

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

## Local Approvals Policy

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**For more information contact the Assets and Works Group**

Administrative Centre, Bridge Road, Nowra • Telephone (02) 4429 3111 • Fax (02) 4422 1816 • PO Box 42 Nowra 2541  
Southern District Office – Deering Street, Ulladulla • Telephone (02) 4429 8999 • Fax (02) 4429 8939 • PO Box 737  
Ulladulla

[council@shoalhaven.nsw.gov.au](mailto:council@shoalhaven.nsw.gov.au) • [www.shoalhaven.nsw.gov.au](http://www.shoalhaven.nsw.gov.au)

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## 1. Purpose

- 1.1 The purpose of this Policy is to provide clear guiding principles for the ongoing professional management of Mobile Food Vending Vehicles on Council Owned or Managed Land (including roads).
- 1.2 The Policy supplements the provisions of the:
  - 1.2.1 Local Government Act 1993 (NSW);
  - 1.2.2 Local Government (General) Regulations 2005 (NSW);
  - 1.2.3 Food Act 2003 (NSW);
  - 1.2.4 Road Rules 2014 (NSW); and
  - 1.2.5 Council’s existing Policy for Mobile Food Stall/Vehicles and Temporary Food Premises (POL16/240).
- 1.3 In accordance with the requirements of the Local Government Act this Policy is divided into three (3) parts as follows:
  - 1.3.1 **Part 1** of this Policy specifies any exemptions from this Policy;
  - 1.3.2 **Part 2** of this Policy specifies the criteria which Council must consider when determining whether or not to grant approval for a particular activity; and
  - 1.3.3 **Part 3** of this 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

- 2.1 This Policy aims to:
  - 2.1.1 Ensure the Mobile Food Vending Vehicles operate in accordance with the rules and restrictions within Lawful Car Parking Spaces on Council-owned roads.
  - 2.1.2 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*.
  - 2.1.3 Ensure that food and beverages sold through Mobile Food Vending Vehicles is safe and fit for human consumption.
  - 2.1.4 Provide guidance and assistance for people wanting to operate Mobile Food Vending Vehicles within the Shoalhaven City Council Local Government Area.
  - 2.1.5 Minimise any potential adverse environmental, business and/or other impacts of Mobile Food Vending Vehicles;
  - 2.1.6 Ensure that trading has regard to Existing Takeaway Food and Drink Premises.

## 3. Commencement date

- 3.1 The Policy was adopted by Council on 24 May 2016 and will come into operation 1 July 2016.

#### 4. Local approvals policy

4.1 This Policy is a Local Approvals Policy prepared and adopted under Section 158 of the Local Government Act 1993 (NSW).

#### 5. When will the policy be revoked?

5.1 In accordance with Section 165(4) of the Local Government Act 1993 (NSW), 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

6.1 This Policy applies to Council Owned and Managed Land (including roads) within the Shoalhaven City Council Local Government Area.

6.2 This Policy **DOES NOT APPLY** to Mobile Food Vending Vehicles:

6.2.1 trading in accordance with development consent on private land;

6.2.2 trading on public land in accordance with an approved event; or

6.2.3 providing catering services to private events.

#### 7 Definitions

7.1 Unless the context otherwise required the meanings are taken to be those listed within the definitions at Annexure 1 to this Policy and as set out below.

7.1.1 A Mobile Food Vending Vehicle is any registered vehicle used on land that is either self-driven, or that can be towed down Council-owned roads and that is used in connection with the sale of food.

7.1.2 Mobile Food Vending Vehicles that are used for on-site food preparation (e.g. hamburgers and tacos) and one-step food preparation (e.g. popcorn, fairy floss, coffee) and the sale of any type of food, including pre-packaged foods.

7.1.3 All Mobile Food Vending Vehicles require Section 68 approval issued by Council prior to operating in public places.

7.1.4 Council can issue 2 categories of Mobile Food Vending approvals:

(a) **Category 1 – Food Itinerant** – 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 customers have been served they are required to move on to another location.

(b) **Category 2 – Food Vans** are permitted to operate for a maximum stopping time of 5 hours in any location.

7.1.5 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, the Food Standard Codes and Policy 16/122.

**8 Other documents**

8.1 The following documents are related to this Policy:

- 8.1.1 Local Government Act 1993 (NSW);
- 8.1.2 Local Government (General) Regulations 2005 (NSW);
- 8.1.3 Food Act 2003 (NSW);
- 8.1.4 Environmental Planning and Assessment Act 1979 (NSW);
- 8.1.5 Crown Lands Act 1989 (NSW);
- 8.1.6 Crown Lands Regulation 2006 (NSW);
- 8.1.7 Road Rules 2014 (NSW);
- 8.1.8 NSW Food Authority – Guidelines for Mobile Food Vending Vehicles;
- 8.1.9 Shoalhaven City Council’s Mobile Food Stalls/Vehicles and Temporary Food Premises POL16/240; and
- 8.1.10 Shoalhaven City Council Food Vending Vehicle Guidelines.

## **PART 1: EXEMPTIONS FROM APPROVAL**

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### **9 Exemptions under this policy**

- 9.1 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.

