

City of Newcastle

Policy

Mobile Food Vending Vehicles – Local Approvals Policy

March 2019

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PRELIMINARY

P.1 Title of the Policy

This Policy (“*the Policy*”) is called the Local Approvals Policy for Mobile Food Vending Vehicles.

P.2 What is the purpose of the Policy?

The City of Newcastle supports the operation of food trucks and food vans to enliven the City of Newcastle Local Government Area and encourage diversity in takeaway food options.

The purpose of the Policy is to provide the framework for the operation of mobile food vending vehicles in the City of Newcastle Local Government Area. The Policy sets out the relevant legislative requirements for safe food handling and preparation practices and establishes the on-street trading parameters.

The Policy also supplements provisions of the *Local Government Act 1993*, the *Roads Act 1993*, the *Food Act 2003* and associated regulations.

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

Part 1 of the Policy specifies any exemptions from the 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.

P.3 Review of the Policy

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

The Policy will be reviewed every three years from the date of commencement.

P.4 What are the objectives of the Policy?

The Policy aims to:

- (a) Ensure that mobile food vending vehicles operate in accordance with the rules and restrictions on lawful parking spaces on Council-owned roads; and
- (b) Ensure that food sold through mobile food vending vehicles is safe and fit for human consumption; and
- (c) Provide guidance and assistance to people wanting to operate a mobile food vending vehicle on Council-owned roads in the City of Newcastle Local Government Area; and
- (d) Ensure the construction, fitting out and facilities for cleaning utensils, articles, fittings and appliances in vehicles are adequate; and
- (e) Minimise any potential adverse impacts of mobile food vending vehicles; and

- (f) Ensure the safe operation of mobile food vending vehicles; and
- (g) Ensure the operation of mobile food vending vehicles does not increase litter or waste in or from the trading location; and
- (h) Ensure that the operation of the mobile food vending vehicle does not adversely impact any surrounding sensitive land uses, and in particular residential amenity.

P.5 Policy commencement date

The Policy was adopted by Council on 26 March 2019 and came into operation on 27 March 2019.

P.6 Where the Policy applies

The Policy applies to all Council-owned roads within the City of Newcastle Local Government Area.

The Policy does not apply to any food truck or food van that is operating pursuant to a separate “events” authorisation and/or sporting ground licence issued by Council. The use of Council parks, reserves and the like is prohibited unless expressly authorised by Council.

The Policy does not apply to the use and operation of any food truck or food van that is used on private land. Such activities may be exempt from a requirement to obtain development consent, subject to the provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

P.7 Approvals to which the policy relates

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

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

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

P.8 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 a general election of Council, unless Council revokes the Policy sooner.

P.9 Definitions

For the purposes of the Policy:

- (a) A **mobile food vending vehicle** is a vehicle located on Council-owned roads used in connection with the preparation and/or sale of food.

It includes vehicles used for on-site food preparation (eg. hamburgers, hot dogs and kebabs), one-step food preparation (eg. popcorn, fairy floss, coffee) and the sale of any type of food, including pre-packaged food.

For the purposes of the Policy, the term “*mobile food vending vehicle*” refers to both food trucks and food vans, being vehicles that are registered within the meaning of the *Road Transport Act 2013*.

All mobile food vending vehicles require an approval issued by Council prior to operating.

- (b) A **food truck** is a vehicle used for the purposes of on-site preparation and sale of hot and cold food (considered a medium to high risk food category). Food trucks routinely change location and must not remain in any one location for more than 4 hours at one time.
- (c) A **food van** is a vehicle used for the purposes of selling tea, coffee, drinks, cakes, sweets or other similar food (low risk food category). Food vans routinely change location and can make intermittent stops of up to 15 minutes at any one time.
- (d) A **food cart** is 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).
- (e) **Council-owned roads** includes all of the land used for vehicular traffic, plus any footway, shoulder, kerb and gutter.

P.10 Explanations of notes in the text

The notes in text boxes are explanatory notes and do not form part of the Policy. The notes are provided to assist with the understanding of the Policy.

P.11 Other relevant documents

The following documents are related to the Policy:

- *Local Government Act 1993*
- *Food Act 2003*
- *Roads Act 1993*
- *Food Standards Code*
- Mobile Food Vending Vehicles – Operation, construction and food handling guidelines, August 2009 (available on the NSW Government Food website <http://www.foodauthority.nsw.gov.au/>)
- Department of Local Government Street Vending Control Guidelines 2017

PART 1: EXEMPTIONS FROM THE NECESSITY TO OBTAIN APPROVAL

1.1 Exemptions under the Policy

There are no exemptions under the Policy for mobile food vending vehicles.

Note: Section 158(3) of the *Local Government Act 1993* requires a Local Approvals Policy to specify the circumstances (if any) in which a person would be exempt from the necessity to obtain a particular approval from Council.

