

Name:	Use of Public Open Space by Commercial Fitness Trainers
Last review date:	October 2023
Review timeframe:	2 years
Next scheduled review date:	October 2025
Related legislation:	<i>Local Government Act 1993</i> <i>Crown Land Management Act 2016</i>
Association policies/documents:	Open Space and Recreation Strategy 2023 -2035
Responsible division:	Liveable Communities

Purpose

To provide a detailed procedure for implementing and issuing licences in accordance with the Use of Public Open Space by Commercial Fitness Trainer policy.

Procedure coverage

This procedure will cover one on one sessions and/or group fitness activities carried out in all beaches, parks and public reserves within the MidCoast Local Government Area.

Council approved commercial fitness trainers must only operate in the areas specified in their licence issued in accordance with Council's Policy *Use of Public Open Space by Commercial Fitness Trainers*.

Qualifications

The following criteria must be met to be eligible for an approval to provide fitness training activities on community land or public open space in the MidCoast Local Government Area. Evidence (a copy of all certificates to be provided with application) of the following must be provided with the application form:

- Approved qualifications endorsed by Fitness Australia and/or VETAB providers such as TAFE, Universities and Nationally Recognised Training institutions/colleges
- A current HLTAID011 Provide First Aid course completion certificate

The following criteria must also be met by Commercial Fitness Trainers who carry out Children's fitness training activities:

- Completed a Working with Children Check or provide a copy of their Blue Card.
- Provide a copy of certification in having completed an accredited course specific to Children's Fitness Training.

Insurance

Council approved Commercial Fitness Trainers must take out and maintain in their name or business name, for the duration of the term of the approval, public liability insurance for a minimum of \$20m (or such greater amount as Council may reasonably require) and produce documentary evidence of this at the time of application.

Licences will be issued to an individual trainer. However, insurance can be held in a company name. Applications for licences are to be submitted in writing accompanied by a 'plan of operation' including times, days, locations of intended use, specific programs or activities, and the trainer(s) assigned to these activities as detailed in the application form. Proof that the trainer who is to be operating under the licence is appropriately insured either as an individual or as a company must also accompany the application.

Issue of licence

Applications for a Commercial Fitness Trainer licence will be assessed by Council officers taking into account the following factors:

- Evidence of the qualifications and insurance provided with the application
- Type of activities to be undertaken and the potential impact on the public asset, other users and neighbouring residents during the times requested
- Whether the activities will contribute to increasing congestion or user conflict in the areas requested
- Whether the proposed training site is within an exclusion zone.

In considering the above, Council officers may decide to approve or decline an application.

Approval to conduct fitness training activities within the MidCoast Local Government Area is not transferable to any other Commercial Fitness Trainer. A Commercial Fitness Trainer can nominate a replacement person in case of illness or leave. To do so, the replacement Commercial Fitness Trainer must also have a valid and current licence from MidCoast Council prior to the scheduled session.

Term of approval

An approved licence will be valid for 3, 6 or 12 months. The approval will authorise each trainer to use public open space for fitness training activities strictly in accordance with the policy on a non-exclusive basis.

Application process

The following process and approval conditions will apply:

- Each Commercial Fitness Trainer covered by this policy requires approval pursuant to section 68 of the Local Government Act 1993. Each individual Commercial Fitness Trainer will need to obtain a licence to conduct commercial fitness training.
- Each applicant should indicate on their application if they hold Fitness Australia professional registration at the time of applying.
- The applicant will identify which park/s or reserve they are seeking access to. On approval the designated area will be confirmed and will be indicated on the licence.

- Each approved Commercial Fitness Trainer allocated an approval will be issued a licence per financial year. The licence must be produced on request from Council authorised officers. The licence is to be returned to Council if the approval to use public open space for Commercial Fitness Trainers is terminated.
- If the applicant wishes to cancel their licence, they will need to give Council a minimum of two weeks notice in writing of intention to cancel.
- Penalties may apply if the following offence(s) are committed:
 1. A Commercial Fitness Trainer is found to be using public open space for fitness training activities without Council approval
 2. An approved Commercial Fitness Trainer is not operating in accordance with the policy.

Licence fees

- 12-month licences are renewed on anniversary of application approval each year. Applications can be accepted after this and licence fees will be at a pro rata rate.
- Fees associated with a Commercial Fitness Trainer's licence will be in accordance with Council's Fees and Charges and are available on Council's website.
- No refunds of licence fees will be given, except in the case of a medical condition, where a pro-rata refund will be provided.

Termination of approval

Council can terminate an approval to conduct fitness training activities on public open space in the following circumstances:

- The qualifications criteria are not complied with
- The approval holder has been issued three or more written warnings (this can include combination of penalty notices or written warnings), for non-compliance with the policy.

Council will issue four weeks notice of termination in writing to the approved licence holder. The offending trainer will also be referred to Fitness Australia.

