

# Local Planning Policy 13

## Mobile Food Businesses



*This Policy was adopted by Council to give guidance as to how discretion under the Local Planning Scheme and relevant Local Laws may be exercised. It also serves to help proponents, landowners and the community understand how decisions are likely to be reached.*

### 1.0 Introduction

The purpose of this policy is to provide guidance and decision-making criteria for the location and operation of mobile food businesses across the Shire of Augusta Margaret River (Shire).

This policy further aims to encourage and support mobile food businesses, and enhance community experience in key public places across the Shire.

### 2.0 Objectives

The objectives of this policy include:

- (a) The location and operation of mobile food businesses in public places across the Shire occurs in a consistent and appropriate manner; and
- (b) Mobile food businesses enhance the experience of the Shire's key public places in a manner consistent with the purpose and value of those public places.

### 3.0 Scope

This Local Planning Policy applies to all applications and approvals for mobile food businesses operating in public places or reserves owned or managed by the Shire of Augusta Margaret River.

#### 3.1 Exclusions – operating at approved markets or events

This Local Planning Policy does not deal with applications and approvals for mobile food businesses operating at Shire approved events and markets, where that approval expressly allows for Mobile Food Businesses and/or Temporary Food Stalls.

## 4.0 Relation to Legislation and Council Local Laws

A trading permit is required under the Shire of Augusta Margaret River Activities in Thoroughfares and Public Places and Trading Local Law 2010 and Shire of Augusta Margaret River Local Government Property Local Law 2013 for selling goods or services in public places or on Local Government Property. General standard permit conditions are set in accordance with the Local Laws.

The local laws are made under the provisions of Part 5 of the *Local Government Act 1995*.

Under Part 3 of the Local Planning Scheme No. 1 (LPS1) planning consent is generally required for the repetitive and consistent use of reserved land. In the instance where a local law permit is required the Shire will exercise its discretion under the clause 61(1)(f) of the (LPS1), not to require planning approval. In this instance the merits or otherwise will be considered through the Local Law process.

## 5.0 Interpretation

**“Mobile Food Business”** is any means of transport designed to be moveable and used for the preparation or sale of food and beverages fit for human consumption, but does not include a temporary food stall.

**“Itinerant Mobile Food Business”** is any means of transport designed to be moveable and used for the preparation or sale of food and beverages fit for human consumption. The itinerant mobile food business will routinely change location making intermittent stops of up to 15 minutes at any one time (or until customer activity ceases).

**“Temporary Food Stall”** includes a stall, tent or barbecue stand that is used to sell food at an occasional event and is usually dismantled after an event.

**“Public Place”** includes -

- a) any thoroughfare or place which the public are allowed to use which whether or not the thoroughfare or place is on private property; and
- b) local government property;  
but does not include premises on private property from which trading is lawfully conducted under a written law.

**“Local Government Property”** means anything except a thoroughfare –

- a) which belongs to the local government;
- b) of which the local government is the management body under the *Land Administration Act 1997*; or
- c) which is an “otherwise unvested facility” within section 3.53 of the *Local Government Act 1995*.

**“Shire”** is Shire of Augusta Margaret River.

## 6.0 Permits

Mobile food businesses and itinerant mobile food businesses trading within the Shire are required to:

- a) Hold a valid Permit issued under the Shire of Augusta Margaret River Activities in Thoroughfares and Public Places and Trading Local Law 2010 or Shire of Augusta Margaret River Local Government Property Local Law 2013;
- b) Hold a current *Food Act 2008* Certificate of Registration from a Western Australian Local Government; and
- c) Obtain any other relevant approvals or consent that may be required by State authorities.

## 7.0 Mobile food business permits

### 7.1 Location and site requirements for Mobile Food Businesses

7.1.1 The Shire has approved the following locations for mobile food businesses to operate with applicants selected through a EOI process:

- a) Rotary Park, Margaret River, Reserve 18451;
- b) Margaret River Civic Administration Centre and Youth Precinct, Margaret River, Wallcliffe Road Reserve;
- c) Surfers Point, Reserve 41545;
- d) Rivermouth, Reserve 41545; and
- e) Flinders Bay, Reserve 24653.