To ensure the safety of food for human consumption, there will be no exemptions for compliance with the Policy in relation to mobile food vending vehicles.

PART 2: CRITERIA COUNCIL MUST CONSIDER WHEN DETERMINING APPLICATIONS FOR MOBILE FOOD VENDING VEHICLES

2.1 General requirements of mobile food vending vehicles

- (a) Approval under the *Local Government Act 1993* is required prior to commencement of operation of a mobile food vending vehicle on a Council-owned road. The operation of a mobile food vending vehicle without the required approval is an offence.
- (b) 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.
- (c) Prior to the issue of an approval under this Policy, the mobile food vending vehicle is to be made available for inspection by Council's Regulatory Services officer/s. 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.
- (d) All Approvals will be issued with an end date of 30 June each year, to enable an annual review.
- (e) Operators are to notify the food business to Council using a Food Business Update form found on Council website at www.newcastle.nsw.gov.au.
- (f) The criteria to be used in the assessment of a mobile food vending vehicle for approval will include all the relevant provisions contained in the standards as set out in Part 2 of the Policy, the *Food Act 2003* and associated regulations, and the Food Standards Code.
- (g) Approvals will be issued subject to conditions, including but not limited to compliance with the Policy.
- (h) 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.

- (i) The applicant is to submit a copy of a broadform public liability insurance indemnifying the applicant 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.
- (j) 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*; 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 and shall be extended to include “*CTP Gap Coverage Endorsement*” cover. The policy shall note the interest of the 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.

2.2 General requirements in accordance with Food Safety Standard 3.2.3

The design and construction of a mobile food vending vehicle is to:

- (a) Be appropriate for the types of food produced and activities conducted; and
- (b) Provide adequate space for all activities and for all equipment to be used or stored; and
- (c) Allow easy cleaning/sanitising procedures of all structures and equipment; and
- (d) Prevent entry of pests, dust, fumes, smoke and other contaminants; and
- (e) Exclude favourable sites for pests to harbour (live and breed).

Further details on these requirements are contained within *Mobile Food Vending Vehicles – Operation, construction and food handling guidelines*, prepared by the NSW Food Authority. All mobile food vending vehicles approved by Council are required to comply with these guidelines.

PART 2A: CRITERIA COUNCIL MUST CONSIDER WHEN DETERMINING AN APPLICATION TO OPERATE A FOOD TRUCK

2A.1 Location

Food trucks may only operate in the areas specified in Appendix 1 (the schedule of streets may be updated from time to time). Maps of the approved locations are also available on Council's website.

Note: Council will use the following principles in determining the suitability of any additional food truck locations to those specified in Appendix 1:

- Land use zoning and permissible uses within that zone (compatibility considerations)
- Proximity to residential properties (potential residential amenity impacts)
- Proposed hours of operation (consideration of other food and drink premises in proposed location)
- Road, road-user and pedestrian safety
- Availability of alternate locations

Food trucks permitted to operate on Council-owned roads are to:

- (a) Be located within existing lawful parking spaces; and
- (b) Comply with the local parking restrictions; and
- (c) Stand in any one location for a maximum period of four hours at a time, inclusive of set-up and pack-up times; and
- (d) Not return to an operating location for four hours; and
- (e) Comply with the relevant road rules; and
- (f) Not operate directly in front of a residential building (house or apartment) on the same side of the road as the frontage of the residential building.

2A.2 Proximity to an operating food truck

Food trucks are not to trade within a 50m radius of another food truck.

2A.3 Proximity to existing comparable premises

No food truck is to be positioned within 50m of an operating food and drink premises or kiosk or a special event selling food. This minimum distance requirement is measured in a straight line from the closest point of the food truck (location) to the main entrance of a food and drink premises or kiosk or boundary of a licensed event area.

2A.4 Parking

Food trucks are to operate so as to:

- (a) Not impact on or conflict with any marked bicycle lanes; and
- (b) Ensure access to pedestrian ramps and footpaths are not compromised; and

- (c) Ensure that access or egress from any building is not restricted by the operation of the food truck; and
- (d) 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.

2A.5 Truck specifications

Food trucks must be no wider than 2.5m.

Additionally, vehicles 7.5m or greater in length require separate Road Occupancy Permits.

2A.6 Deliveries

Food trucks are to arrive at a location fully equipped. Deliveries are not to be made to a food truck while it is in operation.

PART 2B: CRITERIA COUNCIL MUST CONSIDER WHEN DETERMINING AN APPLICATION TO OPERATE A FOOD VAN

2B.1 Location

Food vans may only operate in the areas specified in Appendix 2. Maps of the approved areas are also available on Council's website.

2B.2 Stopping time

Each food van will be able to trade for a maximum period of 15 minutes in one location at one time.