## **PART 2: COUNCIL APPROVAL REQUIREMENTS**

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### **10 Approvals**

- 10.1 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.
- 10.2 This Policy applies to approvals for an activity as per Section 68 F Item 7 of the Local Government Act 1993 (NSW), namely:
- “7. Use a standing vehicle or any article for the purpose of selling any article in a public place.”*
- 10.3 For the purpose of this Policy a “standing vehicle” includes any mobile food vending vehicle that has stopped to make a sale.
- 10.4 Council may approve Temporary Licences in relation to Crown Owned lands. It is noted that 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.*
- 10.5 This 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”.*
- 10.6 For the purpose of this Policy “sales” includes the sale of food and drink in public places.
- 10.7 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.
- 10.8 Mobile Food Vending Vehicles will be issued an approval that will contain conditions of operation to be complied with at all times.
- 10.9 Council will charge a fee for the relevant category of Mobile Food Vending Vehicle as per the schedule of fees and charges documents on Shoalhaven City Council’s website.
- 10.10 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**

- 11.1 Council may grant approval to Mobile Food Vending Vehicles pursuant to the following categories:



11.1.1 **Category 1 – Food Itinerant (per Council POL16/240)**

- (a) **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.
- (b) **Trading Conditions:** only permitted to undertake street trading so long as not within 75 metres of an existing trading takeaway that offers similar products.
- (c) **Maximum Number of Approved Category 1 Permits:** unlimited

11.1.2 **Category 2 – Food Vans**

- (a) **Stopping Time:** Allows the operator to occupy any one position on a public road or car park for up to a maximum of 5 hours
- (b) **Trading Conditions:** only permitted to undertake street trading so long as not within 1km of an existing trading takeaway that offers similar products; and

**12 (C) Applications for approval**

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

**13 Fees**

13.1 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 payment of the applicable fee will not be processed and may be refused after 5 days if a payment is not made.

13.2 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.

13.3 An annual approval (permit) fee in addition to 13.1 and 13.2 above also applies.

13.4 Incomplete applications may also be rejected if additional information is not supplied within 5 days of request. Fees will not be refunded.

13.5 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**

14.1 All Mobile Food Vending Vehicles must have their vehicles inspected as per Council POL16/240.

14.2 Random inspections may be conducted by Council Officers during trading locations and times.

**15 Issuing of approvals**

15.1 Approvals and/or temporary licences Permits will be issued on a per vehicle basis.

15.2 An approval Permit will be provided to all Mobile Food Vending Vehicles when final approval has been issued.

- 15.3 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.
- 15.4 Any modifications to the vehicle, excepting cosmetic, requires prior approval of Council.
- 15.5 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.
- 15.6 Approvals are specific to each Mobile Food Vending Vehicle and they are not transferrable between vehicles.
- 15.7 No ownership transfer of Council approval (by either Section 68 Local Government Act (NSW) or Section 108 Crown Lands Act (NSW)) 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.
- 15.8 Approvals will be issued subject to conditions including, but not limited to, compliance with the Policy.
- 15.9 Applications for renewal of approvals must be lodged sufficiently in advance of the expiry date to enable an adequate processing period
- 15.10 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;
- 15.11 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;
- 15.12 Operators must notify the NSW Food Authority of their Food Business prior to commencement of operation.

## **16 Locations**

- 16.1 A Mobile Food Vending Vehicle approval entitles operators to Trade in the following locations:

### 16.1.1 Street Vending:

- (a) All Approved Mobile Food Vending Vehicles are permitted to operate on Council owned roads; car parks and within existing Lawful Car Parking Spaces, subject to the exclusions noted within the Policy.
- (b) All Approved Mobile Food Vending Vehicles must comply with Local Car Parking Restrictions.
- (c) All Approved Mobile Food Vending Vehicles are permitted to pull up to the Kerb, into a Lawful Car Parking Space, and to Trade onto the Footpath.
- (d) All Approved Mobile Food Vending Vehicles are not permitted to Park on the Footpath or on Driveways.
- (e) In instances where no markings exist the *Road Rules 2014* are to be adhered to and obeyed at all times.

## **17 Prohibited roads, streets and land**

- 17.1 Mobile Food Vending Vehicles are not permitted to trade:
- 17.1.1 On Roads and Maritime Services (RMS) controlled roads;
  - 17.1.2 Where it is dangerous to do so;
  - 17.1.3 In contravention of the Road Rules 2014;
  - 17.1.4 On Crown Land where Council is not the Reserve Trust Manager; and
  - 17.1.5 On streets within 1km of an existing shopping precinct/village.

## **18 Truck dimensions**

- 18.1 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**

- 19.1 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**

- 20.1 All Approved Mobile Food Vending Vehicles must arrive fully stocked and equipped at all Trading Locations and are not permitted to receive any Deliveries.

