

# COMMERCIAL HEALTH AND FITNESS PROVIDERS TERMS AND CONDITIONS OF USE

## 1. Introduction

Mitchell Shire Council directly or indirectly (via Committees of Management) manages sportsgrounds, parks and ancillary facilities primarily to support community participation in organised sport. These services also provide for other sport, recreation and social opportunities for the broader community including various health and fitness activities.

Commercial health and fitness providers that use Council sportsgrounds, parks or reserves are required to have a permit with Council.

## 2. Definitions

**Ancillary facilities:** Facilities at a park or reserve that support its use, for example seating, BBQ's, toilets, shelters, pathways, fencing and car parks.

**Application form:** Mitchell Shire Council Commercial Health and Fitness Providers Application Form.

**Assignment:** The transfer of usage rights to another party.

**Bookings:** Usage rights formally given by Mitchell Shire Council to use a park or reserve at particular times on particular days/dates.

**Council:** Mitchell Shire Council (includes staff acting on behalf of Council).

**Crown land:** Crown land owned by the state government.

**Equipment:** Items being used by the hirer or hirer's client on Council parks and sporting reserves

**Hirer:** The Commercial health and fitness provider/s that has been given usage rights for the park or sporting reserve by Council.

**Park:** An area of land set aside for public use, rest and recreation which may contain playground equipment, toilets, BBQ's or open space.

**Sporting Reserve:** An area of public open space which contains a sportsground/s, pavilion/s and ancillary facilities.

**Unauthorised use:** Use of a park or sporting reserve for any organised activity without a booking.

**Usage rights:** Are the rights to use the park or sporting reserve at the times/days/activity approved and under Mitchell Shire Council Commercial Health and Fitness Providers Terms and Conditions of Hire.

**Venue:** Park, Reserve and ancillary facilities.

### 3. Reserve and Park arrangements and management at Mitchell

**Sporting Reserves** — Sportsgrounds managed directly by Council are: Green Hill Reserve Upper and Lower ovals (Wallan), LB Davern Reserve (Wandong), JJ Clancy Reserve (Kilmore) and Chittick and Bennett Ovals at Chittick Park (Seymour). Bookings for these sportsgrounds are therefore managed by Council.

Sportsgrounds managed on behalf of Council by Committees of Management are: Harley Hammond Reserve (Broadford), Kings Park (Seymour), Tallarook Recreation Reserve, Pyalong Recreation Reserve and Tooborac Recreation Reserve. Bookings are therefore managed by the Committee of Management for the site.

**Parks** – The Kings Park Recreation Reserve Inc. Committee of Management manages Kings Park in Seymour. The committee is responsible for bookings at Kings Park.

### 4. Bookings

**Additional/changed use:** Should the hirer need to change or vary its usage rights, prior approval must first be obtained from Council.

**Application form:** Is Council's Commercial Health and Fitness Provider Terms and Conditions of Use application form. It is an application form only and does not confer any usage rights.

**Approved use:** Application forms are assessed and then usage rights are given in writing for specific uses on specific days and times. Such approval does not confer exclusive usage rights and Council may at its discretion approve use of the park or reserve by other parties.

**Assignment of use:** Hirers are given approval for specific use. These rights cannot be assigned to any other party nor allow any other party the right of use.

**Emergency evacuation:** Where a park/reserve is located in areas which could be subject to a bushfire event, the hirer must have a documented Fire Plan, developed in conjunction with the CFA and Victoria Police, which can be implemented. During emergency events, hirers must comply with any warnings, advices or direction given by emergency service personnel.

**Fees:** Council introduces new fees on 1 July annually. Hirers will be invoiced based on the fees and charges for the financial year of the date/s of their booking usage.

**Park and Reserve closures/restrictions:** In wet or extreme weather conditions or if there has been or is likely to be damage to a park or reserve, Council has the right to close or restrict the use of parks and reserves

- Council reserves the right to cancel a Park or Reserve booking at any time if extreme weather, bush fire or other conditions exist which are deemed to pose a public risk. This includes all 'Code Red' fire danger days.

**Unauthorised use:** If an individual or organisation uses a park or reserve for Commercial Health and Fitness activities without prior permission, they will be required to pay a fee. If that group is a hirer, such use is a breach of these Terms and Conditions of Use.

Note: An application for use is not an approval for use. Unauthorised use may also impact on the user's insurance coverage.

**Withdrawal of usage rights:** Council can withdraw or restrict usage rights temporarily or in full if the hirer does not comply with Mitchell Shire Council Commercial Health and Fitness Provider Hire Terms and Conditions of Use.