An authorised officer has the authority to require the vehicle to move on from the area within the 15 minute period if necessary.

2B.3 Proximity to existing comparable premises

No food van is to be positioned within 50m of an operating food and drink premises or kiosk or a special event selling food. This minimum distance requirement is measured in a straight line from the closest point of the food van (location) to the main entrance of a food and drink premises or kiosk or boundary of a licensed event area.

PART 2C: CRITERIA COUNCIL MUST CONSIDER WHEN DETERMINING AN APPLICATION TO OPERATE A FOOD CART

2C.1 Food Carts *Not* supported under the Policy

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

PART 3: OTHER MATTERS RELATING TO APPROVALS FOR MOBILE FOOD VENDING VEHICLES

Note: Approval of a mobile food vending vehicle is subject to compliance with the requirements of the *Food Act 2003*, Food Standard Codes and all other conditions of approval.

The mobile food vending vehicle approval (page 1) issued by Council is to be displayed in a location that is clearly visible to customers at all times during operation. A copy of the full approval document is to be kept within the vehicle at all times and made available to an authorised Council officer upon request.

Failure to adhere to any condition of approval and/or legislative requirement may result in modification, suspension or revocation of an approval, in addition to the potential issuing of fines.

3.1 Permitted days and hours of operation

The use of Council-owned roads for the purpose of operating a mobile food vending vehicle is restricted to 7am to 10pm each day, inclusive of set up and set down times.

Mobile food vending vehicles are not to remain in any on-road location overnight.

3.2 Serving

Mobile food vending vehicles are not to operate with their serving window opening onto any part of a vehicular carriageway or a cycleway.

3.3 Customer seating

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

3.4 Waste management and recycling

Provisions for waste management are to include the following:

- (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, and stored and disposed of at the cost of the operator.
- (b) 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.
- (c) The trading area is to be left in a clean and tidy condition at the end of each trading interval.
- (d) 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.

- (e) 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.
- (f) Details of liquid waste and garbage disposal arrangements must be supplied with the application for the mobile food vending vehicle.
- (g) Where feasible the packaging used for the sale of food should be selected for its suitability for recycling in the City of Newcastle Local Government Area. Details are available on the City of Newcastle website on <http://www.newcastle.nsw.gov.au>

Note: The City of Newcastle has prepared a Local Approvals Policy for Waste Management in a public place which addresses the management of commercial waste in a public place.

3.5 Signage

An Approval under the 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.

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

3.6 Animals and pests

All practicable measures are to be taken to prevent pests (including birds, spiders and flying insects) from entering or remaining in the vehicle.

No animal is permitted to enter any vehicle, whether the vehicle is in operation or not.

3.7 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.

3.8 Control of pollution

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

3.9 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:

- (a) 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 *Protection of the Environment Operations Act 1997*.
- (b) 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.
- (c) 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.

3.10 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.

3.11 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 also apply to pre-packaged food and low-risk food. Fact Sheets and user guides are available on the Food Standards Australia New Zealand website (www.foodstandards.gov.au).

3.12 Preparing food at home

A separate approval may be required for the preparation of food as part of a home business. Please contact Council for further information regarding restrictions in your residential zone on 4974 2000.

3.13 Use of separate premises

Where the operation of the mobile food vending vehicle involves the use of premises within the City of Newcastle Local Government Area, for the storage or preparation of food in conjunction with a mobile food vending vehicle, a Development Consent for such use may be required under the *Environmental Planning and Assessment Act 1979*.

Any change in the permanent facilities is to be notified to Council.

3.14 Maintenance

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

3.15 Non-compliance

Council's Authorised Officers may issue penalty infringement notices, orders, clean up notices, prevention notices or court attendance notices for non-compliance with the Policy and all related offences. Serious pollution incidences can also be prosecuted by state agencies such as the NSW Environment Protection Authority.

CONTACT INFORMATION

Please contact Council or the NSW Food Authority for further information relating to information contained within the Policy.

City of Newcastle

Tel: (02) 4974 2000

Website: www.newcastle.nsw.gov.au

NSW Food Authority

Tel: 1300 552 406

Fax: (02) 9647 0026

Website: <http://www.foodauthority.nsw.gov.au>

Email: contact@foodauthority.nsw.gov.au

Food Standards Australia New Zealand

Website: <http://foodstandards.gov.au>

APPENDIX 1: PERMITTED TRADING LOCATIONS – FOOD TRUCKS

Location No.	Site Name	Street Address	Suburb
1	National Park	Union Street Parry Street	Newcastle West Newcastle West
2	Newcastle Foreshore (east)	Wharf Road	Newcastle East
3	Newcastle Foreshore (west)	Wharf Road	Newcastle
4	Dixon Park	Ocean Street	Merewether
5	Civic Park	Laman Street	Newcastle
6	Myers Park	Meyers Road	Broadmeadow
7	Freeway South Business Park	Arunga Drive Enterprise Drive Balook Drive Yangan Drive Balbu Close Birraba Avenue Pippita Close Kullara Close	Beresfield
8	Steel River Industrial Estate	Steel River Blvd Metal Pit Drive Riverside Drive Channel Road Murray Dwyer Circuit McIntosh Drive Laurio Place Frost Drive Spit Island Close Pambalong Drive	Steel River

