

Manual Number:

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Approved By:

Date:

Final due by: 29 June 2000

Minute Number:

POLICY FOR COMMERCIAL OCCUPATION OF FOOTPATHS, CARPARKS, AND PARKING SQUARES.

Background

- 01 The purpose of this policy document is to provide a framework for decision making on the current management and future allocation of commercial activities on footpaths, carparks, and parking squares. A balance is needed between the rights of the inner city commercial sector, the retention of open space, and establishment of trading sites. Where trading is allowed within the city, standards and conditions of occupation are recommended and appended to this policy. This policy does not cover transient trading activities such as busking, hawking and itinerant trading.
- 02 Currently street trading is governed by the Trading in Streets and Public Places Bylaw 190 (1989). The Bylaw will be reviewed and updated when this policy is adopted.
- 03 "Nelson's Inner City – The Future" was a strategy adopted in 1995. It placed emphasis on promoting activities that added vitality, including street occupation, but the scope did not include details on guidance or limitations to the activities in question.
- 04 The Nelson Resource Management Plan has objectives and policy statements that impact on any future street occupation policy. They include:
 - A diversity of activities which do not adversely affect the environment sought for the city centre and city fringe.
 - Activities which enhance the vitality and vibrancy of the City Centre shall be encouraged.

While the Resource Management Plan encourages such activities, the methods described to evaluate activities are very general, and the adoption of this policy will provide improved guidance on what may be permitted.

- 05 This policy contributes to the following LTFS strategic outcomes:

- That the environment is beautiful and pollution is minimised.
 - That the city is well planned and attractive, and has easy access.
 - That the city's economy is strong and diversified.
 - That Nelson is a colourful, vibrant city with a diversity of cultures and lifestyles.
- 06 This policy is consistent with the "Nelson Inner City Enhancement Study" Design Report November 1999. The council's overall objective for the City Centre was expressed as "A City Centre which provides a strong and vibrant focus to the City." The report specifically identifies the following opportunities:
- Facilitate the development of a café precinct in the upper part of Trafalgar Street.
 - Provide for outdoor seating and dining in a part of Trafalgar Street which is characterised by low traffic use.

Key Issues

- 07 That commercial activities are encouraged in Nelson in such a way that they enhance the vibrancy, vitality and colour of the city.
- 08 That the safety of pedestrians and road users remains paramount within the city.
- 09 That there is a balance between encouraging commercial activities on the street and maintaining sufficient inner city parking including parking spaces in close proximity to businesses reliant on easy customer access for specific customer services. Consideration is given to the needs of aged and disabled inner city users.
- 10 That commercial activities are promoted in specific areas that would be enhanced by these activities. Rapid growth in the allocation of commercial activities as at 31st March 2000 has resulted in fifteen current parking spaces used for outdoor dining, and three other businesses having parking spaces approved but are choosing not to utilise them at the present time. Fourteen street stalls are operating on the footpath and two inner city parking squares are operating weekend markets.
- 11 That activities are managed on a commercial basis to minimise any unfair economic advantage between shop retailers and current and future street traders (licensee's).
- 12 That all bona fide commercial operators have an appropriate licence to occupy, issued by council, and a reasonable security of tenure.
- 13 That car parks, the parking squares, and inner city enhancement have been paid for in the past from car parking revenue and from a differential rate paid by inner city property owners, ensuring that in the future all revenue received from commercial activities is no less than what would be obtained from the carparking it replaces, with all revenue returned to the appropriate parking account.

- 14 That any adverse effects of increased commercial activities are minimised.

Anticipated Outcome

- 15 To permit controlled use of footpaths, carparks, and parking squares for commercial activities which enhances the vitality and vibrancy of the city, while maintaining pedestrian and road user safety and access, ensuring adequate parking, whilst minimising any negative impacts on other businesses or retailers in Nelson city.

