

## DEVELOPMENT SERVICES

### Health Services

## 3.3.6

<b>TITLE:</b>	<b>TRADING IN PUBLIC PLACES</b>
<b>ADOPTED:</b>	OCM 15 December 2016 – Pages 544 - 549
<b>REVIEWED:</b>	
<b>ASSOCIATED LEGISLATION:</b>	Trading, Outdoor Dining and Street Entertainment Local Law 2003 Local Government Property and Public Places Local Law 2012
<b>ASSOCIATED DOCUMENTS:</b>	Local Planning Policy 8.3 Outdoor Dining
<b>REVIEW RESPONSIBILITY:</b>	Manager Health, Emergency and Ranger Services
<b>DELEGATION:</b>	

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Previous Policy Number 4.2.15

### Objective:

1. To facilitate the assessment and approval of Trading Licences in accordance with the Trading, Outdoor Dining and Street Entertainment Local Law 2003 (**Local Law**).
2. To maintain amenity, usability and public safety in public places.
3. Promote fairness and certainty to traders, permanent businesses and the community in relation to trading in public places.
4. Promote vibrancy of public places and economic development in the Shire of Broome.
5. To protect Cable Beach as a highly valued environmental, cultural and social asset enjoyed by visitors and residents alike.

### Definitions:

**authorised person** means a person appointed by the local government to perform all or any of the functions conferred on an authorised person under the Local Law.

**camel operators** means those persons associated with commercial camel activities, either as the owner, the licensee or an employee.

**commercial camel activities** means those activities associated with camel tours/rides on Cable Beach.

**directly competing with** means that both the proposed trading activity and the permanent business offer a type or category of good or service that is directly comparable, for example:

- an ice cream van would be directly competing with an ice cream parlour;
- a mobile food van selling coffee, cake and sandwiches would be directly competing with a café;
- a mobile food van selling pizza would be directly competing with a pizza or Italian take away store/restaurant;
- a stall offering massages would be directly competing with a massage parlour.

**node** means an area where trading activities can be undertaken in accordance with clause 3.1(c) of this Policy.

**permanent business** means a business that operates from private property.

**person** or any word or expression descriptive of a person includes a public body, company, or association or body of persons, corporate or unincorporate.

**private property** means any real property, parcel of land or lot that has a separate certificate of title, which is in private ownership or the subject of a lease or agreement with a person or the local government enabling its use for private purposes and includes any building or structure thereon.

**public place** means any thoroughfare or place which the public are allowed to use, whether the thoroughfare or place is or is not on private property and includes parklands, squares, reserves, beaches and other lands set apart for the use and enjoyment of the public, including all land which belongs to or of which the local government is the management body under the *Land Administration Act 1997* or which is an "otherwise unvested facility" within section 3.53 of the Act;

**Related Entity Interest** is defined in Schedule 4 of this Policy.

**Shire** means the Shire of Broome.

**trader** means the person/s who operate, or propose to operate, an activity subject to a Trading Licence granted in accordance with the Local Law, either as the owner, the holder of the Trading Licence or an employee.

**trading** includes:

- (a) the selling or hiring or, the offering for sale or hire of or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place for the purpose of:
  - (i) offering them for sale or hire;
  - (ii) inviting offers for their sale or hire;
  - (iii) soliciting orders for their sale or hire; or
  - (iv) carrying out any other transaction in relation to them; and
- (c) the going from place to place, whether or not public places, and:
  - (i) offering goods or services for sale or hire; or
  - (ii) inviting offers or soliciting orders for the sale or hire of goods or services, but does not include;
- (d) the delivery of pre ordered goods or services to the purchaser of those goods or services, or to the person nominated by the purchaser of those goods or services to accept delivery, whether or not payment for those goods or services is made on delivery;
- (e) the taking of further orders for goods or services from the purchaser of the pre ordered goods or services, or from the person nominated by the purchaser of the

pre ordered goods or services to accept delivery, when those orders are taken at the same time as the previous order is being delivered, whether or not payment is made for the further orders or the pre ordered goods or services at the time of the taking of the further orders;

- (f) the selling or the offering for sale of goods or services to, or the soliciting of orders for goods or services from a person who sells those goods or services;
- (g) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; or
- (h) the selling or hiring or the offering for sale or hire of—
  - (i) goods by a person who represents the manufacturer of the goods; or
  - (ii) services by a person who represents a provider of the services, which are only sold directly to consumers and not through a shop.

