



Mackenzie

DISTRICT COUNCIL

Date: Tuesday, 16 November 2021

Time: 9.30am to adopt bylaws

Location: Council Chambers

Fairlie

AGENDA

Late Item

Extraordinary Council Meeting

16 November 2021

Note: This meeting may be digitally recorded by the minute-taker.

Order Of Business

1 Reports3

 1.1 Adoption of Mobile Shops and Traders Bylaw 2021 3

1 REPORTS

1.1 ADOPTION OF MOBILE SHOPS AND TRADERS BYLAW 2021

Author: Rachael Willox, Planning

Authoriser: Aaron Hakkaart, Manager - Planning

Attachments: 1. Proposed Mobile Shops and Traders Bylaw 2021 [↓](#) 

Council Role:

- ☐ **Advocacy** When Council or Committee advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- ☒ **Executive** The substantial direction setting and oversight role of the Council or Committee e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- ☒ **Legislative** Includes adopting District Plans and plan changes, bylaws and policies.
- ☐ **Review** When Council or Committee reviews decisions made by officers.
- ☐ **Quasi-judicial** When Council determines an application/matter that directly affects a person's rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice, e.g. resource consent or planning applications or objections, consents or other permits/licences (e.g. under Health Act, Dog Control Act) and other decisions that may be appealable to the Court including the Environment Court.
- ☐ **Not applicable** (Not applicable to Community Boards).

PURPOSE OF REPORT

To purpose of this report is to provide Council with the relevant information to enable the adoption of the proposed Mobile Shops and Traders Bylaw 2021.

STAFF RECOMMENDATIONS

1. That the report be received.
2. That Council upholds in part or dismisses the submissions to the Proposed Mobile Shops and Traders Bylaw 2021; and
3. That Council adopts the amended Mobile Shops and Traders Bylaw 2021 (attached to the agenda).

BACKGROUND

The Council at its meeting on 14 September 2021 formally adopted the Mobile Shops and Traders Bylaw – Statement of Proposal and the Proposed Mobile Shops and Traders Bylaw 2021 for formal consultation pursuant to section 83 of the Local Government Act 2002 (LGA).

The Statement of Proposal and associated Bylaw were released for formal consultation, in accordance with the Special Consultative Procedure set out in the LGA, on Monday 20 September 2021. The submission period closed on Friday 22 October 2021.

In total eight submissions were received on the Proposed Mobile Shops and Traders Bylaw 2021. Three submitters, in support of their submission, were heard at a public hearing held on 10 November 2021. Following the close of the hearing the Council has considered each submission on its individual merits and has determined if they uphold the submission, uphold the submission in part or dismiss the submission.

DETERMINATIONS

Following the completion of the Mobile Shops and Traders Bylaw hearing on 10 November 2021, a deliberations session was held by elected members.

Based on the deliberations and having heard and received the submissions the Council have made the following determinations on the Mobile Shops and Traders Bylaw 2021:

Submitter	Submission	Determination
Alan and Robyn Pauley	The exemption applied to mobile ice cream vans (e.g., Mr. Whippy) shall be expanded to include the Shot Coffee who operate a similar style business. Preference should not be given to one group.	<p>Submission Dismissed – Shot Coffee while more mobile than a traditional food truck does not operate in the same manner to ice cream vans such as Mr. Whippy. Traditional mobile ice-cream vans operate within the road reserve in residential neighborhoods and use audible devices to attract customers. Council is not aware of an example of where Shot Coffee operates in this manner.</p> <p>It is noted that the operation of Shot Coffee on private land not owned or managed by the Council is outside the scope of the Mobile Shops and Traders Bylaw and falls under the rules of the Operative Mackenzie District Plan.</p>
Jainik Shah Hungry Birds	Supports mobile trading but has raised concerns with the regulations relating to signage and rubbish bins. Submission points raised at the	<p>Submission Upheld in Part – The Council based on the submission received will amend the signage rules to allow for up</p>

