

# Bylaw

## MOBILE SHOPS, STALLS AND HAWKERS

<b>TITLE:</b>	Ashburton District Council Mobile Shops, Stalls and Hawkers Bylaw 2016
<b>TEAM:</b>	Environmental Services
<b>RESPONSIBILITY:</b>	Environmental Monitoring Manager
<b>DATE ADOPTED:</b>	22 September 2016
<b>COMMENCEMENT:</b>	1 December 2016
<b>NEXT REVIEW DUE:</b>	22 September 2026

### 1. Title

The title of this bylaw is Ashburton District Council Mobile Shops, Stalls and Hawkers Bylaw 2016.

### 2. Purpose

The purpose of this bylaw is to regulate trading in public places in order to protect the public from nuisance and to protect, promote and maintain public health and safety.

### 3. Related documents

- Ashburton District Council Advertising Signs, Placards and Footpath Advertising Controls Bylaw
- Ashburton District Council Explanatory Bylaw
- Ashburton District Council Open Spaces Bylaw
- Ashburton District Council Public Places Bylaw
- Ashburton District Council Schedule of Fees and Charges
- Ashburton District Plan
- Fair Trading Act 1986
- Fisheries Act 1996
- Health Act 1956
- Food Act 2014
- Reserves Act 1977.

## 4. Application

This bylaw applies to public places within Ashburton District.

The provisions of this bylaw do not apply to:

- a) The owner of a fishing boat registered under Part 4 Section 103 of the Fisheries Act 1996 where the fishing permit allows the sale of fresh fish or shellfish from that boat at the place where it is moored, berthed, or beached; or from a stall within 450m of that place.
- b) Collectors for charitable purposes. Street appeal collectors must make an application through the Customer Services Team at Council.
- c) Street performances and pavement artists. These are addressed in Ashburton District Council's Public Places Bylaw.
- d) Outdoor dining, which is covered by Council's Use of Footpaths for Alfresco Dining Policy.

## 5. Definitions

In this bylaw, unless the context requires otherwise:

**Authorised Officer** means any person appointed by the Council to act on its behalf and with its authority.

**Bylaw** means the Ashburton District Council Mobile Shops, Stalls and Hawkers Bylaw 2016.

**Council** means Ashburton District Council.

**District** means the district of the Ashburton District Council.

**Goods** is as defined in the Goods and Services Tax Act 1985.

**Hawker** means any person who carries or takes about any goods and/or services for sale not in pursuance of any invitation to call with, or of any previous order or request for, such goods, and includes a pedlar and any person who exposes for sale any goods and/or services or taken about by him/her, or solicits the custom of any other person; and whether any such person shall carry any such goods and/or services or not, but does not include any person who uses any vehicle as a mobile shop.

**Keeper** in relation to any mobile shop, means the person by whom or on whose behalf any business is carried on by means of that mobile shop.

**Permit** means authority granted by Ashburton District Council allowing the holder to engage in the sale of goods or services from a mobile shop or stall, or the hawking of goods or services, upon payment of the required fee, upon such terms and for any duration that Council sees fit, including occasionally requiring inspections for health and safety regulations.

**Mobile shop** means a vehicle, whether self-propelled or not, from which goods and/or services are offered or exposed for sale in a public area (whether or not in pursuance of any invitation to call with the goods and/or services or from which services are offered for sale in the public area); but does not include any vehicle used for the purpose of transporting and delivering goods pursuant to a prior order placed for the delivery of the goods.

**Nuisance** means to obstruct, annoy or interfere, be it intentionally or unintentionally.

**Permitted Area** means the identified areas in Part A, Schedule 1 of this bylaw, where trade in public places is permitted to take place.

**Public Area** means those parts of an outdoor area normally available for use by the general public exclusive or any service or access areas.

**Service** is as defined in the Goods and Services Tax Act 1985.

**Stall** means any stand, booth, tent or structure erected, either temporarily or for ongoing use, in any space accessible by members of the public, for the sale of goods or services to members of the public.

