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COMMERCIAL ACTIVITIES PROCEDURE

Parent Policy Title	Commercial Activities Policy
Associated Procedures	Not Applicable
Preamble	This Procedure is designed to establish clear guidelines for entering into Commercial Activities with external entities and establishing separate legal entities within or outside the University.
General	<p>The term Commercial Activity is defined in the Commercial Activities Policy and may include a partnership, trust, corporate joint venture, an unincorporated joint venture by agreement, incorporated or unincorporated association as well as other legal vehicles.</p> <p>Any Commercial Activity proposal coming forward for consideration must be directed to the Chief Financial Officer and Executive Director, Finance and Resource Planning in the first instance.</p> <p>The initiator of the proposal must submit a concept paper and implementation plan (a preliminary business case) to the Chief Financial Officer and Executive Director, Finance and Resource Planning. The proposal must clearly demonstrate the strategic and financial benefits to the University.</p> <p>The Chief Financial Officer and Executive Director Finance and Resource Planning may:</p> <ul style="list-style-type: none"> • seek advice on the proposal; • notify the initiator of the proposal that the proposal has been rejected or require further information; • recommend to the Vice-Chancellor that the proposal, subject to development of a Business Case and the provision of due diligence report, be submitted to the Finance and Resources Committee. • <p>Where the Vice-Chancellor has agreed that a Commercial Activity proposal be submitted to the Finance and Resources Committee, a formal Business Case and due diligence report must be produced for the consideration of Finance and Resources Committee and Council.</p> <p>A Commercial Activity must not be entered into by the University unless:</p> <ul style="list-style-type: none"> • a Business Case has been approved by Council on the recommendation of the Finance and Resources Committee; and • a Due Diligence Exercise has been undertaken and submitted to Finance and Resources Committee and the due diligence report has been accepted by Finance and Resources Committee.


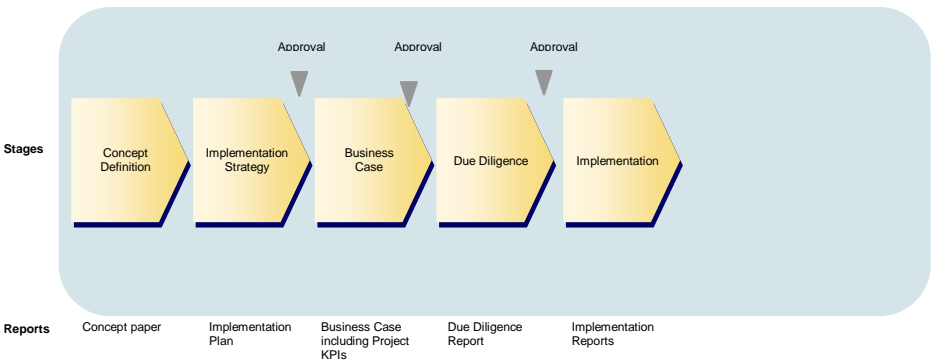
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1. Background	<p>This Procedure governs the process to be followed by the University when entering into a Commercial Activity as defined by the Commercial Activities Policy.</p> <p style="text-align: center;">Commercial Activity Procedures</p>  <p>The flowchart illustrates the process of Commercial Activity Procedures. It consists of five sequential stages, each represented by a yellow chevron pointing right. Above the chevrons, three 'Approval' points are indicated by downward-pointing triangles. Below the chevrons, corresponding reports are listed: 'Concept paper' for Concept Definition, 'Implementation Plan' for Implementation Strategy, 'Business Case including Project KPIs' for Business Case, 'Due Diligence Report' for Due Diligence, and 'Implementation Reports' for Implementation.</p>												
2. Business Case	<p>A Business Case must be developed to facilitate the making of an informed decision by the University whether or not to enter into a Commercial Activity.</p> <p>The Business Case must be based on best business practices and all financial data must comply with the reporting conventions contained in the Australian Accounting Standards.</p> <p>The Business Case must set out in clear terms the financial and strategic advantages to be obtained by the University. For assistance in preparing a Business Case please contact the Finance Division.</p> <p>The Business Case, once accepted by the Finance and Resources Committee and Council, will be the means against which performance is measured by the Finance and Resources Committee and Council.</p>												
3. Issues to be covered in the Business Case	<p>This section specifies the issues that must be covered by the Business Case</p>												

