

Management of Mobile Food Vending Vehicles on Council Owned or Managed Land

Local Approvals Policy

Policy Number: POL15/84

Adopted: [Click here to enter date]

Minute Number: [Click here to enter Minute number]

File: 33417E

Produced By: Assets and Works Group

Review Date: 1/12/2016

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1. PURPOSE

The purpose of this policy is to provide clear guiding principles for the ongoing professional management of Mobile Food Vending Vehicles (MFV) on Council owned or managed land (including roads).

The Policy supplements the provisions of the Local Government Act 1993, the Local Government (General) Regulations 2005, the Food Act 2003, and Council's existing Policy for Mobile Food Stall/Vehicles and Temporary Food Premises (POL12/122).

The Policy is divided into three (3) parts in accordance with the requirements of the Local Government Act 1993:

- **Part 1** of the Policy specifies any exemptions from this Policy;
- **Part 2** of the Policy specifies the criteria which Council must consider when determining whether or not to grant approval for a particular activity; and
- **Part 3** of the Policy specifies other matters relating to approvals not dealt with by the Local Government Act 1993, the Local Government (General) Regulation 2005, the Food Act 2003 or the Food Regulation 2010.

2. OBJECTIVES

The Policy aims to:

- (a) Ensure the Mobile Food Vending Vehicles operate in accordance with the rules and restrictions within lawful car parking spaces on Council-owned roads;
- (b) Ensure Mobile Food Vending Vehicles operate in accordance with the **Operational Plans of Management** supplied by operators under "Supporting Documentation" in the *Mobile Food Vending Vehicle Guidelines*.
- (c) Ensure that food sold through Mobile Food Vending Vehicles is safe and fit for human consumption;
- (d) Provide guidance and assistance for people wanting to operate Mobile Food Vending Vehicles within the Shoalhaven City Council Local Government Area;
- (e) Minimise any potential adverse impacts of Mobile Food Vending Vehicles;
- (f) Ensure that trading has regard to existing comparable trading takeaway food and drink premises.

3. COMMENCEMENT DATE

The Policy was adopted by Council on XXXXX and will come into operation XXXXX.

4. LOCAL APPROVALS POLICY

The Policy is a Local Approvals Policy prepared and adopted under Section 158 of the Local Government Act 1993.

5. WHEN WILL THE POLICY BE REVOKED?

In accordance with Section 165(4) of the Local Government Act 1993, the Policy is automatically revoked at the expiration of 12 months after the declaration of the poll for that election, unless Council revokes it sooner.

6. SCOPE

- (a) The Policy applies to Council owned and managed land (including roads) within the Shoalhaven City Council Local Government Area; and
- (b) This Policy **DOES NOT APPLY** to Mobile Food Vending Vehicles:
 - Trading in accordance with development consent on private land;
 - Trading on public land in accordance with an approved event;
 - Providing catering services to private events;

7. DEFINITIONS

- (a) **Mobile Food Vending Vehicle** means:
 - Any registered vehicle that is either self-driven, or can be towed;
 - Used for on-site food preparation (e.g. hamburgers and tacos) and one-step food preparation (e.g. popcorn, fairy floss, coffee, soft serve ice cream) and the sale of any type of food, including pre-packaged food.
- (b) **All Mobile Food Vending Vehicles** require Section 68 approval issued by Shoalhaven City Council or in the case of Crown Land where Council is Reserve Trust Manager approval by way of a temporary licence under Section 108 of the Crown Lands Act 1989.
- (c) **Council can issue two (2) categories of Mobile Food Vending Vehicle approvals:**
 - i. **Category 1 – Food Itinerant:**
 - Approvals granted under POL12/122.
 - Allows the operator to trade on a public road for such period of time as necessary to engage in the actual serving of a customer.
 - Once the customer/s have been served they are required to move on.
 - ii. **Category 2 – Food Vans:**
 - Permit issued for 12 months.
 - Operate at nominated sites from 1st October to 31st March for a maximum of up to 7 hours within the period 7am to 7pm
 - Maximum stopping time of 3 hours in any other location.

- (d) The criteria for approval to be used in the assessment of a Mobile Food Vending Vehicle will include all the relevant provisions contained in the approval standards as set out in Parts 2 & 3 of this Policy, the Food Act 2003, Food Standard Codes and POL12/122.

