COUNCIL POLICY

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 that aligns with the use of public places and local government property.

The purpose of this policy is -

1. To provide direction to Shire administration 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 2025* and/or *Local Government Property Local Law 2009*, and other relevant regulatory instruments.
2. To provide a clear set of controls for operators to trade under.
3. To protect the amenity and function of the Shire's public places and protect priority use for community members.
4. To encourage traders to operate in locations that support the activation of public places and promote and align with community activities.
5. To ensure traders operate in a manner that complements surrounding trade.
6. To align the policy with the Shire of Esperance *Public Health Plan 2026 - 2031* objectives, and to support the achievement of the Plans objectives and actions.
7. To align the policy with the Shire of Esperance *Disability and Inclusion Plan 2025 – 2030* objectives, and to support the achievement of the Plans objectives and actions.

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, community service organisations, and individuals seeking to use public land to operate a business, undertake a commercial activity, or provide a community service.

'Trading in public places' refers to long-term or periodic occupation of Shire controlled land for the purposes of either selling or displaying goods, providing services, and/or offering activities.

This policy covers the following type of traders, who may trade on a casual, seasonal, or permanent basis:

1. Food Traders
2. Commercial Traders
3. Community Health Service
4. Community Activation and Wellbeing

This policy does not apply to Traders who wish to trade on privately owned land. Proposals to use private land will generally be subject to a development application.

Definitions

Approved Fixed Site: means locations from which vendors can trade with Shire approval, in accordance with any requirements of the approved fixed site.

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

Casual Trading: Trade that is temporary and/or periodic in nature. Trade duration may be singular days of trade or short periods of trade that typically do not cumulate to exceed a week.

Community Activation and Wellbeing: The provision of an activity or a service that promotes and provides participation by the community in exercise or other wellbeing activities. Unless unpracticable or inappropriate, principles of accessibility and inclusion are to be incorporated in the activity or service.

Community Health Service: A person or organisation that provides a free or low-cost health service on a temporary basis from a vehicle, trailer or stall, or at a location.

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

Commercial Trader: means a person who sells goods or services from a vehicle parked temporarily on the road/public place while they are parked. Includes retail type of trade.

Food Trader: A trader that sells food, and includes traders operating food stalls, food vans, and food trucks on a permanent, casual, or seasonal basis. Excludes special permit holders and itinerant food traders.

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 Truck: means any form of food vehicle with a Gross Vehicle Mass (GVM) over 4,500kg.

Food Van: means a form of Food 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 Food 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*.

Permanent Trading: Trading where routine trade has been approved by the Shire for a period of time that is not seasonal or casual. The period of time and frequency of trade in that period of which trade is permitted to occur will be specified in a permit.

Permit: means a permit issued to any type of permit holder to which this policy applies, and is required under the *Activities in Thoroughfares and Public Places and Trading* and/or *Local Government Property local laws.*

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

Seasonal Trading: Trading that occurs during or across a seasonal period, typically the ‘summer’ period, from October to May, and includes multiple trading events on a regular basis.

Special Permit Holder: Typically a Community Service Organisation that provides a free or low-cost food service, or other type of community service.

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.

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

Trader's Permit: means a permit issued to a Trader or Stallholder.

Application Assessment Practice

The Shire’s *Activities in Thoroughfares and Public Places and Trading Local Law 2025* 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.

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

Assessment of an application considers the proposed location and impact that the trading activity may have on surrounding land uses, functionality, or character of an area, as well as other traders and commercial outlets, traffic flow and the amenities at the desired location.

The ‘Purpose’ of this policy identifies that the policy is to ‘ensure traders operate in a manner that complements surrounding trade’, meaning that the assessment of an application will consider, where relevant, if the type of trade proposed is aligned with the character or function of the immediate vicinity, and whether it contributes to or detracts from the public place.

Assessment will not consider the level of competition the proposed trade will incur to nearby ‘bricks and mortar’ businesses or other traders, including comparisons of types of goods or food offered or sold. Assessment may consider the suitability of proposed trading times in order to improve amenity outcomes, such as reduced parking demand and support pedestrian safety.

Designated Trade Areas

Approved Fixed Sites

Appendix 1 identifies Approved Fixed Sites for specific types of trade and duration of trade, and other considerations for the assessment of an application. Applicants are encouraged to select a preferred site based on the site description and best suited operational parameters.