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3.1. Strategic benefits to be achieved for the University	<p>A cost/benefit analysis including the following.</p> <ul style="list-style-type: none"> (a) how the proposal supports the current strategic and operational plans of the University; (b) the social costs and benefits; (c) the impact of the proposed activity on the University's capacity to meet existing priorities by deflecting resources from core activities; (d) the impact of the proposal on the priorities of the strategic and operational plans of the University; (e) the University employees who will assume responsibility for the proposal and be responsible to the University and its Council for its success or failure.
3.2 Market Assessment	<ul style="list-style-type: none"> (a) What is on offer? (b) The potential market (internal/external) for the products and/or services; (c) Detailed assessment of competitors whether external or internal competitors; (d) The market share and performance targets to be achieved over a 5 to 10 year period to be included as Key Performance Indicators (KPIs).
3.3 Finance related issues	<p>An appropriate financial cost benefit analysis that assesses the level of exposure of the University's resources and assets including the following.</p> <ul style="list-style-type: none"> (a) The activities to be performed and the costs of each activity including direct costs, indirect costs, management time, overhead allocation, interest, etc; (b) The costs of setting up the Commercial Activity including legal, accounting and taxation advice; (c) The expected profit to be achieved by the University; (d) Timeframes for activities; (e) The expected rate of return and comparison of this rate of return against interest that could otherwise be earned with the available money; (f) Estimated cost of production with particular regard to capital, establishment costs and recurrent costs including the identification of funding sources; (g) The identification of financial returns with respect to revenue and expenditures over a five to ten year period to be included as KPIs to ensure that the Finance and Resources Committee and Council can measure performance. <p>The above matters must be set out in a detailed spreadsheet that spans a minimum five to ten year period. The spreadsheet must detail all expected revenues and costs over the period in question and quantify the financial benefits to the University.</p> <p>The spreadsheet must be developed on the basis of the reporting conventions contained in the Australian Accounting Standards. These conventions will need to be explained in accounting and non-accounting terms to assist financial and non-financial members of Council to understand and appreciate the significance of the methodology applied.</p>

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3.4 Management related issues	<ul style="list-style-type: none"> (a) Details of proposed management structure of the entity; (b) Details of proposed reporting arrangements which as a minimum must provide for quarterly reporting to the University; (c) Details of mechanism for appointment of University directors and non University directors (if applicable) who will be responsible for the performance of the proposed Commercial Activity where it involves a company. Note that any University nominee directors must be appointed by Council and must possess the business and financial skills, knowledge and experience to professionally discharge the responsibilities of a director in accordance with professional standards; (d) Details of the skills, knowledge and experience of the entity's proposed board to ensure that they are adequate to provide proper stewardship and control of the entity in accordance with professional standards; (e) Sign off of University line managers who will be expected to perform functions for the proposed Commercial Activity and the provision of costs to cover their involvement.
3.5 Risk management issues	<p>A risk assessment of the activity and development of associated risk management measures including:</p> <ul style="list-style-type: none"> (a) Development of a Risk Profile using contemporary methods and proposed annual reviews of the Risk Profile by the University's Director, Risk Management; (b) Development of risk treatment plan based on the Risk Profile; (c) Linking the results of due diligence exercise to Risk Profile; (d) An analysis of the viability of the proposed Commercial Activity and the capacity of the external parties participating in the Commercial Activity; (e) Assessment of the capabilities of managers to be appointed or identified to manage the affairs of the proposed Commercial Activity; (f) Details of any risks to University intellectual property and how these risks will be mitigated.
3.6 Key Performance Indicators	The Business Case must specify KPI's for each area specified in the Business Case including without limitation financial performance.
3.7 Review of Commercial Activity	The Business Case must specify triggers for review of the Commercial Activity.
3.8 Legal Issues	<ul style="list-style-type: none"> (a) The Business Case must set out the nature of the legal relationship and whether the legal structures are appropriate having regard to the size, risk and type of the Commercial Activity; (b) The Business must contain an exit strategy to enable the University to exit the relationship in the event that the Commercial Activity does not realise the expectations detailed in the Business Case; (c) The Business Case must set out the terms and conditions of the proposed arrangements including those dealing with governance, representation of the University on any board or decision making group,

