

11. PROPOSED CHARITABLE TRUST TO OPERATE THE WORLD BUSKERS FESTIVAL – PART ONE

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:
 - (a) Report the result of the Special Consultative Procedure adopted by the Council in relation to the proposed establishment of a charitable trust to operate the World Buskers Festival (“the Buskers Festival”) as a Council-controlled organisation.
 - (b) Recommend that the Council resolves to establish the proposed charitable trust as a Council-controlled organisation as part of the legal and financial structure to operate 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 Legal Services Unit has sought specialist 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.
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 currently received from grants, sponsorship and other donated support, a charitable trust be established to operate the Buskers Festival. This replicates the operating structure adopted by the previous owner, the Festival City Trust.
7. 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.

8. At the Council's meeting of 23 July 2009 the Council resolved 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) That a hearings panel of three Councillors be appointed by the Deputy Mayor and Councillor Wells, in conjunction with the Council Secretary, to consider any oral submissions that may be received in respect of the proposal.”*
9. Pursuant to the Council's resolution of 23 July 2009 a Hearings Panel of Councillors Wells, Broughton and Johanson was appointed by the Deputy Mayor and Councillor Wells, in conjunction with the Council Secretary.
10. The proposal was publicly notified on 31 July 2009 and the consultation period ran from 1 August 2009 to 1 September 2009. No submissions were received and the Hearings Panel was not required to meet.
11. Consequently, it is recommended that the Council approves the establishment of the trust as a Council-controlled organisation and appoints the initial trustees of the trust (although the staff recommendations as to trustee appointments are contained in a separate report in the Council's public excluded agenda to be considered later on the same date as this report is considered).

FINANCIAL IMPLICATIONS

12. 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 currently 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.
13. 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. 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.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

14. 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

15. 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”.
16. 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.

17. As it is proposed that the Council will have the right to appoint all of 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.
18. The draft Deed of Trust for the proposed Trust has been prepared by Mr Ayers and is substantially similar to the Deed adopted for the Gardens Event Trust formed to support the Ellerslie International Flower Show.
19. 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.
20. 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.
21. 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. The necessary Statement of Proposal as required under the Special Consultative Procedure was publicly notified on 31 July 2009 and the consultation period ran from 1 August 2009 to 1 September 2009. The Statement of Proposal proposed "the establishment of a charitable trust as a Council Controlled Organisation for the purpose of operating the World Buskers Festival from 1 April 2010". The proposed objects of the proposed Trust were detailed in full in the Statement of Proposal and in addition a full copy of the proposed Deed of Trust was attached to the Statement of Proposal.
22. A Council-controlled organisation cannot be established unless the Special Consultative Procedure is used. The Council has complied with this requirement.
23. No submissions were received in response to the Special Consultative Procedure.
24. Mr Ayers has advised that the proposed Trust Deed in the form attached 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.
25. Once the Council approves the establishment of the Trust it will be necessary to register the Trust under the Charitable Trusts Act 1957 and the Charities Act 2005.

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

26. Yes – see above.

Proposed Trust Name

27. It is proposed that the name of the Trust be 'The World Buskers Festival Trust'.

Proposed Trustees

28. The staff recommendations as to membership of the proposed Trust Board are contained in a Part Two of this report which is included in the public excluded agenda to be considered at that same meeting as this report.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

29. 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?

30. Yes. The Buskers Festival fits well into 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

31. 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?

32. Yes.

CONSULTATION FULFILMENT

33. The Council adopted and used the Special Consultative Procedure in relation to the proposed establishment of the Trust as a Council-controlled organisation.
34. There is no statutory impediment to the Council making a decision in respect of the recommendations contained in this report.

HEARINGS PANEL RECOMMENDATION

35. It is recommended that the Council, having adopted and completed a special consultative procedure, resolves to:
- (a) Approve the establishment of a charitable trust as a Council-controlled organisation to operate the World Buskers Festival.
 - (b) Adopt the Deed of Trust in the form attached to this report as the form to be used in the establishment of the charitable trust subject to such amendments as may be required by the Registrar of Charitable Trusts or the Charities Commission.
 - (c) Adopt the name 'The World Buskers Festival Trust' as the formal name of the charitable trust or such other similar name as shall be approved by the Registrar of Charitable Trusts or the Charities Commission.
 - (d) Authorise the registration of the Trust under the Charitable Trusts Act 1957 and the Charities Act 2005.