Approved Fixed Sites were selected for the following reasons:

1. Suitability for types of trade.
2. Suitability for times of trade.
3. Distance or proximity to similar or contrary land uses, such as commercial activities, residential or sensitive land uses.
4. Amenity availability and amenity impacts.
5. Public safety.
6. Consideration of activation of space and contribution to space vibrancy.
7. Historical success of trading at the site.
8. Consultation outcomes, including surveys, trader and ‘bricks and mortar’ feedback, community and internal feedback.

Non-Approved Sites – when considered and application requirements

Where an application seeks to trade outside of an Approved Fixed Site the applicant will be required to demonstrate suitability for the proposed type of trade to the proposed site and location. An applicant must submit all required documentation as outlined in the relevant sections below, and may be required to submit additional documentation including:

- Cover letter outlining trade detail and why they seek to trade at the location.
- Risk assessment and risk management plan for the proposed trade at the site.

Note: Only non-food traders can apply to trade outside of an Approved Fixed Site.

Where a health service demonstrates maximum accessibility to the community, or part of the community, at a location in a public space or on local government property, the Shire will support the provision of that service outside of approved fixed locations where appropriate.

Town Boat Ramp Exclusion Zone

Appendix 2 identifies the Town Boat Ramp Carpark Exclusion Zone.

The Town Boat Ramp Carpark Exclusion Zone prohibits food traders and commercial traders. Community Activation & Wellbeing permit holders may apply to use the grassed areas within the exclusion zone, subject to approval.

Non-designated Trade Areas Outside of Esperance Townsite

A trading permit for a location outside of the Esperance Townsite can be made provided that the applicant can demonstrate that they meet the relevant requirements in the subsequent sections to the type of trade proposed.

Examples of such locations include:

Esperance Airport – Expressions of Interest are encouraged for mobile coffee vans that propose to sell coffee, tea, other beverages, snacks, and/or light meals. Only one van can be supported at any one time.

Within the townsites of Salmon Gums, Grass Patch, Scaddan, Gibson, Condingup, and Cascades.

<u>Trading – General Requirements applicable to all Traders</u>

1. All Stallholders and 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. Fees may apply for the provision of additional waste or cleaning services.

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. Where a trader has additional lighting, any lighting must not pose a hazard to vehicles and pedestrians in the vicinity, and not be a nuisance to residences.
7. Advertising signs are restricted to the vehicle/stall from which the business is conducted unless otherwise approved.
8. All traders must be self-contained with the ability to provide own power and water, as well as retain any wastewater until appropriate disposal. Food traders must comply with the Food Standards Code requirements for relating to potable water and wastewater.
9. Where a site has water, power, or other service connections, a trader does not have any right to connect to water, power, or other services, unless negotiated with and approved by the Shire. Fees & Charges will apply for the use of any services, and/or metered use charges may apply.
10. To apply for a permit 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 Standards Code, applicable Australian standards, and the *Shire of Esperance Health Local Law 2025* (as amended)) is required, in addition to meeting any specific requirements set out by Environmental Health staff in assessing and inspecting the mobile food business.
11. Fees will be applied as per Council's Fees and Charges Schedule.

<u>Trading Approved Fixed Sites</u>

1. The Shire of Esperance has identified Approved Fixed Sites where trading may be permitted only by the approved Traders in accordance with their permit.

2. A Trader operating within an Approved Fixed Site as identified in Appendix 1 may be issued for a maximum fixed term of 3 years. At each financial year anniversary, permit conditions shall be reviewed and annual fee invoiced.
3. Where a trader has demonstrated compliance, trading regularity, community value, and has enhanced a public space, the Shire may approve a trader to a maximum of 5 years with yearly permit review and annual fee invoiced.
4. The maximum number of traders able to trade at any approved fixed site at any one time is specified for each site in Appendix 1.
5. If a trader is unable to trade for periods of time of greater than 50% of operation, as specified in their permit, then that trader must notify the Shire in writing. The Shire reserves the right to make this site available to other traders during a period of absence.
6. An approved fixed trading site becomes available when a permit holder either:
   a) Notifies the Shire in writing that they wish to cease trading and when. The site becomes available from the next day; or,
   b) Fails to trade in accordance with their permit conditions, and/or where a trader does not trade during the permitted periods and operating times specified on their permit for two months without written permission from the Shire. This ‘Use it or Lose it’ clause applies to all trading types.