**trading licence** means a licence issued under the Local Law to carry on trading.

All other words and expressions used in this Policy have the meaning as defined in the Local Law.

## **Policy:**

1. The Local Law allows a person to apply for a licence to undertake a range of activities to either sell, offer for sale or hire goods and services to the public. This Policy is made under the Local Law and provides additional information not outlined in the Local Law that applies specifically to trading licences.
2. For the purposes of subclause 5.2.3 of the Local Law, a person/s will be exempted from holding a valid Trading Licence when carrying out trading in a public place where the trading is undertaken:
  - 2.1 as part of an event or function approved in accordance with the Local Government Property and Public Places Local Law 2012; or
  - 2.2 in accordance with an approval granted by the Shire under another written law.
3. A trading licence will be issued for a trading activity where the following criteria are met:
  - 3.1 the proposed trading activity does not occur within 300 metres of a permanent business that it would be directly competing with, unless:
    - (a) the trading activity does not occur during the ordinary opening hours of the permanent business; or
    - (b) the owners of the permanent business have provided their support in writing for the proposed trading activity; or
    - (c) the activity occurs in a node identified in Schedule 5 of this Policy; or
    - (d) Council decides that the proposed trading activity should be approved notwithstanding its proximity to the permanent business;
  - 3.2 the location of the proposed trading area is suitable for the trading activity that is the subject of the application;

- 3.3 the trading will not have an unreasonable impact on other traders, permanent businesses, traffic flow, pedestrians or the public's use of a public place;
  - 3.4 the trading activity will not generate noise or disturbance that is likely to cause a nuisance to any person in the vicinity of the trader;
  - 3.5 the trading activity is consistent with the zoning of the land in the Shire's Local Planning Scheme, any existing use of the land and any management order for the land comprising the public place;
  - 3.6 a Risk Management Plan has been completed for the proposed trading activity to the Shire's satisfaction;
  - 3.7 an Occupational Safety & Health Plan has been prepared for the proposed trading activity to the Shire's satisfaction;
  - 3.8 a business/operational plan has been prepared for the proposed trading activity to the Shire's satisfaction, outlining how the proposed trading activity will be undertaken; and
  - 3.9 the trader has other statutory approvals and accreditations applicable to the operation of the commercial activity, if required.
4. Council may seek additional information from an applicant for a trading licence to facilitate the assessment of an application for a trading licence.
  5. Council may invite applications for trading licences for trading in a particular area or a specific type of trading activity and applications that are received will be assessed in accordance with the Local Law, this Policy and the criteria set out in Schedule 3 of this Policy.
  6. It will be a condition of any trading licence issued that:
    - 6.1 The licensee is responsible for the repair, restoration or reinstatement of any damage to Shire property arising from the trading activity or caused by the customers of the trading activity. Such repair, restoration or reinstatement of damage must be carried out as directed by Council and to Council's satisfaction.
    - 6.2 The licensee obtains public liability insurance in accordance with subclause 8.6.1 of the Local Law, except that the value of the public liability insurance must be \$10,000,000.
    - 6.3 The placing of signs occurs only within the area approved for the trading activity, unless otherwise approved by Council.
  7. A trading activity must not:
    - 7.1 involve the sale of offensive, illegal, prohibited, counterfeit or unauthorised goods, including goods bearing trademarks for which the person does not have a licence to sell;
    - 7.2 adversely impact on:

- (a) traffic movement;
  - (b) traffic safety;
  - (c) traffic flow; or
  - (d) cause a traffic hazard,
- 7.3 prevent access to a footpath;
- 7.4 erect signage, except in accordance with the Local Law or as approved in accordance with the trading licence; and
- 7.5 involve the connection to or utilisation of any Shire utilities without prior approval, unless otherwise approved as a condition of the trading licence.
8. Council may seek to engage with the community and seek public comment in relation to an application for a Trading Licence if Council considers that it is desirable to do so in the circumstances. Any submissions received by Council during the public comment period may be taken into account by Council in deciding whether to grant the trading licence applied for.
9. An authorised person may direct the holder of a trading licence to stop doing anything which is contrary to the Local Law or a condition of the trading licence. A person who is given such a direction by an authorised person must comply with that direction.
10. The licensee must, during the period of the licence:
- 10.1 at the conclusion of each day the trading activity occurs, remove all and any refuse and litter associated with the operation of the trading activity and ensure the area in which the trading is undertaken is left in a clean and safe condition;
  - 10.2 maintain and adhere to all plans, procedures, policies, licences and accreditations relevant to the trading activity; and
  - 10.3 allow Shire officers to, upon request, inspect and verify that the plans, procedures, policies, licences and accreditation are current and are being complied with.
11. Failure to comply with clause 10 of this Policy will be deemed to be a breach of the trading licence conditions for the purposes of clause 2.7(a) of the Local Law.
12. For the purposes of subclause 2.7(f) of the Local Law, the failure of a licensee to undertake an activity approved by a trading licence for a period of 12 months is considered a ground upon which a trading licence should be cancelled.
13. An annual fee will be payable for a trading licence, with payment due 1 August annually.
14. All applicants for Trading Licences are advised of their right to object a decision made by the Shire. In accordance with section 9.4 of the *Local Government Act 1995*, an affected person may object to a decision of local government and lodge an appeal to the decision by lodging an objection to the Shire within 28 days of the decision.

15. Additional provisions that apply to trading activities on Cable Beach are outlined in Schedule 1 of this policy.
16. Additional provisions that apply to commercial camel activities are outlined in Schedule 2 of this policy.
17. Additional provisions that apply to trading activities undertaken in a node are outlined in Schedule 5 of this policy.

# Schedule 1

## Additional provisions for trading activities on Cable Beach

### **Additional provisions for trading activities on Cable Beach:**

1. A maximum of six trading licences will be granted for trading activities on Cable Beach.
2. Trading licences, except for commercial camel activities, will only be issued:
  - 2.1 for trading activities which support and are directly related to the recreational use and enjoyment of Cable Beach and its adjacent waters; and
  - 2.2 for the section of Cable Beach:
    - (a) between a point formed by the westerly prolongation of Murray Road to the low water mark and a point located 500 metres north of the vehicle entry ramp adjacent to the Broome Surf Club; and
    - (b) between the high and low water mark.
3. Council may decide to grant a trading licence for an activity even though:
  - 3.1 six trading licences have already been granted for trading activities on Cable Beach;
  - 3.2 the activity does not support and/or is not directly related to the recreational use and enjoyment of Cable Beach and its adjacent waters; and/or
  - 3.3 the activity is proposed outside the section of Cable Beach specified in subclause 2.2,  
  
where Council considers that there is sufficient merit in the proposed trading activity to justify its approval.
4. A person must not hold more than one trading licence for a trading activity on Cable Beach at any time.
5. Council may close Cable Beach to all activities, including trading activities, at any time.
6. A licensee must have a valid permit issued by the Shire's Chief Executive Officer in accordance with the *Control of Vehicles (Off Road Areas) Act 1960*. The licensee must at all times comply with the requirements of that Act.

## Schedule 2

### Additional provisions for commercial camel activities on Cable Beach

#### **Additional provisions for commercial camel activities on Cable Beach:**

##### Trading licences for commercial camel activities generally

1. A maximum of three trading licences will be granted for commercial camel activities on Cable Beach.
2. A person must not hold more than one trading licence for a commercial camel activity at any time, and must not have a Related Entity Interest in respect of the holder of another trading licence for a commercial camel activity.
3. Each camel operator must operate independently, unless otherwise approved as part of an event or function approval issued in accordance with the Local Government Property and Public Places Local Law 2012.
4. Each trading licence will allow a maximum of 18 camels per operator on Cable Beach at any time, unless otherwise approved by the Shire for extraordinary circumstances, eg. cruise ships and corporate/conference functions.
5. Trading licences for commercial camel activities on Cable Beach will be approved for ten years.
6. The conditions of a trading licence issued for a commercial camel activity will be consistent with the provisions in Part 4 in Schedule 2 of the Local Government Property and Public Places Local Law 2012.

##### Area in which licences will be approved

7. Commercial camel activities may be conducted on Cable Beach:
  - 7.1 between:
    - (a) a point formed by the westerly prolongation to the low water mark of the northern boundary of Reserve 36477;
    - (b) a point formed by the westerly prolongation to the low water mark of the Northern Boundary of Lot 405 Lullfitz Drive; and
    - (c) the high and low water mark, and
  - 7.2 within the set down/pick up area allocated or approved by Council, including land required to traverse from the area identified in subclause 7.1 to this allocated or approved set down/pick up area.