GENERAL POLICY

Aesthetics

- 16 The Chief Executive will consider the visual effect of the commercial activity in relation to the streetscape when assessing a prospective application.
- 17 Footpaths may be used for commercial activities in approved areas. The use of wider footpaths for street activities will be preferred.
- 18 The furniture used must be in keeping with the existing streetscape and approved by the Chief Executive.
- 19 The licensee is responsible for keeping the area clean and tidy. Excessive smoke, noise, fumes, objectionable smells or dust should not emanate from the activity. Any stained or damaged paving must be cleaned or replaced by the Licensee, as directed and at no cost to the council.
- 20 The licensee will be responsible for control of litter originating from their activity within a ten-metre radius of the defined area. Council's street litter bins are not to be used for this purpose.
- 21 The licensee must provide a full detailed plan of the proposed site, showing any structural and planned works to the site. The plan must be submitted and approved before any work on the site commences.
- 22 The Chief Executive has final approval of the design and layout of any structures.
- 23 Council property such as bollards, chains, seats, trees, plant protector frames and the like are not to be used by the licensee for any purpose.
- 24 The licensee shall not display or place any signs, placards, posters or advertising material within the licensed area apart from those fixed permanently to furniture and promoting the specific commercial activity.
- 25 The licensee cannot make any structural changes or additions to the footpath, parking space or parking squares area without prior written approval from the Chief Executive.
- 26 The area must be returned to its original condition at the cost of the licensee at the conclusion or termination of the licence. Note that the licence provides for a bond where required.
- 27 That the area to be occupied is clearly defined and each licensee to have a site plan available at all times for inspection.
- 28 Where a commercial activity is established on the kerbside of the footpath and at an intersection, for traffic visibility, the airspace between 1.2m and 1.8m above

the footpath must not be occupied with any walls, partitions, signs, fixtures or goods.

- 29 Table umbrellas shall be permitted within the designated site area only, provided they are firmly secured and do not obstruct or impede pedestrian or vehicle access or visibility.

Area Specifications

- 30 See specific requirements in Appendices Three to Six

Operation Limitations and Licensee Obligations

- 31 Commercial activities must comply with the Trading in Streets and Public Places Bylaw 190/1989 and its amendments, and any other relevant regulations or Nelson City bylaws.
- 32 A "Licence to Occupy" contract must be signed by the council and the Licensee for Street Stalls, Outdoor Dining, Retail Display and Carpark occupation prior to occupation of the site in addition to other regulatory requirements.
- 33 To allow a reasonable level of security of tenure, the term of the licence to occupy may be for a maximum period of up to three years.
- 34 The licensee may choose to reapply for a renewal on expiry of the licence.
- 35 If Council decides that a licence will not be renewed because the site is required for other purposes, it will endeavour to give three months prior warning to the licensee.
- 36 The licensee must have in place a current Public Liability policy to the value of at least \$500,000.
- 37 Only one licensee can operate from the same site at the same time.
- 38 There shall be no assignment or subletting of the activity on the site without the prior written approval of the Chief Executive.
- 39 The hours of operation will be those specified in the licence to occupy.
- 40 No live animals, birds, fish etc are to be are to be displayed or sold.
- 41 A commercial activity may not be used for any other purpose than its original intent as specified in the licence to occupy.
- 42 The council may vary the position of the site either temporarily or permanently, or offer an alternative site, for the purposes of Public Works, street or footpath or services repair or realignment, or a relevant planning requirement.

Rental

- 43 The setting of rentals will take into consideration the following criteria:
- (a) Market value of the site occupied e.g. determined by a registered valuer.
 - (b) Commercial shop rentals.
 - (c) Cost of providing the site.
 - (d) Alternative revenue opportunities to Council.
- 44 Site rentals will be reviewed every three years unless specified otherwise in current agreements.

