

Conditions of Use for holders of Allocation Permits (19/1261659)

1. INTRODUCTION

These *Conditions of Use* apply to fitness trainers to whom an Allocation Permit is granted for the use of public open space for the purposes of conducting commercial health and fitness activities. They aim to ensure equitable access to parks for all users; minimise the impact of commercial activities on the grassed areas and sports fields; regulate activities on these areas; and address public liability and other concerns.

2. BACKGROUND

Fitness trainers applying for a permit or licence to conduct training sessions on open space areas in Glen Eira, have the option of utilising Council land or Crown Land.

Under Council's Community Local Law 2019, a Permit is required from Council, for any commercial activity in a Public Reserves including fitness training sessions.

The *Crown Land (Reserves) Act 1978 (Act)* regulates the licensing of commercial recreational activity on Crown Land in Victoria. Licence approval must be applied for under the Tour Operator Licence System, which is managed by the Department of Environment, Land, Water and Planning (DELWP) (formerly DEPI).

Glen Eira City Council is responsible for issuing licences, collecting fees and managing use of Crown Land.

Council acts as land manager for Crown Land sites at Caulfield Park, Glenhuntly Reserve, East Caulfield Reserve, and part of Duncan Mackinnon Reserve. All other open spaces listed in Appendix one are Council land.

3. OBJECTIVES

These *Conditions of Use*, which set out the requirements for fitness trainers operating in parks in Glen Eira, provide a consistent framework and direction for the management of all parks while protecting amenity and access for the whole community.

This approach ensures compliance with the *Act* by both Council and the operator and provides a structured and equitable approach for all commercial fitness operators.

Specifically these *Conditions of Use*:

- ensure activities in nominated parks and gardens are safe and do not adversely affect the amenity of other park users and residents;
- impose a fee structure consistent with the type of use;
- support activities that increase physical activity, social interaction and wellbeing;
- outline suitable activities and operational protocols for fitness trainers;
- develop relationships and communication lines with fitness trainers;
- assist in the maintenance of sports fields, garden and open space areas; and
- clarify responsibilities for the safety of people using outdoor fitness training services in Council parks and gardens.

4. DEFINITIONS

In these *Conditions*, the following words have the meaning given:

4.1 Fitness trainer — means any individual and/or organisation conducting an activity in parks and gardens under the control of Council (see 4.2 below) that attracts and involves persons for health and fitness purposes, for which a fee is charged by the operator and for which the operator receives a commercial benefit.

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4.2 Council parks and gardens — land owned, leased, licenced or managed by Council, including but not limited to:

- parks and gardens;
- plazas and malls;
- reserves;
- sportsgrounds;
- nature reservations;
- open space; and
- facilities provided or used in association with activities at a park, garden, reserve, sportsground, nature reservation or open space including pavilions, pathways and car parks.

4.3 The Act

The Act means the *Crown Land (Reserves) Act 1978*.

4.4 Allocation Permit

Refers to an Allocation Permit on Council land granted under the *Glen Eira City Council Community Local Law 2019*.

5. ALLOCATION PERMIT CONDITIONS

Council may grant Allocation Permits, which set out the activities allowed by fitness trainers in Council parks and gardens. The following conditions apply to holders of Allocation Permits.

5.1 Permitted activities

Allocation Permits allow fitness trainers to conduct approved fitness activities, including but not limited to:

- boxing or pad training;
- organised aerobics or group exercise programs;
- yoga, tai chi or similar classes;
- the use of swiss balls, skipping ropes, foam mats, medicine balls (under 10 kilograms);
- circuit training;
- running drills; and
- a combination of any of these activities.

Permitted activities will be set out on the Allocation Permit.

5.2 Restricted activities

Allocation Permits will not be granted for activities that:

- involve amplified music or audio;
- involve dragging tyres, vehicles or equipment across grassed areas;
- cause damage or stress to grassed areas, park fixtures or trees;
- involve aggressive activities and behaviour, including games or activities that may unreasonably interfere with the use of or access to the parks or gardens by any other person;
- cause a nuisance to members of the public and neighbouring residents;

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- the use of whistles, megaphones, or amplified music;
- unreasonably exclude or cause to obstruct the public from the use of parks' fixtures such as outdoor exercise equipment, benches or pathways, picnic tables, rotundas, pavilions; and
- use weight training equipment more than 10 kilograms.

