Management Plan and the 2009-2019 LTCCP. The Buskers Festival aligns with the following key community outcomes:

- A City of Inclusive and Diverse Communities
- A Prosperous City
- A City for Recreation, Fun and Creativity

Do the recommendations of this report support a level of service or project in the 2009-2019 LTCCP?

23. Yes. The Buskers Festival fits well into the Council's objective specified in the 2009-2019 LTCCP – that is to ensure that events and festivals contribute to the enjoyment of living in Christchurch. The Council's strategic direction is to provide and support a year round programme of events that:

- Attracts visitors and generates economic activity
- Strengthens the distinctive identity and lifestyle qualities of Christchurch
- Provides multiple and lasting benefits to the city
- Celebrates and promotes Christchurch's culture and diversity.

ALIGNMENT WITH STRATEGIES

24. The Council's Events Strategy 2007 - 2017 was adopted in December 2007. The Buskers Festival delivers on several goals of the Events Strategy:

- Goal One: Events attract visitors and strengthen the distinctive identities and lifestyle qualities of Christchurch.
- Goal Two: A vibrant calendar of events that enhance Christchurch as a place to live and visit.

Do the recommendations align with the Council's strategies?

25. Yes.

CONSULTATION FULFILMENT

26. The adoption of the staff recommendation will meet the Council's consultation obligations.

STAFF RECOMMENDATION

It is recommended that the Council resolves to:

- (a) Approve the Statement of Proposal and the Summary of Information attached to this report.
- (b) Adopt the special consultative procedure for consulting with the public on the proposal to establish a charitable trust to operate the World Buskers Festival.
- (c) Appoint a hearings panel of three Councillors [to be identified as part of the resolution] to consider any oral submissions that may be received in respect of the proposal.