7.1.2 Alternative trading locations may be considered if they meet the objectives of this Policy and the location and site requirement specified in clause 7.1.3.

7.1.3 The following location and site requirements apply to all mobile food business permits:

- i. Permits granted to mobile food businesses must enhance the experience and be relevant to the purpose of the public place.
- ii. Permits in public places may be refused on the basis of inadequate car parking spaces available for the public and mobile food vehicle.
- iii. Permits will not be granted on or within 200m of any land zoned town centre or village centre under the Shire's Local Planning Scheme 1 unless it is a location specified within 7.1.1.

- iv. Applicants for permits in or within 200m of a townsite boundary (but not within the parameters of clause 7.1.3.(iii)) will be required to pay for public advertising of the application prior to consideration of the application.
- v. Mobile food businesses will not be approved to operate in a public place unless it can be demonstrated to the satisfaction of the Shire that the location of the vehicle will not pose a traffic or pedestrian impediment or danger to the safety of the general public.
- vi. Trees and other significant streetscape elements such as public art, benches, waste bins and toilets shall not be obstructed, covered, removed, relocated or modified as a result of a mobile food business operating.

7.1.4 Generally, a maximum of one permit shall be granted to operate at an approved trading location at any one time, however, trading locations for mobile food businesses may be individually assessed to determine if the location is suitable for more than one mobile food vehicle to operate at certain times throughout the year.

## **7.2 Operational requirements for mobile food businesses**

7.2.1 Operating times for mobile food businesses are within the hours of 6am and 9pm (inclusive of set up and set down times), but may be further limited by permit conditions.

7.2.2 The maximum term for mobile food business permits is two years.

7.2.3 Operating requirements relating to events, waste management, noise, power and advertising are dealt with in Parts 9-13 of this Policy.

7.2.4 General standard operating conditions of approval are contained in Schedule 1.

## **8 Itinerant mobile food businesses**

### **8.1 Location and site requirements for itinerant mobile food businesses**

8.1.1 Itinerant mobile food businesses are not permitted to trade on the following roads or any property adjacent to that road:

- a) Bussell Highway anywhere within the Shire district;
- b) Blackwood Av, Augusta;
- c) Caves Road anywhere within the Shire district;
- d) Churchill Av, Margaret River;
- e) Charles West Av, Margaret River;
- f) Fearn Av, Margaret River;
- g) Forrest Rd, west of Elva Street, Margaret River;

- h) Ned Higgin Lane, Margaret River;
- i) Town View Terrace, Margaret River;
- j) Tunbridge Street, east of Farrelly Street, Margaret River;
- k) Wallcliffe Road anywhere within the Shire district;
- l) Wilmott Av, west of Elva Street Margaret River;
- m) Rivermouth carpark, Prevelly;
- n) Gas Bay carpark, Gnarabup;
- o) GrunTERS carpark, Gnarabup;
- p) Gnarabup carpark, Gnarabup;
- q) South Point carpark, Gracetown.

8.1.2 The Shire may condition further roads or property where itinerant mobile food businesses are not permitted to trade.

8.1.3 Itinerant mobile food businesses must not trade within 200 metres of a permanent food business or mobile food business offering the same food type or beverage type.

8.1.4 Itinerant mobile food businesses shall only stop in lawful locations on Shire managed roads and reserves and comply with any local parking restrictions.

## **8.2 Operational requirements for itinerant mobile food businesses**

8.2.1 Itinerant mobile food business operators shall not use any bell, music or other sound device to attract customers whilst the vehicle is stationary.

8.2.2 Itinerant mobile food businesses shall only make intermittent stops of up to 15 minutes at a time (or until customers cease).

8.2.3 Itinerant mobile food businesses operating in residential streets are restricted to selling ice-cream and beverages.

