

# Commercial Use of Council Land Policy

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## 1 Document Control

The electronic version of this document is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.

RESPONSIBLE GENERAL MANAGER	General Manager City Assets and Environment
POLICY OWNER	Manager Property, Arts and Leisure Services
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## 2 Purpose

The purpose of this policy is to:

- Provide framework for Council's consideration of Applications and Proposals for commercial activities on Council owned or Council-controlled land.

## 3 Scope

This policy applies to all public places under the control of Council, including:

- Council owned or controlled land (including roads)
- Crown reserves where Council is appointed Committee of Management
- This policy does not apply to Council owned or controlled buildings as Council has a Leasing Policy which refers to buildings. This policy does not apply to Council-organised events.
- Nothing in this policy permits or licences a contravention of any planning instrument, common law or Council local laws.

## 4 Objectives

The objectives of the policy are:

- Respond to all requests received by Council for Commercial use of Council owned or controlled land
- Promote equitable use of land with a focus on community benefit
- Protect public use of land including environmental, cultural heritage and aboriginal sites while providing equitable access to those entities wishing to utilise public land;
- Facilitate access to Council land by Commercial organisations which may not otherwise be available in Kingston if the land were not made available through this policy.

## **5 Policy Statement**

Council is committed to the principle that public land is for the benefit of the community. Any use of public land should minimise disruption to the everyday user unless a significant community benefit can be demonstrated.

Any application for an event should outline the Community benefit received as a result of the event being held on Council Land.

## **6 Council Land Licencing Principles**

### **6.1 General**

A Licence or Permit gives the licensee a right to occupy land (not exclusively) which without the Licence would be unlawful.

### **6.2 Nature of Interest**

- A Licence does not create an interest in land.
- The rights created by the Licence are personal and do not run with the land.
- A Licence cannot be assigned.
- A Licence will terminate where the owner ceases to own or control the land.

### **6.3 Crown Land Reserves in Kingston**

The State Government – Department Environment, Land, Water and Planning (DELWP), has appointed Council as the Committee of Management for a number of Crown Land Reserves including those foreshore reserves in the City of Kingston. This appointment was made under Section 14 of the Crown Land (Reserves) Act 1978. Any policies or guidelines set by DELWP will be the governing document for Crown Land controlled by Council.

DELWP represents the Crown as the landowner of the Foreshore Reserves. Approvals for the use and development of coastal Crown land is required in accordance with Section 37 of the Coastal Management Act 1995.

### **6.4 Activities not requiring a Commercial Activity Licence**

- Emergency services performed by recognised emergency service organisations.
- Passive recreational activities
- Informal social gatherings
- Spreading of Ashes
- Volunteer Rescue Organisation – Training Days

The activities listed in this clause are permitted provided that they are not undertaken for commercial gain.

### **6.5 Activities not requiring a Commercial Activity Licence but requiring other Council permits/approvals**

- Filming – refer to Council's website

- Footpath / Street Trading – refer to Council’s Footpath & Street Trading Policy
- Busking - refer to Council’s Busking Policy

#### **6.6 Commercial Activities with an operating time exceeding two days**

An activity that is to operate for a period of two days or more (excluding bump in and bump out time) requires a resolution of Council.

#### **6.7 Restrictions – Commercial Activities that will NOT be approved**

- Activities involving the promotion or advertising of tobacco, or gambling;
- Activities which are illegal, or are likely to promote or incite violence;
- Activities that do not meet the goals and objectives of the Council plan;
- Activities which are deemed to be a significant detriment to public accessing public space;
- Activities which may be significantly detrimental to the environment.
- Activities that restrict or impose on the usage of Council controlled car parks.

#### **6.8 Commercial Exclusion Zone**

Unless the activity is designated as a use under a lease or licence from Council or a sub-lease or sub-licence of a Council tenancy, no commercial activities will be permitted on or close to the following areas:

- Socially or culturally sensitive areas, including memorials, aboriginal heritage sites, shrines and public art works;
- Any designated sportsground without a specific written approval by Councils Sports and Recreation Team;
- Tree reserves, garden beds or vegetation including natural reserves;
- Any other areas that may be nominated by Council at any time.