8. OTHER DOCUMENTS

The following documents are related to this Policy:

- Local Government Act 1993
- Local Government (General) Regulations 2005
- Food Act 2003
- Environmental Planning and Assessment Act 1979
- Crown Lands Act 1989
- Crown Lands Regulation 2006
- Road Rules 2014
- NSW Food Authority – Guidelines for Mobile Food Vending Vehicles
- Shoalhaven City Council's Mobile Food Stalls/Vehicles and Temporary Food Premises POL12/122
- Shoalhaven City Council Food Vending Vehicle Guidelines

PART 1: EXEMPTIONS FROM APPROVAL

9. EXEMPTIONS UNDER THIS POLICY

There are no exemptions from the necessity to obtain approval under this Policy for Mobile Food Vending that is used for the sale of food and drink in public places within the Shoalhaven City Council Local Government Area.

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PART 2: COUNCIL APPROVAL REQUIREMENTS

Council must consider the criteria as outlined in this Policy when determining applications for Mobile Food Vending Vehicle approvals within the Shoalhaven City Council Local Government Area.

10. APPROVALS

- a) The Policy applies to approvals for an activity as per Section 68 F Item 7 of the Local Government Act 1993, namely:

“7. Use a standing vehicle or any article for the purpose of selling any article in a public place.”

- b) For the purpose of this Policy a “standing vehicle” includes any Mobile Food Vending Vehicle that has stopped to make a sale.

The Reserve Trust Handbook states:

Temporary licences allow the trust to permit short-term and generally low impact activities on the reserve without the Minister’s consent. Temporary licences cannot be issued for periods greater than 12 months. Under section 108 of the Crown Lands Act, a reserve trust can grant temporary licences for a use which may not always be permitted within the reserve purpose.

- c) The Policy applies to granting of a “Temporary Licence” under Section 108 of the Crown Lands Act 1989, namely:

108 (1). A reserve trust may, in respect of the whole or any part of a reserve, grant temporary licence for grazing or any other prescribed purpose;

and further

Section 31(1) (q) Crown Lands Regulation 2006 defines other prescribed purposes to include “Sales”.

- d) For the purpose of this Policy “Sales” includes the sale of food and drink in public places.
- e) The operation of a Mobile Food Vending Vehicle, or the selling of any food from a mobile vehicle in a public place within the Shoalhaven City Council Local Government Area without prior approval is an offence under the Local Government Act 1993.
- f) Mobile Food Vending Vehicles will be issued an approval that will contain conditions of operation to be complied with at all times.
- g) Council will charge a fee for the relevant category of Mobile Food Vending Vehicle as per the schedule of fees and charges documents on Council’s website.

- h) Approvals shall take effect from the date stated thereon and shall expire 12 months after the date of approval or any other time as stated on the approval no greater than 12 months.

11. APPROVAL CATEGORIES

The Mobile Food Vending Vehicle approval categories are based on location and trading duration.

(a) **Category 1 – Food Itinerant (per Council POL12/122)**

- i. **Stopping Time:** Allows the operator to occupy any one position on a public road for such period of time as necessary to engage in the actual serving of a customer. Once the customer/s have been served they are required to move on.
- ii. **Trading Conditions:** only permitted to undertake street trading so long as not within 75 metres of an existing trading takeaway that offers similar products.
- iii. **Maximum Number of Approved Category 1 Permits:** unlimited

(b) **Category 2 – Food Vans**

- i. **Stopping Time:** Allows the operator to occupy any one position on a public road or car park for up to a maximum of 3 hours in any 12hr period and for a maximum of up to 7 hours within the period 7am to 7pm at nominated sites from 1st October to 31st March. Refer to the “Locations” section of this Policy for further details on “Nominated Sites”.
- ii. **Trading Conditions:** only permitted to undertake street trading so long as not within 500 metres of an existing trading takeaway that offers similar products; and
- iii. **Maximum Number of Approved Category 2 Permits:** 6 (six) in any 12 month period.

12. APPLICATIONS FOR APPROVAL

The completed forms must be accompanied with supporting documentation required as outlined in the *Mobile Food Vending Vehicle Guidelines*.

13. FEES

- (a) An application fee applies to the assessment of an application for the approval to operate a Mobile Food Vending Vehicle. Applications not accompanied by a fee will not be processed and may be refused after 5 days if a payment is not made.
- (b) An inspection fee is payable at the time of inspection. The fee covers the initial inspection of the vehicle, which is required prior to commencing trade.
- (c) An annual approval (permit) fee in addition to a) & b) above also applies.
- (d) Incomplete applications may also be rejected if additional information is not supplied within 5 days of request. Fees will not be refunded.
- (e) Council will not refund any fees paid if the business is sold or transferred. The purchaser will need to reapply for approval under this Policy.