	<p>hearing also include the boundaries of the Denmark Street site, the use of Bluetooth speaker and the establishment of more permanent sites with electricity and water supply.</p> <p>to two signs per trader and for traditional flag style signs which are greater than 1m² and/or 1m in height provided the signs are located within 10m of the mobile trader and the signs align with the standards set by Waka Kotahi for sites fronting a State Highway.</p> <p>The Denmark Street site will be expanded to encompass the area adjacent to 34 to 46 Denmark Street to allow for the trees and powerlines present in the area.</p> <p>The musical chimes standard will also be amended to allow for music from a radio provided it is not audible outside of a 10m radius of the operating mobile trader.</p> <p>The Council however dismiss the establishment of permanent serviced sites for mobile trading. The creation of permanent sites will require greater planning and discussion that is outside the scope of the Mobile Shops and Trader's Bylaw.</p> <p>The Council also dismiss the removal of the requirement for rubbish bins. Rubbish bins are essential to ensure sites remain clean and tidy and free of rubbish. The rubbish bins are not for public use and can be kept within the business or directly adjacent to it to for customers. The rubbish conditions will be amended to</p>
--	---

		reflect that all rubbish bins are for their customers.
Sam and Jane Staley	Council should suspend all non-resident/ratepayer mobile trading in the community and believes the Council should aid ratepayers rather than creating more stress and unwanted competition. Mobile traders should not compete with existing business activities of local ratepayers and leaseholders. Hospitality has been hit hard by the Covid 19 Pandemic.	Submission Dismissed – The Council acknowledge the pressure on local businesses given the Covid 19 Global Pandemic. The Council however still consider mobile trading to be an appropriate service in the townships as they contribute to the vibrancy and provide greater food options for residents and domestic tourists. Cafes and restaurants in the district also provide a different service to that of a mobile trader. Mobile traders are traditionally takeaways only and do not provide for sit down meals. It is also acknowledged that most of the mobile traders operating in the district at present are local residents.
Richard Smith Fancy Pants	<p>Mobile traders with more than one shop shall be required to hold a separate license but if under the same name shall only attract one fee.</p> <p>The break in service shall be extended from six to 12 weeks.</p> <p>The hours of operation for Twizel shall be 6am and 9pm Monday to Sunday, same as ever other site in the district.</p> <p>The maximum height of sign is restrictive to normal flag style signs commonly manufactured and should be removed.</p> <p>Noise needs to have a decibel reading. Generators need to be at a considerate level with a good definition.</p>	<p>Submission Upheld in Part – It was never Council's intension to have different hours of operation for mobile traders in Twizel. The Mobile Shops and Traders Bylaw will therefore be amended to ensure the hours of operation in Twizel are the same as all of the other sites in the district (6am to 9pm).</p> <p>The signage provisions as discussed above will also be amended to provide for flag style signage.</p> <p>A decibel reading is also considered appropriate to ensure there is no subjectivity when assessing the impacts of a mobile trader in respect of noise. The Council also agree that generators need to be at a considerate level. The Bylaw will</p>

		<p>therefore be amended to ensure all mobile shops and traders are designed and conducted to ensure that the following levels are not exceeded at any point within any other site within the Residential Zone:</p> <ul style="list-style-type: none"> • Daytime 50 dBA L10 • Daytime 70 dBA Lmax • Night-time 40 dBA L10 • Night-time 70 dbA Lmax <p>Mobile traders with more than one shop will however be required to pay a separate application fee for each license. The process required to obtain a mobile trader license will require administration time. Each application will also be assessed individually with a discount for having more than one shop not appropriate.</p> <p>An extension to the break in service where a trader has not contacted the Council in advance is not considered appropriate given the site restrictions limiting the number of traders per site.</p>
Darren Watkins	Supports the mobile trading site on Mackenzie Drive but is against the level of regulation required. Mobile traders should be able to trade how they deem fit within the designated areas.	<p>Submission Dismissed – Regulations are required to ensure standards of health, pedestrian and road safety, and amenity are maintained. Mobile traders should also not be unfairly advantaged over established businesses that</p>

		have rent and/or rates overheads.
Lousley	Supports the mobile trading site on Mackenzie Drive in Twizel as its handy, safe and convenient.	Submission Upheld – The specific site selected for mobile trading in Twizel is located on Mackenzie Drive south of the Twizel Medical Centre.
Robin McCarthy	A specific area in Twizel should be set aside for non-food related vendors.	Submission Dismissed – The Mobile Shops and Traders Bylaw has been restricted to stands, stalls, structures, vehicles, awnings, or tables from which goods are offered for the distribution of sale. Goods in the Bylaw are restricted to foods, refreshments and handmade crafts and does not extend to services for hire. Services such as bike and scooter hire are therefore outside the scope of the Mobile Shops and Traders Bylaw and fall under the rules of the Operative Mackenzie District Plan. The creation of a non-food related vendors site in Twizel is therefore not considered necessary.