Where the holder of an Allocation Permit engages in a restricted activity, the Allocation Permit will have been breached and clause 5.12 will apply.

5.3 Community Local Law 2019

Glen Eira City Council Community Local Law 2019 applies to all activities conducted by fitness trainers holding an Allocation

Permit and has precedence over any conditions set out herein.

5.4 Group size

Council may at its discretion, limit the maximum group size allowed by a person holding an Allocation Permit and restrict the number of fitness trainers allowed to operate from each site. Appendix one lists the maximum group size and number of fitness trainers allowed to operate from each site.

5.5 Times of use and allocated sessions

The times of use and allocated sessions for activities conducted under an Allocation Permit will be set by Council and specified in the Allocation Permit. Appendix one lists the time restrictions for each site. Session times will be specified in the Allocation Permit.

5.6 Noise restrictions

Many parks are located next to private premises. Allocation Permit holders must respect residents nearby and keep noise levels to a minimum and comply with the *Environment Protection Act 1970* and the *State Environment Protection Policy (Control of Music Noise from Public Premises)*.

- The noise limit for outdoor venues is 65 dB (A) when the measurement point is located outdoors and 55 dB (A) when located indoors.
- An occupier of public premises may be required to provide monitoring equipment and carry out a monitoring program.

The use of whistles, megaphones, and any amplified music is strictly prohibited.

5.7 Restricted areas

Allocation Permits do not allow outdoor fitness training to be conducted in areas of cultural, environmental or natural significance. Specific restricted areas include, but are not limited to:

- picnic and barbecue areas;
- memorials, statues and cenotaphs;
- skate parks;
- rotundas and shelters;
- pavilions and areas surrounding pavilions including undercover areas;
- playgrounds; and
- centre and practice turf cricket pitches, synthetic practice wickets, goal squares on sportsgrounds and other areas of high wear and tear.

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Allocation Permits do not allow fitness trainers to:

- exclusively use public outdoor fitness equipment in parks and gardens;
- obstruct pathways;
- conduct weight training on sports grounds; and
- use designated sportsgrounds during times when the facilities have been allocated to sporting clubs or schools for organised sporting activities, training and games or matches.

5.8 Permitted locations

Allocation Permits specify nominated areas for fitness trainers to conduct sessions in accordance with the areas outlined in Appendix one. The availability of locations is subject to variation due to demand, water management projects, capital works, cyclical maintenance or community events.

An authorised officer of Council may ask a fitness trainer to leave or relocate from a park or garden if they are in violation of any of the conditions outlined in these *Conditions of Use* or the Community Local Law 2019.

5.9 Storage and electricity supply

Allocation Permits do not confer on the holder the right to utilise pavilions or establish on-site storage.

Allocation Permits do not enable the holder to access onsite power, sports lighting or pathway lighting.

5.10 Temporary or fixed structures

Allocation Permits do not permit the erection of temporary or fixed structures. This includes, but is not limited to tents, marquees, signage or stands.

5.11 Inclement weather

The possibility of inclement weather needs to be considered when applying for an Allocation Permit. Council does not provide undercover training areas in the event of inclement weather. It is the responsibility of the fitness trainer to cancel the session or seek an alternative venue.

5.12 Breach

Council may suspend, terminate, restrict or amend any Allocation Permit if it considers that there has been:

- a material misstatement or concealment of fact in relation to the application for an Allocation Permit;
- any failure to comply with a condition of an Allocation Permit or any breach of the law;
- any material mistake in relation to granting an Allocation Permit; or
- any material change of circumstances, which has occurred since the granting of an Allocation Permit.

5.13 Exemptions

An Allocation Permit does not confer or imply exclusive rights to any location and there may be instances when the use of the parks and gardens may be restricted or removed due to the following reasons:

- park or reserve is unusable due to inclement weather;
- park or reserve is unsafe for use;
- park or reserve is required for the undertaking of surface repairs, redevelopment works or major capital works;
- park or reserve is required for a Council approved community event;

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- amenity issues arising from training sessions;
- emergency or security reasons;
- breach of these *Conditions of Use*; and
- Council discretion.