8.2.4 Itinerant mobile food businesses operating in:

- a) residential streets are restricted to trading between the hours of 9am and 6pm, on weekends, public and school holidays;
- b) in other areas are restricted to trading between the hours of 6am and 9pm;

but may be further limited by permit conditions.

8.2.5 The term of itinerant mobile food business permits are for a maximum of two (2) years.

8.2.6 Operating requirements relating to events, waste management, noise, power and advertising are dealt with in Parts 9-13 of this Policy.

8.2.7 General standard operating conditions of approval are contained in Schedule 1.

## 9. Events

9.1 Where an event is being held at or adjacent to a pre-approved mobile food ( or itinerant mobile food) business location, the Permit Holder shall not operate at the location unless approval is obtained from the Shire and event organisers prior to the event.

## 10. Sustainability

10.1 The Shire encourages mobile food (or itinerant mobile food) businesses to:

- a) Use locally sourced or produced goods;
- b) Use 100% compostable packaging, cutlery, plates etc. and provide bins for organic matter;
- c) Avoid using single use plastics such as plastic straws, take away containers, cutlery etc.;
- d) Provide re-usable crockery, cutlery etc., that can be washed within mobile food vehicle and re-used.

10.2 While adhering to the sustainability objectives listed above is not currently compulsory, the Shire is moving towards the position of a mandatory requirement for mobile food businesses to avoid using single use plastics such as plastic straws, takeaway containers, plastic cutlery etc.

## 11. Waste Management

11.1 The mobile food (or itinerant mobile food) business operator is required to maintain the mobile food vehicle and surrounding area to a high standard and in accordance with the following requirements:

- a) When operating at an approved location, the approved area must be cleaned frequently;
- b) Mobile food business operators must provide adequately sized bins for patron's use. The Shire encourages the provision of bins for recyclable materials, and organic matter clearly labelled to avoid contamination;
- c) Remove all rubbish from the approved location generated by the conduct of the mobile food business at the close of business each day. No waste or litter from the mobile food business may be disposed of into the Shire's rubbish bins; and
- d) Waste water, solid waste, litter or any other pollutant must not be disposed of at the trading site.

## 12. Noise

12.1 Generators must have a manufacturer specified operational volume of no greater than 75db.

12.2 Notwithstanding the above provision (clause 12.1), all noise resulting from the mobile food (or itinerant mobile food) business (including the use of a generator or any amplified music) must comply with the provisions of the *Environmental Protection (Noise) Regulations 1997*.

## 13. Power

13.1 Mobile food (or itinerant mobile food) businesses must not use external power, gas or water connections, unless otherwise approved by the Shire.

## 14. Advertising

14.1 Advertising is to be fitted to the mobile food (or itinerant mobile food) vehicle with the exception of one portable A-frame sign which is to be no greater than 0.8m high and 0.6m wide displaying basic information. Permit conditions will specify approved locations of signs specific to the trading location.

## 15. Public Liability Insurance

15.1 The mobile food (or itinerant mobile food) business must hold current public liability insurance cover, to the value of not less than twenty million dollars (\$20,000,000), for the Permitted Activity, with the Shire of Augusta Margaret River recorded as an interested party to the policy.

## 16. Application and Approval Process

### 16.1 Expressions of Interest for mobile food business permits

16.1.1 Expressions of interest (EOI) will be invited every two years for the operation of mobile food businesses at the approved locations identified in part 7.1.1 of this Policy.

16.1.2 The EOI document will require a response to the following criteria (but not limited to):

- a) Enhancement of experience of the public place / recreational reserve;
- b) Minimal noise associated with trading (use of quiet generators);
- c) Sustainability - incorporation of sustainable practices such as:
  - use of locally sourced or produced goods;
  - use of 100% compostable packaging, plates, cutlery etc., and provision of bins for organic matter;
  - re-usable crockery, cutlery washed within mobile food vehicle and re-used;
  - avoidance of single use plastics;
  - or any other waste minimisation techniques.

- d) Relevant experience and a demonstrated compliance with the *Food Act 2008* and Food Safety Standards.