Pedestrian and Road User Safety and Access

- 45 The safety of pedestrians and road users is given highest priority within the city at all times. Commercial activities will be limited or prohibited where it would adversely effect pedestrian or road user safety.
- 46 Where footpath is occupied by a licensee, the remaining width of any formed footpath must be sufficient to ensure that pedestrian flow is not interrupted and is adequate for all disabled people. There is to be at least two metres width of access around the commercial activity for pedestrians.
- 47 Safety of the licensee and customers of the commercial activity must be considered also. If customers are to be seated they must be protected from the vehicular traffic by barriers installed at the cost of the licensee and to standards approved by council. Any barrier shall be at least 0.6m high, have a hazard reflectorised marker on the end, facing oncoming traffic.
- 48 To ensure that road user access and thoroughfare is not hindered or restricted in any way, no verandas, umbrellas or tables shall extend beyond the approved site.

Location

- 49 Commercial activities will be permitted or promoted in specified areas. The character of the immediate environment and the current businesses will strongly influence what other activities may be compatible and permitted. E.g. dining on footpath or carparks will only be considered immediately in front of existing dining facilities
- 50 Commercial activities occupying carpark will not be permitted where public access is unreasonably obstructed to nearby businesses.
- 51 The applicant will seek to obtain the written approval of Commerce Nelson and the three businesses both sides of the proposed activity for all licence applications and renewals. Written comments from the above must be attached with the application.

LEGISLATION

52 The licensee will comply with the following Acts and Regulations where appropriate in the management of their commercial activity.

- Food Hygiene Regulation 1974.
- Sale of Liquor Act 1989 and its amendments.
- The Building Act 1991 and its amendments.
- Health and Safety in Employment Act 1992 and its amendments.
- The Nelson City Council Engineering Standards.
- Public Works Act 1981 and its amendments.
- The Disabled Persons Community Welfare Act 1975 and its amendments.
- The Resource Management Act 1991 and its amendments.
- The Litter Act and its amendments.
- Trading in Streets and Public Places Bylaw 190/1989.
- Any other relevant Acts, Regulations, or Nelson City Bylaws.

DELEGATIONS

53 The Chief Executive will:

- Approve the design and layout and workmanship standards of any structures.
- Enforce inappropriate or non compliant activities
- Approve structural changes to the footpath, parking square or parking spaces as required.
- Approve any variation or assignment of licences.
- Prepare and complete Licence to Occupy contract documents.
- Set fees and rentals for activities.
- Ensure the licensee complies fully with the conditions of the licence.

REFERENCES

54 The following references were used in designing this policy:

- Nelson City Council Long Term Financial Strategy.
- Nelson Resource Management Plan: Objective IC4.
- Nelson's Inner City – The Future adopted April 1996: Section 14.
- Nelson Inner City Enhancement Study Design Report November 1999.
- Nelson City Council Inner City Car Parking Policy.
- Nelson City Bylaw 190/1989 Trading in Streets and Public Places.
- Christchurch City Council, Public Places and Signs Bylaw 1992.
- Wellington City Council, Wellington Consolidated Bylaw 1991, Part 17 Roads and Public Places.
- Wellington City Council Footpath Management Policy.

IMPLEMENTATION

- 55 The Chief Executive or his delegated representative Divisional Manager Asset Management (DMAM) will be responsible for the implementation of this policy.
- 56 DMAM will ensure that rentals are reviewed every three years.
- 57 DMAM will be responsible for identifying, monitoring and minimising the cumulative result of adverse effects of increased commercial activities on pedestrians, users and other retailers.
- 58 DMAM will review and update the Nelson City Bylaw 190/1989 Trading in Streets and Public Places to reflect the content of this policy.
- 59 Notwithstanding anything in this policy, Council has the right to decline any application it considers to be inappropriate or contrary to the public interest.

REVIEW

- 60 This policy will be reviewed by April 30th 2005, or earlier if substantial changes take place.

APPENDICES

- 61 Street Occupation Schedule (Appendix One).
- 62 Street Stall Specific Requirements and Licence to Occupy (Appendix Two).
- 63 Outdoor Dining on Footpath and Carpark Specific Requirements and Licences to Occupy (Appendix Three).
- 64 Sandwich Boards and Retail Displays Specific Requirements and Licence to Occupy (Appendix Four).
- 65 Weekend Markets Specific Requirements (Appendix Five).
- 66 Design, Layout and Workmanship Assessment Criteria (Appendix Six).