## **5. Care of Parks/Reserves, Ancillary Facilities, Surrounds and Equipment**

**Advertising/Sponsorship signage:** If you intend to erect signage including advertising/sponsorship signs you must obtain written permission from Council prior to the booking date

**Damage/misuse:** Should Council or the Committee of Management be required to undertake additional cleaning and or repairs as a result of misuse of the venue, the hirer/s will be responsible for meeting the costs

**Exclusion Zones:** No commercial fitness activities are permitted in the following areas:

- Playgrounds, skate parks, basketball courts etc.
  - Trees, garden beds and vegetation.
  - Picnic and barbecue facilities.
  - Park furniture, buildings and structures (including seats and tables).
  - Environmentally sensitive areas such as bushland
  - Socially or culturally sensitive areas, including memorials, cemeteries and public art works
  - Any designated sportsgrounds without a specific booking
  - Stairways within open spaces and footpaths may be transited but not used for training activity.
  - Any other areas that may be nominated by Council at any time
- Any areas that may be temporarily closed by Council

### **Excluded activities:**

- Aggressive or intimidating activities including combat/fighting training
- Amplified music or use of amplified audio (voice) equipment.
- Organised ball sports are restricted to designated sportsgrounds
- The offering for sale of clothing, merchandise, equipment, refreshment, goods, services or products.
- The setting up of gymnasium type equipment (e.g weight benches, weight stacks, stationary bikes, punching/boxing bag, treadmills, steppers etc.)
- Portable structures

**Irrigation:** Hirers must not interfere with or adjust any irrigation systems on Council parks or sporting reserves.

**Parking/traffic:** Parking is not permitted on sportsgrounds, parks, reserves, footpaths or nature strips and must not obstruct driveways or emergency vehicle access points.

**Periodic inspections:** Periodic inspections of parks and sporting reserves will be undertaken by Council and/or Committee of Management representative/s throughout the year. These inspections are to ensure that the venue is clean and safe. Hirers must inspect the park or sporting reserve prior to use to identify any hazards.

**Surface penetration/disturbance:** Irrigation and drainage infrastructure can easily be damaged by pegs, spikes and other items. Penetration or disturbance of the park/reserve surface is strictly forbidden.

**Waste and litter:** Hirers are responsible for ensuring that all waste and litter generated from their use of the park or reserve is cleaned by the end of the session.

**Water restrictions:** Should these be in place, hirers should take this into consideration when using parks and reserves

## **6. Risk Management, Compliance and Insurance**

**Emergency procedures:** Should there be a situation where attendance of emergency services (Police, Fire or Ambulance) occurs, at the Hirer's request or otherwise, Council must be informed immediately.

**First Aid:** All personal trainers that are using Council parks or reserves must have first aid qualifications

### **Insurance:**

- **Public Liability:** Hirers must have public liability insurance for a sum insured of not less than \$10M in joint names of the hirer and Council. The policy is to be maintained as current during the period of the booking. The policy must indemnify the hirer and the Council from any liability arising out of the hirer's use of the venue, including cover for all activities. Note – Most public liability policies exclude cover for activities such as events, temporary structures, amusement machines, jumping castles, fireworks and other activities considered higher risk. It is vital to check exclusion clauses in the policy. A certificate of currency of the policy stating the level of cover and any exclusion clauses must be provided to Council as part of the application to hire the venue. Hirers must not undertake activities not covered by their Public Liability Insurance
- **Professional Indemnity:** The hirer must have current Professional Indemnity Policy of Insurance in respect to the activities specified herein in the name of the applicant providing coverage for a minimum of \$10 million. The professional indemnity Policy shall cover such risks and be subject only to such conditions and exclusions as are approved by Council.

**Indemnity:** The hirer agrees to indemnify and keep indemnified and to hold harmless the Council, its servants and agents and each of them from and against all actions, costs, claims, charges, expenses and damages whatsoever which may be brought or made or claimed against it by any of them arising out of or in any way related to the granting of this licence and/or the use of Reserve. Council is not responsible for any theft, loss, damage or injury suffered by the hirer or any guest or invitee of the hirer, or any person

coming on the premises during the period of hire, and the hirer indemnifies the Council in respect of all claims for loss, damage or injury caused to any person or property during the period of hire, or as a result of the use by the hirer of the venue.

**Qualifications:** All personal trainers using public parks and reserves must be qualified with at least a certificate 4 or diploma in fitness and be registered with Fitness Australia or Physical Activity Australia.

**Risk management:** Hirers are responsible for ensuring that all reasonable precautions are taken to ensure the safety of themselves and their clients. Hirers must comply with the risk management and safety requirements of their employer (if applicable) and insurers. Council will conduct regular inspections throughout the year. Hirers are responsible for pre-session inspections.