## **16.2 General applications for itinerant mobile food business and mobile food business permits**

16.2.1 The Shire will consider applications for itinerant mobile food businesses in approved areas at any time throughout the year.

16.2.2 The Shire may also consider applications for permits received throughout the year for locations other than the approved trading locations identified in 7.1.1.

16.2.3 Should a vacancy arise at one of the approved locations in 7.1.1, the Shire will consider applications for permits at that location, throughout the year.

16.2.4 The following information is required for mobile food business and itinerant mobile food business applications (but not limited to):

- a) A completed mobile food business permit application form, including a description of how the mobile food business incorporates sustainable practices (see 16.1.2(c));
- b) A current Certificate of Currency (Public Liability Insurance) for a minimum of \$20,000,000;
- c) A copy of manufacturer's specifications for any generators to be used; and
- d) A copy of current *Food Act 2008* Certificate of Registration issued by the local government where the mobile food vehicle is housed and/or where the majority of the food preparation activities are occurring.

16.2.5 Applications will be assessed and permits issued in accordance with the requirements of this policy.

## **17 Fees**

16.1 The permit holder will be required to pay the fees as prescribed in the Shire of Augusta Margaret River Fees and Charges adopted by Council each year.

## **18 Permit Renewal, Variation and Cancellation**

17.1 A mobile food business permit may be cancelled, amended or renewed at the discretion of the Shire. Where a permit holder seeks to renew or amend a permit, an application must be submitted at least 15 working days prior to expiry of existing permit.

17.2 Upon cancellation of a permit, the permit holder will be charged a cancellation fee as per the Shire's Schedule of Fees and Charges, and entitled to a 50% refund of the fees paid for the unused duration of the permit.

## **19 General Standard Conditions of Approval**

18.1 General standard conditions of approval are provided in Schedule 1.

## Schedule 1:

### General Standard Conditions of Approval

#### Principal conditions

- 1 The Permit Holder is only permitted to:
  - (a) undertake the permit activity;
  - (b) during the permit days and times within the permit period; and
  - (c) in the permit area.
  
- 2 This Permit cannot be transferred or assigned unless an application for the transfer of the Permit has been made and approved by the Shire.
  
- 3 The Permit Holder must carry a copy of this Permit at all times while undertaking the Permit Activity and present it to any Shire representative upon demand.
  
- 4 The Permit Activity shall be conducted in accordance with the *Shire of Augusta Margaret River Activities in Thoroughfares and Public Places and Trading Local Law 2010* and all terms and conditions under this Permit.
  
- 5 The Permit Holder shall be responsible for the cost of any damage to, or the cleaning of, the reserve or the road/footpath/car park resulting from the conduct of the Permitted Activity.

#### Special Conditions

- 6 The Permit Holder shall provide appropriate waste receptacles for patron's use and ensure the approved area shall be maintained free of litter at all times. The collection and removal of waste generated by the conduct of permitted activity is the responsibility of the Permit Holder. The Permit Holder shall make provision for removal and disposal of collected waste from the approved location to an approved disposal site at the close of business each day.
  
- 7 Waste water disposal is not to be undertaken at the trading site.

- 8 The Permit Holder shall not park a vehicle on the Reserve except in the area approved by the Shire for the parking of vehicles, as delineated in Permit Plan x.
- 9 The Permit Holder shall not deposit or store any container, vehicle or structure containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles.
- 10 No structures temporary or otherwise shall be erected other than those approved by the Shire.
- 11 The Permit Holder is not permitted to set up or provide external tables, chairs, umbrellas, or erect any other structures, temporary or otherwise, other than those approved by the Shire.
- 12 The Permit Holder shall ensure the serving area from the mobile food business is from the foot path side of the vehicle and not the road side / carpark side of the vehicle.
- 13 The mobile food vehicle shall be removed from the approved area at the close of business each day and not occupy the area until the business next opens for trading as per approved times.
- 14 The Permit Holder shall not conduct the Permitted Activity, enter or remain on a reserve or foreshore, under the influence of intoxicating liquor or having intoxicating liquor in their possession unless pursuant to a Permit granted under the *Liquor Control Act 1988*.
- 15 Generators must have a manufacturer specified operational volume of no greater than 75db.
- 16 Notwithstanding the above provision (clause 15), noise generated from the conduct of the mobile food business, including the use of a generator or amplified music, must comply with the provisions of the *Environmental Protection (Noise) Regulations 1997*.
- 17 The food business must be registered under the provisions of the *Food Act 2008* and comply with the *Food Act 2008, Australian New Zealand Food Standards Code and Food Regulations 2009* at all times. Prior to trading within the Shire of Augusta Margaret River