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	<p>risk (including insurance and indemnities), taxation, intellectual property and termination rights;</p> <p>(d) In respect to Commercial Activities conducted overseas, the laws that will apply;</p> <p>(e) any consequences of termination.</p>
3.9 Compliance with the La Trobe University Act	The Business Case must address the issues of compliance with the requirements the La Trobe University Act. Advice must be obtained from the Director, Legal Services on this issue.
3.10 Governance, Reporting and Auditing Arrangements	<p>The Business Plan must contain a consideration of whether the governance, reporting and auditing arrangements are appropriate for the size, risk and type of activity including:</p> <p>(a) Details of the proposed constitution/shareholders agreement or other agreements to govern the Commercial Activity;</p> <p>(b) Details of the process for reviewing the business plan of the entity which as a minimum must be reviewed and updated on an annual basis;</p> <p>(c) Details of the process for ensuring that the board of the entity adopts and regularly evaluates a written statement of its own governance principles;</p> <p>(d) Audit reporting cycle;</p> <p>(e) Reporting to Council through the Finance and Resources Committee on quarterly basis.</p> <p>Note: The contractual documentation must provide for quarterly reports to the University Council by the entity through which the Commercial Activity is being conducted setting out a brief overview of the entities activities during the preceding quarter including details of:</p> <ul style="list-style-type: none"> · The entity's financial position; · Performance against KPI's and other targets and objectives; · Asset, capital and intellectual property management; · Strategic and educational initiatives; and · Performance against the Business Case and any business plan of the entity.
3.11 Conflicts of Interest	Whether there are any actual or potential conflicts of interest for University staff or University council members that may arise from the activity, and measures to address those conflicts.
4. Due Diligence Exercise	<p>Before any Commercial Activity can be approved by Council on the recommendation of the Finance and Resources Committee, the Director, Risk Management or a external accounting or audit firm approved by the Director, Risk Management must undertake an appropriate due diligence exercise to:</p> <p>(a) evaluate the proposed Commercial Activity;</p> <p>(b) ascertain and determine the financial viability and capacity of the external parties participating in the Commercial Activity; and</p>

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	<p>(c) establish a risk profile for the proposed Commercial Activity. The due diligence exercise must adopt a due diligence framework approved by the Director, Risk Management. The due diligence report must be submitted to the Finance and Resources Committee which will consider the report and pursue any issues of concern with the initiator of the proposed Commercial Activity.</p>
5. Register of Commercial Activities	<p>The University must maintain a register of its current Commercial Activities which discloses:</p> <ul style="list-style-type: none"> (a) all significant University Commercial Activity; (b) any other Commercial Activities which it considers sufficiently important or of interest to list on the register; (c) the University's involvement in each of those activities, and University staff or council members that occupy a board seat or some other office in connection with the activity and the directors' and officers' liability insurance or other insurance arrangements that apply to the activity; (d) the results of any assessment undertaken (if any) to determine whether the activity is meeting its purposes and objectives; (e) whether the activity is ongoing or its anticipated termination date.
Status	<p>Approved by Council on 3 August 2009. The implementation of the latest version of these procedures supersedes all previous versions of these procedures.</p>
Approval Body	University Council
Initiating Body	Vice-Chancellor
Date Effective	3 August 2009
Next Review Date	1 December 2012
Keywords	Commercial Activity, Finance and Resources, Council, Due Diligence, Business Case
Owner/Sponsor	Vice-Chancellor
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