**Reporting of incidents/accidents:** Incidents or accidents arising out of the hirer's use of the park or reserve should be reported to the hirer's insurance provider. Incidents or accidents that may involve the responsibilities of the hirer or Council must also be reported to Council - immediately for any major or statutorily reportable accident/incident or within five days for other.

## **7. Safe, Healthy, Inclusive and Respectful Environment**

**Behaviour:** Hirers are not to conduct or allow to be conducted any activity which could be considered noxious, offensive or immoral.

**Cleaning:** The park or reserve must be left in a clean and tidy condition after each use. Any cleaning required, as a result of use, will be arranged by Council at the hirer's expense.

**Compliance with laws:** Hirers must comply with all laws and regulations which may apply to the hirer's use of the venue.

**Drugs:** Sports hirers must comply with Victorian Sports Anti-doping Policy which applies to all organisations conducting sporting competitions, sports organisations, their affiliates and members in Victoria, and any person or organisation receiving Victorian Government support for sporting activities. The policy is a requirement of the Victorian Sports Anti-doping Act 2005.

**Equal Opportunity:** Hirers must comply with the requirements of the Equal Opportunity Act 1995 and Disability Discrimination Act 1992, including, if applicable Division 7 – Discrimination in sport and Division 6 – Discrimination by clubs and club members

**Equipment:** Hirers must ensure that any equipment used does not create and hazards or obstructions.

**Health and safety:** Sports Hirers must comply with the Victorian Code of Conduct for Community Sport (VCCCS) and should comply with SunSmart and Good Sports

**Noise:** Hirers must not disturb the local amenity and comply with all requirements under the Environment Protection Act and Regulations.

**Protection of children from sexual abuse:** Hirers must comply with the Crimes Amendment (Protection of Children) Act 2014. Since 27 October 2014 it has been an offence for an adult (aged 18 and over) who holds a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child

(aged under 16) not to disclose that information to police (unless they have a reasonable excuse). Further amendments introduced, effective 1 July 2015, new criminal offences for failing to protect a child under the age of 16 from the risk of sexual abuse. A person in a position of authority in an organisation will commit an offence if they know of the risk of abuse and have power or responsibility to reduce or remove the risk, but negligently fail to do so.

**Smoke free:** The Tobacco Act 1987 prohibits smoking:

- Within 10 metres of children’s playground equipment and skate parks in outdoor public spaces, and
- Within 10 metres of sporting venues in outdoor public places during an organised underage (persons under the age of 18 years) sporting event.

**Working with Children** – Hirers must comply with the requirements of the Working with Children Act 2005 and that any employees or volunteers required to have Assessment Notices and WWC Check Cards do not undertake ‘child related work’ until these are obtained.

## **8. Maintenance/Works**

For parks and reserves booked directly with Council any damage, faults, graffiti, vandalism or potential/identified risks are to be reported to Council immediately.

No improvements, alterations, modifications, installations or additions can be made to the venue.

## **9. Breach of Terms and Conditions of Use**

Council has the right to withdraw or restrict the hirer’s rights to use a park or reserve if the hirer breaches the Mitchell Shire Personal Trainer Terms and Conditions of Use. If a bond has been paid, it will not be refunded to hirers who breach the Terms and Conditions of Use

## **10. Grievance Procedure**

If an applicant or hirer feels they have been treated unfairly and is unable to resolve the situation through normal enquiry processes to Council, the following grievance procedures apply –

1. Submit complaint in writing to the Recreation and Open Space Coordinator.
2. The Recreation and Open Space Coordinator will investigate the complaint and circumstances with the complainant and Council officers or other relevant parties.
3. Through negotiation, the Recreation and Open Space Coordinator will attempt to resolve the issue/s.
4. Should there be any outstanding issues, these can be raised with the Manager Active Communities for further investigation and resolution.
5. The Manager Active Communities’ decision will be final.

## 11. Communication/Key Contacts

Council will in the first instance contact the hirer (contact person) for all matters related to usage of the venue. If this person is not going to be available an alternate contact should be provided to Council.

### Council's Contacts

Issue	Contact	Phone	Email
After Hours issues or emergencies – before 8.30am and after 5pm weekdays.	Mitchell Shire after hours service	5734 6200	
FASA Agreement/Lease/Licence	Recreation Officer	5734 6477	Recreation@mitchellshire.vic.gov.au
Maintenance Issues	Recreation Officer	5734 6477 5734 6200	Recreation@mitchellshire.vic.gov.au
Bookings and seasonal allocations	Recreation Officer	5734 6477	Recreation@mitchellshire.vic.gov.au
Club or Committee issues	Recreation Officer	5734 6477	Recreation@mitchellshire.vic.gov.au
Complaints	Recreation Team Leader	5734 6239	Recreation@mitchellshire.vic.gov.au