



**MORNINGTON  
PENINSULA**  
*Shire*

## **Control and Management of Itinerant Traders**

Policy No.

This Policy is a tool that will provide Council with a framework for the operation and management of itinerant traders within the municipality.

The objectives of this policy are:

- To facilitate the opportunities for itinerant traders that adds to the public's enjoyment and use of the municipality, while not reducing safety or access to public land;
- To provide a consistent and coordinated process for the assessment of applications for itinerant traders within the municipality.

This reviewed Policy was adopted by Council on 20<sup>th</sup> June 2005.

The primary responsibility for the implementation of this Policy lies with the Economic Development Unit.

### **CORPORATE FRAMEWORK**

#### **Vision**

This Policy is consistent with Council's vision for the municipality. Mornington Peninsula Shire is committed to a 'Sustainable Peninsula' by achieving outcomes that are environmentally, economically and socially sustainable. The Shire's Sustainability Framework provides guidance to ensure sustainable outcomes are delivered through Shire policies and strategies.

The Shire values it's vibrant business community and recognises that there are business opportunities that can occur on a temporary basis.

The aim of this policy is to ensure that temporary business opportunities are facilitated and managed in a consistent way that ensures that the community's enjoyment of, and access both to and through, public land is not unduly compromised by the establishment of temporary businesses.

#### **Mission**

The Policy's primary role is to provide a framework to facilitate and manage temporary businesses on the Mornington Peninsula. It will assist Council in undertaking its mission of facilitating a sustainable local economy.

#### **Values**

Consistent with the Shire Values, this policy will assist Council towards:

- Sustainability as a guiding principle;
- Open and effective community consultation;
- Equity and consistency in assessment of temporary business proposals;
- Supporting our diverse communities - particularly the business community;
- Responsible stewardship in managing community assets;
- Responsiveness to community needs;
- Just, healthy and efficient outcomes

## **Key Policy Statement**

Through this policy Council will be able to facilitate and manage temporary business operations that provide an enhanced use and enjoyment of public and municipal places on the Mornington Peninsula.

Some key outcomes of the adopted processes will be to minimise community conflict resulting from temporary business operations while providing a process for assessing temporary business operations that is open and transparent in a manner that is fair to all.

Implementation of this policy will allow Council to develop a pool of funds that can be used to collectively market the Mornington Peninsula's business community.

## **STRATEGY**

### **Strategic Objective 1**

To facilitate and manage the operation of food vans on the Mornington Peninsula.

- Action 1.1* Identify approved locations within the Mornington Peninsula (other than markets and events) that are appropriate and safe from which to allow food vans to operate within.
- Action 1.2* Call for tenders for the locations on an annual basis.
- Action 1.3* Collectively promote the Mornington Peninsula business community using funds generated through the tender process for food vans.

### **Strategic Objective 2**

To provide clear guidelines for the use of Municipal and Public Places for the operation of temporary businesses for Spot or Bulk Sales.

- Action 2.1* Develop a clear set of requirements for undertaking a Spot or Bulk Sale from a Municipal or Public Place.
- Action 2.2* Develop a Fact File that clearly outlines these rules and distribute to all Committees of Management of public buildings and trader groups, while also displaying on the Shire's website.

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### **1. SCOPE**

This Policy applies to all public land within the Mornington Peninsula Shire, and all businesses and individuals who seek to use public land to operate a business or for financial gain.

### **2. DEFINITIONS**

**Approved Location - Food Vans** - Mornington Peninsula Shire has identified locations within the Municipality from which Food Vans may trade with a Local Law Permit. Trading from these locations may occur independently of a Council approved market, festival or event. The Approved Locations are shown in Diagram 1 of this Policy.

**Food Van** - Any vehicle, caravan, trailer, table, stall or other similar structure for the purpose of selling or offering for sale any food and or drink (excluding alcoholic beverages).

**Itinerant Trader** –A person or persons, engaged in providing goods and/or services on a temporary basis, including Food Vans, Spot or Bulk Sales.

**Moveable Advertising Sign** – Any moveable board, notice, structure, banner or similar device used for the purposes of notifying of a sale, soliciting sales or notifying people of the presence of an adjacent property where goods and services may be obtained. Includes A-Frame signs. This excludes commercial signage mounted on vehicles and/or trailers.

**Municipal Place** – All land owned, leased, managed, vested in or occupied by Council to which the public has access and includes buildings and other structures affixed to such land and includes a road, watercourse, reserve and reservation.

**Public Place** – Includes a reserve, public highway, mall, road street, bridge, footway, footpath, court, alley, passage or thoroughfare, notwithstanding that it may be formed on private property and any other place to which the public may resort.

**Road** – Highway, street, lane, bridge, thoroughfare or other place that is open to or used by the public for passage with vehicles. It includes a public highway, carriageway, footpath, traffic island,

nature strip and any other area that is provided to separate vehicle traffic on a highway, street, lane, bridge, thoroughfare or other place. It also means any place that is declared to be a highway under section 3(1) of the Road Safety Act 1986.