A Commercial Fitness Trainer whose licence has been terminated can appeal in writing to the General Manager, MidCoast Council.

Licence fees will not be refunded if the agreement is terminated by Council as a result of breach of license.

Number of trainers

Based on Fitness Australia recommendations, registered Commercial Fitness Trainers should ensure that the group participant number allows for appropriate supervision and instruction for each individual during the group session.

Size of Groups

The size of commercial fitness group classes is at the discretion of the operator so long as they can be conducted within the constraints of the immediate area. The thoroughfare through a reserve shall remain unimpeded with the existing amenity accessible to the general community

Approved hours of operation

Commercial Fitness Trainers have approval to operate on prescribed public open space during the following hours:

- Daylight savings time – 5.30am until 8.30pm
- Non-daylight savings – 5.30am until 6.30pm (if adequate lighting is available)

When conducting activities beyond daylight hours, Commercial Fitness Trainers must monitor and control risk to participants and ensure public safety is not impacted by their activities.

Failure to operate within these specified times will be dealt with in accordance with the Termination of Approval Clause.

Permissible activities under the policy (subject to Council approval)

Fitness training activities are limited to the normal activities of a registered Personal Trainer, Yoga teacher or the like which would include but is not limited to:

- Fitness sessions (with or without weights, fitballs, skipping ropes, etc)
- Boxing and pad training
- Organised aerobic activity
- Walking and running
- Not-for-profit Yoga, Tai Chi, and Pilates and like activities
- Circuit training
- A combination of any of the above
- Other pre-approved fitness activity
- Other appropriate cardio-vascular and muscular skeletal programs that are of benefit to a person's fitness including warming up and cooling down exercises.

Prohibited activities

The following fitness training activities are not permitted on Council public open space within the MidCoast Local Government Area:

- Aggressive and intimidating activities
- Outdoor recreational or fitness activities conducted with amplified music or voice including megaphones or whistles. For the purposes of this policy the following definition for music and noise will apply:

- Noise associated with the event shall not be a source of "Offensive Noise" as defined by the *Protection of the Environment Operations Act 1997*. Amplified music or ancillary equipment must not be audible within a habitable room in any other residential premises (regardless of whether any door or window to that room is open).
- Dragging and/or flipping tyres or other heavy items over any surfaces including sporting fields and parks
- Portable fitness equipment/machinery such as spin bikes, weight machines and rowing machines
- Group training with companion animals on or off leash
- Organised ball sports and competitions are restricted to designated ovals, sportsgrounds or courts, which are subject to the payment of applicable published fees and charges.
- Fitness activities not to be undertaken where wet or adverse ground conditions are apparent.

Sportsground floodlights

Commercial Fitness Trainers are not to use sports lighting whilst undertaking their activities, including when sports clubs are using sports facilities.

Terms and conditions

Under this policy Commercial Fitness Trainers approved by MidCoast Council must:

- Must have their licence on them whilst conducting their activities and present it to an authorised Council officer when requested.
- Ensure that their clients do not use picnic tables and/or park furniture to store any bags or equipment that would leave members of the public unable to utilise these facilities
- Ensure that any exercise equipment used does not create any hazards or obstruction
- Vary or rotate their location for static and repeated training so as to reduce wear on turf
- Not suspend boxing bags, kickboxing bags or any other training apparatus from trees and/or structure in public reserves
- Always conduct themselves in a proper and orderly manner and be considerate to other users and adjacent residents
- Ensure that any training group for which they are responsible, runs in single file when running on footpaths or in narrow areas
- Not interfere with any Council approved or booked activities being carried out on any Council property. This includes the allocated community sporting use of sporting fields
- Not display any advertising signage including banners, "A" frame signs or Pop Up Tents unless approved by Council
- Ensure that the parks and associated facilities are left in a clean and tidy condition after use and all articles and items brought on to the property are removed and any damage is made good. Where this condition is breached, Council may carry out works to return

the property to its original condition and recover the expense of doing so from the licence holder

