

Mobile Food Businesses

Local Planning Policy 13



July 2024

This policy was adopted by Council to set governing principles in place that align with the strategic direction of the organisation:

Strategy PE1.2 Facilitate, advocate for and fund initiatives which promote a community that is accessible for all and promotes inclusivity for all races, genders, ages and abilities throughout the community

Strategy PL1.2 Facilitate and advocate for agreed urban design parameters for public places with the community which improve vibrancy and are reflective of the values and character of each place

Strategy PL4.1 Facilitate and advocate for actions that support a sustainable and equitable circular economy with increased local spend. Increased local employment and resilient, innovative communities.

1.0 Introduction

The purpose of this policy is to provide guidance 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 while ensuring these do not detract from the established centres.

2.0 Objectives

- (a) The location and operation of mobile food businesses across the Shire occurs in a consistent and appropriate manner.
- (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.
- (c) Mobile food businesses activate places within the Shire where there is an identified need or gap, such as in locations with a lack of night time dining options.

3.0 Scope

This policy applies to:

- mobile food businesses operating on private property within the Shire.
- mobile food businesses operating on public places, reserves and land owned or managed by the Shire.

The policy excludes mobile food businesses operating at Shire approved events and markets, where that approval expressly allows for Mobile Food Businesses and/or Temporary Food Stalls.

MOBILE FOOD BUSINESSES

4.0 Approval to operate on Private Property

- 4.1 Mobile food business operating on properties in the Priority/General Agricultural zones, Town/Village Centre zones or caravan park zone will be exempt from the need for planning approval where:
- They operate incidentally to an approved small bar, brewery, tavern, winery, cellar door, café, restaurant, lunch bar, fast food outlet, service station or caravan park
 - Limited to one per property
- 4.2 All mobile food businesses operating in the Shire must hold a current *Food Act 2008* Certificate of Registration from a Western Australian Local Government

5.0 Permit to operate on Shire Reserve

- 5.1 Mobile food businesses will only be granted approval to operate at approved Shire Reserve locations. See *Section 6.0 Approved Locations*.
- 5.2 Permits will be granted via an expression of interest process. The expression of interest will be run annually in the winter period.
- 5.3 The maximum term for a mobile food business permit is 2 years.
- 5.4 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.
- 5.5 The approved locations shall have permit days and times restricted through the expression of interest process to reduce conflict with existing food and beverage businesses and use by community groups.
- 5.6 A maximum of two permits shall be granted to mobile food businesses to operate at any one time for the Surfers Point approved location.
- 5.7 The division of trading times between permit holders at a single location will be considered by the Shire through the expression of interest process.
- 5.8 The Shire may reallocate a permit in situations where a vacancy arises, at any time throughout the year.
- 5.9 Permits holders are required to adhere to a schedule of operating conditions (See **Schedule 1**).
- 5.10 Operating times for mobile food businesses will be limited by permit conditions but are to fall within the hours of 6am and 9pm (inclusive of set up and set down times).
- 5.11 Permit holders must hold a current *Food Act 2008* Certificate of Registration from a Western Australian Local Government.
- 5.12 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.

- 5.13 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.

6.0 Approved locations

- 6.1 Mobile food businesses on Shire reserves are to be located in designated policy locations.
- 6.2 The Shire has approved the following locations for mobile food businesses to operate:
- a) Rotary Park, Margaret River, Reserve 18451;
 - b) Surfers Point, Reserve 41545
 - c) Rivermouth, Reserve 41545; and
 - d) Flinders Bay, Reserve 24653.
 - e) Duggan Pavilion, Cowaramup, Reserve 22636
 - f) Main Beach, Gracetown, Reserve 27618
 - g) Druid's Hall Park, Witchcliffe, Reserve 28074
 - h) Ellis Street Jetty, Augusta, Reserve 27643

7.0 Permit for Itinerant mobile food businesses

- 7.1 A permit is required to operate an itinerant mobile food business in the Shire.
- 7.2 There are restricted trading locations in the Shire for itinerant mobile food businesses. These are referred to in the Shire's Itinerant Mobile Food Business Guidelines – **Schedule 2**

8.0 Sustainability

- 8.1 Mobile food businesses are required to connect to power where possible to avoid the use of generators.
- 8.2 Mobile food businesses are to use locally sourced or produced goods where possible.
- 8.3 Conditions will be applied to permits in order to ensure waste minimisation, opportunities to recycle and a prohibition on single use plastics.

9. Relation to legislation and council local laws

Planning approval is required under the *Shire's Local Planning Scheme No. 1* and therefore, the *Planning and Development Act 2005*, for mobile food businesses to operate on private properties.

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.

10. Definitions

“Itinerant Mobile Food Business” is any means of transport designed to be moveable and used for the preparation or sale of food and beverages. 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).

“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*.

“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.

“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.

“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.

“Shire” is Shire of Augusta Margaret River.

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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 is to advise the Shire 2 weeks in advance of periods greater than 2 weeks where the approved permit area will not be occupied.
- 4 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.
- 5 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.
- 6 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

- 7 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.
- 8 Mobile food businesses are to use 100% compostable packaging, cutlery, plates etc. or provide re-usable crockery, cutlery etc., that can be washed within mobile food vehicle and re-used.
- 9 Mobile food businesses to provide bins for organic matter (FOGO) and recyclable materials clearly labelled to avoid contamination, and disposed of correctly;
- 10 Waste water disposal is not to be undertaken at the trading site.
- 11 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.
- 12 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.

- 13 No structures temporary or otherwise shall be erected other than those approved by the Shire.
- 14 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.
- 15 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.
- 16 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.
- 17 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*.
- 18 Generators must have a manufacturer specified operational volume of no greater than 75db. If more than one generator is used, the combined operational volume of the generators must not exceed 75db.
- 19 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*.
- 20 Generators must be:
 - i. kept within the Permit Area;
 - ii. a minimum distance of 1m from any vegetation; and
 - iii. safely secured and protected from public access.
- 21 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.
- 22 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.
- 23 The Permit Holder may use the Shire power connection situated next to the Permit Area. The Permit Holder shall pay power usage fees as per Shire's fees and charges. Fees to be invoiced at the end of each calendar month. The Permit Holder shall submit usage details within 7 days from the end of each calendar month.
- 24 The Permit Holder must pay a bond of \$250 to cover any cost or damage to keys or locks used to access the power outlet, which will be returned to the Permit Holder upon return of key to Shire offices (paid).
- 25 The Permit Holder must ensure the power outlet is locked at the end of each trading day.

- 26 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.
- 27 The Permit Holder must not use external power, gas or water connections at approved locations, unless otherwise approved by the Shire.
- 28 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.

Permit Fee

- 29 Permit fees due shall be paid prior to operating as per the Shire's fees and charges

No exclusive rights

- 30 This Permit does not grant the Permit Holder any exclusive rights to the Permit Area.
- 31 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

- 32 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

- 33 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.
- 34 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

- 35 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.
- 36 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.

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Schedule 2: Itinerant mobile food businesses

1. Location and site requirements for itinerant mobile food businesses

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.

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

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.

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.

2. Operational requirements for itinerant mobile food businesses

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.

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

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

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.

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

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

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