



# Commercial Recreation Policy

Open Space and Recreation Services  
June 2019



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# Commercial Recreation Policy 2019

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**Responsible officer:**

Sport and Recreation Participation Officer

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## 1. PURPOSE

To provide a framework for the City of Port Phillip to manage the provision of Commercial Recreation activities across the municipality and support a range of recreation opportunities that reflect the cities diverse community.

## 2. OUTCOMES

The key objectives of this policy are:

- 2.1 To encourage commercial recreation activities in the City of Port Phillip's parks, open space and foreshore to enhance residents and visitors' experience when engaging with recreational activities.
- 2.2 To conduct commercial recreation activities within the City's open space, contributing to the development of a healthy and inclusive community.
- 2.3 To preserve the quality and longevity of public open space and council assets within these spaces.

## 3. DEFINITIONS

3.1 **'Council'** refers to City of Port Phillip.

3.2 **'CoPP'** stands for City of Port Phillip.

3.3 **'Commercial Recreation'** refers to any activity (recreation or sport related) which is conducted outdoors along the foreshore, parks, beaches and other approved public spaces and for which a fee is charged or other commercial gain is obtained. The activity must have a recreation use as its core element along with an educational component.

3.4 **'Crown Land'** means land, buildings and facilities which are owned or occupied by or vested in Council or in respect of which Council has the care and management to which the public has access whether an entry fee is paid or not and includes a public place.

3.5 **'Open Space and Public Lands'** refers to land administered under the 'National Parks Act 1975, Forest Act 1958, Crown land (Reserves) Act 1978 and Land Act 1958.

3.6 **'Tour Operator'** means a person who conducts an organised tour or outdoor recreational activity for profit on public lands in Victoria.

3.7 **'Tour'** means an activity, guided tour or recreation programme conducted or coordinated by an approved operator for licenced area.

3.8 **'Itinerant trading'** refers to a business that trades goods from any temporary method of transport including a caravan, trailer, table, stall or other similar structure at Council approved locations.

3.9 **'Major events'** refers to all outdoor events, promotions and markets on Council managed public space within the municipality. Including (but not limited to) events which are run by private organisations, businesses, schools, special interest groups or community groups.

3.10 **'DELWP'** refers to Department of Environment, Land, Water and Planning which is a state government department responsible for protecting the environment, climate change, managing water resources, land and emergency management and providing guidelines and licences for Tour Operators.

3.11 **'Ethical practice'** means having rules and regulations which guarantees the right conduct within the industry.

3.12 **'Permit'** refers to an official document issued under Local Laws that authorises use or activity.

3.13 **'Permit holder'** refers to the person who has been issued the permit.

#### 4. SCOPE

This policy applies to commercial recreational activities taking place outdoors along Port Phillip's public open space. Council acts as Land Manager for a number of Crown Land sites and Licences are issued according to Section 21B Crown Land (Reserve) Act 1978 and Crown Land Acts Amendment (Lease and Licence Terms) Act 2009.

##### 4.1 Activities that will be considered for a commercial recreation licence.

(Water and land based)	(Land based only)
Kayaking	Beach Volleyball
Canoeing	Skydiving
Kiteboarding	Beach Sports
Stand up Paddleboarding	Bike riding/ cycling
Scuba Diving	Dog training
Snorkelling	Pony rides
Windsurfing	

4.2 Other activities can be proposed and will be considered under Council's discretion.

4.3 Commercial recreation operators may apply for a licence for more than one recreational activity under the same licence.

##### 4.4 Limitations / restrictions:

- Activities that include promotion of tobacco, gambling or alcohol.
- Activities that do not meet goals or objectives of the Council Plan.
- Use of jetties and boat ramps within the City of Port Phillip require liaison with both Council and Parks Victoria).
- Aircraft and helicopter landings.
- Motorised water sports ie: jet skis (potential to operate 200m off the foreshore).
- Itinerant traders.
- Once off recreational event.
- Seasonal and casual use of sports grounds.
- Personal Training.
- Events.
- Promotions.
- Only one Skydiving licence will be granted across the municipality at the designated location, Moran Reserve.
- Up to three Kite Boarding licences will only be granted at West Beach, St Kilda.

