

POL 0063: Trading in Public Places and Local Government Property

Purpose

The Shire of Esperance is committed to promoting small business initiatives in a sustainable and fair manner.

The purpose of this policy is -

1. To provide direction to Shire staff in the processing of applications for trading in public places in accordance with the Shire of Esperance's *Activities in Thoroughfares and Public Places and Trading Local Law 2016*; and,
2. To provide a clear set of conditions for operators to trade under.

Scope

This policy applies to all public land within the Shire of Esperance as well as private land used for public purposes, and all businesses and individuals seeking to use public land to operate a business or for financial gain.

Definitions

Approved Fixed Locations: means locations from which vendors can trade with Shire approval.

Approved Event: means an event that has been approved under the Shire of Esperance event approval process.

Community Service Organisation: means an organisation which can demonstrate that its objectives are charitable, benevolent, religious, cultural, educational, recreational or sporting.

Food Stall: means a stall from which any perishable or high risk foods, other than fruit or vegetables, is sold or offered for sale, unless approved by the Shire of Esperance

Food Van: means a form of Street Trader being any vehicle, caravan, trailer or other similar mobile structure selling or offering for sale any food and or drink (excluding alcoholic beverages).

Itinerant Food Vendor: means a form of Street Trader who sells food from a vehicle parked temporarily on the road to customers who stop them or come to them while they are so parked.

High Risk Foods: means all prepared or cooked food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, crustaceans, molluscs, gravy, cooked rice and pasta or ingredients capable of supporting the growth of infectious or toxigenic micro-organisms.

Local Government Property: means anything except a thoroughfare -

1. Which belongs to the local government;

2. Of which the local government is the management body under the *Land Administration Act 1997*; or
3. Which is an 'otherwise unvested facility' within section 3.53 of the *Local Government Act 1995*.

Public Place: Includes any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include -

1. premises on private property from which trading is lawfully conducted under a written law; and
2. local government property;

Stall: means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, hired or offered for sale or hire.

Stallholder: means a person in charge of a stall.

Street Trader: means a person who sells food, goods and/or services from a vehicle parked temporarily on the road/public place while they are parked.

Trader's Permit: means a permit issued to a Street Trader or stall holder.

Trading in Public Places: refers to long-term or periodic occupation of Shire controlled land for the purposes of either selling or displaying goods or providing services to customers.

Practice

The Shire supports Street Traders operating on a regulated basis to ensure equity and fairness to all business proprietors.

The Shire's *Activities in Thoroughfares and Public Places and Trading Local Law 2016* provides regulation for the management of public property and the activities that may be conducted on public property that is owned or managed by the Shire, including Shire halls, carparks, parks and reserves.

This also applies to private property, if being used for public purposes such as fetes and markets.

Assessment of an application considers the proposed location and impact the activity may have on established businesses close by, other traders, traffic flow and the amenities at the desired location.

The Shire reserves the right to refuse any application for any reason.

Trading – General Requirement applicable to all Street Traders

1. All Stallholders and Street Traders (Traders) must ensure that the trading location is kept clean and tidy at all times. Traders are responsible for the disposal of all litter associated with the provision of the goods or services and the cleaning of the permit location.

2. Traders shall depart from a trading location upon the direction of any person or body authorised to carry out any works in the street, thoroughfare, local government property or public place in which the Trader is situated.
3. Traders shall not have any claim for compensation or damages as a result of any disruption to business or loss incurred due to an event, market, parade, thoroughfare works or any other contingency.
4. The Shire is under no obligation to relocate the Trader or Stallholder, however, an alternate location may be offered if an appropriate location is available.
5. Trading shall only take place in a suitable area with landowner permission where it does not cause a safety or nuisance concern, or in a car parking area/space where it complies with local parking restrictions unless otherwise approved.
6. To ensure public safety, trading must be conducted in areas that are serviced by adequate lighting.
7. Advertising signs are restricted to the vehicle/stall from which the business is conducted unless otherwise approved.
8. If trading is selling food, the trading is not to occur within 300m (unless it occurs on Reserve 27318 or adjacent area) of a permanent food business during its normal hours of operation.
9. To apply for permission to operate a mobile trading vehicle within the Shire, the following documentation will be required -
 - a. A copy of current public liability insurance;
 - b. A complete application for a Trader's Permit including proposed payment details; and
 - c. If food is sold, a current copy of your *Food Act 2008* Certificate of Registration (noting the vehicles internal fit out must comply with the requirements of the Food Regulations 2009, applicable ASNZ Food Standards Codes and the Shire of Esperance Health Local Law 2009 (as amended)) is required.
10. Fees will be applied as per Council's Fees and Charges Schedule
11. Where power, water or other services are supplied by the Shire to a Trader, the Trader is responsible for all costs accrued relating to usage and supply.