### **7 Assessment Criteria**

**The following criteria will be considered when determining whether or not a proposed activity shall be granted a Commercial Activity Licence.**

- Nature of Activity  
Does the commercial activity complement the local community.
- Suitability of Site  
Consider compatibility with the land purpose, or any plans of management, and whether the activity will have an unreasonable adverse effect on free and equitable access to the land or its use.
- Scale of the Activity  
Consideration of local area’s population, growth and the ability for the location to support the activity.

- Public Safety  
The applicant must demonstrate ability to meet following:
  - Appropriate safety requirements
  - Awareness of duty of care responsibilities.
  - Demonstrate capability to promote interpretive and educational information that ensures the general public and attendees receive instruction regarding environmental protection and ethics of appropriate behaviour.
- Impact on Community & Amenity  
Including but not limited to:
  - Noise and other pollution
  - Visual impacts
  - Flora and fauna
  - Access
  - Safety
  - Increased use and degradation of the space
  - Usage of carparks and associate available car parks
  - Effect on adjoining residential properties
  - The local community's desire and tolerance for the proposed activity
- Ability to Conduct the Activity  
The applicant must demonstrate experience in carrying out the proposed activity to a high professional standard.
- Return to Council  
The applicant must demonstrate they have the capacity to meet licence conditions, including the keeping of records and prompt payment of fees.
- Community Benefit  
Including but not limited to:
  - Promoting the primary purpose of the land; and/or
  - Support or servicing the needs of the users of that land; and/or
  - Promoting or supporting a charitable organisation; and/or
  - Contributing to tourism.
- Compliance with the Kingston Planning Scheme and other agency's requirements

## **8 General Applications**

A number of Council teams will assess and manage permits by applying processes and application guidelines for relevant activities to enable Council to issue permits on Council land. These include:

- Personal Training – Sport & Recreation Team
- Promotional Activities – Property Services Team
- Weddings – Events Team
- Public Events – Events Team
- Triathlons / Cycling / Other major Sporting Events – Events Team

- Major Events such as Food Truck Parks – Events & Property Services’ Team

All other uses shall be considered on a case by case basis.

Applicants for all events must apply in writing utilising the Commercial Use of Council Land Application form available on Councils website. The application should set out the proposal in detail and accompany the appropriate application fee.

## **9 Licence Applications (e.g. Markets, Food Vendors, etc.) by EOI**

Council may seek applications via an advertised Expression of Interest process from suitably qualified individuals or organisations who wish to conduct commercial activities on Council land. Depending on the usage categories, applicants may be offered an EOI on an annual, bi-annual or tri-annual basis.

Respondents must set out their proposal in detail, and address all criteria set out in the EOI specification. Respondents may be required to submit further documentation to support an application, ie Risk Management Plan, Site Management Plan, Waste Management Plan, Emergency Management Plan, Traffic Management Plan, signage, permits etc.

All applications for licences under this clause shall be assessed and determined by the Manager of Property, Arts and Leisure (or his/her delegate). Applications may be referred to other internal departments for comment as part of the assessment.

Annual permits and licences will generally operate for 1 year commencing 1 July to 30 June. Permits and licences for longer than one year may be considered on a case by case basis, taking into consideration set-up costs etc.

An approximate timeline for an Annual EOI is as follows:

- Expression of Interest opens                      May
- Applications Close:                                      June
- Assessment:    July - September
- Approvals    October

## **10 Appealing a Decision**

Applicants who disagree with Council Officers decision not to issue a Commercial Activity Licence can apply to have the decision reviewed by a review committee which will include at a minimum one Councillor from each ward and a Council Officer. If the review committee determine that the Council Officer decision is to be overturned, the matter will be referred to Council for a final decision to determine if a permit or licence is to be issued.

## **11 Insurance**

All Licence holders are required to hold Public Liability insurance indemnifying Council (minimum \$10M but higher limits may be required for higher risk activities). Prospective Licence holders will be required to provide a Certificate of Currency for such insurance to Council prior to the issue of the Licence and will be required to provide proof of continuance of that insurance as requested.