POLICY STATUS

The Proposed Mobile Shops and Traders Bylaw has been created under relevant legislation. This has included the engagement process in accordance with the requirements of the LGA. Once adopted the proposed bylaw will become a statutory document administered by the Mackenzie District Council in accordance with the delegation manual.

SIGNIFICANCE OF DECISION

The Mobile Shops and Traders Bylaw has been through the Special Consultative Procedure set out in the LGA.

OPTIONS

Option 1 – The Council uphold in part or dismiss the submissions to the Proposed Mobile Shops and Traders Bylaw and adopt the Mobile Shop and Traders Bylaw 2021 (attached).

Option 2 – The Council subject to amendments adopt the Mobile Shops and Traders Bylaw 2021.

Option 3 – The Council decline to adopt the Mobile Shops and Traders Bylaw 2021.

CONSIDERATIONS**Legal**

Adoption of the Mobile Shops and Traders Bylaw will enable Council to deal with mobile traders appropriately using regulatory enforcement.

Financial

Additional regulatory staff to enforce and administer the Mobile Shops and Traders Bylaw may be required in future. The requirement for additional staff will be closely monitored once the Mobile Shops and Traders Bylaw has been adopted.

Other

The Mobile Shops and Traders Bylaw will be revoked if not reviewed.

CONCLUSION

The Mobile Shops and Traders Bylaw has been through the Special Consultative Procedure set out in the LGA and will give the Council an ability to effectively manage mobile shops and traders in the district through regulatory enforcement.

Proposed Mobile Shops and Traders Bylaw

2021

Proposed Mobile Shops and Traders Bylaw 2021

REVISION HISTORY

Date Adopted:	16 November 2021
Review Date:	16 November 2024
Department:	Operations
Responsible Officer:	Manager Planning
Sponsor:	Group Manager Operations
Adopted by:	Chief Executive

Mobile Shops and Traders Bylaw 2021

1. Introduction

This Bylaw is the Mackenzie District Council Mobile Shops and Traders Bylaw 2021.

This Bylaw shall come into force on 16 November 2021.

This Bylaw has been made pursuant to section 146 of the Local Government Act 2002.

2. Purpose

The purpose of this Bylaw is:

- to regulate the conduct of persons selling goods on streets, roads and pavements and on property owned or managed by the Council; and
- to regulate persons using vehicles to sell goods and services in public places.

3. Interpretations

For the purposes of this Bylaw the following definitions shall apply.

Act	the Local Government Act 2002
Authorised Officer	a Council Officer appointed by Council to be an Enforcement Officer or a Police Officer
Council	the Mackenzie District Council
Goods	all foods, refreshments, and handmade crafts
Mobile Shop	any stand, stall, structure, vehicle, awning, or table from which goods are offered for the distribution of sale
Night-time	the hours between 9pm and 6am Monday to Sunday
Public Place	the same meaning as section 147 of the Act a place that is open to or being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it
Residential Zones	land zoned Residential 1, 2, 3, 4 and Rural Residential 1 and 2 in the <u>Operative Mackenzie District Plan</u>
Similar Goods	types of foods, refreshments and or handmade crafts that a similar
Trader/Operator	any person who is involved in any business in the district involving the sale of goods from a mobile shop

Mobile Shops and Traders Bylaw 2021

4. Exclusions

The provisions of this Bylaw do not apply:

- to sellers of printed books, pamphlets, magazines or newspapers.
- mobile traders operating at community events where the trader has been invited or has permission of the event organiser; ~~and~~
- mobile traders operating on private land not owned or managed by the Council; and
- mobile ice-cream vans such as Mr. Whippy.

Mobile ice cream vans such as Mr. Whippy are permitted in the district provided:

- the trader informs Council, in writing, when and where they will be operating.
- the trader stays in one location no longer than one hour.
- the trader does not park within 200m of the village centre.
- musical chimes or other audible devices are operated in a reasonably modulated manner.
- an authorised officer provides written confirmation that the trader has permission to trade.

5. Mobile Trading License

Any person or business wanting to engage in mobile trading at the sites designated under Section 7 must obtain a license from Mackenzie District Council. To apply for a license a person or business must:

- apply to the Council on the appropriate form.
- state the type of food, goods and/or merchandise to be sold.
- state the hours and days of trade.
- supply copies of any additional licenses or permits applicable to the activity, such as a Food Registration Certificate under the Food Act 2014.
- pay the relevant license application fee prior to the license being issued.

A trader must apply for a separate license for each location. Each license application is subject to a separate application fee and assessment process.

A license may be granted, have conditions imposed, or be refused at the discretion of an authorised officer.