## **21 Serving**

- 21.1 All Mobile Food Vending Vehicles must not:
- 21.1.1 sell with their serving window opening onto any part of a roadway to ensure the safety of pedestrians; and
  - 21.1.2 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**

- 22.1 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**

- 23.1 All Mobile Food Vending Vehicles are prohibited from conducting Trade within 1km of an Existing Takeaway Food and Drink Premises open for business that is serving the same or similar food and/or drink types. This minimum distance requirement is measured by road (shortest route from shop to MFV Vehicle set up point) 23.2 For the purpose of this Policy, Existing Takeaway Food and Drink Premises include 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.
- 23.3 All Mobile Food Vending Vehicles are prohibited from conducting Trade directly in front of any Residential Building (house or apartment) or Mixed Use Site (building that contains residential premises) on the same side of the road as the Building Frontage.

## **24 Liquor licencing**

- 24.1 All Mobile Food Vending Vehicles are prohibited from obtaining a Liquor Licence and/or selling alcohol to the Public.

## **PART 3: OTHER CRITERIA REQUIREMENTS**

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### **AMENITY REQUIREMENTS**

#### **25 Noise, Air, Water Pollution**

- 25.1 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:
- 25.1.1 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.
  - 25.1.2 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.
- 25.2 The use of amplified music, bells or a public address system is prohibited for Category 2 Mobile Food Vending Vehicles.
- 25.3 Amplified music or bells can only be used by Category 1 Mobile Food Vending Vehicles:
- 25.3.1 whilst the vehicle is moving; and
  - 25.3.2 only between the hours of 9am – 7pm.
- 25.4 Any noise emission from the Mobile Food Vending 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.
- 25.5 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.
- 25.6 An Authorised Officer may require the Mobile Food Vending Vehicle to move if necessary. An Authorised Officer also has the authority to request that the Mobile Food Vending Vehicle leave the area.

#### **26 Noise and odour**

- 26.1 All Mobile Food Vending Vehicles’ technical operations, including ancillary exhaust, discharge fans, cooking facilities or generator noise shall be minimised.
- 26.2 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.
- 26.3 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**

- 27.1 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 waste facility nominated in the Operational Plan of Management.

## **28 Vehicle equipment**

- 28.1 Shall be in accordance with Council's POL 16/240 and you have prior approval as a mobile food vendor.

## **29 Customer seating**

- 29.1 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**

- 30.1 Suitable garbage receptacles with close fitting lids are to be provided in the Mobile Food Vending Vehicle.
- 30.2 When directed, a suitable receptacle shall be provided outside the Mobile Food Vending Vehicle for depositing of take away food containers and other litter associated with the Trade of the Mobile Food Vending Vehicle.
- 30.3 Garbage generated within the Mobile Food Vending Vehicle is not to be disposed of at Public Garbage Bins. It is to be collected and contained until disposal at approved garbage disposal sites can occur.
- Operators must recycle.

## **31 Waste management and recycling**

- 31.1 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.
- 31.2 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.
- 31.3 The trading area must be left in a clean and tidy condition at the end of each trading interval.
- 31.4 Under no circumstances is Liquid Waste to be discharged to the ground or in the stormwater drain.
- 31.5 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**

- 32.1 All Approved Mobile Food Vending Vehicles 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.

- 32.2 Mobile Food Vending Vehicles 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.
- 32.3 Mobile Food Vending Vehicles must dispose of all Liquid Wastes 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.
- 32.4 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**

- 33.1 Refer to Council POL16/240 for details regulating safe food handling in accordance with the *Food Act 2003*.

### **34 Penalties applicable to approvals**

- 34.1 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 determine the legal remedy for breaches of this Policy.
- 34.2 City Rangers or other Authorised Council Officers may take enforcement action for non-compliance with the 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. Unless the context otherwise requires, in this Policy:

- Approval** means an 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 Officer** 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.
- Existing Take-away Food or Drink Premises** means any take-away food or drink outlet that was trading prior to the Mobile Food Vending Vehicle approval to trade.
- 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.

**Kerb**

means:

- (a) a structured kerb at the side of the road; or
- (b) where no such structure exists, the side of the road.

**Lawful Car Parking Space**

means:

- (a) a length of road or area designated for parking vehicles pursuant to the Road Rules 2014 and/or other existing laws and regulations; or
- (b) a length or road or area not specifically designated for parking vehicles but safely positioned so not as to cause an obstruction or danger to traffic, pedestrians and/or otherwise compromise the general safety of the area.
- (c) It is not an area that is restricted to emergency vehicles, marked mobility parking only or otherwise does not comply with the existing road laws, rules and regulations.

**Liquid Waste**

means any Waste in the form of a liquid that is generated from the Mobile Food Vending Vehicle or generated as a result of the Trade of the Mobile Food Vending Vehicle

**Local Car Parking Restrictions**

means parking restrictions pursuant to the existing laws, rules, laws and regulations.

**Mobile Food Vending Vehicles**

means:

- (a) any registered vehicle that is either self-driven, or can be towed; and
- (b) used for on-site food preparation and one-step food preparation and the sale of any type of food or beverage, including pre-packaged food.

**Operational Plan of Management**

means 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 that is suitable and safe for human consumption.

**Shoalhaven City Council Local Government Area**

means the area that is depicted in [map reference]

**This Policy** means the Management of Mobile Food Vending Vehicles on Council Owned or Managed Land, Policy Number POL15/84

**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.