5.14 General conditions

Fitness trainers are required to abide by the following general conditions:

- (a) advertising signage may not be erected without a separate permit obtained from Council's Civic Compliance department. A copy of that permit must be produced on request from an authorised officer of Council;
- (b) vehicles are not permitted in Council parks and reserves except in designated car parking spaces;
- (c) activities must be conducted in a way which minimises wear and tear on grassed areas;
- (d) prior to commencing activities, the immediate areas should be inspected and any damage or hazards must be reported to Council immediately and appropriate action taken to ensure the safety of participants;
- (e) rights under Allocation Permits must not be assigned to any other person or organisation;
- (f) public liability for the amount of \$20 million per single event and professional indemnity insurance in the amount of \$5 million per single event must be maintained for the period of the Allocation Permit;
- (g) fitness trainers must conduct themselves in a proper and orderly manner and be considerate to other parks and reserves users and residents;
- (h) equipment (including bands) must not be suspended from trees or structures in parks and gardens;
- (i) all other legislative requirements, including water restrictions, must be complied with and fitness trainers will be liable for any fines, penalties, loss or damage arising from any breach including any breach of Council's Community Local Law 2019;
- (j) fitness trainers must comply with any reasonable direction from an authorised officer of Council;
- (k) fitness trainers and their clients must not wear footwear (eg. football boots or spikes) that may damage grassed areas;
- (l) fitness trainers must, as soon as practicable, report any loss or damage to Council land or property of which they are aware and must supply Council with details of how any damage occurred to Council land or property to assist with a determination of liability for its repair or replacement;
- (m) any exercise equipment used must not create any hazard or obstruction;
- (n) the sale of clothing, equipment or refreshments or any other goods, services or products is not permitted; and
- (o) if filming in any Council spaces (feature film, television, TVC, music video, student film, audio visual recording for website or promotional purposes or still photography), a separate permit must be obtained from Council.

5.15 Liability and indemnity

- (a) The Allocation Permit holder acknowledges he/she/it is aware of all the risks and dangers associated with the provision of the activities, and agrees that Council parks and reserves are used at his/her/its own risk.
- (b) Council makes no promise or representation that Council land, parks and reserves are fit for the purposes of the Allocation Permit holder's activities.
- (c) The Allocation Permit holder will indemnify Council, its Councillors, employees and agents against, any loss, damage, liability, claim, expense or cost arising as a result of the issue of the Allocation Permit or any act or omission, whether negligent or otherwise, of the Allocation Permit holder or a participant in the activities of the Allocation Permit holder.

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(d) Council will not be liable for any loss or damage to any property or injury or death to any person arising out of the grant of the Allocation Permit or any activities of the Allocation Permit holder or its participants except to the extent that Council, its employees or agents has caused or contributed to such loss or damage by their negligent acts or omissions.

(e) The Allocation Permit holder releases, to the full extent permitted by law, Council, its Councillors, employees and agents from all claims and demands of any kind and from all liability, loss or damage of any kind which may arise in respect of any accident, damage or injury occurring to any person or property in or about Council parks and reserves and property on which the Allocation Permit holder conducts activities.

5.16 Child safe standards

Glen Eira City Council has a zero tolerance policy on child abuse and is committed to children's safety and best interests. Fitness Trainers that work with children must:

- comply with the Victorian Government Child Safe Standards; and
- hold a current Working with Children Check.

Glen Eira's *Child Safe Standards Policy* is currently being developed and will be available on Council's website.

6. AVAILABLE PARKS AND RESERVES

The following criteria, amongst other things, are used by Council to assess the suitability of the sites to accommodate outdoor fitness trainer activities:

6.1 Size

Size defines the capacity of the site to accommodate the outdoor fitness training activities without adversely affecting the amenity or property of other park users and adjoining residents. Small parks and gardens are not available to fitness trainers due to their size and limitation to provide for organised activities.

