On Public Exhibition

Draft Mobile Food Vending Vehicle Policy

Exhibition period

From 30 May to 27 June 2024

How to make a Submission

Submissions must be received in writing and addressed to
The Chief Executive Officer, Dharawal Country,
Locked Bag 155 Shellharbour City Centre, 2529
or sent by email to council@shellharbour.nsw.gov.au

PRIVACY & PERSONAL INFORMATION PROTECTION NOTICE

The personal information contained in your submissions is collected by Shellharbour City Council for the purpose of corresponding with you about your submission. If you make an anonymous submission, Council will be unable to contact you further.

The information is intended for use by Council to assist in its decision making processes. The content of your submission may be summarised and attached to a Council Report and displayed on Councils website, your personal information will not be included. The submission will be stored in Council's electronic records management system. You can apply to Council to access and correct your personal information. Please see Council's Privacy Management Plan available on Council's website or contact Council's Privacy Officer on 4221 6111 for more information.

Shellharbour CITY COUNCIL

Policy

Mobile Food Vending Vehicle

Policy Owner: Executive Director Business Enterprises	
Date Last Adopted: 28 May 2024	Review Date: 28 May 2025

1. Policy Statement/Objective(s)

Shellharbour City Council recognises the opportunity of mobile food vending vehicles to invigorate the Shellharbour City Council's Local Government Area (LGA) and encourage activation of public spaces and bring communities and visitors together. Council will allow mobile food vending vehicles to operate in the LGA to activate public spaces, increase the diversity of food options (for residents and visitors) and boost the local night-time economy (where appropriate).

The purpose of the Policy is to provide the framework for the operation of mobile food vending vehicles in the LGA. The Policy sets out the relevant legislative requirements for safe food handling and preparation practices and establishes the trading parameters on public land. The Policy also supplements provisions of the *Local Government Act 1993* (NSW), Roads *Act 1993* (NSW), *Food Act 2008* (NSW), *Food Regulation 2015* (NSW), Australian and New Zealand Food Standards Code 2008 and associated regulations.

The main objectives of this policy are to:

a) Set criteria for the operation of mobile food vending vehicles on Council-owned and managed land in the LGA.;

b) Encourage the activation of public spaces through a flexible food vending offer.

c) Establish that mobile food vending vehicles are adequately equipped and meet relevant standards.

d) Set criteria so that mobile food vending vehicles operate safely and in accordance with the rules and restrictions on Council-owned and managed land.

e) Guard that food sold through mobile food vending vehicles is safe and fit for human consumption.

f) Minimise any potential adverse impacts of mobile food vending vehicles on residential amenity, and the environment.

g) Support sustainable economic and retail practices.

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2. Scope

The Policy applies to the following activity, as specified in the Table to Section 68 of the *Local Government Act 1993* (NSW):

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

For the purposes of this Policy a 'standing vehicle' includes any food truck or food van that has stopped to make a sale, prepare to make a sale, or with the intention to sell.

Where the policy applies:

The Policy applies to all Council-owned and managed land and roads within the LGA

Specifically, the policy applies under the following circumstances:

- The operation of a mobile food vending vehicle, or the selling of any food from a mobile vehicle in a public place within the LGA, Council owned roads or on Council-owned and managed land.

Where the policy **does not apply:**

The Policy **does not apply** under the following circumstances:

- Use and operation of any food truck or food van that is used on private land.
- Use and operation of any food truck or food van that is conducted under a development approval e.g. special events.

3. References

- *Local Government Act 1993* (NSW)
- *Local Government (General) Regulation 2021* (NSW)
- *Food Act 2008* (NSW)
- *Roads Act 1993* (NSW)
- Australia New Zealand Food Standards Code Food Safety Standards – 3.1.1 – 3.23
- *Environmental Planning and Assessment Act 1979* (NSW)
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- *Road Rules 2014* (NSW)
- *Protection of the Environment Operations Act 1997* (NSW)
- NSW State Government Guidelines for Mobile Food Vending Vehicles
- Shellharbour City Council Community Strategic Plan 2022-2032
- *Crown Land Management Act 2016* (NSW)
- *Native Title Act 1994* (NSW)

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4. External/Internal Consultations

Shellharbour City Council Chief Executive Officer
Executive Director Business Enterprises
Business Performance Specialist
Commercial Agreements Specialist
Executive Director Planning and Environment
Statutory Planning and Urban Release Manager
Senior Transport Engineer
Environmental Health Coordinator

