

**FILE NO:** PSC2013-00406

**TITLE:** MOBILE FOOD VEHICLE POLICY

**POLICY OWNER:** MANAGER DEVELOPMENT ASSESSMENT AND COMPLIANCE  
SECTION MANAGER

**PURPOSE:**

The purpose of this policy is to provide a framework in which mobile food vehicles may safely operate within the Port Stephens Local Government Area without impact on land-based businesses.

**CONTEXT/BACKGROUND:**

Mobile food vehicles and street vending has become common practice in today's experience of commercial and tourist destinations, often filling a need in the market that is otherwise not met by existing retail and service offerings.

Mobile food vehicles are not normally subject to development approval as they fall outside the *Environmental Planning and Assessment Act 1979*. However, this type of business needs to be regulated as they are serving food to the public similar to traditional land based food outlets. Many mobile food vehicles park in locations that at times may create a hazard for pedestrians and traffic. Due to the nature of mobile food vehicles, there is the need for a strong policy that provides for food safety, pedestrian and traffic safety.

This policy does not relate to permanent land based food vans that may be subject of a development application under the *Environmental Planning and Assessment Act 1979*. The policy does however place a number of operational restrictions on mobile food businesses to afford a level of protection to the viability of land based food businesses and to ensure that both types of businesses can mutually co-exist.

**SCOPE:**

This policy captures all mobile food vehicles whether self propelled or not that operate within the LGA for the purpose of selling food. It includes vehicles designed to perform complex food preparation, single step/simple food preparation or the sale of only pre-packaged foods. The policy is relevant to land, air or water based vehicles. The policy does not capture food vending machines (land-based) or food transport vehicles licenced through the NSW Food Authority.

**DEFINITIONS:**

An outline of the key definitions of terms included in the policy.

<b>Mobile Food Vehicle</b>	All food vending vans, mobile trailers, carts and maritime vessels (whether registered or not) used for the purpose of selling any article of food on a public reserve or within public or private property.
<b>Mobile Food Vendor</b>	A company or individual that operates a mobile food vehicle
<b>Development Application</b>	A formal request for permission to carry out a development under the Environmental Assessment and Planning Act, 1979.
<b>Approved Vehicle</b>	A mobile food vehicle holding an approval currently in-force with PSC or another local Council.
<b>Council</b>	Port Stephens Council
<b>LGA</b>	Local Government Area
<b>Sell</b>	As defined in the <i>Food Act 2003</i> – "Sell" includes: <ul style="list-style-type: none"><li>(a) barter, offer or attempt to sell, or</li><li>(b) receive for sale, or</li><li>(c) have in possession for sale, or</li><li>(d) display for sale, or</li><li>(e) cause or permit to be sold or offered for sale, or</li><li>(f) send, forward or deliver for sale, or</li><li>(g) dispose of by any method for valuable consideration, or</li><li>(h) dispose of to an agent for sale on consignment, or</li><li>(i) provide under a contract of service, or</li><li>(j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work, or</li><li>(k) dispose of by way of raffle, lottery or other game of chance, or</li><li>(l) offer as a prize or reward, or</li><li>(m) give away for the purpose of advertisement or in furtherance of trade or business, or</li><li>(n) supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration</li></ul>

of an inclusive charge for the food supplied and the accommodation, service or entertainment, or

- (o) supply food (whether or not for consideration) in the course of providing services to patients in public hospitals (within the meaning of the Health Services Act 1997) or inmates in correctional centres (within the meaning of the Crimes (Administration of Sentences) Act 1999), or
- (p) sell for the purpose of resale.

### **POLICY STATEMENT:**

This policy will provide a consistent and equitable framework for all matters relating to the approval, operation and construction of mobile food vehicles within Port Stephens Local Government Area. It will allow mobile food vehicles to operate legitimately in those locations where the policy permits without significant impact on land based food businesses. Applicants are advised to read and familiarise themselves with the policy prior to making a formal application.

### **POLICY RESPONSIBILITIES:**

- 1) The Environmental Health team are responsible for implementing, monitoring, evaluating, reviewing and providing advice on the policy.

### **RELATED DOCUMENTS:**

- 1) *Local Government Act 1993 and Local Government (General) Regulation 2005.*
- 2) *Food Act 2003 and Food Regulation 2015.*
- 3) *Environmental Planning and Assessment Act 1979.*
- 4) FSANZ Food Standards Codes.
- 5) *Roads Act 1993 and Roads Regulation 2008.*
- 6) State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Subdivision 27A – Mobile food and drink outlets),
- 7) Guidelines for mobile food vending vehicles, NSW Food Authority, NSW/FA/FI055/1302.
- 8) PSC Commercial Operators Policy, PSC2015-01929.