6.2 Level and type of current usage

The current level and type of usage of the park determines the compatibility of the outdoor fitness training activities with other park uses.

6.3 Existing infrastructure

Although a site may be large enough to accommodate outdoor fitness training, existing park infrastructure and its location in the park including park furniture, pathways, trees, vegetation, playground, public toilets and barbecues, will have an impact on the type of organised activities that can operate from the site.

7. ALLOCATION PERMIT APPLICATION PROCESS

Fitness trainers intending to use Council parks and gardens are required to apply for an Allocation Permit each year, which will include resubmitting the documentation listed below. Annual Allocation Permits will commence on 1 July each year. For Allocation Permits issued after 1 October, the fees will be pro-rata.

Council requires the following documentation for an applicant to be assessed for suitability for an Allocation Permit:

- (a) completed and signed commercial health, recreation and fitness operators — Allocation Permit application form;
- (b) a satisfactory *Risk Management Plan* that identifies risks, management of those risks and responsibilities;

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- (c) copy of Certificate of Currency for public liability insurance providing cover to a minimum sum of \$20 million per single event and professional indemnity insurance to a minimum sum of \$5 million per single event;
- (d) evidence of a current first aid certificate (CPR component to be updated annually);
- (e) evidence of current registration with a recognised peak fitness body or education institution;
- (f) payment of all relevant fees and bonds;
- (g) copy of a current Working with Children Check (if required); and
- (h) a passport photo of the applicant;

Where the applicant is an organisation, passport photos and current Working with Children Checks will be required for all fitness trainers who will be operating under the Allocation Permit.

Each application will be assessed, amongst other things, on group sizes and the number of existing Allocation Permits at the requested site.

Allocation Permits will contain Allocation Permit conditions, allocated training times, duration of the sessions, locations and restrictions. These may be amended from time to time at the discretion of Council.

Approval is managed under the Tour Operator Licence System for all permits on Crown Land. This licence is managed by the Department of Environment, Land, Water and Planning (DELWP) (formerly DEPI).

Organisations that are affected by this legislation will be required to obtain a 12 month Tour Operator Licence from DELWP (through Glen Eira City Council) and pay all relevant fees.

Glen Eira City Council is responsible for issuing licences, collecting fees and managing use of Crown Land.

8. FEES AND CHARGES

8.1 Fees

Fees for the use of public open space are set by Council annually as part of its budget process.

Fees comprise two parts — a fixed annual Allocation Permit fee and a variable usage fee based on the number of visitors or participants.

Usage fees are linked to participant numbers. Allocation Permit holders will be required to report participant numbers monthly and Council will invoice Allocation Permit holders quarterly.

Monthly participant numbers must be provided to the recreation facilities booking officer in the Recreation and Open Space department prior to the tenth (10th) day of each month.

Crown Land permit holders are exempt from the usage fees under the revised Act.

Note: no GST is applicable to the annual license fee.

Licence category	Fee from 1 July 2019
Annual fee — standard	\$349 (pro rata)
Use fee — per general visitor (PER VISIT)	\$2.70
Use fee — per school student and child (PER VISIT)	\$1.80
Annual fee — Crown Land *	\$305 (non-refundable)

* GST is not paid on Crown Land fees. GST is included in all other fees.

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8.2. Bonds

On application for an Allocation Permit, a minimum bond of \$500 is required to cover any damage to Council property or debt incurred.

If Council has suspended, cancelled or otherwise terminated an Allocation Permit under clause 5.13 due to breach of these *Conditions of Use* or breach of the Community Local Law 2019, there will be no refund of any bond paid.

The cost of rectification of any damage caused by the permit holder or a participant will be taken from the bond.

Subject to the above, a bond will be remitted to the permit holder at the expiration of the permit period.

8.3. Cancellation by permit holder

Permit holders who cancel their Allocation Permits on Council land will be entitled to a pro-rata refund of the annual fee, minus a 20 per cent (20%) administration fee. Cancellations must be in writing addressed to Council's Recreation and Open Space department.

Licence holders who cancel their Allocation on Crown Land are not entitled to a refund. The fees and charges for Crown Land licences are non-refundable.