Trading – Approved Events and Markets

Subject to approval from event holders -

1. If a business, that is registered as a food business outside of the Shire of Esperance and is a stall holder at an event or market, a Temporary Food Permit is required in order to trade.
2. If your business is located outside of the Shire of Esperance an Application for a Temporary Food Stall Approval will be required (unless proof of appropriate registration in another local government area is provided).

Trading Approved Fixed Locations

1. The Shire of Esperance has identified Approved Fixed Trading locations and Reserve 27318 and adjoining areas where trading may be permitted only by the approved Street Traders in accordance with their permit.

2. A Street Trader operating within an Approved Fixed Location as identified in Annexure A may be issued for a maximum fixed term of 3 years.
3. A maximum of two (2) Street Traders are allowed at any one Approved Fixed Location at the same time.
4. A fixed trading location becomes available for reallocation if the Street Trader ceases trading for a period of six (6) months or advises that they wish to cease trading.
5. The Shire of Esperance will call for applications from Street Traders to operate at an Approved Fixed Location prior to the expiry of a Trader's Permit or when an Approved Trading Location becomes available.
6. Annual trading site hire fees will be set each year by Council through the budget process and fees may differ depending on the location/desirability of the site (as shown in Annexure A). The desirability rating is based on the proximity, attractiveness of the locality and/or potential for passing trade.
7. Trader's Permits for these sites are determined at the discretion of the Shire, on their individual merit and against the following criteria -
 - a. How the business will benefit the community (i.e. authenticity, unique culinary experience and celebrating local produce);
 - b. Experience of the Street Trader (e.g. food van or restaurant that is currently operating);
 - c. Already in possession of a well-designed and well-maintained vehicle that is aesthetically pleasing and complies with the Shire's environmental health requirements;
 - d. Vehicle size or layout, utility requirements, public access, circulation, safety or other street or public place activities;
 - e. Historic use of a specific location by the Street Trader and existing patronage by the community;
 - f. Risk management plans provided by the Street Trader.
 - g. Knowledge of food safety principles;
 - h. Litter management plan.

Trading – Itinerant Varied Locations

Itinerant Traders, such as ice-cream vans or the like that stop for customers on public property when hailed, are permitted to trade outside of Approved Fixed Locations under the following conditions -

1. Hold a valid Trader's Permit;
2. Hold a current *Food Act 2008* Certificate of Registration from a Western Australian Local Government;
3. Comply with the overall provisions and intent of this Policy;
4. Serve only approved foods;
5. Only trade between the hours of 9am to 5pm, Monday to Sunday;
6. Must not trade within -
 - a. 100 metres of a permanent food business of the same food type; or
 - b. 300 metres of a school between the hours of 8.00am and 9.00am and 3.00pm and 4.00pm during school days

7. Only remain at a particular location for as long as there is a customer making a purchase. If there is no customer making a purchase, the permit holder must move on from that location within a reasonable time of the last purchase having been made; and
8. Music, or any other forms of noise to attract customers, is not permitted to be played whilst the van is parked.

Trading – Special Permit

Street Traders may apply for a special permit to trade under the following conditions -

1. Reserve 2815 is designated for Community Service Organisations trading food only operating between the months of December to February and other peak holiday periods i.e. Easter one night per week.
2. A permit maybe issued to allow a Community Service Organisation to trade outside of the designated trading zones if selling low risk food on an infrequent basis.

Please note the Shire is not obliged to issue any special permits and reserves the right to apply additional conditions of operation.

Stallholder

1. Approval for stalls, other than stalls which are part of an approved market or extend the service area of an existing business onto the adjacent footpath, will be restricted to Community Service Organisations.
2. A stallholder proposing to operate a food stall, which will offer for sale to the public high risk foods (e.g. sausage sizzles) is required to submit an application for approval (unless proof of appropriate registration is provided) to the Shire's Environmental Health team
3. All food products that are not for immediate consumption must be labelled in accordance with the relevant food regulations

Market Operators

1. Operators of markets on public land are required to hold a market operator's permit under the provisions of *the Activities in Thoroughfares and Public Places and Trading Local Law*. Please note, Development Approval may be required for a Market on private land.
2. Individual stalls, other than stalls selling food, are covered by the market operator's permit - individual licencing fees will not be charged.
3. Stallholders proposing to operate a food stall, which will offer for sale to the public high risk foods (e.g. sausage sizzles) are required to be registered/hold registration under the provisions of the *Food Act 2008*.
4. All food products that are not for immediate consumption must be labelled in accordance with the relevant health regulations.