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### **CONTROLLED DOCUMENT INFORMATION:**

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<b>RM8 container No</b>	PSC2013-00406	<b>RM8 record No</b>	
<b>Audience</b>	Existing and potential commercial food operators		
<b>Process owner</b>	Section Manager Development Assessment and Compliance		
<b>Author</b>	Coordinator Environmental Health and Compliance		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	November 2018
<b>Adoption date</b>	22 November 2016		

**VERSION HISTORY:**

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Details</b>	<b>Minute No.</b>
V1	22/11/2011	Coordinator Environmental Health and Compliance	Mobile Food Vending Policy,	396
V2	26/8/2014	Coordinator Environmental Health and Compliance	Mobile Food Vending Policy.	225
V2.1	22/11/2016	Coordinator Environmental Health and Compliance	Mobile Food Vehicle Policy updated to new template.	340



**PORT STEPHENS**  
C O U N C I L

**PORT STEPHENS COUNCIL**  
**MOBILE FOOD VEHICLE GUIDELINES**

## 1. PURPOSE

The Mobile Food Vehicle Guidelines is to be used in conjunction with Council's Mobile Food Vehicle Policy adopted 22.11.2011 Min No. 396 amended xx.xx.xxxx Min No. xx

The guidelines provide Council and mobile food vehicle operators with guidance to effectively and consistently control and operate mobile food operations and street vending activities within public roads or within limited public and private places. The guidelines identify the responsibilities and requirements for mobile food vehicle operators. The Guidelines also establish criteria for the construction of vehicles, vans, vessels so that appropriate standards associated with street vending and food sales are regulated. The guidelines are mandatory for all mobile food vending activities carried out within the Local Government Area (LGA).

## 2. APPLICATION OF THE GUIDELINES

- 2.1 These Guidelines shall apply to all mobile food operators and food vending vehicles.
- 2.2 Operators are required to comply with all applicable legislation including the *Local Government Act, 1993*, the *Roads Act, 1993*, including the *Road Rules 2008*, the *Food Act, 2003* and FSANZ Food Standards Codes [as amended from time to time].
- 2.3 Council must take the provisions of the Mobile Food Vehicle Policy and these Policy Guidelines into account when determining whether to give or refuse an approval for the operation of a food vendor.
- 2.4 Council will take all relevant matters into consideration when determining an application.

## 3. MOBILE FOOD VEHICLE ASSESSMENT AND OPERATIONAL CRITERIA

### 3.1 Mobile Food Vehicle Standards

- a. The design, construction and operation of mobile food vehicles must comply with the NSW Food Authority *Guidelines for Mobile Food Vending Vehicles* (NSW/FA/FI055/1302).
- b. Food handling and hygiene requirements must comply with the *Food Act 2003*, *Food Regulation* and relevant FSANZ Food Standards Codes [as amended from time to time].
- c. Mobile food vehicles must be of a size, design and construction appropriate for the type and scale of food being prepared and sold.

### 3.2 Trading Areas, Trading Times and Other Information

To ensure mobile food vehicles do not unreasonably impact on the operation of existing land-based food businesses the following standards apply:

- a. Mobile food vehicles must not trade within 350 metres of an existing trading land-based food business. This minimum distance requirement is measured in a straight line from the closest point of the Mobile Food Vehicle (location) to the main entrance of the land based food business.
- b. Mobile food vehicles must not trade on any road or street regulated by the Roads and Maritime Service (RMS) without the prior approval of the RMS. Registration with the RMS does not preclude the requirement to register with Council.
- c. Mobile food vehicles must not trade on any street deemed by Council as being unsuitable by virtue of its location, traffic condition or other safety issue.
- d. Mobile Food Vendors must only occupy a permitted selling location for such a period of time whilst engaged in the actual setting up and serving of a customer and shall after serving all customers move on and not return to the same location within one (1) hour.
- e. Mobile Food Vendors must at all times comply with the relevant parking restrictions.
- f. Mobile food vehicles must not trade as a roadside stall or as a stall to sell food to the public on any site that first requires development consent for that use.
- g. Mobile food vehicles are not permitted to trade between sunset and sunrise unless stated in the approval. Council may limit operating hours to particular days or dates or shorter trading times. An authorised officer may require a mobile food van to move if necessary and may also require a van to leave the area.

## 4. APPLICATION PROCESS

### 4.1 General

Applications to operate a mobile food vehicle for the vending of food shall be made to Council on the prescribed application form. Not-for-profit and charitable organisations are not exempt from this policy. PSC operates a home jurisdiction rule as detailed in 4.1(c).