(the Shire) the food business must notify the Shire of the location of all food premises and must present a 'Certificate of Registration' that demonstrates the food business is approved to sell at temporary locations.

- 18 Advertising (signage) for the Permitted Activity is to be limited to one (1) portable sign, not greater than 0.8m high and 0.6m wide displaying basic information. The sign is to be placed in the approved permit area, or on the road reserve on the same side of the road verge as the mobile food business to which it relates and directly in front of the mobile food business to which it relates, so that it does not impede a public path or visibility to or from traffic. The sign must be removed from the area each day at the close of business.
- 19 All electrical leads and appliances used onsite shall be tested and tagged by a suitably qualified person. All trip hazards to be identified and remedied. All power leads to be either buried, securely covered/protected or secured overhead.
- 20 The Permit Holder must not use external power, gas or water connections at approved locations, unless otherwise approved by the Shire.
- 21 Should the Shire need to undertake any works within or near the approved location, if required, the Permit Holder must vacate the site until notified by the Shire that the works is complete and the Permit Holder may return to the approved location to conduct the approved activity.

### **No exclusive rights**

- 22 This Permit does not grant the Permit Holder any exclusive rights to the Permit Area.
- 23 The Permit Holder shall ensure that the permitted activity does not interfere with the use of the proposed areas of the Reserve by other groups authorised to use those areas and the Shire reserves the right to cancel individual bookings should a conflict with another authorised user's booking occur. Should an event be held at or adjacent to the approved location, the Permit Holder shall not operate unless approval is obtained from the Shire and event organisers prior to the event.

### **Breach of Conditions**

- 24 Council reserves the right to withdraw approval for the Permitted Activity and all approvals granted by Council to the Permit Holder for the Permitted Activity shall cease should the Facility be in breach of the terms and conditions contained in this schedule.

### **Insurance**

- 25 The Permit Holder must hold current public liability insurance cover, to the value of not less than twenty million dollars (\$20,000,000), for the Permitted Activity, with the Shire of Augusta Margaret River recorded as an interested party to the policy.
- 26 The Permit Holder shall ensure that a copy of Insurance Certificate of Currency for the Permitted Activity is provided to Council prior to undertaking the activity.

### **Indemnification**

- 27 The Permit Holder shall undertake to hold the Shire of Augusta Margaret River indemnified against all claims which may be made against them for damages or otherwise, in respect of any loss, damage, death or injury caused by, or in the course of or arising out of the use of the venue, or any property of the Shire of Augusta Margaret River, during all periods when this Permit is in effect.
- 28 During the term of this permit, the Permit Holder shall accept responsibility for the damage to property or injury/death of any persons associated with the Permitted Activity and arising from the actions of the Permit Holder or any contractor, agent or person acting on behalf of the Licensee. The Permit Holder shall indemnify and hold harmless the Shire of Augusta Margaret River, in respect of the Permitted Activity, from any claim, action, liability or costs however, wheresoever or whatsoever arising out of anything done or omitted to be done by the Permit Holder or promoter or any contractor, agent or person acting on behalf of the Permit Holder. The Permit Holder shall have each person participating acknowledge that the Shire of Augusta Margaret River shall not be liable to that person or any person for any injury or damage to person or property arising out of anything done or omitted to be done by the Permit Holder or any contractor, agent or person acting on behalf of the Licensee.

## Document and version control table

<b>Strategic outcome</b>	Vibrant and diverse economy – foster sustainable economic growth which provides local employment	
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