Legislative and Strategic Context

Both the *Food Act 2008* and the Shire's *Activities on Thoroughfares and Public Places and Trading Local Law 2016* require Street Traders to obtain a permit for trading and selling food.

This policy aims to provide direction and guidance for Shire officers assessing applications and to ensure equity for all commercial outlets.

Annexure A

Goldfields Road – Adjacent to Seafront Caravan Park



Portion of Reserve 36993 & 36994



Twilight Beach Carpark (Reserve 50765)



Reserve 3287

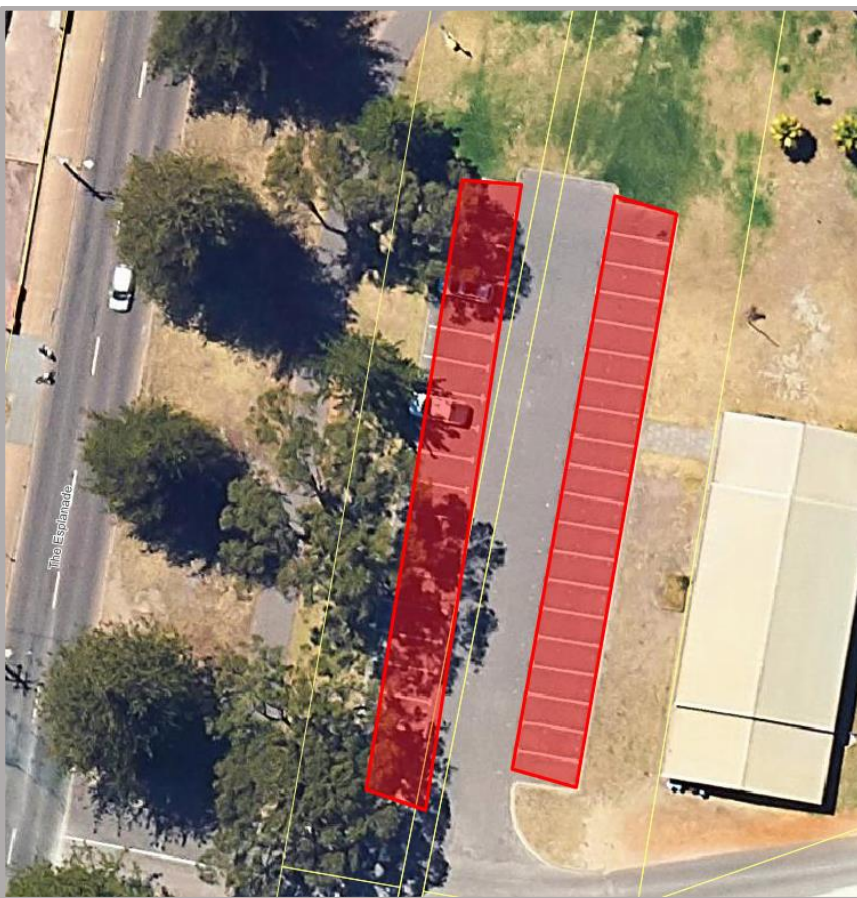


Reserve 2815

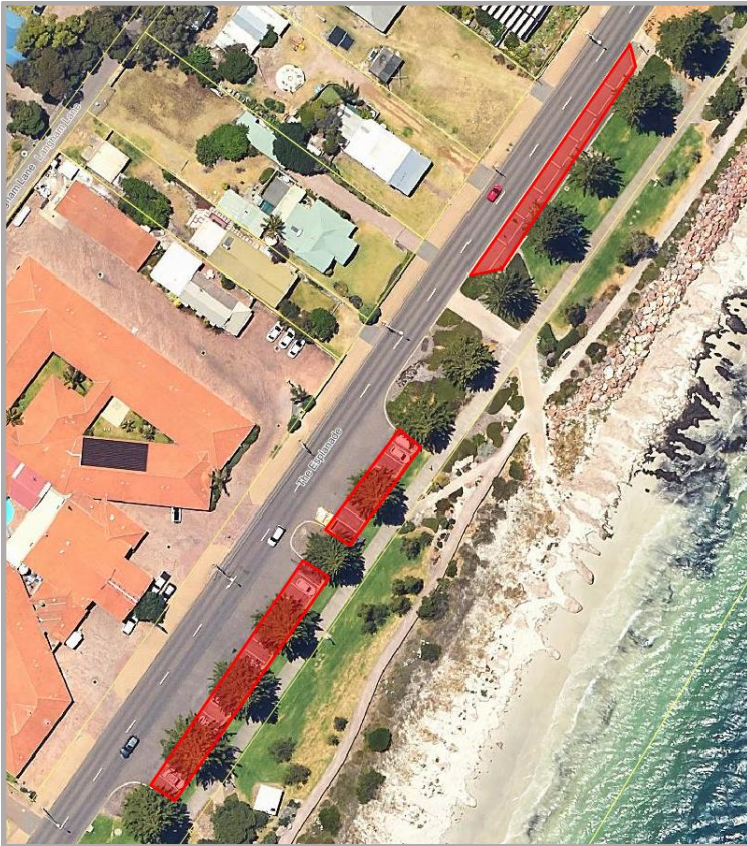


Use of Reserve 2815 is subject to conditions as specified in section E – Trading – Special Permit.

