

Terms and Conditions

Boroondara Farmers Market

1 Definitions

BFM Committee means the committee established by Council and the Rotary Club of Glenferrie to advise Council on applications for stalls at the Boroondara Farmers Market.

Boroondara Farmers Market means the farmers market at Patterson Reserve, located in Auburn Rd, Hawthorn East VIC 3123, bordered by the bike track (western boundary), Auburn Road (eastern boundary), hockey pitch (northern boundary) and the car park fence (southern boundary).

Council means Boroondara City Council (ABN 83 441 314 695) of 8 Inglesby Rd, Camberwell VIC 3124 and includes Council's successors and assigns and where it is consistent with the context includes Council's employees and agents.

Eligibility Criteria means the Eligibility Criteria outlined in clause 2 of these Terms and Conditions.

Rotary Club of Glenferrie means the Rotary Club of Glenferrie Inc (Registration number A0023628D) of PO Box 2134 Hawthorn VIC 3122 and includes the Rotary Club of Glenferrie's successors and assigns and where it is consistent with the context includes the Rotary Club of Glenferrie's employees, officers and agents.

Stall means any stall operated by the Stallholder at the Boroondara Farmers Market.

Stallholder means the entity whose application to operate a stall at the Boroondara Farmers Market has been approved by Council in consultation with the BFM Committee.

Stallholder's Property means all property at the Boroondara Farmers Market including all fixtures and fittings owned or leased by the Stallholder but excluding those owned or leased by Council.

VFMA means the Victorian Farmers' Market Association Inc (Registration number A0045672W), being a Registrable Australian Body within the meaning of the *Corporations Act 2001* (Cth).

2 Eligibility Criteria

2.1 Subject to clause 2.2, the Stallholder must:

2.1.1 have obtained accreditation from the VMFA to operate as an accredited farmer;

2.1.2 have up-to-date membership of the VMFA; and

2.1.3 comply with the Rules of Association published by the VMFA.

2.2 Council, in its sole discretion, may give consideration to applications from non-VMFA members and applications that do not meet all Eligibility Criteria.

2.3 The Stallholder must ensure that:

2.3.1 any Stall only sells fresh produce or food products that are grown or produced (as the case may be) in Victoria, or interstate, as approved by Council, including but not

limited to, fruit and vegetables, fresh chicken, meats and fish, smoked meats and fish, cheeses, honey, oils, bread etc;

- 2.3.2 the Stallholder or any person connected to the Stallholder has a good knowledge of any produce or products sold by the Stallholder at the Boroondara Farmers Market;
- 2.3.3 any produce or products sold by the Stallholder at the Boroondara Farmers Market is not genetically modified (and known as GM-free); and
- 2.3.4 any produce or products sold by the Stallholder at the Boroondara Farmers Market is grown with the least use of chemicals as practically possible.

3 Approval as a Stallholder

3.1 Assessment by Council

Council, in consultation with the BFM Committee, will assess any application to become a stallholder at the Boroondara Farmers Market:

- 3.1.1 against the Eligibility Criteria subject to clause 2.2; and
- 3.1.2 with a view to maintaining a balanced market mix at the Boroondara Farmers Market.

3.2 Acknowledgement by Stallholder

The Stallholder acknowledges and agrees that:

- 3.2.1 participation at the Boroondara Farmers Market is only by invitation from Council;
- 3.2.2 Council, in consultation with the BFM Committee, may approve or disapprove an application, , to be a Stallholder at its absolute discretion and is not bound to accept any application;
- 3.2.3 if the Stallholder's initial application is accepted, Council will send the Stallholder an invitation to participate in the Boroondara Farmers Market subject to a trial period of three months (**Trial Period**);
- 3.2.4 during the Trial Period, the Stallholder will not be a fully-recognised stallholder and only has a provisional right to be a stallholder (**Provisional Stallholder**);
- 3.2.5 upon expiration of the Trial Period, Council will review the Provisional Stallholder's performance at the Boroondara Farmers Market; and
- 3.2.6 if Council is satisfied with the Provisional Stallholder's performance following its review in accordance with clause 3.2.5 and subject to the agreement of the Provisional Stallholder and the BFM Committee, Council will invite the Provisional Stallholder to become a formal Stallholder.

3.3 Preference in applications

The Stallholder also acknowledges and agrees that Council will give preference to growers and producers of produce or products in the following manner:

- 3.3.1 products such as jams, chutneys, sweets, cakes etc made in Victoria with local ingredients must be sold by the manufacturer of those products; and
- 3.3.2 selected products from outside Victoria such as coffee and teas must have had value added in Victoria, and must be sold by the Stallholder as a person involved in that value-adding.