For more information on the application process refer to Section 8.

A trader who operates more than one mobile shop shall hold a separate license for each mobile shop.

A license issued under this Bylaw is not transferable to any other person or business.

6. Production of License

Mobile Shops and Traders Bylaw 2021

The operator of a mobile shop shall display at all times while trading a copy of their license.

The operator of a mobile shop shall at all times while trading ensure that a copy of their license is made available to an authorised officer on request.

The operator of a mobile shop shall move as directed at the request of an authorised officer.

Any person who fails to comply with any such requests commits an offence against this Bylaw.

7. Mobile Trading Sites

The Council have designated specific locations in Fairlie, Tekapo and Twizel as permanent sites for mobile trading. The specific sites are:

1. the Village Green, Fairlie
2. the Denmark Street Greenway, Fairlie
3. the Lakeside Drive Carpark, Tekapo
4. the Hamilton Drive Carpark, Tekapo
5. the Mackenzie Drive Carpark, Twizel

In the designated mobile trading sites, an authorised officer must grant a mobile trading license provided the following are met:

- compliance with the mobile trading site restrictions can be achieved (Schedule 1).
- compliance with the conditions for mobile traders has been demonstrated (Schedule 2).

For more information on the preferred sites, including the site restrictions, refer to Schedule 1.

The Council can add, remove, or alter any part of Schedule 1 in accordance with section 156 of the Act.

No Mobile Trading Licenses will be granted to operate outside of the designated sites.

8. Allocation of Licenses

The Council on 1 April each year will call for applications to operate within the designated mobile trading sites. The application period will be open for a two-month period (April-May); with the granted licenses allocated in June and coming into effect on 1 July until 30 June the following year (a twelve-month period).

At the close of the application period, an authorised officer will assess the applications received and create a mobile trading schedule for Fairlie, Tekapo and Twizel.

Where the number of applications received for a site exceeds the site restrictions an authorised officer will assess the applications received and evaluate them against the criteria listed below. This assessment will then be considered by full Council and a determination made as to the allocation of licenses for the following year. For clarity the site restrictions will be assessed on an hourly basis. More licenses than the site can occupy

Mobile Shops and Traders Bylaw 2021

can therefore be provided as long as there is no more than the maximum number of traders operating at any one time.

Where an application is received outside of the April-May period, an authorised officer may grant a license until June 30 where the site restrictions are not exceeded (no discount to the applicable fees will be applied).

An authorised officer/Council when determining what licences should be granted, shall have regard to:

- whether the trader has held a license for the site previously;
- the number of applications received;
- the types of food, refreshments, and handmade crafts to be sold to ensure a variety of offerings;
- the hours/days of operation sought;
- the previous history of the mobile shop and/or trader;
- whether the mobile trader is familiar with their obligations under the Bylaw; and
- any other matter deemed necessary.

9. Conditions of License

All licenses issued under this Bylaw shall be subject to the standard Conditions contained in Schedule 2.

The Council may, in issuing a license, prescribe additional conditions or amend the standard conditions where appropriate.

All license holders shall comply with the conditions issued to their license while carrying out their trade or business.

Any breach of conditions shall constitute a breach of this Bylaw.

10. Expiry of License

A license issued under this Bylaw is valid for twelve months from the date of issue (1 July to 31 June).

Where an application is issued after 1 July the license will only be valid until the 31 June.

11. Suspension/Cancellation of License

Failure to comply with any conditions contained within this Bylaw, or on a specific license will result in the immediate suspension of the license for a one-week period. During this period staff will investigate the non-compliance. At the completion of the investigation staff can remove the suspension on the license or cancel the license.

An authorised officer may also suspend or cancel a license issued under this Bylaw where they are satisfied that:

Mobile Shops and Traders Bylaw 2021

- there has been a breach of the Bylaw.
- the license holder has been convicted of an offence relating to or in connection with the trade conducted pursuant to the said license.
- the trader has ceased operation for more than six weeks, unless the trader has notified the Council of the intended break in service.

12. Fees

Prior to the issue of a licence the prescribed fee set out in the Councils Schedule of Fees and Charges shall be paid. Failure to pay within the time frame specified may result in the offer of a license being rescinded and the license allocated to another party.

The Council may waive, upon written request, the payment of fees for any license where the activity involves local or national recognised charitable or community organisations.

13. Offences and Penalties

Any person or business found to be in breach of this Bylaw commits an offence and is liable upon conviction to the penalty set out in Section 242 (4) of the Local Government Act 2002 which provides for a fine not exceeding \$20,000.