14. VEHICLE INSPECTIONS

- (a) All Mobile Food Vending Vehicles must have their vehicles inspected as per Council POL12/122;
- (b) Random inspections may be conducted by Council Officers during trading locations and times.

15. ISSUING OF APPROVALS

- (a) Approvals and/or temporary licences Permits will be issued on a per vehicle basis;
- (b) An approval Permit will be provided to all Mobile Food Vending Vehicles when final approval has been issued;
- (c) The approval Permit must be attached and displayed on the approved vehicle in a location clearly visible to the customers at all times whilst in operation;
- (d) Any modifications to the vehicle, excepting cosmetic, requires prior approval of Council;
- (e) Any modification of the Operational Plan of Management must be applied for in writing to Council, and be accompanied by the appropriate paperwork. An additional assessment fee may be applicable.
- (f) Approvals are specific to each Mobile Food Vending Vehicle and they are not transferrable between vehicles;
- (g) No ownership transfer of Council approval (by either Section 68 Local Government Act or Section 108 Crown Lands Act) is permitted. All applicants will be required to pay the appropriate fee, and lodge all new application paperwork specific to their business prior to any approvals being issued to the new owner;

- (h) Approvals will be issued subject to conditions including, but not limited to, compliance with this Policy;
- (i) Applications for renewal of approvals must be lodged sufficiently in advance of the expiry date to enable an adequate processing period. Council require a minimum of 6 weeks prior to the expiration of the current approval;
- (j) If a trader ceases trading, or does not trade for a period of longer than 6 months, Council will reserve the right to revoke their approval;
- (k) Failure to adhere to any condition of approval and/or legislation may result in modification, suspension or revocation of the approval, in addition to persecution or the issue of fines;
- (l) Operators must notify the NSW Food Authority of their food business prior to commencement of operation.

16. LOCATIONS

A Mobile Food Vending Vehicle approval entitles operators to trade in the following locations:

- (a) **Street Vending**
All approved Mobile Food Vending Vehicles are permitted to operate on Council owned road and car parks within existing lawful car parking spaces, subject to the exclusions noted within this Policy. The operation of a Mobile Food Vending Vehicle must comply with local car parking restrictions of that parking space. All Mobile Food Vending approval categories allow vehicles to pull up to the kerb, into a lawful parking spot, and to trade onto the footpath. Vehicles must not park on the footpath or on driveways. In instances where no marking exist the *Road Rules 2014* are to be adhered to and obeyed at all times.
- (b) **Nominated sites**
Food Vans can trade on nominated Council owned and managed sites, within the Local Government Area when they have obtained approval to do so only in accordance with the dates and times set by this Policy.
 - (i) There are a number of approved nominated sites in public places operated by Shoalhaven City Council. The list of nominated sites is contained within the *Shoalhaven City Council Food Vending Vehicle Guidelines*.
 - (ii) Nominated sites are non-exclusive, however only one Mobile Food Vending Vehicle is permitted on a nominated site at any one time. Should a Mobile Food Vending Vehicle arrive at a nominated site where a Mobile Food Vending vehicle is already trading the second trader is to move on immediately to another nominated site or alternate permissible location as if he were Street Vending.

17. PROHIBITED ROADS, STREETS AND LAND

Mobile Food Vending Vehicles are not permitted to trade:

- On Roads and Maritime Services (RMS) controlled roads;
- Where it is dangerous to do so;
- In contravention of the Road Rules 2014;
- On Crown Land where Council is not the Reserve Trust Manager; and
- On streets within 500 metres of an existing shopping precinct/village

18. TRUCK DIMENSIONS

The dimensions of a Mobile Food Vending Vehicle must not exceed the length of 6 metres and must be no wider than 2.5 metres.

19. PARKING

Mobile Food Vending vehicles must operate in full compliance with existing road rules and parking restrictions, unless it is impracticable and/or unsafe to the operator and the public when operating on Council Owned or Managed land (including roads), including no parking on footpaths or across driveways.

20. DELIVERIES

Mobile Food Vending Vehicles must arrive fully equipped at all trading locations and are not permitted to receive any deliveries.

21. SERVING

Mobile Food Vending Vehicles must not:

- sell with their serving window opening onto any part of a roadway to ensure the safety of pedestrians; and
- face with their serving window opening onto a cycleway, to ensure the safety of pedestrians and cyclists and to minimise pedestrian traffic across the cycleway.

22. HOURS OF OPERATION

Mobile Food Vending Vehicles must only trade between the hours of 7am to 7pm irrespective of the Category of approval unless otherwise approved.