**Spot or Bulk Sales** - The temporary use of a public building for the sale of products, including overstocked, damaged, end of line items (eg. rugs, shoes) or artworks.

### **3. PROCEDURE**

#### **a. General**

- All Itinerant Traders operating within the Mornington Peninsula Shire must hold a public liability policy of insurance in respect of the activities being undertaken, providing cover for at least \$10,000,000. The public liability policy shall be effected with an insurer approved by the Council.

The public liability policy shall cover such risks and be subject to such conditions and exclusions as are approved by Mornington Peninsula Shire and shall be extended to provide a Principals Indemnity to the Mornington Peninsula Shire in respect to claims for personal injury or property damage arising out of the negligence of the business, organisation or individual.

The business, organisation or individual agrees to indemnify and keep indemnified by way of entering into a deed of indemnity, and to hold harmless Mornington Peninsula Shire, its servants and agents, and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, arising from the business, organisation or individual holding the sale and be directly related to the negligent acts, errors or omissions of the business, organisation or individual.

A copy of the certificate of currency of the insurance policy or deed of indemnity must be provided to an Authorised Officer of Mornington Peninsula Shire on being requested to do so.

- All Itinerant Traders must comply with the Mornington Peninsula Planning Scheme, General Purposes Local Law – 2012, Part 9 Sale of Goods, Street Collections and Spruiking, Section 65 and Mornington Peninsula Shire's Signage Policy. No permanent signage may be erected. A Movable Advertising Sign may only be displayed during the operating times of the business.

#### **b. Spot or Bulk Sales in a Municipal or Public Place**

Any business, organisation or individual seeking to undertake spot or bulk sales in a Municipal or Public Place, must ensure that they:

- Have the prior written consent of the Committee of Management or Mornington Peninsula Shire (as appropriate) to hold a sale on the premises;
- Have evidence to show that the activity complies with the Mornington Peninsula Planning Scheme (either a letter stating that no planning permit is required, or a planning permit). Where the activity does not comply with the Mornington Peninsula Planning Scheme it may not occur;
- Pay any relevant building hire fees;
- Comply with all relevant guidelines or rules for hiring a Municipal or Public Place

## **c. Food Vans**

### ***Food Vans General***

A Permit may be granted to erect, place or position a vehicle, caravan, trailer, table, stall or other similar structure for the purpose of selling or offering for sale any food or drink. Food vans must not provide alcoholic beverages for on or off-site consumption.

A Food Van may only operate in the area specified within their Local Law permit (Refer to sub-section - "Where Food Vans May Operate"), and must operate in accordance with all conditions of their permit.

All Food Vans may only operate within the Mornington Peninsula Shire if they have a current permit that allows them to do so, except as described in sub-section - "Where Food Vans May Operate" (iii, iv).

All applications for a permit to operate a Food Van will be assessed through a tender process. Tenders will be invited in June of each year. Upon advice that a permit will be issued to operate a Food Van within an approved location, the applicant will need to pay the annual operating fee as determined through the tender process.

The permit is valid for up to 12 months from the date of issue. A permit may not be automatically renewed after the 12 months is completed, as the full tender process must be undertaken.

In determining whether to grant a Permit the following considerations must be taken into account by Council or an Authorised Officer:

- Whether the activity will be detrimental to the amenity of the area;
- Whether the activity will be detrimental to the safe usage of the area;
- What value the proposed activity adds to the area;
- What value the applicant places on the approved location;
- What arrangements the applicant is making for:
  1. Waste water disposal
  2. Litter and garbage disposal
  3. Recycling facilities
- Whether the consent of the Responsible Authority has been obtained where the road is a declared state highway, tourist road or forest road;
- Whether the applicant has provided current evidence that the vehicle is registered under the Food Act;
- Whether there have been previous complaints about a previous permit holder;
- Whether a previous permit holder has received an official warning, infringement notice or had their permit cancelled;
- Any other matter relevant to the circumstances of the application.

A Food Van may only be operated during daylight hours, unless it is being operated in association with a Council approved market, festival or event.

Advertising signs for food vans shall be restricted to the vehicle, caravan, trailer, or any other structure from which the business is conducted.

All other necessary permits and approvals must be obtained prior to the commencement of the business operation.

Where there is an event approved by Council, the approval for the event to use a specific area, over-rides the permission for the itinerant trader to use the same area.

A register must be kept of all permits granted for food vans. This register must include:

- The name of the permit holder;
- Detail of which approved site they may operate from;
- Vehicle registration number;
- Food Act registration details (including a copy of their certificate);
- Permit expiry date.

The Authorised Officer must also maintain a separate register that details whether there have been any complaints regarding the operation of the business.

**Where Food Vans May Operate**

*i. Approved Locations*

- Where a person wishes to operate a Food Van in an approved location within a public place as identified in Diagram 1 of this policy, a Local Law Permit must be approved in accordance with General Purposes Local Law – 2012, Part 9 Sale of Goods, Street Collections Road Safety Act 1986 prior to the commencement of the operation of the business.