      For the purposes of clarity, two months includes eight consecutive weeks of failure to trade for at least 50% of the permitted operating time, whether the trade is permanent or seasonal.
7. The Shire of Esperance will call for applications from Traders to operate at an Approved Fixed Site prior to the expiry of a Trader's Permit or when an Approved Fixed Site becomes available.
8. 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. Any such desirability rating will be based on the proximity, attractiveness of the locality and/or potential for passing trade.
9. Trader's Permits for any site 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 and complement the immediate area (i.e. authenticity, unique culinary experience, celebrating local produce, or creating vibrancy/activating space);
   b. Experience of the Trader (e.g. food van or restaurant that is currently operates and demonstrates high compliance, or operates from multiple locations);
   c. Already in possession of a well-designed and well-maintained vehicle that does not detract from the amenity of the area, is self-contained for water and power, 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 Trader and existing patronage by the community;

f. Risk management plans provided by the Trader.
g. Knowledge of food safety requirements;
h. Litter management plan.

10. The Shire reserves the right to consider periods of non-trade and non-compliance with permit conditions when assessing new or subsequent permit applications for any site by a trader.
11. The Shire will consider the period applied for in an application but reserves the right to approve a permit for a lesser time than applied for, with consideration to the criteria set out above.

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 stallholder / trader at an event or market, a Temporary Food Permit is required in order to trade.
2. An approved event at an Approved Fixed Site may permit a greater number of traders, and event traders may operate outside of the parameters as outlined in Appendix 1.

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

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

1. A permit maybe issued to allow a Community Service Organisation to trade outside of the approved fixed trading sites if providing low risk food as part of a community service, and/or a type of community service that benefits vulnerable community members.

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

Stallholder

1. A stallholder proposing to operate a food stall, which intends to sell medium- to high-risk foods (e.g. sausage sizzles, sandwiches etc) is required to submit an application for approval (unless proof of appropriate registration is provided) to the Shire's Environmental Health team.
9. 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 medium- to 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 2025* require Traders to obtain a permit for trading and selling food.

The *Local Government Property Local Law*, as amended 2009, makes provisions for the use of local government property.

The Shire's *Public Health Plan 2026 – 2031* and the *Disability and Inclusion Plan 2025 – 2030* outline objectives relevant to the purpose, scope, and application of this policy.

This policy aims to provide direction and guidance to applicants, and for Shire officers assessing applications, to ensure equity for commercial outlets, public space users, and the broader community to provide for vibrant public spaces.

Appendix 1

Approved Fixed Sites

1-A RAC Caravan Park – Food Trader Site

Facilities			
Toilets	❌	Rubbish Bins	❌
Drinking Water	❌	Power	❌
Open Space	❌	Lighting	❌
Table & Benches	❌	Parking (limited)	✅
Trading Conditions			
Fixed			
Maximum Traders	1		
Permitted Hours	5am – 9pm		
Conflict with adjacent landuse/s	Low		
Other	• Self-contained van only • No storage of van allowed outside operation hours • Suitable for beverage vendor, such as coffee van. • Casual evening trade may be considered		



1-B Jetty Headland – Food Trader Site

Facilities			
Toilets	✅	Rubbish Bins	✅
Drinking Water	❌	Power	❌
Open Space	✅	Lighting	✅
Table & Benches	✅	Parking	✅
Trading Conditions			
Fixed / Temporary			
Maximum Traders	2. Events may permit an increased number of food vans.		
Permitted Hours	Restrictions apply		
Conflict with Adjacent Landuse/s	Medium		
Other	• Self-contained vans and marquee vendors • No storage of vans allowed outside operation hours • No food trucks permitted on grass or paved area		



1-C Twilight Beach Carpark – Food Trader Site

Facilities			
Toilets	✅	Rubbish Bins	✅
Drinking Water	❌	Power	❌
Open Space	✅	Lighting	❌
Table & Benches	✅	Parking	✅
Trading Conditions			
Fixed / Temporary / Seasonal			
Maximum Traders	1		
Permitted Hours	8am to 5pm		
Conflict with Adjacent Landuse/s	Low		
Other	• Self-contained van only • No storage of van allowed outside operation hours		



1-D Skate Park – Food and Commercial Traders

Facilities			
Toilets	✅	Rubbish Bins	✅
Drinking Water	✅	Power	❌
Open Space	✅	Lighting	✅
Table & Benches	❌	Parking	✅
Trading Conditions			
Fixed / Temporary			
Maximum Traders	2-4, depending on specific location of trade		
Permitted Hours	6am - 9pm		
Conflict with Adjacent Landuse/s	Medium		
Other	• Self-contained vans and marquee vendors • No storage of vans allowed outside operation hours • Vendors must open towards grassed areas where appropriate to improve pedestrian safety and traffic flow		



Note: Traders may be required to be grouped together in a single designated trading area as directed by Shire staff.