4 Operation of the Boroondara Farmers Market

4.1 Stalls

The Stallholder must ensure that any Stall:

- 4.1.1 provides clear and accurate information about the produce or products being sold at the Stall, which is readily accessible and available to customers;
- 4.1.2 clearly displays all prices for any produce or products sold at the Stall, which must not be misleading or deceptive;
- 4.1.3 makes all reasonable endeavours to minimise packaging and recyclable packaging is used where reasonably practicable;
- 4.1.4 is properly weighted down (including signage) as directed by the On Site Market Managers and
- 4.1.5 removes all rubbish generated by the Stallholder or any person connected with the Stallholder at the end of each occurrence of the Boroondara Farmers Market.

4.2 Sites

The Stallholder acknowledges and agrees that:

- 4.2.1 the standard site on which to operate a stall that is provided by Council to the Stallholder is grassed and measures approximately three metres by 4 metres, and can bear the weight of a light vehicle and/or table and shelter;
- 4.2.2 the Stallholder may request that Council provide special site requirements as part of its application to become a stallholder, which may be approved or disapproved at Council's absolute discretion in conjunction with the BFM Committee and subject to availability;
- 4.2.3 Council is only able to provide a limited number of powered sites to operate a stall at the Boroondara Farmers Market and Council is not responsible if the Stallholder is unable to occupy a powered site, which is at the Stallholder's risk; and
- 4.2.4 Council and the Rotary Club of Glenferrie do not warrant that any Stall is suitable for any of the purposes or uses of the Stallholder.

4.3 Set-up and Pack-down

The Stallholder must ensure that the Stallholder or any person connected with the Stallholder:

- 4.3.1 does not commence setting up any Stall before 6.00am and has completed setting up any Stall by 7.30am;
 - 4.3.2 does not begin trading or otherwise selling produce or products before 8.00am;
 - 4.3.3 does not commence packing down any Stall before 12.30pm; and
 - 4.3.4 has completed packing down any Stall and removing any of the Stallholder's Property by 2.00pm.
- 4.4 Code of Conduct

The Stallholder must ensure that the Stallholder and any person connected with the Stallholder operates in accordance with the following Code of Conduct:

- 4.4.1 They will support the purpose of the VFMA and are bound by its Rules of Association and the Accreditation Handbook as updated from time to time.
- 4.4.2 They will behave in a cooperative manner which includes, but is not limited to:
 - 4.4.2(a) refraining from any aggressive, discriminatory or inappropriate behaviour towards VFMA staff, On-Site Market Managers, other Stallholders and customers;
 - 4.4.2(b) Adhering to OH&S standards for safety; and
 - 4.4.2(c) Following the direction of On-Site Market Managers, including in relation to the goods that may be sold at their particular market.

Seeking the permission of the market manager before bringing newly-accredited products to market.

4.5 New Products

If the Stallholder wishes to introduce a new VFMA-accredited product to the Boroondara Farmers Market, the Stallholder must obtain the prior written consent of the BFM Committee.

4.6 Stallholder's Property left at the Boroondara Farmers Market

Anything left at the Boroondara Farmers Market after the end of any occurrence of the Boroondara Farmers Market will, subject to any agreement to the contrary with Council, be deemed to be abandoned by the Stallholder and will become the property of Council and may be removed by Council at the Stallholder's cost and at the Stallholder's risk and the parties agree that this clause 4.6 is an agreement about the disposal of uncollected goods for the purposes of section 56(6) of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*.

5 Fees

- 5.1 Subject to clauses 5.3,5.4 and 5.5, the Stallholder must pay a fee of \$75 (**Fee**) to the Rotary Club of Glenferrie for each Stall operated by the Stallholder at each Boroondara Farmers Market.
- 5.2 The Stallholder must pay the Fee via direct electronic funds transfer to the bank account nominated in writing by the Rotary Club of Glenferrie to the Stallholder in advance.

- 5.3 If Council has approved a request made by the Stallholder for a special site in accordance with clause 4.2.2, Council will notify the Stallholder of the fee to be paid to the Rotary Club of Glenferrie in the manner specified in clause 5.2.
- 5.4 If the Stallholder elects to not pay the Fee to the Rotary Club of Glenferrie in advance by the manner specified in clause 5.2, the Stallholder must pay a fee of \$85 to the Rotary Club of Glenferrie for each Stall operated by the Stallholder on the date on which the particular Boroondara Farmers Market occurs.
- 5.5 Council, in its sole discretion, may waive the Fee from time to time.
- 5.6 A waiver of the Fee under clause 5.5 is not a waiver of future payments under this Agreement.

6 Reservation of Rights

Council reserves the right to:

- 6.1 amend the number and type of stallholders at the Boroondara Farmers Market at any time and for any reason, at Council's absolute discretion; and
- 6.2 in conjunction with the BFM Committee and at Council's absolute discretion, determine which VFMA-accredited products are to be sold by individual stallholders once the stallholder's application has been accepted by Council, in order to maintain a balanced market mix.

