

## 8.4 Mobile Vending Vehicles and Temporary Stalls in a Public Place Policy

REPORT BY THE MANAGER, HEALTH AND BUILDING  
TO 17 MARCH 2021 ORDINARY MEETING  
GOV400088, A0130047

### RECOMMENDATION

#### That Council:

1. **receive the report by the Manager, Health and Building on the submission received to the amended Mobile Food Vending Vehicles and Temporary Food Stalls in a Public Place Policy; and**
2. **adopt the revised Mobile Vending Vehicles and Temporary Stalls in a Public Place Policy.**

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### Executive summary

At Council's December 2020 meeting, Council endorsed a copy of the revised Mobile Vending Vehicles and Temporary Stalls in a Public Place Policy to be placed on public exhibition for a period of 28 days.

The revised policy was placed on public exhibition with one staff submission received. No public submissions were received. The staff submission is not specifically related to the Policy, rather it requested that consideration be given to non-food related and low risk food vendors receiving reduced fees and the option to apply for a one off event permit. This matter is relevant to the setting of Council's Fees and Charges in the future.

As the submission does not require a change to the Policy, it is recommended that Council adopt the Mobile Vending Vehicles and Temporary Stalls in a Public Place Policy as exhibited and attached to this report.

### Disclosure of Interest

Nil

### Detailed report

At Council's December 2020 meeting, Council endorsed a copy of the revised Mobile Vending Vehicles and Temporary Stalls in a Public Place Policy to be placed on public exhibition for a period of 28 days.

The revised policy was placed on public exhibition for a period of 28 days, with one staff submission received (as per Attachment 2). The details of the submission and staff's response are summarised in the following table.

Summary of Submission	Staff Response	Is a change to the policy required?
<p>Based on the reduced risk to public safety compared to that presented by high risk food vendors, may consideration be given for non-food related vendors and low risk food vendors to be afforded the option to apply for a one off event permit and a lower fee of \$30.00, in lieu of the annual permit and annual fee of \$156.00.</p>	<p>The setting of fees is not a matter specifically covered by the Policy. However, the recommendation has been considered and is proposed to be implemented in the future Fees and Charges.</p> <p>To ensure that an adequate rate of recovery can be achieved, a new fee of \$40.00 will be proposed in the 2021/22 Fees and Charges.</p> <p>This fee will be available for non-food related and low risk food vendors who wish to attend a single event. The \$40.00 does not include business registration.</p>	No

The amended policy as endorsed at the December 2020 meeting and as exhibited for 28 days is included in Attachment 1. Given the submission did not object to the policy nor require changes to be made to the policy, the recommendation is for Council to adopt the Policy as exhibited.

## Community Plan implications

Theme	Looking After Our Community
Goal	A safe and healthy community
Strategy	Maintain the provision of high quality, accessible community services that meet the needs of our community

## Strategic implications

### Council Strategies

The policy links to Council's strategy of maintaining its partnership with the NSW Food Authority to address matters such as food premises inspections, safe food handling and food borne illness investigation.

Should the policy not be adopted, Council may not meet the expectations of both the businesses seeking the opportunity to operate a mobile or temporary premises in the region and the community, who should be confident in the knowledge that the operators are not impacting too greatly upon those permanent businesses whilst also satisfying food regulation requirements.

### Council Policies

Mobile Food Vending Vehicles and Temporary Food Stalls in a Public Place Policy (2018).

### Legislation

Local Government Act 1993

Local Government (General) Regulation 2005  
NSW Food Act 2003  
NSW Food Regulation 2015

### Financial implications

Not Applicable.

### Associated Risks

Not Applicable.

JOSH BAKER  
MANAGER, HEALTH AND BUILDING

JULIE ROBERTSON  
DIRECTOR DEVELOPMENT

23 February 2021

*Attachments:* 1. Mobile Vending Vehicles and Temporary Stalls in a Public Place - November 2020 - unmarked version March 2021.  
2. Submission.

### APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER

ADOPTED		VERSION NO	3
COUNCIL MEETING MIN	<a href="#">CLICK HERE TO</a>	REVIEW DATE	NOVEMBER 2022
DATE:	NOVEMBER 2020	FILE NUMBER	A0130047

## Objective

The objective of this policy is to manage the sale of any article in a public place within the Mid-Western Regional Local Government Area (LGA), whether from a standing vehicle or temporary stall. It is designed to provide applicants with instructions on how to obtain approval for mobile sales and sales at temporary events within the region.

The policy will be used to regulate 'Approvals to Operate' for mobile vending vehicles and temporary stalls so that they will not interfere with the operation of permanent commercial enterprises located in the Central Business District (CBD) areas of Mudgee, Gulgong, Rylstone and Kandos, or elsewhere as stated within this policy.

This policy does not relate to mobile food carts or kiosks in a shopping centre, or a temporary stall or mobile vehicle on private land.

## Legislative requirements

This policy operates in accordance with the provisions of the following legislation:

- Local Government Act 1993
- Local Government (General) Regulation 2005
- NSW Food Act 2003
- NSW Food Regulation 2015

## Related policies and plans

- Australian Standard AS4674-2004 'Design, Construction and Fit out of Food Premises'
- NSW Food Authority Guidelines for Mobile Food Vending Vehicles
- NSW Food Authority Guidelines for Food Businesses at Temporary Events
- Standards 3.1.1, 3.2.2 and 3.2.3 of the Australian New Zealand Food Standards Code
- Roads and Maritime Services (RMS) – 'Mobile vending in rest areas' Policy Number: PN271

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## Policy

### Criteria for Determination of Applications

#### FOOD RELATED SALES

Businesses that sell food at temporary events such as fairs, festivals, markets and shows are considered retail food businesses under this policy, as they sell food to the public and need to meet a range of requirements.

All applications must be made in the approved form. Each vehicle and/or stall operator must submit a completed individual application form which is accompanied by the appropriate application fee and relevant supporting documentation for Council assessment.

Prior to the issuing of an 'Approval to Operate' a Mobile Food Vending Vehicle or a Temporary Food Stall under this policy, the applicant is to submit sufficient information for Council to use when considering the application. The criteria used to assess the application is provided in Council's 'Section 68 Application to Operate a Mobile Food Vending Vehicle or Temporary Food Stall' form. Further provisions and explanatory information is included in the *NSW Food Authority Guidelines for Mobile Food Vending Vehicles* and *Guidelines for Food Businesses at Temporary Events*.

The construction and fit out of mobile food vending vehicles and temporary food stalls must comply with the relevant requirements of the *NSW Food Act 2003*, and, the *NSW Food Regulation 2015* incorporating the Food Standards Code.

#### SALE OF ANY OTHER (NON-FOOD RELATED) ARTICLE

All applications must be made in the approved form. Each vehicle or stall must submit a completed application form, accompanied by the appropriate fee and relevant supporting documentation for Council assessment.

Prior to the issuing of an 'Approval to Operate' for a Mobile Vending Vehicle or a Temporary Stall under this policy, the applicant is to submit sufficient information for Council to use when considering the application. Applicants are required to declare all articles proposed to be sold from the vehicle or stall.

### Other Matters Relating to Approvals

Approvals will be issued for a maximum of 12 months. In all cases, a written approval must be obtained from Council prior to operation.

#### NOISE

The use of amplified music, bells or a public address system is restricted to the approved hours of operation on any day. The use of such equipment is also prohibited whilst the vehicle is stationary.

#### WASTE MANAGEMENT

Mobile vendors and temporary stall operators are responsible for all waste materials that they generate. Waste materials such as packaging and food waste generated by the operator, should be collected in bins or suitable receptacles, bagged or contained, stored and disposed of at the cost of the operator.

## INSPECTIONS

The inspection of retail food businesses trading at temporary events is conducted by Council Health Officers, who are authorised officers under the *NSW Food Act 2003*. The role of Council Health Officers undertaking inspections is to ensure that good food safety practices are in place such as temperature control, cleanliness, hand washing and labelling.

### Mobile Food Vending Vehicles

All mobile food vending vehicles operating in the Mid-Western Regional LGA must be presented for inspection at Council's administration office or an alternative location as agreed upon with Council. Mobile food vending vehicles must be constructed and maintained in accordance with the NSW Food Authority's 'Guidelines for Mobile Food Vending Vehicles'.