## 5. PERMIT / LICENCE

### Background

The Commercial Recreation Policy provides guidance on the allocation and approval of commercial recreational activities within the City of Port Phillip, creating flexible and innovative recreational participation options.

### 5.1 This policy applies to all open space under the jurisdiction / management of Council :

5.1.1 A licence will be issued under a commercial recreation licence from DELWP.

5.1.2 A permit will be provided by Council (Land Manager) to operate commercial recreation activities at Council approved sites such as parks, foreshore and open spaces.

5.1.3 All new commercial recreation operator's permit and licences are for a three year period.

5.1.4 An allocated area does not grant exclusive access or use of that space to the permit holder. The area must remain accessible to the public at all times. Commercial operators are not permitted to request that members of the public remove themselves from any part of the allocated area. The exception will be in circumstances where an "exclusion zone" must be established for public safety.

5.1.5 Commercial recreation activities/ operators can be supported outside the EOI process (under delegation by the General Manager of Infrastructure and Amenity and Manager of Open Space and Recreation Services). Dependent on site availability operators will be given a one year licence with the opportunity for extension after 12 months of operation.

### 5.2 Assessment Criteria

Applicants for a commercial recreation licence should demonstrate the following in their application:

- Business Overview and site suitability.
- Community and educational benefit.
- Tourism, visitation and economic benefit.
- Promotion of ethical, environmental / amenity impact and sustainable practices.
- Safety and risk management.
- Child Safe standards (if applicable).
- Experience.

### 5.3 Application

5.3.1 An advertised Expression of Interest process will occur annually for all commercial recreation activities and will be advertised on Council's website and social media platforms. Note: Licences may not be available due to site availability and if three year licences are in place.

5.3.2 Applications will be evaluated against the pre determined assessment criteria.

5.3.3 Successful applicants will be required to formalise their commercial recreation licence with Council and the DELWP prior to commencing operation.

5.3.4 Council will issue a permit to the commercial recreation provider, which must be on hand at all times.

5.3.5 All sessions must be conducted at the approved commercial recreation site, time and for the duration stipulated on permit.

## 5.4 Requirements

5.4.1 Port Phillip is committed to sustainable practices and requires commercial recreation operators to adopt sustainable practices where possible.

5.4.2 All operators must use equipment and infrastructure that is well maintained, structurally sound and has the ability to withstand exposure to climatic conditions.

5.4.3 Pre safety checks must be undertaken prior to all operations to evaluate and eliminate any risks/hazards that may harm participants and the community.

5.4.4 All operators are responsible for all their staff to be appropriately insured and qualified (industry related qualification), valid First Aid and CPR.

5.4.5 Commercial recreation operators must accept any Council approved major events, minor events, weddings, capital projects or maintenance works. These activities will take precedence and commercial recreation operators will be required to familiarise themselves with the events calendar via [www.portphillip.vic.gov.au/events-calendar.htm](http://www.portphillip.vic.gov.au/events-calendar.htm).

5.4.6 Noise from activities must not disturb other users or adjacent residents/businesses and must comply with Council's Outdoor Event Noise Management Guidelines the Environment Protection Act 1970 and the State Environment Protection Policy.

5.4.7 As a general precaution for water based activities, EPA advises against swimming near stormwater drains, rivers, streams and other outlets into Port Phillip Bay during rainfall and for at least 24 hours afterwards. All commercial recreation operators should refer to <https://yarraandbay.vic.gov.au/beach-report>.

5.4.8 The operator of an outdoor commercial recreational activity must provide a permit to an authorised officer when conducting activities on Council owned and managed land.

5.4.9 Council may require approvals from other relevant regulatory bodies, such as Victoria Police, WorkSafe, Parks Victoria, Maritime Safety or State Sporting Associations.