**Trade** is as defined in the Commerce Act 1986.

## **6. Permit**

- 6.1 No person, in any public place, shall solicit trade or engage in the sale of goods or services of any description whatsoever without having first obtained a permit from Council.
- 6.2 Every person wishing to sell goods in a public place shall make an application to the Council on the prescribed form and submit the application accompanied by the relevant fee.
- 6.3 A separate permit shall be required for each vehicle or stall used and the appropriate fee must be paid per vehicle or stall.
- 6.4 No permit issued shall be transferable to any other person.
- 6.5 Council may issue temporary permits for an activity at its discretion.
- 6.6 Permits shall be in the form prescribed by the Ashburton District Council and shall take effect as indicated on the permits.
- 6.7 At all times while operating in trade in a public place, hawkers or keepers of a mobile shop or stall must carry and be able to produce that permit to any Police Officer or Authorised Officer on request.
- 6.8 In addition to a permit to operate a mobile shop, stall, or as a hawker other licenses or permits may be required.

## **7. Fees**

- 7.1 Fees payable are set by resolution of Council from time to time and prescribed in the Ashburton District Council Schedule of Fees and Charges.

## **8. Local authority may prescribe conditions**

- 8.1 Council may, either upon the issue of any permit to any hawker or keeper of a mobile shop or stall, or at any time by notice in writing:

- 8.1.1 Prescribe any condition or conditions which the hawker or keeper of a mobile shop or stall must carry out trade or business in compliance with.
- 8.2 Where a vehicle is to be used for the sale of food for human consumption, it shall be a condition of the permit that no vehicle other than that specified in that permit or shall be used without the approval of the Council.
- 8.3 Any hawker or keeper of a mobile shop or stall who fails to comply in all respects with any such condition commits an offence against this bylaw.

## **9. Location of mobile shops and stalls**

- 9.1 In the first instance, mobile shops or stalls should be located in the areas identified as 'permitted areas' in Part A, Schedule 1.
- 9.2 Where a mobile shop or stall wishes to locate in areas outside of the permitted areas, an application must be made to Council. Council will assess the application based on the criteria specified in Part B, Schedule 1. Council have the discretion to grant or deny the permit based on this criteria.
- 9.3 Whilst it is a permitted site, no more than a total of three mobile shops or stalls may operate concurrently from the Ashburton Domain Layby site at any given time.

## **10. Trading during the hours of darkness**

- 10.1 No hawker, mobile shop or stall shall be operated for business on any public place in the time between half an hour after sunset on one day and 8.30am the following morning, unless prior permission has been given by Council.

## **11. Musical chimes**

- 11.1 Musical chimes or other audible devices for attracting customers to a mobile shop or stall may be operated in a reasonably modulated manner.
- 11.2 No such chimes or other audible device shall be operated within 300 metres of any place of public worship while a service is in progress or any hospital or similar institution licensed under the Health Act 1956.

## **12. Farmers markets**

- 12.1 A permit may be issued by Council for the operation of a Farmers Market in the Ashburton District. Specific requirements pertaining to this permit will be made as Council sees fit.

## **13. Request to move or relocate**

- 13.1 Every permitted hawker, or keeper of a mobile shop or stall shall, upon request by any police officer or Council Authorised Officer, relocate to any other street, part of the street, or public place as indicated by that officer.

- 13.2 Any person who fails to comply with any request made by any police officer or Council Authorised Officer pursuant to Clause 10.1 thereof commits an offence against this bylaw.

## **14. Breaches of bylaw – compliance and enforcement**

- 14.1 Every keeper of a mobile shop or stall, or person operating as a hawker, who breaches this bylaw, must on request of an Authorised Officer immediately stop the activity. Any person failing to comply with such a request commits a further offence against this bylaw.
- 14.2 Any person who breaches this bylaw may be prohibited from holding a permit for such period as the Council or Authorised Officer shall determine.
- 14.3 Any person found to be operating as a keeper of a Mobile Shop or Stall, or as a Hawker, who does not hold a valid permit for that activity commits a further offence against this bylaw.
- 14.4 Breaches of this bylaw may also result in an application being made to the District Court for an injunction to restrain the keeper/hawker from the activity that they have been involved in.
- 14.5 Any person who breaches this bylaw may be prosecuted for any such breach and is liable upon summary conviction to a fine, as provided for under the Local Government Act 2002 (which specifies a fine not exceeding \$20,000), and may also be liable to penalties under other legislation.