5. Definitions

Community Land	All council land classified as 'Community Land' under the *Local Government Act 1993* (NSW).
Council-Owned Roads	All of the land used for vehicular traffic, plus any footway shoulder, and gutter.
Crown Land	Land that is vested in the Crown.
Food Cart	A unit/vehicle which may or may not be powered, that is for the purpose of selling food or drink which operates within Council-owned roads and does not meet the definition of a food truck or food van (Note: **food carts are not supported under the Policy**).
Mobile Food Vending Vehicle	A vehicle located on Council-owned roads and public land used in connection with the preparation and/or sale of food. It includes vehicles used for on-site food preparation (e.g. hamburgers, pizza and kebabs), one-step food preparation (e.g. popcorn, fairy floss, coffee) and the sale of any type of food, including pre-packaged food.
Operational Land	As classified under the *Local Government Act 1993* (NSW) Division 1 of Part 2 of Chapter 6. Operational land has no special restrictions other than those that may apply to any piece of land. Operational land is used for Council's administrative and works functions.
Public reserve	Land provided for the use of the community including lands designated as public parks, reserves and sportsgrounds under the ownership of Council or Crown Land managed by Council.

6. Variation and Review

Council reserves the right to review, vary or revoke this policy.

Review History

Date Policy first adopted – version 1	28 May 2024

7. Policy

7.1. Policy Requirements

7.1.1. Section 68 Requirements

Section 68 Approval requirements are as follows:

a) The policy applies to application for an approval to undertake an activity under Section 68 Part F(7) of the *Local Government Act 1993* (NSW)

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

b) Only the sale of foodstuffs and drinks will be allowed from mobile food vending vehicles. No sale of alcohol, cigarettes or other products from mobile food vending vehicles will be approved.

All mobile food vending vehicles subject to this Policy require a Section 68 approval issued by Shellharbour City Council prior to operating on Council owned roads or on Council-owned and managed land. The operation of a mobile food vending vehicle, or the selling of any food from a mobile vehicle in a public place within the LGA without prior approval is an offence under the *Local Government Act 1993* (NSW).

c) Prior to the issue of an approval under this Policy, the mobile food vending vehicle's business details must be notified to Council in accordance with the *Food Act 2003* (NSW). This can be done by completing the Food Business Registration Form on Council's website. The vehicle is to be made available for inspection by Council's Environmental Health Officer. Council will charge a fee for inspecting the mobile food vending vehicle as per Council's adopted Fees and Charges Schedule. Based on The Food Regulation Partnership adopted in July 2018, Council may choose to not inspect the vehicle, if the applicant is able to produce a satisfactory operational inspection report from their home jurisdiction council.

Mobile_Food_Vendor_Application.pdf (nsw.gov.au)
Fees and charges | Shellharbour Council (nsw.gov.au)

d) Where applicable under the *Food Act 2003* (NSW), Mobile Food Vending Vehicle Vendor (Vendor) must appoint a Food Safety Supervisor (FSS). The Vendor must ensure that the appointed FSS maintains a current FSS certificate.

e) Mobile food vending vehicle approvals will contain conditions of operation to be complied with at all times, including but not limited to compliance with this Policy.

f) An application for approval to use a mobile food vending vehicle is to be made on the approved form. The prescribed fee is also to be paid before the application is assessed. Council will charge a fee (see 'Fees and Charges' section) for the mobile food vending vehicle approval as per the Fees and Charges on Councils website.

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g) Approvals will take effect from the date stated thereon and shall expire 12 months after the date of approval or any other period of time as stated in the approval, up to a maximum approval period of 12 months.

h) The applicant is to submit evidence of public liability insurance indemnifying Council against any actions, suits, claims, demands or proceedings for death or injury to any third party or parties or loss of, or damage to, any property, with an indemnity amount of not less than $20,000,000 per occurrence and noting Council as an interested party. The insurance is to be valid at all times from the date of approval through to the date the approval lapses.

i) The applicant is to submit copies of valid insurance policies that protect the applicant:

(i) Against any injury to any third party or parties under Compulsory Third Party Insurance as required by the *Motor Accidents Compensation Act 1999* (NSW); and

(ii) Against loss of, or damage to, any property whatsoever caused by the use of the vehicle when being driven by the Licensee, an employee of the Licensee, an independent contractor or any other person (including a person not employed by the Licensee). The policy is to have a limit of indemnity of not less than $20,000,000 checking with Council's existing insurance policy to what is currently required, and shall be extended to include "CTP Gap Coverage Endorsement" cover. The policy shall note the interest of Council as an insured.