## Requirements for commercial camel activities

8. All commercial camel activities must be undertaken in accordance with the provisions in Part 4 in Schedule 2 of the Local Government Property and Public Places Local Law 2012.
9. Camel operators must only set down/pick up customers for their camel train at the set down/pick up area allocated to the operator in the operator's trading licence, except where otherwise approved by the Shire due to adverse environmental or other conditions making the designated set down area unsuitable. A portable sign may be placed in the set down/pick up area allocated in the operator's trading licence as follows:
  - 9.1 the sign must not exceed one metre in height;
  - 9.2 each advertising panel on the sign must not exceed 0.8 square metres;
  - 9.3 the sign must only contain details relevant to the commercial camel activity;
  - 9.4 the sign must not be placed in a way that causes interference or is hazardous to vehicular traffic or pedestrians;
  - 9.5 the sign must be of sound construction and maintained in good condition; and
  - 9.6 the sign must be removed at the end of each trading session.
10. No commercial camel activities can be undertaken on Cable Beach between 10am and 2.30pm, unless otherwise approved by the Shire for extraordinary circumstances e.g. cruise ships and corporate/conference functions. Any request to conduct commercial camel activities in between 10am and 2.30pm must be made in writing, and if approved will be for a maximum period of two hours between 10am and 2.30pm.
11. A camel operator must hold current approval from the Shire to keep a large animal in accordance with the Health Local Laws 2006.
12. A single temporary shade structure can be erected for each commercial camel activity, no more than 3 metres by 3 metres in size and erected soundly and securely so as not to cause a hazard.
13. All camels must be fitted with manure collection devices. Any manure that escapes a manure collection device must be collected immediately.
14. Camel operators must ensure that there is at least 30 metres between each camel train at all times.

### Activities that can be undertaken as part of a commercial camel activity

15. The following activities may be undertaken in accordance with a trading licence issued for a commercial camel activity:
  - 15.1 camel tours;
  - 15.2 the taking and sale of photographs and camel memorabilia associated with the commercial camel activity to customers undertaking camel tours; and
  - 15.3 the sale of bottled water.
16. A camel operator must not facilitate the provision by any other business of any goods or services (eg. provision of food or drinks) to the operator's customers on Cable Beach or any other public place, except for:
  - 16.1 to facilitate the provision of medical or other emergency services to customers where required; and
  - 16.2 as part of an event or function approved as in accordance with the Local Government Property and Public Places Local Law 2012.

### General

17. Council may close Cable Beach to all activities, including trading activities, at any time.
18. Council may, at any time, direct that access to Cable Beach be obtained from an alternative location to that approved in the trading licence.

### Advice notes for camel operators

The following advice notes are provided as recommendations to assist camel operators in providing for a safe and professional service to customers. It should be noted that in providing this advice, the Shire accepts no responsibility for non-compliance of any occupational health and safety requirements or any other legislation.

- A. Informative introductory talks should be provided to customers covering all aspects of safety prior to clients commencing a camel ride.
- B. Camel operators should have a maintenance schedule to ensure all equipment used in association with the riding of camels is kept at a high standard.
- C. Camel operators should have a system for the recording of any incidents or accidents that may occur in operation of the commercial camel activities.
- D. An employee induction process should be introduced for all employees.
- E. It is recommended that first aid training be provided to employees and that first aid kits are carried on the camel tours.

- F. A mobile phone should be carried on all camel tours to ensure communication in the event of an accident, or contact with Shire Officers if necessary.
- G. It is recommended that camel operators hold current tourism accreditation to support a high standard of practice within the camel industry in Broome.
- H. Camel operators should endeavor to meet with Shire Officers prior to each new tourist season to discuss both the previous and upcoming season's activities and other matters relevant to the operation of camel tours.

