

Tour Operator Licence

Use of Council Reserves for Commercial Purpose

2023-2024

Terms and Conditions

1. Introduction

The foreshore, parks and reserves are highly valued by the Bayside community. These open spaces are an attractive environment that encourages a healthy and active lifestyle.

Bayside City Council (Council) supports opportunities for the community to participate in safe, supervised health and fitness activities that enhance physical and social wellbeing. Commercial health and fitness providers are increasingly recognising the attraction of conducting such activities in pleasant outdoor environments.

Council has adopted regionally developed principals that will guide Council's management of the use of Council reserves for Commercial Purpose. This system aims to manage these activities in a manner that balances industry needs, supports safe, physical wellbeing activities, provides protection of natural assets, and maintains community access amenity.

2. Background

Amendments to the Crown Land (Reserves) Act 1978 became effective in Victoria on 1 July 2011. There is now a consistent legislative framework for the licencing of commercial tourism and commercial activity on Crown Land in Victoria.

A 'tour operator' is now defined as 'a person or business who conducts a guided tour or recreational activity for profit on Crown Land'. The Act applies to a number of commercial operators currently operating on Crown Land within Bayside City Council; these include commercial health and fitness providers, professional coaches, and commercial sporting clinics.

Council acts as land manager for a number of Crown Land sites including but not limited to Elsternwick Park, Brighton Beach Oval, Cheltenham Recreation Reserve, Cheltenham Park, Trey Bit Reserve and Trevor Barker Reserve along with expanses of the foreshore.

At the Ordinary Council Meeting held on 8 May 2012, Council resolved as follows;
That Council adopts the Use of Commercial Reserves for Commercial Purpose 2012.

3. Scope

These terms and conditions will apply to all commercial operators who seek to use Council owned or managed reserves for the provision of health and fitness training services for financial gain including, but not limited to:

- Personal training – personal health, fitness, and exercise instruction for individuals.
- Group class – supervised health, fitness, and exercise classes.

The terms of the licence will apply to all beaches, parks, reserves, foreshore areas that are owned by Council as per the Bayside Planning Scheme and Council Local Laws. Applicants that are seeking to use Crown Land for a commercial purpose will be required to adhere to the terms and conditions within this document along with full compliance of the Tour Operator Licence Section 21B Crown Land (Reserves) Act 1978, issued by the Department of Sustainability and Environment.

4. Exclusion Zones

Each permit will cover one location only. No commercial fitness training or organised ball sports are permitted in the following areas;

- Within 20m of playgrounds or Council buildings such as sports pavilions;
- Picnic shelters, rotundas and barbeque facilities;
- Public adult exercise equipment;
- Trees, garden beds and vegetation;
- Significant gardens;
- Environmentally sensitive areas such as nature reserves, bushland and foreshore areas, including sand dunes;
- Socially or culturally sensitive areas, including memorials, shrines and public art works;
- Any designated sportsground;
- Stairways within open spaces and footpaths may be transited but not used for training activities;
- Any area not designed for organised or recreational use, such as car parks, residential streets or roads;
- Any other areas that may be closed or nominated by Council at any time.

5. Permissible fitness activities under the Policy (subject to Council approval)

- Gym sessions (with or without hand weights, fit balls, skipping ropes, etc.);
- Organised aerobic activities or running groups;
- Circuit training;
- A combination of any of the above.

6. Excluded Activities

- Aggressive or intimidating activities including combat/fighting training;
- Amplified music or use of amplified audio (voice) equipment;
- The use of equipment that may cause damage to the amenities (such as battle ropes and balls);
- Ball games or training involving kicking or throwing balls;
- Any activities taking place on a designated sportsground or oval;
- The offering for sale of clothing, merchandise, equipment, refreshments, goods, services or products;
- The setting up of gymnastic type equipment (egg weight benches, weight stakes, stationary bikes, punching/boxing bags, treadmills, steppers, etc.).

7. Eligibility

The following criteria must be met to be eligible for a Licence to provide commercial health and fitness training activities in Council owned or managed reserves. Evidence of the following must be provided at the time of application.

- Current Public Liability Insurance which indemnifies Council to a minimum of \$20 million.
- Current Professional Indemnity Insurance which indemnifies Council to a minimum of \$10 million.

8. Nature and Size of Groups

A licence will cover the holder to train in one area only. A licence will not be issued for groups that have more than **15** participants. A licence will cover the holder for up to 15 one-hour sessions per week, with no more than 4 hours of continued use in any one location.

9. Allocation of Licence

The licence will authorise the named Licensee for “use of Council Reserves for Commercial Purpose” in accordance with these terms and conditions on a non-exclusive basis. The licence is valid for the stipulated period, location, session,

maximum number of participants and activity type. A licence may be cancelled by Council if the terms of the licence are breached or if the licence is deemed as not being reasonably utilised.

10. Licence Period

Licence will cover the holder for a financial year, 1 July to 30 June.