- a. **New Mobile Food Vehicles:** This applies to vehicles where the applicant resides in PSC. New vehicles are those that do not hold a current approval with PSC or with any other Council. The application shall be subject to a business registration fee and initial inspection. The vehicle will be subject to on-going annual inspections.
- b. **Existing Mobile Food Vehicles:** Existing vehicles are those that hold a current approval with Council or hold an approval (in-force) with another Council. Operators of existing mobile food vehicles holding an approval with another Local Council and wishing to operate in the Port Stephens LGA shall make application in writing to Council. The application shall be subject to an administration fee and provision of a copy of a current and satisfactory inspection report from another Council (refer section 6.3). The vehicle may be subject to on-going annual inspections (fee applicable) or alternatively the provision of a copy of a current and satisfactory inspection report from another Council (refer section 6.3).
- c. **Home Council Jurisdiction Rule:** PSC operates under a home Council jurisdiction rule intended to minimise the cost and time burden for operators intending to operate within multiple Local Government Areas (LGA). All new and existing mobile food vehicles are required to be registered with PSC regardless of their home Council. Operators located or residing in the PSC area are required to have their vehicles inspected by PSC annually. Operators located or residing outside the PSC area may choose to have the annual inspection undertaken by their home (or alternative) Council. This reduces the cost of having multiple inspections by different Councils within the same approval year.



## 4.2 Required Information

The following information is required from the applicant when submitting an application:

- a. A completed Mobile Food Vehicle Application Form. (**Note:** Incomplete application forms will not be processed).
- b. A current certificate of currency (Public Liability Insurance) for a minimum \$20,000,000.

## 4.3 Assessment

Following receipt of a complete application Council will undertake an assessment against relevant legislation and guidelines. If approved and once all fees have been received an approval to operate will be released allowing operation of the mobile food vehicle.

## 5. APPROVALS

- 5.1 The Policy applies to approvals for an activity in accordance with *Local Government Act, 1993* (section 68, F7); *Use a standing vehicle or any article for the purpose of selling any article in a public place.*
- 5.2 Approvals shall take effect from the date stated thereon and shall expire 12 months after the date of the approval or any other time as stated on the approval. Continuation of the operation of the mobile food vehicle is only permitted after re-inspection and payment of fees or after the provision of a recent (less than 12-month old) satisfactory inspection report from another Council if accessing the home Council jurisdiction rule.
- 5.3 Food Vendors must not hawk or sell any article of food away from or separate to the mobile food vehicle.
- 5.4 To continue to operate in the LGA mobile food vendors must maintain a current registration of their business with Council.
- 5.5 The vehicle or vessel shall be maintained, registered and comply with the relevant provisions of the Motor Traffic or Maritime Regulations.
- 5.6 NSW Transport Roads and Maritime Service (RMS) is an approval authority for road related and marine vessels. Operators of vessels are to obtain prior consent of NSW RMS as part of the Council application process.

- 5.7 The operation of a mobile food vehicle approved under this policy does not extinguish other legislative responsibilities that may be applicable such as approvals required under the *Environmental Planning and Assessment Act*, *Local Government Act* or *Food Act*.

## 6. INSPECTIONS

- 6.1 Mobile food vehicles may be subject to an annual inspection by Councils Environmental Health Officers for which a fee may be applicable except as determined in section 6.3.
- 6.2 All vehicles subject to an inspection shall be presented at a designated location convenient to both the Environmental Health Officer and the operator on a mutually acceptable date and time.
- 6.3 Operators of approved vehicles accessing the home jurisdiction rule must, on an annual basis, provide a copy of an inspection report relating to the nominated vehicle that has been undertaken by a Council other than Port Stephens Council. The inspection report submitted must have been performed within the previous 12-months and must indicate a satisfactory result with no critical non-compliances. The provided report must be on the letterhead of the issuing Council.

## 7. FEES AND CHARGES

- 7.1 Fees applicable to mobile food vending vehicles are presented in Council's Schedule of Fees and Charges.
- 7.3 Mobile food vending vehicles owned or operated by not-for-profit, charitable or community organisations may be exempt from applicable fees. Documentation demonstrating the charitable or community status of an organisation must be provided if requested by Council.

## 8. COMMUNITY AMENITY, SAFETY AND CLEANLINESS

The operation of mobile food vehicles must give consideration to impacts on the community amenity, other businesses and the environment through the following standards;

- 8.1 The location and operation of mobile food vehicles must not have a detrimental impact on the safety of pedestrians and other road users.
- 8.2 Access to a mobile food vehicle must be via an adjacent pedestrian walkway and not a roadway.

- 8.3 Mobile food vehicles must comply with parking restrictions and applicable road and traffic rules.
- 8.4 The operation of mobile food vehicles must ensure compliance with *Protection of the Environment and Operations Act, 1997* having regard to noise, litter and other potential environmental impacts.
- 8.5 All operators of mobile food vehicles must outline a clear waste management plan ensuring the litter created from the operations of the mobile food vehicle do not adversely impact on the surrounding environment or Council's existing waste management service in the surrounding area.
- 8.6 Residential amenity must not be unreasonably affected by the operation of a mobile food vehicle.