

# Council Policy

<b>Council policy title:</b>	<b>Use of Council Reserves for Commercial Purposes Policy</b>
<b>Council policy ref no:</b>	C/POL/CMS/015
<b>Council policy owner:</b>	Director Community Services
<b>Adopted by:</b>	Bayside City Council
<b>Date adopted:</b>	8 May 2012
<b>Scheduled review:</b>	2016

(Council Policy is a public statement formally resolved by Council, which clearly states Council's requirements in relation to a particular matter or issue. For Council policy approval process see Section 10 and Appendix 1 of the Policy Handbook.)

## 1. Policy intent

To apply a consistent and equitable approach to the management of commercial recreation activity providers and tour operators using Council owned and/or managed reserves.

## 2. Purpose/Objective

- To manage access to Council reserves by commercial operators with primary consideration given to the: social, cultural and environmental impacts; preservation of community access and amenity; protection of Council's natural and built assets.
- To align the use of Council owned and/or managed reserves with the provisions of the *Crown Land Acts Amendment (Lease and Licence Terms) Act 2009 (Act)* and the related *Crown Land (Reserves) (Tour Operator Licence Fees) Regulations 2011 (Regulations)*.
- To provide for the effective administration, management and compliance of commercial operators using Council owned and/or managed reserves consistent with the Act, the related Regulations and Council's Local Law.
- To provide a transparent, consistent and equitable approach to the management of commercial operators using Council owned and/or managed reserves.
- The Policy is consistent with the Charter of Human Rights and Responsibilities Act 2006

## 3. Scope

The Policy applies to the following persons and activities on Council owned and/or managed reserves:

- a person or business who conducts a guided tour or recreation activity for profit where the activity is carried out regularly (including commercial health and fitness providers);
- higher education providers, including TAFEs and universities that conduct guided tours or recreation activities for significant commercial purpose;
- commercial tour operators and recreation activity providers that are engaged as a third party by another entity to conduct an activity.

The Policy does not apply to the following on Council owned and/or managed reserves;

- non-commercial recreation use by community members;
- not-for-profit organisations that provide a service to their members and do not receive a financial reward beyond their direct costs to conduct the activity;
- primary or secondary school activities conducted as part of the school curriculum;
- activities that are conducted on an irregular or one-off basis, such as markets, events, races or festivals which are covered by other Council policies;
- tenants where the commercial activities are covered under the terms of an occupancy agreement, such as a lease. Where Council is the lessor then Council's Leasing Policy will apply; and
- individuals or groups that hire equipment, vehicles or vessels where a guided tour is not a promoted element of the service. These types of commercial operations may be covered by Council's Leasing Policy.

#### **4. Roles & Responsibilities**

The Policy is approved by Council. The Manager Recreation, Events and Social Development is responsible for ensuring Policy implementation, providing advice on this Policy and will provide a determination in the event that a dispute or difference arises in the interpretation of this Policy. A final written appeal may be made to the Chief Executive Officer.

As land manager, Council approves commercial licences on all Council owned and/or managed reserves. If the activities of the commercial operator licence are undertaken on Crown land, the licence will also require Ministerial attestation, which has been delegated to the Department of Sustainability and Environment (DSE).

#### **5. Monitoring, evaluation & review**

Compliance with the Policy and the Regulations will be undertaken by authorised Council Local Law officers on Council owned and/or managed reserves and authorised officers from DSE on Crown land. Effectiveness of the Policy will be monitored by the number of commercial operator licences granted and reports of non-compliance occurring on Council owned and/or managed reserves. DSE will be responsible for the review and evaluation of the Regulations, which inform the Policy.

#### **6. Policy statement**

- Council recognises that commercial operators offer activities that may provide economic, social and physical wellbeing benefits to the Bayside community.
- Council will manage access to Council reserves by the commercial operators and assess the suitability of the proposed activities, giving primary consideration to the:
  - o social, cultural and environmental impacts;
  - o protection of the natural and built assets;
  - o preservation of community access and amenity.

- Following consideration of the community values and existing and future uses of the Council owned and/or managed reserves, Council will determine whether a commercial operator licence is to be granted and the terms and conditions of any such licence.
- Council will strive to achieve a transparent, consistent and equitable approach to the management of commercial operators using Council owned and/or managed reserves.
- Council will observe and apply the Act and related Regulations for the management of commercial tours and recreation activities being undertaken on Council owned and/or managed reserves, including Crown land where Council acts as the Committee of Management.
- 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.

## 7. Related documents

<b>Policies</b>	<ul style="list-style-type: none"> <li>- Leasing Policy 2008</li> <li>- Risk Management Policy 2011</li> <li>- Temporary Advertising Signage on Recreation Reserves Policy 2005</li> <li>- Events Policy 2012 (draft)</li> <li>- Road Race Events Policy 2004</li> <li>- Sportsground Allocation Policy 2012</li> <li>- Booking of Reserves and Outdoor Recreation Facilities Policy 1999</li> </ul>
<b>Strategies</b>	<ul style="list-style-type: none"> <li>- Coastal Management Strategy 1997</li> <li>- Open Space Strategy 2010-2020</li> <li>- Health and Wellbeing Plan 2009-2013</li> <li>- Long Term Financial Plan 2009-2019</li> </ul>
<b>Legislation</b>	<ul style="list-style-type: none"> <li>- Crown Lands (Reserves) Act 1978</li> <li>- Crown Lands Acts Amendment (Lease and Licence terms) Act 2009</li> <li>- Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2011</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>- Council Reserves – Commercial Health and Fitness Providers – Terms and Conditions</li> <li>- Bayside City Council Local Law</li> <li>- Bayside City Council Fees and Charges Schedule</li> </ul>

## 8. Definitions & Abbreviations

<b>Term</b>	<b>Meaning</b>
<b>Council reserves</b>	Public space that is owned and/or managed by Council (e.g. parks, reserves, foreshore, sportsgrounds, pedestrian and cycling paths, bushland reserves etc)
<b>Commercial operator licence</b>	A permit granted by the public land manager for non-exclusive use of a specified area within specified times and dates and in accordance with specific conditions. Permission to use is not to be construed as tenancy. Commercial operator licences can be issued under the Local Law and the Act.
<b>Local law</b>	The Council's authority given under the Local Government Act 1989 to makes laws that apply to the City of Bayside. Provides the authority to both permit occupancy and/or use and to enforce compliance of any such permit/licence.
<b>Licence</b>	Council (licensor) permits a person/business (licensee) to occupy land (or part thereof) on particular conditions. A licence does not permit exclusive occupancy of the land and does not create any interest in the land.
<b>Lease</b>	A lease is a right granted by Council (lessor/landlord) to a legal entity (lessee/tenant) to have exclusive possession of a defined area/building for a fixed duration and specified terms for a rental payment.
<b>Permit</b>	A permit issued by Council under a Local Law

**Please note:** This policy is current as at the date of approval. Refer to Council's website ([www.bayside.vic.gov.au](http://www.bayside.vic.gov.au)) or staff intranet to ensure this is the latest version.