

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	Chief Financial Officer
POLICY OWNER	Manager Property Services
ADOPTED BY	Council 24 June 2024
EFFECTIVE DATE (If different from approval date)	
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CM REF AND VERSION	Version 2 - adopted 27/8/2018 14/98314
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2 Purpose

The purpose of this policy is to:

- Provide framework for Council's consideration of Applications and Proposals for casual use of council owned or managed land for commercial activities.

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 casual use of council owned or managed land for commercial activities
- 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.

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 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 Energy, Environment and Climate Action (DEECA), 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 DEECA will be the governing document for Crown Land controlled by Council.

DEECA 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 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 Licence but requiring other Council permits/approvals:

- Filming – refer to Council's website (<https://www.kingston.vic.gov.au/council/payments-and-permits/film-permits>)

- Footpath / Street Trading – refer to Council's Footpath Activities Policy (<https://www.kingston.vic.gov.au/files/sharedassets/public/v/1/hptrim/communications-website-and-online-development-corporate-website-documents/footpath-activities-policy.pdf>)
- Busking - refer to Council's Busking guidelines (<https://www.kingstonarts.com.au/OPPORTUNITIES/Busking>)

6.6 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.

6.7 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 Council;
- 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 Licence.

- Nature of Activity
Is the commercial activity in direct competition with more established local entities and does it complement the local community.
- Suitability of Site
Consider compatibility with the land purpose, or any plans of management (including traffic), 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 including traffic management plans.
 - 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, including safe management practices.
- 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 Licence Applications.

Council may seek applications via an advertised Expression of Interest (EOI) process from suitably qualified individuals or organisations who wish to conduct casual commercial activities on Council land.

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, i.e. Risk Management Plan, Site Management Plan, Waste Management Plan, Emergency Management Plan, Traffic Management Plan, signage, permits etc.

Applicants for all casual activities must apply in writing utilising the Commercial Use of Council Land Application form available on Councils website (<https://www.kingston.vic.gov.au/community/events/holding-an-event-in-kingston>).

Licences will generally be valid for a determined period within one 1 year commencing 1 January to 31 December. Licences for multiple periods during a one year period 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 June
- Applications Close: July
- Assessment: July - August
- Approvals September

Council may consider Expression of Interest Applications submitted outside of the above timelines. These applications require a minimum of three months to process.

All Applications are received and reviewed by Councils Festivals and Events Team (events@kingston.vic.gov.au). Applications may be referred to other internal departments for comment as part of the assessment.

9 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 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.

10 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.

11 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.

12 Termination of Licence

Council may terminate a Licence 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 12a - 12e. 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.

13 Licence Fees

Licence fees are required to be paid annually or otherwise in advance. Fees are outlined below:

Activity Period	Fee
1-3 days	Daily fee determined annually through the Council budget process
4 or more days	Via EOI negotiations

Fees for non-operational days such as set up and pack down days are 50% of the daily fee determined annually through the Council budget process. Current fees can be viewed on Council's website.

<https://www.kingston.vic.gov.au/council/council-documents/plans-policies-and-reports/council-plan-and-budget>

All licences will incur an administration fee, determined annually through the Council budget process.

Fees for activities that benefit the community, or a charitable organisation may be reduced or waived as deemed appropriate by the Chief Financial Officer. 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.

Asset Protection Permits are required for some activities at Council's discretion.

13.1 Ground Rental Only

Use of Council land can be required from time for a variety of purposes which are not linked to publicly accessible activities, such as container or vehicles storage for construction.

A ground rental will be charged where a has the sole occupation of Council owned or managed land, that is, land that is fenced in and cannot be used by the public when the tenant is not using it e.g. bowling greens and tennis courts. The minimum ground rental that can be charged will be in accordance with Council's Schedule of Fees and Charges, as amended annually. The minimum ground rental will be calculated at \$1.00 per square metre of the area occupied as amended by Council's Schedule of Fees and Charges.

14 Delegation Authority and Decision Guidelines

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

- Local Government Act 2020

14.1 Delegations/Authorisations

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

14.2 Exemptions

None.

14.3 Human Rights Charter

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

15 Related Documents and Resources

15.1 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 2020
- d) Kingston Community Local Law
- e) Planning and Environment Act 1987
- f) Road Safety (Traffic Management) Regulations 2005

15.2 Internal Document

This policy refers to the following internal plans and strategies:

- a) Event Application Guidelines
- b) Sporting Ground Allocation Policy
- c) Lease and Licence Policy 2024

16 Definitions

Casual use (occupation)	Use of Council owned or managed land on an ad hoc basis.
Commercial Enterprise	An organisation (including Not-for-Profits) providing goods, services or activities for financial return.
Commercial Activity	An event (including those events undertaken by Not-for-Profits) which provides goods, services or activities for financial return.
Council Land	Land owned or controlled by Council.
Commercial Activity Licence	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.
Licence Fee	The fee payable to Council by the licensee 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.