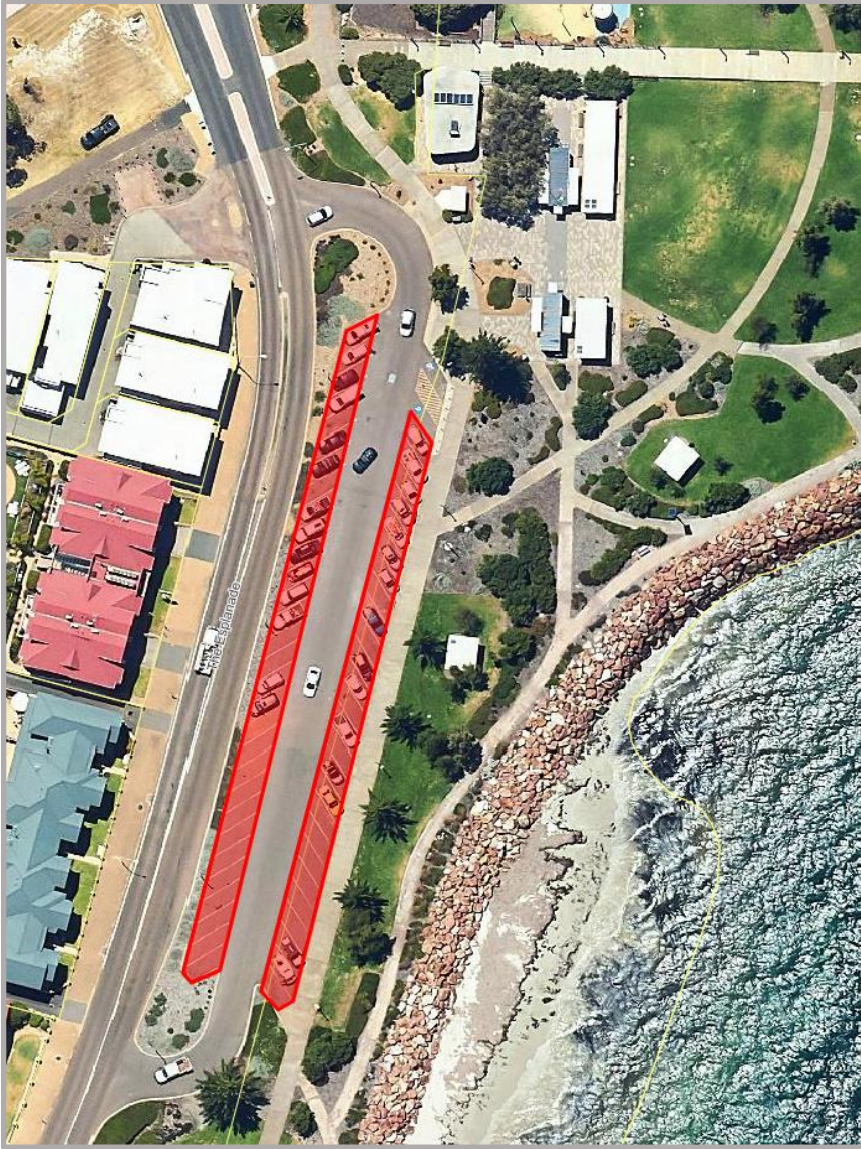
Adjoining areas to Reserve 27318

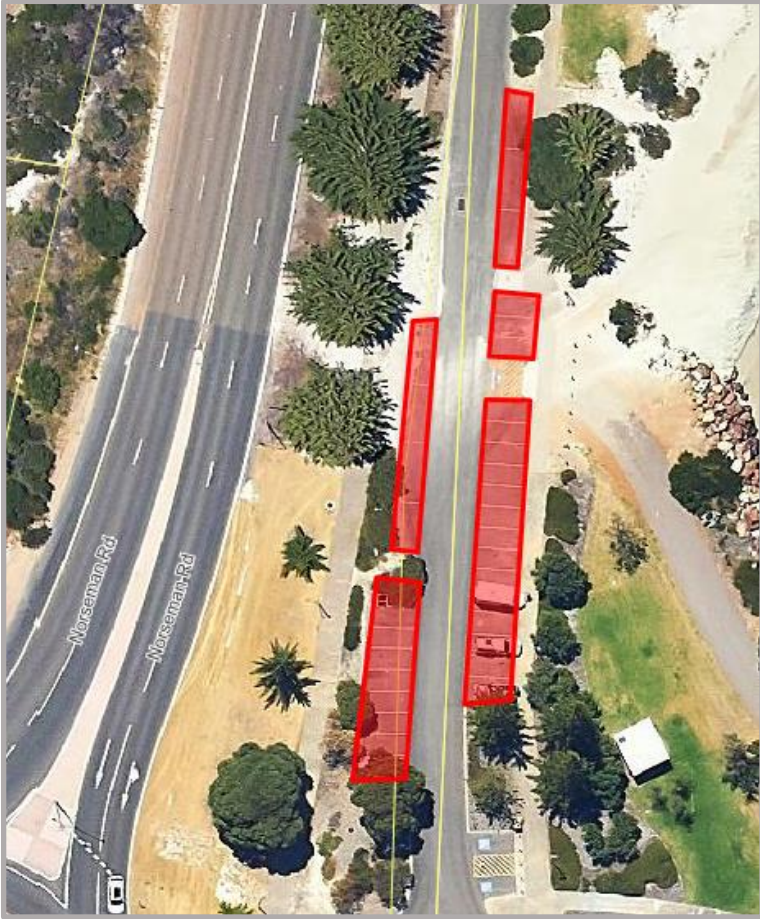












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Document Information

Responsible Position	Manager Development Services
Risk Rating	Medium

Referencing Documents

- *Local Government Act 1995*
- *Food Act 2008*
- *Food Regulations 2009*
- *Australia New Zealand Food Standards Code*
- *Activities on Thoroughfares and Public Places and Trading Local Law 2016*
- *Local Government Property Local Law 2009 (as amended)*
- *Environmental Protection (Noise) Regulations 1997*
- *Environmental Protection (Unauthorised Discharge) Regulations 2004*
- *National Competition Policy*: Noting Australia's National Reform Agenda is the successor program to the National Competition Policy. Clause 7 of the Competition Principles Agreement extended elements of the National Competition Policy reform agenda to local government.

Revision History

Date	Version	CM Reference	Reason for Change	Resolution #	Next Review
April 2018 Oct 2020	1	D18/376	New policy No change, Council resolved to undertake 30 day advertising period.	O0418-074 O1020-317	April 2020 Oct 2022
Dec 2020	2	D18/376[v2]	Minor wording changes throughout, removal of Jetty Headland and Twilight permit areas. Inclusion of applications not complying with Policy being put to Council for consideration.	O1220-399	Dec 2022
April 2021	3	D18/376[v3]	Include two additional locations where a food van may trade, those being Reserve 2815 (grassed area adjacent to Museum Village) and Reserve 50765 (Twilight Beach).	O0421-105	April 2023
Dec 2021	4	D18/376[v4]	Include Stall Holder in definition for Trader's Permit, minor wording update to point 1 in Part F.	O1221-225	Dec 2023
Mar 2023	5	D18/376[v5]	Allow a trader to only occupy a car parking space where it complies with local parking restrictions unless otherwise approved. Exclude the 300m separation within Reserve 27318 (the foreshore). Approved fixed locations has	O0323-048	Dec 2025

been amended to include Reserve 27318.

Feb 2024	6	D18/376[v6]	Amend title. Include local government property definition, amend public place definition. Include provision for water/power use costs. Minor wording changes. Include more specific map areas for the foreshore and remove areas vested to other agencies.	O0224-018	Feb 2026
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