## 5.5 Liability

5.5.1 All approved commercial recreation operators must;

- Have Public Liability Insurance (minimum \$20 million).
- Indemnify the City of Port Phillip from any claim or demand arising from or in relation to any act, omission, damage, loss, charge, liability, outgoing, payment, expense or cost. The approved commercial recreation operator is responsible for managing risks associated with the activity at its permitted location / site.

5.5.2 Operators must operate with caution or cancel activities due to:

- Extreme weather.
- Safety concerns.
- Identified risks.
- Unsafe practices.

## 5.6 Special conditions

5.6.1 For those commercial recreation operators that have a desire to utilise an onsite trailer to support their business functions, the operator may request authorisation for the trailer to remain at their allocated site. CoPP will review the application and consider suitability and fee.

### **5.7 Compliance**

All commercial recreation activities must comply with Council's Local Laws, relevant laws, legislations or any other authority having jurisdiction over the area where the commercial recreation activity is to take place.

### **5.8 Non – compliance**

The City of Port Phillip reserves the right to terminate any licence if a commercial recreation operator or any member of the business is found to have:

- Failed to comply with the terms and conditions outlined in their commercial recreation permit or directions from Council.
- Acted inappropriately.
- Caused damage to Council's foreshore or local amenities.
- Breached any laws or regulations.
- Failed to pay annual fees and quarterly charges by the due date.
- Breached Legislation, Local Laws or Tour Operator Licence regulations.
- Failed to supply updated insurance policy.
- Conducted their business in an unsafe manner / environment.
- A misrepresentation is identified in an application.

Local laws authorised officers may issue:

- A warning on behalf of Council to a commercial recreation operator who is operating without a permit or not upholding permit conditions.
- A notice to comply if the warning has been ignored.
- A cancellation of permit / infringement notice.

For more information regarding Councils Complaint Handling Policy visit

<http://www.portphillip.vic.gov.au/complaints.htm>

## 5.9 Fees and Charges

Commercial recreation operations will be subject to the following fees:

### 5.9.1 Council fees:

- Set through the annual Council budget process, or as varied by Council resolution.
- The annual fee is required to be paid prior to operation.

### 5.9.2 DELWP user fees:

- Commercial recreation operators must calculate and reconcile each tour for DELWP "Use Fee". All operators will be required to maintain a record of the number of persons who participate in the recreational activity on a daily basis and must be reported to Council.
- For more information visit <https://www.forestsandreserves.vic.gov.au/tour-operators>

### 5.9.3 Fee categories

Fees are categorised by the nature of the recreational activity.

## 5.10 Cancellation and Refunds

Annual licence fees are non – refundable.

## 5.11 Licence Transfer

A licence variation can be issued by DELWP and Council, a licence variation will be granted under the following conditions:

- Sufficient evidence of the new operator's ability to comply with the current terms and conditions of the licence, including required documentation, certifications and insurance.
- Operator has the intention to continue to facilitate business.
- Commitment to ensure sustainable management of the location and natural resources.
- The provider must comply with relevant consumer guarantees and anti-competitive provisions as set out in the Competition and Consumer Act 2010.

## 6. RELEVANT POLICY, REGULATIONS OR LEGISLATION

- City of Port Phillip Council Plan 2017-2027
- City of Port Phillip Outdoor Events Policy 2017
- Council's Outdoor Event Noise Management Guidelines 2018
- City of Port Phillip Sport and Recreation Strategy 2015 - 2024
- City of Port Phillip Local Law No.3 (Community Amenity) 2013
- City of Port Phillip Public Space Strategy 2009
- Department of Sustainability and Environment – Licensing system for Tour Operators and Activity Providers on Public Land in Victoria 2018
- Crown Land Acts Amendment (Lease and Licence Terms) Act 2009
- Local Government Act 1989
- Child Safe Standards Policy
- Foreshore Management Plan