A prior appointment must be made with Council's Health Officers for an inspection. A minimum 48 hours' notice is required.

### Temporary Food Stalls

In accordance with the *NSW Food Act 2003*, Council may inspect food stalls at any time of operation.

### Any other mobile vehicle or stall

The inspection of a mobile vehicle or stall selling any other article (non-food related) will be at the discretion of Council's authorised officers.

## FEEES

Fees for the assessment of applications, issuing of approvals and conducting of inspections are determined by Council each year and are contained in Council's "Adopted Fees and Charges". The application fee includes the cost of any initial inspections.

Applications will only be considered for approval after payment of the approved fee.

Additional inspection fees will be charged for all additional inspections of mobile food vending vehicles and temporary food stalls, where reinspection is required or where sufficient evidence is provided in conjunction with a complaint.

Charities and not-for-profit organisations are not required to pay the application fee. However, they must still make application and comply with the conditions of the approval if issued.

## SIGNAGE

An approval under this policy does not infer any approval for the erection or display of any sign or sign structure other than those directly attached to the mobile vending vehicle or temporary food stall.

## HOURS OF OPERATION

A mobile vending vehicle or temporary stall that is erected, installed or located on a public place or public reserve is only permitted to operate between 7:00am – 7:00pm or for the duration of a sporting event, fete, fair, festival, carnival, community market or similar event.

Council reserves the right to vary the approved hours of operation where it has been demonstrated that the hours will not interfere with residents or other commercial businesses.

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**SAFEWORK NSW**

A fire extinguisher and fire blanket should be supplied and readily accessible in every vehicle or stall where cooking or heating processes are undertaken. Gas fired appliances used in the open should not have a gas bottle greater than 9kg capacity and the bottle secured so that it cannot be tipped over. All measures should be taken to satisfy SafeWork NSW. Contact SafeWork NSW for more information.

**RMS REST STOPS**

Any application to operate within a designated rest stop/trucking bay must have prior concurrence from NSW Roads and Maritime Services (RMS), granting support for the activity. If RMS support is granted, application must then be made to Council for mobile trading within the nominated rest stop. Any approval granted will be subject to Council conditions and any other conditions imposed by the RMS.

**REVOKE OR AMEND AN APPROVAL TO OPERATE**

Where it is found that a condition of any approval to operate has not been complied with, Council may decide to either modify the approval or revoke the approval.

**RESTRICTED AREAS**

Mobile vending is not approved in areas where it may interfere with road users or established shops/businesses.

In the Mid-Western Regional LGA, operation of a mobile vending vehicle or stall is prohibited in the following areas:

- Within a 300 metre radius of a commercial area in Mudgee, Gulgong, Rylstone and Kandos; or
- Within a 300 metre radius of a sports ground with a canteen, unless approval is obtained from the relevant sporting association consenting to the mobile trading occurring in conjunction with the sporting event; or
- Within a 300 metre radius of an existing fixed premises not located within a commercial area and that sells the same or similar article; or
- On the side of a highway or classified road (including the Castlereagh Highway or Ulan Road); or
- Any other road where reduced speed limits apply.

**INSURANCE**

Prior to operation and for the duration of any 'Approval to Operate', all mobile vending vehicles and temporary stalls are to hold a valid Certificate of Currency for Public Liability Insurance to a value of \$20,000,000 which lists Mid-Western Regional Council as an 'Interested Party'.

Where insurance cover expires within an approval period, the operator is required to submit a copy of new insurance details to Council within 7 days prior to the expiry date of the insurance.

Mobile vending vehicles are required to carry and supply a Certificate of Currency for Third Party Property Damage Insurance.

Should any insurance cover either expire without renewal or be cancelled by the provider, the 'Approval to Operate' ceases to have any affect and the holder of the approval is not permitted to operate the business until insurance cover is obtained.

## Exemptions

Given the importance of preserving the safety of food for sale for human consumption, there are no exemptions for compliance with this policy. The design, fitout and operation of any mobile vending vehicles or temporary stalls whether used for the sale of food or other article in a public place in the Mid-Western Region LGA must comply with this policy.