## Schedule 1

### Part A: Permitted sites

The following are permitted sites for mobile shops and stalls:

- **Havelock Street**, between East Street and Baring Square East, Ashburton
- **Havelock Street cul-de-sac**, northwest from Walker Street, Ashburton
- **Ashburton Domain layby**, within the Ashburton Domain along West Street, Ashburton
- **160 Main Street**, outside the Methven Heritage Centre, Methven

The following are additional permitted sites for stalls only:

- **East Street footpath**, in front of 242 East Street, Ashburton
- **The Mall**, between Main Street and McMillian Street, Methven
- **The Square - Main Street**, outside the Medical Centre, Methven

The following are discretionary sites for mobile shops and stalls during the timeframes specified:

- **East Street**, Ashburton, during one off events as agreed by an Authorised Officer
- **West Street car park**, Ashburton, during weekends and after 5pm weekdays

### Part B: Criteria for determining other sites

An Authorised Officer may use discretion to permit mobile shops and stalls to trade at sites other than those listed in Part A, Schedule 1.

There must be good reason why the permitted sites are not suitable and the proposed site must be consistent with the following criteria:

- Mobile shops and stalls must be located in areas controlled by speed limits of 50km or less.
- Mobile shops and stalls must be at least 100 meters (nearest point to nearest point) from any business premises selling like goods or services.
- There must be adequate and safe roadside customer parking available at the site.

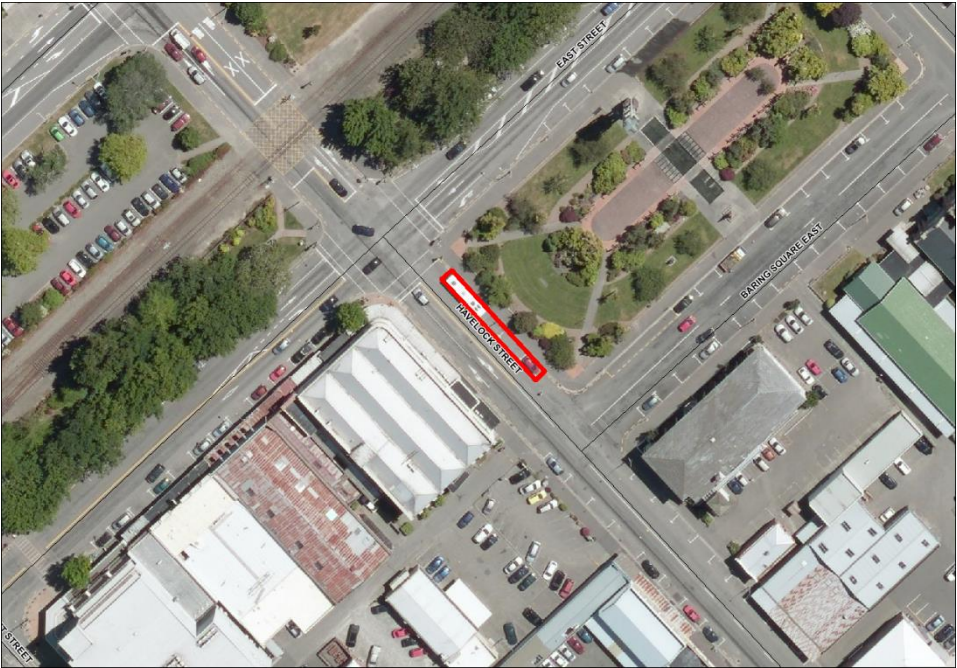

In addition, in deciding to grant or decline an application for an alternative site, the following must be taken into consideration:

- (a) the nature of the activity;
- (b) the location and duration of the activity;
- (c) the degree to which public use of the street or public place will be maintained;
- (d) whether it is likely to cause a nuisance, obstruction or a hazard to pedestrians or vehicular traffic;
- (e) the potential impacts on the surrounding environment (including immediately adjacent stakeholders) as a result of noise, smell, glare, light spill, appearance or any other effects.