23. PROXIMITY TO OTHER PREMISES

- (a) No Mobile Food Vending Vehicle is to trade within 500 metres of an existing trading takeaway food or drink premises open for business that is serving the same or similar food types. This minimum distance requirement is measured in a straight line

from the closest point of the Mobile Food Vending Vehicle (location) to the main entrance of the takeaway food and drink premises.

- (b) For the purpose of this Policy, existing take away food and drink premises includes only the types of take a way food and drink premises that are used predominately for the preparation and retail of food and drink (or both) for immediate consumption away from the premises.
- (c) Mobile Food Vending Vehicles cannot trade directly in front of any residential building (house or apartment) or building that contains residential premises (mixed use sites) on the same side of the road as the building frontage.

24. LIQUOR LICENCING

No Mobile Food Vending Vehicle is to obtain a liquor licence or sell alcohol to the public.

PART 3: OTHER CRITERIA REQUIREMENTS

AMENITY REQUIREMENTS

25. NOISE, AIR, WATER POLLUTION

- (a) The emission of noise associated with the use of the vehicle, including the operation of any mechanical plant and equipment, must comply with the following criteria:
- The use of the vehicle and any associated equipment must be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the Protection of the Environment Operations Act 1997 (POEO) to any affected receiver.
 - If any noise complaints are received and substantiated by an authorised Council officer, the Council officer may direct that the use of the Mobile Food Vending Vehicle must be suspended or moderated to prevent nuisance or until attenuation measures are completed and the Council has confirmed in writing that the use may resume.
- (b) The use of amplified music, bells or a public address system is prohibited for Category 2 Mobile Food Vending Vehicles.
- (c) Amplified music or bells can only be used by Category 1 Mobile Food Vending Vehicles:
- (i) whilst the vehicle is moving; and
 - (ii) only between the hours of 9am – 7pm.
- (d) Any noise emission from the vehicle (including music or amplified noise from a Category 1 vehicle) must not affect the amenity of the surrounding area or adjacent noise sensitive receivers by creating noise that is considered 'offensive' by an Authorised Council Officer or Police Officer, in accordance with the POEO definition.
- (e) A Mobile Food Vending Vehicle must not emit any noise that an authorised Council Officer believes to be unreasonable in a public place or impact upon a noise sensitive receiver.
- (f) An authorised officer may require the vehicle to move if necessary. An authorised officer also has the authority to request that the Mobile Food Vending Vehicles leave the area.

26. NOISE AND ODOUR

- (a) All Mobile Food Vending Vehicle technical operations, including ancillary exhaust, discharge fans, cooking facilities or generator noise shall be minimised.
- (b) If any noise, odour or smoke complaints are received and substantiated by an authorised Council officer, then the use of the vehicle or apparatus must be moderated as directed by an authorised Council officer as deemed necessary to prevent nuisance.
- (c) If the vehicle or ancillary equipment is producing smoke and/or odour that is considered to be air pollution as defined in the *Protection of the Environment*

Operations Act 1997 by an authorised officer then the use of the vehicle or equipment must be moderated as directed by an authorised Council Officer as deemed necessary to prevent the pollution from occurring.

27. WATER

Waste water, grease or any other pollutant including solid waste or litter must not be allowed to enter the stormwater. All waste items must be contained within the vehicle until it can be appropriately disposed of at a facility nominated in the **Operational Plan of Management**.

28. VEHICLE EQUIPMENT

Shall be in accordance with Council's POL 12/122 and you have prior approval as a mobile food vendor.

29. CUSTOMER SEATING

The placement of tables, chairs or other seating apparatus, is not permitted at any time in or around the Mobile Food Vending vehicle.

30. GARBAGE AND RECYCLABLE MATERIALS

- (a) Suitable garbage receptacles with close fitting lids are to be provided in the vehicle.
- (b) When directed, a suitable receptacle shall be provided outside the vehicle for depositing of take away food containers and other litter.
- (c) Garbage generated within the vehicle is not to be disposed of at public garbage bins but is to be collected and contained until disposal at approved garbage disposal sites can occur.
- (d) Operators must recycle.

31. WASTE MANAGEMENT AND RECYCLING

- (a) Mobile Food Vending Vehicle operators are responsible for the waste materials generated during the trading period. Waste materials such as food packaging should be collected in bins or suitable receptacles, bagged or contained, stored within the vehicle and disposed at the cost of the operator.
- (b) Any waste produced by the Mobile Food Vending Vehicles must be removed from the site by the Mobile Food Vending Vehicle operators at the end of the trading period.
- (c) The trading area must be left in a clean and tidy condition at the end of each trading interval.
- (d) Under no circumstances is liquid waste to be discharged to the ground or in the stormwater drain.
- (e) Details of liquid waste and garbage disposal arrangements must be supplied with the application for the Mobile Food Vending Vehicles within the **Operational Plan of Management**.