## Definitions

For the purposes of this policy:

- *"mobile vending vehicle"* includes any vehicle, whether mobile or stationary, used for the purposes of selling any article or food.
- *"temporary stall"* includes any structure, food stall or mobile food stall, any van, truck, trailer or moveable module, tent or gazebo used for the purposes of selling any article or food. A temporary stall includes any structure that is built or designed to enable it to be dismantled and removed from the site when required.
- *"a standing vehicle"* includes any mobile vending vehicle that has stopped to make a sale.
- *"any article for the purpose of selling"* includes a mobile vending vehicle, temporary stall or any other such structure of a temporary nature.
- *"a roadside stall"* includes any stand, van or vehicle set up on the side of the road selling to passing trade.
- *"charities and community groups"* includes those which do not derive funds for personal financial gain, but direct any profits back to the community (e.g. local sports clubs, Lions and Rotary clubs).
- *"public place"* means:
  - a) a public reserve, public bathing reserve, public baths or public swimming pool; or
  - b) a public road, public bridge, public wharf or public road-ferry; or
  - c) a Crown reserve comprising land reserved for future public requirements; or
  - d) public land or Crown land that is not:
    - (i) a Crown reserve (other than a Crown reserve that is a public place because of paragraph (a), (b) or (c)); or
    - (ii) a common; or
    - (iii) land subject to the *Trustees of Schools of Arts Enabling Act 1902*; or
    - (iv) land that has been sold or leased or lawfully contracted to be sold or leased; or
  - e) land that is declared by the regulations to be a public place for the purposes of this definition.
- A *"public reserve"* means:
  - a) a public park; or
  - b) any land conveyed or transferred to the council under section 340A of the *Local Government Act 1919*; or



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- c) any land dedicated or taken to be dedicated as a public reserve under section 340C or 340D of the *Local Government Act 1919*; or
- d) any land dedicated or taken to be dedicated under section 49 or 50; or
- e) any land vested in the council, and declared to be a public reserve, under section 37AAA of the *Crown Lands Consolidation Act 1913*; or
- f) any land vested in the council, and declared to be a public reserve, under section 76 of the *Crown Lands Act 1989*; or
- g) a Crown reserve that is dedicated or reserved:
  - (i) for public recreation or for a public cemetery; or
  - (ii) for a purpose that is declared to be a purpose that falls within the scope of this definition by means of an order published in the Gazette by the Minister administering the *Crown Lands Act 1989*, being a Crown reserve in respect of which a council has been appointed as manager of a reserve trust for the reserve or for which no reserve trust has been established; or
- h) land declared to be a public reserve and placed under the control of a council under section 52 of the *State Roads Act 1986*; or
- i) land dedicated as a public reserve and placed under the control of a council under section 159 of the *Roads Act 1993*, and includes a public reserve of which a council has the control under section 344 of the *Local Government Act 1919* or section 48, but does not include a common.

- “*public road*” means a road which the public are entitled to use.

**From:** [REDACTED]  
**To:** Council  
**Subject:** Formal Submission - Document on Exhibition - Mobile Vending Vehicles and temporary Stalls in a Public Place  
**Date:** Wednesday, 23 December 2020 12:00:30 PM

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To the General Manager,

Please find below a formal submission on behalf of Council's Events Team in regards to the current policy on exhibition - **Mobile Vending Vehicles and temporary Stalls in a Public Place** Whilst acknowledging that the amendments to the policy are positive and offer fairer operational existence amongst local and visiting vendors we ask that the below may be considered:

1. That for non-food vendors there is an introduction of a one off event permit of \$30 for Mobile Vending Vehicles and temporary Stalls in a Public Place instead of the \$156 fee. This would be to cover those that attend a Council run event such as Flavours of Mudgee and would only be required to have such a permit once a year. Participating vendors at Council events are already charged a stall holder fee of \$122
2. Low risk foods vendors such as but not limited to honey, jam, chocolate, be considered to have a reduced fee applied to their application or are allowed to apply for a one off event permit as these foods are lower risk and are not subject to the same compliance associated to higher risk food vendors

Should you require further information to support this submission please don't hesitate to contact the events team – [REDACTED]

[REDACTED]  
[REDACTED]  
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[REDACTED]  
Mid-Western Regional Council

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