Maps: The above Permitted Trading Locations for Food Trucks are show in a map linked to the Council's website: www.newcastle.nsw.gov.au and search for “Mobile Food Vending”

APPENDIX 2: PERMITTED & EXCLUDED TRADING LOCATIONS – FOOD VANS

Trading locations for food vans are primarily based on land use zonings defined by relevant Environmental Planning Instruments that apply to the City of Newcastle Local Government Area. Relevant instruments include the *Newcastle Local Environmental Plan 2012* and *State Environmental Planning Policy (Three Ports) 2013*. Zoning information, including maps, can be accessed via the NSW Legislation website, at www.legislation.nsw.gov.au. It is noted that land use zones are likely to change from time to time.

Irrespective of the relevant land use zone, food vans are not to operate on “classified” roads within the meaning of the *Roads Act 1993*. Please visit the Roads and Maritime Services website (www.rms.nsw.gov.au) to determine which roads are classified. It is noted that the list of classified roads is likely to change from time to time.

Subject to other exclusions on this Appendix, food vans may operate on Council-owned roads within the Newcastle Local Government Area zoned:

- [Zone B2 Local Centre](#)
- [Zone B3 Commercial Core](#)
- [Zone B4 Mixed Use](#)
- [Zone B5 Business Development](#)
- [Zone RE1 Public Recreation](#) land that directly adjoins the ocean or harbour
- [Zone IN1 General Industrial](#)
- [Zone IN2 Light Industrial](#)
- [Zone IN3 Heavy Industrial](#)
- [Zone SP1 Special Activities](#)
- [Zone SP2 Infrastructure](#)
- [Zone RE2 Private Recreation](#)

Food vans are not to operate on Council-owned roads within the Newcastle Local Government Area that are zoned or are adjacent to land zoned:

- [Zone R2 Low Density Residential](#)
- [Zone R3 Medium Density Residential](#)
- [Zone R4 High Density Residential](#)
- [Zone B1 Neighbourhood Centre](#)
- [Zone RE1 Public Recreation](#) land that does not directly adjoin the ocean or harbour
- [Zone E1 National Parks and Nature Reserves](#)
- [Zone E2 Environmental Conservation](#)
- [Zone E3 Environmental Management](#)
- [Zone E4 Environmental Living](#)
- [Zone W2 Recreational Waterways](#)

Maps: The above Permitted and Excluded Trading Locations for Food Vans are show in a map linked to the Council's website: www.newcastle.nsw.gov.au and search for “Mobile Food Vending”.

Document Control

Policy title	Mobile Food Vending Vehicles – Local Approvals Policy
Policy owner	Director Governance
Policy expert/writer	Environmental Health Officer
Prepared by	Regulatory, Planning and Assessment
Approved by	Elected Council
Date approved	26/03/2019
Commencement Date	26/03/2019
Next revision date	30/09/2020
Termination date	30/09/2021
Version	Version 2
Category	Administration
Keywords	Mobile food vending vehicles including food vending trucks, vans and carts
Relevant strategic direction	Vibrant, Safe and Active Public Places
Relevant legislation/codes (reference to specific sections)	<p><i>Local Government Act 1993 (NSW) (s68, s75-113, s158-161)</i></p> <p><i>Environmental Planning and Assessment Act 1979 (NSW)</i></p> <p><i>Food Act 2003 (NSW) (s37)</i></p> <p><i>Motor Accidents Act 1988 (NSW) OR Motor Accidents Compensation Act 1999</i></p> <p><i>Protection of the Environment Operations Act 1997 (NSW)</i></p> <p><i>Road Transport Act 2013 (NSW)</i></p> <p><i>Roads Act 1993 (NSW) (Dictionary, Part 5 Classification of roads)</i></p> <p>Food Standards Code - Standard 3.2.2</p>
Related policies/documents	NIL
Related forms	Mobile Food Vending Vehicle Application Form
Required on website	Yes
Authorisations	Determination of applications under Section 68 of the <i>Local Government Act 1993</i> , to “Use a standing vehicle or any article for the purpose of selling any article in a public place”. For the purposes of the Policy a ‘standing vehicle’ is a food truck or food van that has stopped to make a sale, or with the intention to sell, on a Council-owned road.