32. WATER SUPPLY

- (a) The vehicle must be provided with an adequate supply of potable water stored in food grade water storage containers and suitably protected against contamination for hand washing, cleaning equipment and for use of food preparation. There must also be an adequate supply of hot water for these purposes. Details of the supply of potable water and the cleaning process used for the storage tanks must be included in the **Operational Plan of Management**.
- (b) The vehicle must be equipped with a waste water tank of sufficient capacity to contain all stored potable water with extra capacity for the containment of other discarded liquid waste, with an outlet of sufficient diameter to facilitate easy flushing and cleaning. Details of the disposal and cleaning process used for the waste water storage tanks must be included in the **Operational Plan of Management**.
- (c) Disposal of all liquid wastes generated within the food van must be through the sewer (and grease trap where necessary – contact Shoalwater for additional advice) or as approved by the Environmental Health Officer. The disposal method and location is to be included in the **Operational Plan of Management**. Under no circumstances is liquid waste to be discharged upon the ground or to a stormwater drainage system.
- (d) All hot water for washing purposes should be supplied from a suitable hot water system and should be piped so it can be mixed with cold water. Hot water must be available at all times during the preparation and sale of food.

33. CONSTRUCTION AND EQUIPMENT REQUIREMENTS

Refer to Council POL12/122 for details regulating safe food handling in accordance with the *Food Act 2003*.

34. PENALTIES APPLICABLE TO APPROVALS

- (a) The penalties for failure to obtain an approval or failure to comply with an approval for a Mobile Food Vending Vehicle are set out in the Local Government Act 1993 and the Local Government (General) Regulation 2005. Council reserves the right to decide the legal remedy for breaches of this Policy.
- (b) City Rangers or other Authorised Officers may take enforcement action for non-compliance with this Policy and all related legislation.

APPENDIX 1 – DEFINITIONS

The terms used within this Local Approvals Policy for Mobile Food Vending Vehicles are defined in the Dictionary in the *Local Government Act 1993*, Section 4 Definitions of the *Food Act 2003* and Section 3 of the *Food Regulation 2010*.

The purpose of this Dictionary is to assist with the understanding of terms used throughout this Policy and to assist with the preparation of an application for approval.

Approval means:

An approval that is issued under the *Local Government Act 1993* or the *Crown Lands Act* in the case of land where Council is the Reserve Trust Manager.

Authorised person means:

- (a) An employee of a council generally or specially authorised by the council in respect of or whose duty it is to deal with, or to act in regard to, any acts, matters or things in relation to which the expression is used, or
- (b) A police officer.

Equipment means:

A machine, instrument, apparatus, utensil or appliance – other than a single use item – used or intended to be used or in connection with food handling and includes an equipment used or intended to be used to clean the Mobile Food Vending Vehicles or equipment.

Food means:

- (a) Any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared), or
- (b) Any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a), or
- (c) Any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid, or
- (d) Chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum, or
- (e) Any substance or thing declared to be a food under a declaration in force under section 6 of the Food Standards Australia New Zealand Act 1991 of the Commonwealth, whether or not the substance, thing or chewing gum is in a condition fit for human consumption.
- (f) However, food does not include a therapeutic good within the meaning of the Therapeutic Goods Act 1989 of the Commonwealth.
- (g) To avoid doubt, food may include live animals and plants.

Operational Plan of Management is:

A detailed document that outlines specific controls and management of amenity, food safety and operational issues created by the operator for their Mobile Food Vending business. This **Operational Plan of Management** must be submitted to Council in conjunction with a Mobile Food Vending Vehicles approval application and other supporting documents. Guidelines and templates for writing an **Operational Plan of Management** can be found on Council's Webb site.

Potable water means:

Water suitable (safe) for drinking.

Waste means:

- (a) Effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a human waste storage facility, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with a human waste storage facility, sullage pit or grease trap, or
- (b) Trade waste, being any matter or thing, whether solid, gaseous or liquid or a combination of solids, gases and liquids (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade or business process or operation, including any building or demolition work, or
- (c) Garbage, being all refuse other than trade waste and effluent, and
- (d) Includes any other substance defined as waste for the purposes of the Protection of the Environment Operations Act 1997, and a substance is not precluded from being waste merely because it is capable of being refined or recycled.