*DISCLAIMER: The above information provides readers with advice, guidance and/or recommendations regarding specific operational conduct. The advice, guidance and/or recommendations contained herein do not constitute legal advice, and are not intended as an exhaustive statement of measures that should be undertaken to discharge the operator's duty of care to clients and the public.*

## Schedule 3

### **Clause 4 - Criteria for assessing applications for a trading licence**

Where Council has invited applications for trading licences for trading in a particular area or a specific type of trading activity, the application will be assessed against the following criteria:

1. Compliance of the application with the criteria in clause 3 of this Policy.
2. Compliance of the application with the Local Law.
3. Experience of the applicant in conducting the activity the subject of the application, or other similar operations.
4. Experience of staff and key personnel that will be involved in the conduct of the activity in conducting the activity the subject of the application, or other similar operations.
5. Provision of three referees who can be contacted by the Shire about previous experience in conducting the activity the subject of the application, or other similar operations.

## Schedule 4

### Definition of Related Entity Interest

A person has a Related Entity Interest in relation to another commercial camel activity if any of the following applies:

<b>Where both parties are natural persons</b>	<b>Where both parties are corporations</b>	<b>Where one party is a natural person and the other is a corporation</b>
<ul style="list-style-type: none"> <li>(a) Partnership or joint venture.</li> <li>(b) Trustee/beneficiary.</li> <li>(c) Trustee/potential object of a discretionary trust.</li> <li>(d) Spouses or de facto partners living together.</li> <li>(e) Parent/child living together.</li> <li>(f) A person's spouse, de facto partner or child living with the person, has a relationship of any of categories (a) - (c) to the other party.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Related corporations including parent/subsidiary companies and companies in the same corporate group.</li> <li>(b) Corporations in partnership or joint venture.</li> <li>(c) Except in the case of a publicly-listed company, corporations (other than community associations or clubs) with any degree of common membership. Membership means:               <ul style="list-style-type: none"> <li>(i) Directors;</li> <li>(ii) Shareholders;</li> <li>(iii) Unit holders;</li> <li>(iv) Beneficiaries of trusts administered by unit holders;</li> <li>(v) Potential objects of such trusts.</li> <li>(vi) Spouse, de facto partner or child of any of categories (i) - (v).</li> </ul>               Persons need not be members of the two corporations in the same capacity.             </li> </ul>	<ul style="list-style-type: none"> <li>(a) Partnership or joint venture.</li> <li>(b) Trustee/beneficiary.</li> <li>(c) Trustee/potential object of a discretionary trust.</li> <li>(d) Directorship.</li> <li>(e) Shareholding.</li> <li>(f) Unit holding.</li> <li>(g) Spouse, de facto partner or child living with the natural person party is in any of relationships (a) - (f) with the corporate party.</li> </ul>

## Schedule 5

### Clauses 3.1(c) and 17 – Trading activity nodes

1. Trading activities may be established within the following nodes in Broome:
  - 1.1 Town Beach Reserve 31340
  - 1.2 Broome Recreation and Aquatic Centre (Reserve 42502)
  - 1.3 Cable Beach Foreshore (Reserve 36477 and adjacent Cable Beach Road West Road Reserve)
  - 1.4 Tanami Park (Reserve 51243 and adjacent road reserve)
  - 1.5 Chinatown.
2. The following additional provisions apply to trading activities in a node:
  - 2.1 Up to three trading activities will be allowed to occur at any one time within a node, except for Chinatown;
  - 2.2 Trading licences will only be issued for trading activities in Chinatown following an expressions of interest process, whereby Council invites applications for trading activities in Chinatown in accordance with Clause 5 of this Policy;
  - 2.4 Notwithstanding clause 12 of this Policy, for the purposes of subclause 2.7(f) of the Local Law, the failure of a licensee to undertake an activity approved by a trading licence in a node for a period of 3 months is considered a ground upon which a trading licence may be cancelled;
  - 2.5 Trading licences are site specific, and trading will be limited to the locations/nodes specified in a trading licence;
  - 2.6 Trading licences may specify certain days or hours within which a trading activity may operate within a node; and
  - 2.7 Applications for trading licences in the nodes will be assessed against the additional criteria in clause 3 of this Schedule.
3. The following additional criteria apply to the assessment of trading licence applications for trading activities in the nodes:
  - 3.1 The vehicle or structure used for the trading activity must be well presented and provide a high level of visual appeal.
  - 3.2 The trading activity must not detract from the visual or general amenity of the surrounding area.
  - 3.3 The trading activity will support the vibrancy and/or enhance the use of an area by persons working or visiting the node.

- 3.4 The trading activity will result in a diversity or enhancement of offerings/experiences available within the node.
- 3.5 The trading activity must not incorporate or comprise a bar or the sale of alcohol.