7 Termination and Suspension

- 7.1 Council may, in conjunction with the BFM Committee, immediately terminate or suspend the Stallholder's participation in the Boroondara Farmers Market by giving written notice to the Stallholder, if:
- 7.1.1 in Council's sole opinion, the Stallholder or any person connected with the Stallholder:
- (a) provides incorrect or misleading information;
 - (b) fails to comply with any of these Terms and Conditions;
 - (c) fails to operate in accordance with the Code of Conduct; or
 - (d) operates any Stall in a manner that could reasonably be regarded as adversely affecting Council's reputation; or
- 7.1.2 the Stallholder persistently and without cause cancels, discontinues or varies the operation of any Stall at the Boroondara Farmers Market without Council's consent, which is not to be unreasonably withheld.
- 7.2 The Stallholder agrees that it is not entitled to and will not make any claim for compensation or any other payment whatsoever from Council (both as owner of the land on which the Boroondara Farmers Market operates and any capacity including as the relevant authority under any legislation) in connection with the termination or suspension of the Stallholder's participation in the Boroondara Farmers Market pursuant to this clause 7.

8 Relocation and Cancellation

- 8.1 Council may, in conjunction with the BFM Committee, relocate the Boroondara Farmers Market and the operations of the Stallholder to the southern carpark adjacent to Patterson Reserve in Auburn Rd, Hawthorn East VIC 3123 if:
- 8.1.1 Council determines at its absolute discretion that it is in interest of the municipality; or
 - 8.1.2 Patterson Reserve is unavailable.
- 8.2 Council may at its absolute discretion cancel the Boroondara Farmers Market.
- 8.3 Council, in conjunction with the BFM Committee, will appoint a representative on each day that the Boroondara Farmers Market occurs (**On-Site Market Manager**), who will have absolute discretion to relocate or cancel the Boroondara Farmers Market for any reason.
- 8.4 The Stallholder acknowledges that it is not entitled to receive any compensation from Council where Council exercises its rights pursuant to this clause 8, and the Stallholder releases Council from all claims resulting from any damage, loss, death or injury under these Terms and Conditions except to the extent caused or contributed to by Council's negligent act or omission.
- 8.5 Notwithstanding anything to the contrary in these Terms and Conditions, Council will credit any Fee paid in advance in accordance with clause 5.1 and 5.2 to the Stallholder's operations at the subsequent occurrence of the Boroondara Farmers Market.

9 Insurance

9.1 Public Liability

The Stallholder must maintain insurance for public liability in the amount of \$20 million concerning one single event (or such greater sum as reasonably required by Council) containing an indemnity extension naming Council as an interested party, providing coverage for any loss or damage and death or injury to any other person, arising from the acts or omissions of the Stallholder.

9.2 Stallholder's Property

The Stallholder must insure the Stallholder's Property for loss and damage from risks including fire and water damage for its full replacement value.

9.3 Production of policies

The Stallholder must produce to Council copies of the certificate of currency within one (1) day of the request being made by Council.

9.4 Not invalidate policies

The Stallholder must not do anything which may make any insurance effected by Council or the Stallholder invalid, capable by being cancelled or rendered ineffective, or which may increase any insurance premium effected by Council.

9.5 Requirements by Insurer

The Stallholder must comply with all reasonable requirements of Council's insurer in connection with the Boroondara Farmers Market.

10 Release and Indemnity

10.1 Release

The Stallholder uses and occupies any Stall at its own risk and releases Council from all claims resulting from any damage, loss, death or injury in connection with the Stall except to the extent that Council is negligent.

10.2 Indemnity

The Stallholder must indemnify and hold harmless Council against all claims resulting from any damage, loss, cost, expense (including legal expenses on a full indemnity basis), death or injury in connection with the Stall, the use and occupation of the Stall by the Stallholder or the activities of the Stallholder or any person connected with the Stallholder at the Boroondara Farmers Market except to the extent that Council is negligent.

10.3 No liability

The Stallholder acknowledges and agrees that:

10.3.1 nothing in these Terms and Conditions in any way limits, fetters or restricts the power or discretion of Council in the exercise of its statutory rights, duties or powers under the *Planning and Environment Act 1987* (Vic) or the *Local Government Act 1989* (Vic) or the exercise of any other statutory right, power or duty that Council may lawfully exercise; and

10.3.2 Council will not be liable to the Stallholder under these Terms and Conditions for any acts or omissions of Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 10.3.1,

except nothing in this clause releases Council from any obligations it owes to the Stallholder under these Terms and Conditions in its capacity as the organiser of the Boroondara Farmers Market.

11 Variations

11.1 The Stallholder acknowledges and agrees that Council may amend or vary these Terms and Conditions at any time and for any reason in Council's absolute discretion (**Variation**), which will be binding on the Stallholder.

11.2 The Stallholder acknowledges and agrees that Council is not obliged to consult with the Stallholder or any other person before making any Variation.

11.3 Council or the BFM Committee will inform the Stallholder of any Variation to as soon as reasonably practicable.