*Mobile Shops and Traders Bylaw 2021***Schedule 1****Designated Mobile Trading Sites****6****Fairlie**

Designated Site:	The Village Green
Description of Site:	The area of the Village Green permitted for mobile trading is located south of the war memorial statue, opposite the Gladstone Grand Hotel as indicated below
Number of Traders Allowed	A maximum of three mobile traders may operate at any one time
Maximum Hours of Operation:	The hours of operation for any mobile trader shall be between 6am and 9pm Monday to Sunday.



Mobile Shops and Traders Bylaw 2021

Designated Site:	Denmark Street Greenway
Description of Site:	The portion of the Denmark Street Greenway permitted for mobile trading is located northwest of the Doon Street and State Highway 8 intersection (adjacent to 34 to 46 Denmark Street) as indicated below
Number of Traders Allowed:	A maximum of three traders may operate at any one time
Maximum Hours of Operation:	The hours of operation for any mobile trader shall be between 6am and 9pm Monday to Sunday



*Mobile Shops and Traders Bylaw 2021***Lake Tekapo**

Designated Site:	Lakeside Drive Carpark
Description of Site:	The Lakeside Drive Carpark is located northwest of the Lakeside Drive, Domain Road and Simpson Lane intersection and is directly adjacent to Lake Tekapo. Mobile Traders in this location are restricted to carparking closest to Lakeside Drive
Number of Traders Allowed:	A maximum of three mobile traders may operate at any one time
Maximum Hours of Operation:	The hours of operation for any mobile trader shall be between 6am and 9pm Monday to Sunday



Mobile Shops and Traders Bylaw 2021

Designated Site:	Hamilton Drive Carpark
Description of Site:	The Hamilton Drive Carpark is a large pull in area located at the eastern entrance to Lake Tekapo south of State Highway 8. Access to the site is obtained from Hamilton Drive. Mobile Traders in this location are restricted to the northern portion of the carpark
Number of Traders Allowed:	A maximum of three mobile traders may operate at any one time
Maximum Hours of Operation:	The hours of operation for any mobile trader shall be between 6am and 9pm Monday to Sunday



*Mobile Shops and Traders Bylaw 2021***Twizel**

Designated Site:	Mackenzie Drive Carpark
Description of Site:	The Mackenzie Drive Carpark is located south of the Twizel Medical Center, on land owned by the Council, and is adjacent to the Simons Street and Mackenzie Drive intersection and the Twizel Golf Course
Number of Traders Allowed:	A maximum of six mobile traders may operate at any one time
Maximum Hours of Operation:	The hours of operation for any mobile trader shall be between 6am and 9pm Monday to Friday and 9am and 9pm Saturday and Sunday



*Mobile Shops and Traders Bylaw 2021***Schedule 2****General Conditions of all Licenses****11**

The following conditions shall apply to all mobile shops and traders in the Mackenzie District:

Hours of Operation

All mobile traders shall only operate during the hours of operation specified on their license.

All mobile shops shall be removed from the site at the conclusion of each operating day.

Musical Devices

No musical chimes or other audible device shall be operated from any mobile shop except for music played from a radio or speaker which cannot be heard within 10m of the mobile shop.

Signage

A license holder shall have no more than ~~one~~ two freestanding signs associated with their mobile shop.

The visible area of the sign shall not exceed 1m² and the height of the sign shall not exceed 1m except for traditional flag style signs which can be greater than 1m² in area and 1m² in height provided they meet the Standards set by Waka Kotahi for sites fronting a State Highway and are located within 10m of the mobile shop.

The signs shall only be made visible once ~~it~~ they ~~have~~ has-been approved by Council and the mobile shop is operating. The Council will approve the signs at the time of application for a Mobile Trader License.

No signs shall cause a danger or inconvenience to pedestrians or road users.

Rubbish

No oil or other material shall be discharged on the site.

All rubbish shall be collected on-site and taken away at the end of each operating day.

All mobile traders shall supply their own rubbish bin for their customers.

Noise

Noise generated from any mobile shop including the operation of a generator shall not exceed the following levels at any point within any site in the Residential Zones:

- Daytime 50 dBA L10
- Daytime 70 dBA Lmax
- Night-time 40 dBA L10
- Night-time 70 dBA Lmax

~~Noise shall not be objectionable and/or cause distress to anyone in the surrounding neighbourhood.~~

Mobile Shops and Traders Bylaw 2021

12



Mackenzie
DISTRICT COUNCIL