# Schedule 2

## Permitted sites: mobile shops and stalls

The following are permitted sites for mobile shops and stalls:

<p><b>Havelock Street</b> between East Street and Baring Square East, Ashburton</p>	
<p><b>Havelock Street</b> <b>cul-de-sac</b> northwest from Walker Street, Ashburton</p>	

**Ashburton Domain**  
**layby**  
 within the  
 Ashburton Domain  
 along West Street,  
 Ashburton



**160 Main Street**  
 outside the  
 Methven Heritage  
 Centre, Methven



**KEY:** — permitted sites: mobile shops or stalls

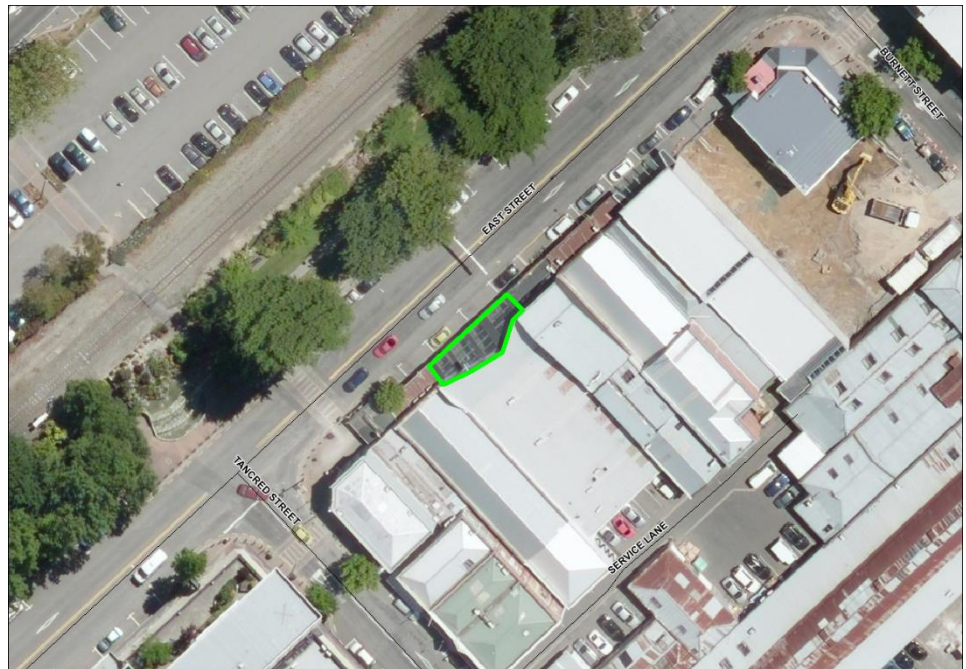
— permitted sites: stalls only

— discretionary sites

## Permitted sites: stalls only

The following are additional permitted sites for stalls only:

**East Street footpath, Ashburton**  
in front of 242 East Street.



**The Mall, Methven**  
between Main Street and McMillan Street.



**KEY:** — permitted sites: mobile shops or stalls

— permitted sites: stalls only

— discretionary sites

**The Square - Main Street, Methven**  
outside the Medical Centre.



## Discretionary Sites

The following are discretionary sites for mobile shops and stalls during the timeframes specified:

**East Street, Ashburton**  
during one off events as agreed by an Authorised Officer.

**West Street car park, Ashburton**  
during weekends and after 5pm weekdays.



**KEY:** — permitted sites: mobile shops or stalls

— permitted sites: stalls only

— discretionary sites