Diagram 1

**Mornington Park**  
*(Schnapper Point Drive)*  
Approved food van location



**Mount Martha**

*Foreshore (Opposite 506 Esplanade)*  
Approved food van location



**Safety Beach**

*Foreshore (Marine Parade & Prescott Ave)*  
Approved food van location



**RYE**

Rye Foreshore (Point Nepean Road – opposite Napier St)  
Approved food van location



**Sorrento**

*(Foreshore opposite 3237 Point Nepean Road)*  
Approved food van location



*ii. Residential Areas*

Other than the locations defined in Diagram 1, a maximum of two vans may be permitted to operate in the residential areas of the Mornington Peninsula Shire. This Food Van may not operate within commercial areas or along the foreshore. A Local Law Permit must be obtained from Mornington Peninsula Shire prior to commencing trading.

*iii. Foreshore Reserves not Owned or Managed by the Shire*

A Local Law permit is not required if a Food Van is operating on foreshore not controlled or managed by Mornington Peninsula Shire where the Committee of Management has gazetted regulations for activities on the subject foreshore that supersedes the powers of the Local Law. Where there are no gazetted regulations, then no Food Vans may operate.

Food Vans may only operate on foreshores within the Mornington Peninsula Shire in locations other than shown in Diagram 1 if they have the prior written consent of the Committee of Management and can provide this to an authorised officer of the Shire or representative of the Committee of Management upon request.

*iv. Food Vans at Markets, Events and Festivals*

Itinerant Traders may only operate at a Market, Event or Festival when they have received the prior consent of the organiser of the Market, Event or Festival. In seeking the prior consent, the Itinerant Trader should provide evidence of current public liability insurance and Food Act Registration (as appropriate).

*v. All other Areas*

Food Vans may not operate.

**d. Exempt Businesses**

The following selling activities on an itinerant basis are exempt from the need for a Local Law Permit:

- Newspapers and magazines being home delivered;
- Milk and milk products being home delivered;
- Fruit juices and soft drinks being home delivered;
- Goods and/or services sold in a legally established market or fair;
- Goods and/or services sold from any house or shop occupied by the person offering the goods and/or services for sale;
- Goods and/or services sold directly to the occupiers of premises.

Council may, by resolution, exempt any itinerant trader from the need for a Local Law Permit. However, this exemption for the need for a permit under Local Law No. 5; Part 11 does not affect the need for compliance with any other legislation.

**e. Other Businesses**

Where a business does not clearly fall into the classification of an Itinerant Trader because the business is operated in a Public or Municipal Place on a more permanent basis, the business must operate in accordance with the Mornington Peninsula Planning Scheme and all other related legislation that provides for occupancy of Public land.

Any person who is aggrieved by the administration or the enforcement of this policy may apply for a review of the decision. This right to appeal does not remove the person's obligation to act in accordance with any other direction, notices, or legislation.

**f. Non-compliance**

- Where a business operator conducts a business on the Mornington Peninsula that does not comply with this Policy or their permit to operate, their permit may be rescinded and enforcement proceedings may occur in accordance with the General Purposes Local Law – 2012, Part 9 Sale of Goods, Street Collections Road Safety Act 1986

Where a business activity is contrary to the Mornington Peninsula Planning Scheme enforcement proceedings in accordance with the Mornington Peninsula Planning Scheme and the Planning and Environment Act may occur.

**4. RESPONSIBILITY**

**Economic Development Unit**

- Receipt and assessment of applications for Food Vans in approved locations and in the residential area of the Shire. The assessment process will require the referral of the application to other external and internal departments as required.
- Maintenance of a register of all permits granted for Food Vans.

**Environment Protection Unit**

- Monitoring itinerant traders to ensure compliance with the relevant permits or legislation.

**Recreation and Culture Unit**

- To ensure that all itinerant traders that are participating in an approved event have the relevant permits in accordance with this policy and all related legislation.
- Receipt and assessment of applications for Spot or Bulk Sales in a Municipal or Public Place. The assessment process will require the referral of the application to other external and internal departments as required.

**5. RELATED POLICES AND LEGISLATION**

- Mornington Peninsula Shire Policy No. 2.8 – Control and Management of Licensees on Crown Land.
- Mornington Peninsula Shire Policy No. 3.4 – Events
- Planning and Environment Act 1987
- Mornington Peninsula Planning Scheme.
- General Purposes Local Law – 2012, Part 9 Sale of Goods, Street Collections Road Safety Act 1986
- Food Act 1984
- Health Act 1958
- Crown Land (Reserves) Act 1978
- National Parks Act 1975
- National Competition Policy

**6. REVIEW**

This policy shall take effect for three (3) years following adoption of the reviewed policy by Council. The policy shall be subject to review not later than 1 June 2008.

**7. BACKGROUND PAPERS**

- a. Extract from the Local Law