The Insurance is to be valid at all times from the date of approval through to the date the approval lapses.

j) Any other insurance required by law or as reasonably required by Council.

Council will consider the criteria as outlined in this Policy when determining applications for mobile food vending vehicle approvals to operate within the LGA. 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 approved standards as set out in Section 68 of the *Local Government Act 1993* (NSW), the *Food Act 2003* (NSW), and the Food Standards Codes.

7.1.2. Food Safety Requirements

All mobile food vending vehicles approved by Council are required to comply with the requirements of Food Safety Standard. Further details on these requirements are contained within the NSW Food Authority's Guidelines for Mobile Food Vending Vehicles

7.1.3. General Requirements

a) Locations:

Vendors permitted to operate on Council-owned roads are to:

(i) Comply with the local parking restrictions; or
(ii) Operate in specified, approved locations; and
(iii) Comply with the relevant road rules;
(iv) Comply with the relevant rules associated with the public land parcel;

(v) Not to operate within 400 metres of an established business with similar food or beverage offerings (Note: “similar food or beverage offerings” are determined at the sole discretion of Council staff)
(vi) Not operate directly in front of residential or commercial properties.

b) Pre-approval Requirements:

Vendors are required to apply for a permit and pay the nominated fee to Council **prior** to operating in the following locations;

(i) Community Land
(ii) Crown Land
(iii) Operational Land

This includes but is not limited to

(i) Public Reserves
(ii) Playgrounds
(iii) Parks
(iv) Carparks

Applications are evaluated and approved subject to land regulations. Council reserves the authority to deny applications for various reasons, including instances where the proposed application contradicts land regulations or conflicts with an existing agreement, including but not limited to event permits, access over Council land permits, leases, or licenced areas.

c) Stopping Time:

Unless prior written approval from Council is received, a vendor may stand in any one location for a **maximum period of sixty (60) minutes at any one time**, inclusive of set-up and pack-up times; and

(i) A vendor can only trade at each location once per day; and
(ii) A vendor can trade across multiple locations within a day.

An approved Mobile Food Vendor must display their approval notice and/or produce their approval notice if requested from an authorised officer.

An authorised officer has the authority to require the vehicle to move on from the area within the prescribed period if necessary.

d) Permitted days and hours of operation:

(i) Standard operating hours are between 7am to 7pm each day, inclusive of set up and pack up times.
(ii) Extended hours may be considered by Council on a location-by-location basis.
(iii) Mobile food vending vehicles are not to remain in any permitted location overnight.

e) Parking:

Mobile food vending vehicles are to operate so as to:

(i) Not impact on or conflict with any marked bicycle lanes;

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(ii) Ensure access to pedestrian ramps and footpaths are not compromised;
(iii) Ensure that access or egress from any building is not restricted by the operation of the food truck;
(iv) Ensure access to public street furniture such as seats, bicycle parking, drinking fountains, rubbish bins, fire hydrants, telephone booths and post boxes or the like;
(v) Ensure that trade does not occur into the road reserve;
(vi) Vendors must not stop on a hill or bend where sight distance is limited nor located in front of driveways or entrances to properties.

f) Vehicle Specifications:

(i) Mobile food vehicle to be registered and comply with all relevant state government vehicle requirements;
(ii) Mobile food vending vehicles must be no wider than 3.0m;
(iii) Vehicles 8.0 metres or greater in length require separate Road Occupancy Permits.

g) Deliveries:

Mobile food vending vehicles are to arrive at a location fully equipped. Deliveries are not to be made to a food truck while it is in operation on public land.

h) Food Carts Not supported under this Policy:

Applications for approval to operate a food cart on Council-owned roads pursuant to Section 68 of the *Local Government Act 1993* (NSW), for the purpose of selling any article in a public place, are not supported under this Policy.

i) Serving:

Mobile food vending vehicles are not to operate with their serving window opening onto any part of a vehicular carriageway (road or carpark) and/or a cycleway.

j) Customer Seating:

The placement of tables, chairs or other seating apparatus is not permitted at any time.

k) Signage:

An Approval under this Policy does not infer any approval for the erection or display of any sign or sign structure not directly attached to the mobile food vending vehicles.