11. Identification Requirements

Each approved commercial fitness operator will be issued a licence in the name of the applicant (person or business name) that will detail the terms of the licence, such as maximum number of participants, activity type, location, and times of sessions. This must be available to be shown to authorised Council officers on request).

12. Application Assessment

The assessment of applications will be based on the following;

- The applied hierarchy of use of sportsgrounds as detailed in Council's Sportsground Allocation Policy 2012;
- Usage, demand, intensity of use of the area and times requested;
- Nature of activities to be undertaken and the potential impact on other users and neighbouring residents during the times required;
- Management of the natural and built assets to preserve and protect the environment;
- Compliance history of the applicant within Bayside or other municipalities.

13. Licence Fees

Fees charged by Council will be aligned to the Regulations and indexed annually as determined by the State Treasurer and will be incorporated into Council's annual fees and charges schedule.

All licence holders will be charged an annual fee – a fixed amount to be paid prior to the commencement of the Licence with payment due within 7 days of issue.

14. General Licence Conditions

Each commercial health and fitness provider issued a licence by Bayside City Council:

1. Must comply with the terms and conditions as outlined by the Department of Sustainability and Environment Section 21B Crown Land (Reserves) Act 1978 Licence when operating on Crown Land;
2. Must only provide the activities for which they are suitably qualified and that have been approved by Council;
3. Must manage the activities to minimise wear and tear on grassed areas (this includes rotating within the designated area and/or alternating activities);
4. Shall, prior to commencing static/grid training, inspect the immediate area to ensure no hazards are evident and take appropriate action to remove those hazards or alternatively move the training site and, without undue delay, report to Council the hazard or any other hazardous matters observed during the training that may require Council's attention;
5. Shall conduct their activities so as not to dominate, monopolise and/or obstruct any stairways, pathways or thoroughfares;
6. Must not create any noise from training activities that unreasonably disturb other users and adjacent residents or stakeholders;
7. Shall not suspend equipment such as boxing, kickboxing or punching bags from trees and/or structures in the public reserves;
8. Shall ensure that any exercise equipment used does not create any hazards or obstructions;
9. Shall leave the training area in the same condition it was at in at the commencement of training;
10. Must not interfere with any Council approved or booked activity including but not limited to a wedding, birthday party, function, special event, sport or sporting activity that is being carried out on any Council owned or managed reserve, including the foreshore;
11. Shall be responsible for satisfying all occupational health and safety legislation and regulations;
12. Shall ensure that all promotional material is presented in a professional manner and does not contain any material likely to cause offence or embarrassment to any person or Council;
13. Shall make good any damage to Council assets that have occurred as result of the activities of the trainer and will be liable for all costs incurred by Council;
14. Providers using Council owned or managed land without a permit will be asked to cease activities immediately and may be issued with a penalty notice in accordance with the Local Laws.

15. Insurance Requirements

Public Liability Insurance

The Licensee shall at all times during the agreed term, be the holder of a current Public Liability Policy of insurance in respect of the activities specified herein in the name of the Licensee holder providing covering for a minimum of \$20 million.

The Public Liability Policy shall cover such risks and be subject only to such conditions and exclusions as are approved by the Council and shall extend to cover the Council in respect to claims for personal injury or property damage arising out of the negligence of the Licensee.

Professional Indemnity Insurance

The permit holder shall, at all times during the licence term, be the holder of a current Professional Indemnity Policy of Insurance in respect to the activities specified herein in the name of the applicant providing coverage for a minimum of \$10 million.

The Professional Indemnity Policy shall cover such risks and be subject only to such conditions and exclusions as are approved by Council.

The Licensee agrees to indemnify and to keep indemnified, the Council, its servants and agents, and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, in connection with the Licensee performance or purported performance of its obligations under this application and be directly related to the negligent acts, errors or omissions of the applicant.

The permit holder's liability to indemnify the Council shall be reduced proportionally to the extent that any act or omission of the Council, its servants, or agents, contributed to the loss of liability. Council does not, and will not, accept liability for any activities associated with the Licensee and Council shall not be in any way responsible for any property of the Licensee or any other person associated with the activities of the Licensee.

16. Termination, Breaches, and Appeal Process

Council reserves the right to cancel the licence without further notice if:

- In its sole opinion it has determined that the licensee has failed to comply with the reasonable direction of an authorised Council Officer;
- Has breached the terms and conditions of the licence or the use of "Council Open Space – Use of Council Reserves for Commercial Purposes Policy"; or
- Have any overdue payments or outstanding debts to Council.

Should Council receive a high level of or serious complaints about a particular group/trainer or site, Council reserves the right to restrict or cancel the licence. Council will advise the licensee in writing of the nature of the breach, the conditions of the restriction or cancellation of the licence and effective date.

A licence holder whose permit has been cancelled can appeal in writing to the Chief Executive Officer, Bayside City Council. The Chief Executive Officer, or a delegated Officer, will have final determination on the appeal.