1-E Jetty Headland Playground – Food and Commercial Traders

Facilities			
Toilets	✅	Rubbish Bins	✅
Drinking Water	❌	Power	❌
Open Space	✅	Lighting	❌
Table & Benches	✅	Parking	✅
Trading Conditions			
Fixed / Temporary / Seasonal (October to April)			
Maximum Traders	2		
Permitted Hours	5am – 9pm		
Conflict with Adjacent Landuse/s	Medium		
Other	• Self-contained vans only • No storage of vans allowed outside operation hours • Traders to trade within roundabout section		



1-F Greater Sports Ground – Community Health Services and Food Traders

Facilities			
Toilets	✅	Rubbish Bins	✅
Drinking Water	❌	Power	✅
Open Space	❌	Lighting	✅
Table & Benches	❌	Parking	✅
Trading Conditions			
Fixed / Temporary / Seasonal			
Maximum Traders	1		
Permitted Hours	Restricted		
Conflict with Adjacent Landuse/s	Low		
Other	• Specific trading site to be negotiated • Trading may be seasonally limited • Barista coffee can be considered for weekend day trade • Food van events may be held during Overflow operation		



Note: Food trading is limited across the Greater Sports Ground due to potential conflicting land uses. Community Health Services will be given an appropriate site within the grounds by Shire staff upon assessment of application.

1-G RSL Carpark – Community Health Services

Facilities			
Toilets	✅	Rubbish Bins	✅
Drinking Water	❌	Power	✅
Open Space	❌	Lighting	❌
Table & Benches	❌	Parking	✅
Trading Conditions			
Fixed / Temporary			
Maximum Traders	1		
Permitted Hours	Daylight hours		
Conflict with Adjacent Landuse/s	Low		
Other	• Van can be stored outside of operation hours • Includes R 6206 and Lot 309		



1-H Jetty Headland – Community Activation and Wellbeing

Facilities			
Toilets	✅	Rubbish Bins	✅
Drinking Water	❌	Power	❌
Open Space	✅	Lighting	❌
Table & Benches	✅	Parking	✅
Trading Conditions			
Temporary			
Maximum Traders	2		
Permitted Hours	Daylight hours		
Conflict with Adjacent Landuse/s	Medium		
Other	• Minimal impact – no marquees • Fitness, Yoga or similar		



1-I Whale Tail Area – Community Activation and Wellbeing

Facilities			
Toilets	✅	Rubbish Bins	✅
Drinking Water	✅	Power	❌
Open Space	✅	Lighting	❌
Table & Benches	✅	Parking	✅
Trading Conditions			
Temporary / Seasonal			
Maximum Traders	1 – 2, dependant on type and impact		
Permitted Hours	Daylight hours		
Conflict with Adjacent Landuse/s	Medium		
Other	• Self-contained vans only in parking bay only • Marquees allowed on lawn – no pegging due to reticulation • No storage of vans allowed outside operation hours • First parking lot reserved for HeliSpirit between December and April		



1-J Mini Golf Area – Community Activation and Wellbeing

Facilities			
Toilets	✅	Rubbish Bins	✅
Drinking Water	✅	Power	❌
Open Space	✅	Lighting	❌
Table & Benches	❌	Parking	✅
Trading Conditions			
Temporary / Seasonal			
Maximum Traders	1 – 2, dependant of type and impact		
Permitted Hours	Daylight hours		
Conflict with Adjacent Landuse/s	Medium		
Other	• No storage of vans allowed outside operation hours		



Appendix 2

Town Boat Ramp Exclusion Zone



.....End.....

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 2025*
- *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.
- *Public Health Plan 2026 – 2031*
- *Disability and Inclusion Plan 2025 - 2030*

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 been amended to include Reserve 27318.	O0323-048	Dec 2025
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
Sept 2026	7	D18/376[v7]	Full review and rewrite.	O0926-124	Sept 2028