This Policy does not allow the use of any temporary signage (e.g. A-frame boards) in association with the operation of any mobile food vending vehicle.

l) Waste management and Recycling:

Provisions for waste management are to include the following:

(i) Vendors 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, and stored and disposed of at the cost of the vendor.

(ii) Any waste produced by the operation of the mobile food vending vehicle is to be removed from the site via the mobile food vending vehicle at the end of the trading period.
(iii) The trading area is to be left in a clean and tidy condition at the end of each trading interval.
(iv) The trading approval holder is liable to reimburse Council for any cleaning cost incurred by Council during the duration of the trading period as a result of the operation of the mobile food vending vehicle.
(v) Disposal of all liquid wastes generated within the food van is to be discharged to the sewer or as approved by an Authorised Council Officer. Under no circumstances is liquid waste to be discharged to the ground or in the stormwater drain.
(vi) Details of liquid waste and garbage disposal arrangements must be supplied with the application for the mobile food vending vehicle.
(vii) Packaging used for the sale of food and drinks should be selected for its suitability for recycling in the LGA.
(viii) Single use plastics including bags and/or straws are not permitted to be used or dispensed.

m) Control of Pollution:

Vendors are to comply with the *Protection of the Environment Operations Act 1997* (NSW), which contains provisions relating to pollution, including prevention of offensive noise, smoke, odour and waste water discharges.

n) Water supply:

The vehicle must be provided with an adequate supply of potable water stored in approved 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.

The vehicle is to be equipped with a waste water tank external to the vehicle, of at least 50 litre capacity with an outlet of sufficient diameter to facilitate easy flushing and cleaning.

All hot water for washing purposes is to be supplied from a suitable hot water system and should be piped so it can be mixed with cold water.

o) Noise:

The emission of noise associated with the use of the vehicle, including the operation of any mechanical plant and equipment, is to comply with the following:

(i) The use of the vehicle must be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the (NSW).
(ii) If any noise complaints are received and substantiated by an Authorised Council Officer, the Officer may direct that the use of the food truck/business is to be suspended or moderated to prevent nuisance until attenuation measures are completed and Council has confirmed in writing that the use may resume.
(iii) The operation of a mobile food vending vehicle is not to involve the use of any bell, music or other sound device to attract customers, nor while the vehicle is stationary.

p) Odour:

If any odour or smoke complaints are received and substantiated by an Authorised Council Officer, then the use of the vehicle or apparatus is to be moderated as directed by an Authorised Council Officer as deemed necessary to prevent nuisance.

q) Food Handling:

The requirements for the handling of food for sale and human consumption are outlined in the standards set by the NSW Food Authority's website (www.foodauthority.nsw.gov.au). The requirements apply to all food handling including pre-packaged food and low-risk food. Fact Sheets and user guides are available on the Food Standards Australia New Zealand website

r) Maintenance:

The vehicle and its associated fixtures, fittings and equipment must be kept clean, presentable, and in a good state of repair and working order, free from dirt, fumes, smoke, foul odours and other contaminants.

s) Non-Compliance:

Council's Authorised Officers may issue improvement notices, penalty infringement notices, orders, clean up notices, prevention notices or court attendance notices for non-compliance within this Policy and all related offences. Serious pollution incidences can also be prosecuted by state agencies such as the NSW Environment Protection Authority. Failure to adhere to any condition of approval and/or legislative requirement may result in modification, suspension or revocation of the approval, in addition to prosecution or the issue of fines.

t) Approval of Applications:

Completed forms must be accompanied with all supporting documentation required as outlined in the application form otherwise the application will not be assessed. Fees must be paid in full prior to an approval being issued.

u) Issuing of Approvals:

(i) Approvals issued by Council will be to a person or corporation on a per vehicle basis. Approvals are specific to each mobile food vending vehicle and they are not transferable between vehicles.
(ii) An approval will be provided to all mobile food vending vehicles when final approval has been issued. The approval must be attached and displayed on the approved vehicle in a location clearly visible to the customers at all times whilst in operation.
(iii) No ownership transfer of Council approval (section 68) 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/vendor.
(iv) Approvals will be issued subject to conditions including, but not limited to, compliance with this Policy.

8. Attachments

Nil

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Policy Authorised by:

Name: Council Resolution Number ??

Date: 28 May 2024

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