- Not create any noise from training activities that unreasonably disturbs other users and/or adjacent residents
- Not fence or block off areas to the exclusion of the general public
- Acknowledge Council will accept no responsibility or liability for any interruption to business caused by Council or any other authority carrying out any special event, filming or type of maintenance works on approved public open space sites, inclement weather or any other interruption to business however caused
- Observe the closing of open space areas due to wet weather. During periods of wet weather the Commercial Fitness Trainer is responsible for viewing Council's website to determine whether parks have been closed or by phoning Council. No activity is permitted if grounds are closed
- Inspect the immediate area prior to commencing any fitness training activities, to ensure no hazards are evident and take appropriate action to remove those hazards or alternatively move to another training site (if appropriate) and without undue delay
- Report to Council the hazards within 24 hours or matters observed during the training that may require Council's attention
- Ensure all equipment used for training sessions is stored off site. The erection of structures for the storage of fitness equipment is not permitted.
- Ensure both themselves and participants park lawfully in designated parking areas and in accordance with parking control signs. Parking on grassed open space is not permitted and may incur penalties in accordance with sections 68, 632, 650 and 651 of the Local Government Act 1993 and the Road Rules 2008
- Indemnify Council against all damages, sums of money, cost, charges, expenses, actions, claims and demands which may be sustained or suffered or recovered or made against Council by any person for any loss of life or injury or damage any person may sustain due to the negligent act of a trainer whilst conducting training sessions
- Comply with reasonable directions of Council's authorised officers in relation to any unacceptable practices, or to display evidence of the licence
- Keep a log book of significant accidents and injuries occurring during training sessions and advise Council of any injuries incurred on Council's property by Commercial Fitness Trainers or customers.
- Understand that the rights issued as part of the licence granted are not transferable.

Definitions

- Commercial Fitness Trainers - trainers, instructors, group fitness operators or trainers that are operating or representing a business whether a sole trader, proprietary limited or company
- Fitness Trails/Zones – fixed fitness equipment provided by Council

- Fitness training activities – include aerobic activities, resistance training (with or without equipment), punch pad training (boxing and kick boxing), relaxation or lifestyle classes such as yoga or tai chi, circuit type classes or any combination of the above.
- Commercial Group Trainers - individuals providing fitness training, activities for a fee or payment.
- Commercial Fitness - a registered business providing fitness services.
- 30m Exclusion – A minimum distance of 30m must be maintained between the nearest private landowners boundary and the service being delivered
- Sporting Grounds – areas of public reserves where organised sports are played and where Council has developed facilities for such sports.
- Park – passive area on open space.
- Play spaces - open space that includes play experiences.
- Community land - is defined as Crown Land managed by Council.
- Licence Holder - shall mean a Commercial Fitness Trainers that have been granted a licence to conduct commercial fitness training on Council's public open space.
- Club - shall also infer Association and shall mean a group of people organised into a recognisable body to administer the playing of sport or recreation activities.
- Association - shall mean existing sporting associations governing the sport in this local government area.
- Policy - this refers to the Use of Public Open Space by Commercial Fitness Trainers.

Related documents

- Use of Public Open Space by Commercial Fitness Trainers Policy
- Open Space and Recreation Strategy 2023 - 2035
- Sections 68, 626, 627, 632, 650 and 651 of the Local Government Act 1993
- Road Rules 2008
- Work Health and Safety Act 2011 – NSW
- Crown Land Management Act 2016
- *Protection of the Environment Operations Act 1997*

Review and revision


This procedure is to be reviewed every 2 years.

Responsible officer/department/section

Manager Strategy and Projects.

Appendix 1

Commercial Fitness Trainer Licence Application

	<p><i>(Place screenshot of requested area here)</i></p>
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APPLICATION FOR COMMERCIAL FITNESS TRAINER LICENCE

Privacy Statement

The information requested by Council on this form may constitute personal information under the Privacy and Personal Information Protection Act 1998. Council is allowed to collect the information from you to consider this matter. Supplying this information is voluntary. However, if you cannot or do not wish to provide the information, we may not be able to consider the matter. If you need further details, please contact the MidCoast Council.

Please note that information provided may be shared with Department of Human Services Community Services, the Police, other relevant agencies and educators, in accordance with applicable legislation.

NAME	
ADDRESS	
PHONE	
EMAIL	
COMPANY	
TRADING NAME	
ABN/ACN	
ADDRESS	

EDUCATION / QUALIFICATIONS		EXPIRY DATE	/	/
FITNESS AUSTRALIA REGISTRATION	YES / NO	EXPIRY DATE	/	/
SENIOR FIRST AID	YES / NO	EXPIRY DATE	/	/
INSURANCE	YES / NO	EXPIRY DATE	/	/

NAME OF PREFERRED AREA	DAYS AND TIMES						
	MON	TUES	WED	THUR	FRI	SAT	SUN
<i>e.g. John Wright Park, Tuncurry</i>	7.00 am 10.00 am		7.00 am 10.00 am		7.00 am 10.00 am		

PLEASE NOTE:
Council will aim to assist Commercial Fitness Trainers access the areas requested but may need to negotiate locations to accommodate all users.

APPLICANT'S SIGNATURE		DATE	
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OFFICE USE ONLY (Originals to be sighted and copies retained by Council)			
PHOTO ID (e.g. Drivers Licence / Passport)		PUBLIC LIABILITY INSURANCE	
FIRST AID		FITNESS AUSTRALIA REGISTRATION	
WORKING WITH CHILDREN CHECK (if required)		BLUE CARD (if required)	
LICENCE PAYMENT MADE		APPROVED / NOT APPROVED	

AUTHORISED OFFICER SIGNATURE		DATE	
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