## **12 Standard Conditions for Licences**

The following standard conditions will apply to all licences:

- a) Licences are non-assignable and non- transferrable to any party. If the business operating under a Licence is sold then the subject licence will automatically terminate and the new business owner must apply for a new licence if required.
- b) A Licence holder will be required to maintain compliance with operating requirements for the nominated activity.
- c) All signage and other uses must comply with Councils signage policy.
- d) All parking and vehicle usage is subject to Council's parking restrictions, local laws and state road rules. If required by the Council, the applicant must develop and implement site management and traffic management plans in accordance with Council's requirements.
- e) Activities must meet all legal requirements, including obtaining approvals related to building occupancy, health and planning.
- f) Council officers may consult other agencies as they consider appropriate, including Victoria Police and VicRoads, in considering applications and imposing conditions.

## **13 Termination of Licence**

The Licence may be terminated in the following circumstances:

- a) if any fees owing remain in arrears for 30 days;
- b) if any insurance the holder is required to have is cancelled or if the holder fails to provide proof of that insurance to Council within 14 days of any request by Council;
- c) if the Licensee breaches any condition of the Licence;
- d) if the Licensee commits an act of bankruptcy or, being a corporation, has receivers appointed; or
- e) If the Licensee commits an unlawful act or breaches requirements of any other relevant Authority.

Council reserves the right to terminate any Licence at any time for management reasons including, but not limited to environmental protection, public safety, changes in policy and/or legislation or if Council determines that another use requires the land for any period.

If a Licence is terminated or suspended by Council for reasons (other than those set out in 16a - 16e. above), then Council shall reimburse the Licence fee on a pro-rata basis – however, Council will not be responsible for any losses incurred by the Licence holder as a result of that termination.

## **14 Licence Fees**

- Licence fees are required to be paid annually or otherwise in advance.
- Council will determine the minimum fees through the annual budget process, listing in the fees and charges section or as varied by Council resolution.

- Fees above the minimum will be set via commercial competition or at the discretion of the Manager Property Arts and Leisure based upon market evidence.
- Fees for community or charity events may be reduced or waived as deemed appropriate by the General Manager City Assets and Environment. Requests for fee waivers or reductions must accompany applications.
- Licence holders will be required to reimburse Council for the cost of any restoration or repairs which are required as a result of damage occurring during the carrying out of the activity.
- Security bonds are required for some activities at Council's discretion.

## **15 Delegation Authority and Decision Guidelines**

Delegations under the following Acts and Regulations that apply to this Policy:

- Local Government Act 1989

### **15.1 Delegations/Authorisations**

Refer to the Council to Staff Instrument of Delegation and the CEO to Staff Instrument of Sub-delegation.

### **15.2 Exemptions**

None.

### **15.3 Human Rights Charter**

This policy has been reviewed against and complies with the Charter of Human Rights and Responsibilities Act 2006.

## **16 Related Documents and Resources**

### **Legislation / External Document**

This policy refers to the following State legislation and local laws –

- (a) Building Act 1993
- (b) Coastal Management Act 1995
- (c) Local Government Act 1989
- (d) Kingston Community Local Law
- (e) Planning and Environment Act 1987
- (f) Road Safety (Traffic Management) Regulations 2005

### **Internal Document**

This policy refers to the following internal plans and strategies:

- (a) Event Application Guidelines
- (b) Sporting Ground Allocation Policy
- (c) Leasing Policy

## **17 Definitions**

<b>Commercial Enterprise</b>	An organisation (including Not-for-Profits) providing goods, services or activities for financial return.
<b>Commercial Activity</b>	An event (including those events undertaken by Not-for-Profits) which provides goods, services or activities for financial return.
<b>Council Land</b>	Land owned or controlled by Council.
<b>Commercial Activity Licence or Lease</b>	A licence or lease which provides consent for the operation of a commercial activity on or across a public place within the Council owned or controlled land. Where this document refers to 'Licence' it also applies to Permit(s).
<b>Licence/Lease Fee</b>	The fee payable to Council by the licensee/lease holder for a specified period for the purposes of undertaking commercial, recreational or sporting activities by providing a service or product available to the public.