

10.2.2 Public Exhibition of Mobile Food Vending Vehicle Policy

To the Chief Executive Officer

Directorate: Business Enterprises

Business Unit: Commercial Enterprises

Author: Jon Kilah, Business Performance Specialist

Manager: Wayde Peterson, Executive Director Business Enterprises

Approver: Wayde Peterson, Executive Director Business Enterprises

Executive Summary

The purpose of this report is to seek approval from Council for the public exhibition of the draft Mobile Food Vending Vehicle Policy (Policy).

The purpose of the Policy is to provide the framework for the operation of mobile food vending vehicles (Food Trucks) on public land within Shellharbour City Council's Local Government Area (LGA). The Policy sets out the relevant legislative requirements for safe food handling and preparation practices and establishes the trading parameters on public land.

Recommendation

That:

- 1. Council endorse the Mobile Food Vending Vehicle Policy to be placed on public exhibition for a period of 28 days.**
- 2. If no submissions are received as a result of public exhibition that require further consideration, that Council adopt the Mobile Food Vending Vehicle Policy, as attached to this report.**

This resolution is a policy position of Council.

Background

Mobile food vending vehicles (Food Trucks) are used for the retail sale of food, drinks, and related products. Many Councils across Australia have endorsed policies to facilitate and control the operation of Food Trucks on public land across their local government areas. Food Trucks often adopt innovative modes of trading through an offer that is flexible, affordable and fun, delivered on a temporary basis. Potential benefits include increased vibrancy, activation

and enjoyment of public land by local communities and attracting visitors providing broader economic benefits to the community.

The City has multiple Food Trucks registered to operate out of private land or under event licenses in the LGA. However, presently the City does not have a formalised Mobile Food Vending Vehicle Policy which would enable a simpler pathway for Food Trucks to operate on public land on a regular basis. The draft Mobile Food Vending Vehicle Policy seeks to establish parameters around which Food Trucks can operate on public land in Shellharbour's LGA.

A draft Mobile Food Vending Policy (**Attachment 1**) has been prepared to allow community consultation and facilitate feedback. The Policy aims to deliver clear direction, transparency, and equal opportunity in permitting and approving Food Truck operations on public land.

The main objectives of the policy are to:

- A. Set criteria for the operation of mobile food vending vehicles on Council-owned and managed land in the Shellharbour City Council's Local Government Area;
- 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.

If the draft Policy is endorsed, Food Truck businesses will be able to seek Council's approval to operate on public land across the LGA in accordance with the Policy. Additionally, Council staff plan to subsequently seek Council's consideration (via a separate and future Council report) to establish a future trial of Food Trucks in defined public spaces for the upcoming daylight savings period (late 2024 and early 2025) with the opportunity for extended hours and periods of land occupation. The trial program will aim to deliver clear direction, transparency, and equal opportunity in permitting and approving Food Trucks to operate on a regular basis during the trial. Successful participants will pay Council a fee which will be determined via an open market process. Post the 6 month trial period, community feedback and consultation will be undertaken prior to any potential extension.

Council Implications

FINANCIAL / RESOURCES

Council currently receives revenue streams from Mobile Food Vending Vehicles as per Fees and Charges 2023/2024.

The two revenue streams include

- Inspection/admin: \$459 per annum
- Local approval fee: \$273 per annum

An endorsed Mobile Food Vending Vehicle Policy is expected to provide greater clarity and transparency to encourage more Food Trucks to apply and operate within the LGA and in turn provide more diverse food and beverage options.

Should the Policy be endorsed, Council officers will in the future seek to establish an approved Food Truck trial with extended occupancy opportunities offered, targeting the 2024/25 daylight savings period. If this trial goes ahead, Council will first need to adopt a new and suitable fee which isn't currently included in Council's adopted Fees and Charges.

LEGISLATION AND POLICY (INCLUDING ADVOCACY, STRATEGIC AND OTHER PLANS)

Under current legislation, Food Trucks may be exempt development if they meet specified standards in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (SEPP). Subdivision 27A titled Mobile Food and Drink Outlets, outlines development standards for the carrying out of the retail sale of food, drinks and related products on land from a mobile outlet such as a food truck, van, cart or other similar vehicle. The SEPP requires that Food Truck owners have consent of the owner of the land on which they operate. The Policy seeks to enable Council to apply (or withhold) this consent in accordance with the Policy requirements.

Additionally, Section 68 of the *Local Government Act 1993* (NSW) specifies a range of activities where approvals are required to be obtained from the local council. Food Trucks fall within the categories of the provision, being Part F - Other Activities, 7) "Use a standing vehicle or any article for the purpose of selling any article in a public place".

The type of consent required can depend upon the classification of the subject land, being Public Roads, Council land encompassing Community and Operational land, and Crown Reserve. Relevant legislation that prescribes Council's ability in administering consents/licences, includes *Local Government Act 1993* (LGA), *Road Act 1993* (NSW) and *Crown Land Management Act* (NSW) 2016.

Consent under Section 125 of the *Roads Act 1993* (NSW) is required before using a footway for restaurant purposes. Consent or conditional consent can be granted by a council that allows a person who conducts a restaurant adjacent to a footway of a public road to use part of the footway for the purposes of the restaurant.

A licence under Section 46 of the LGA is required to grant a short-term, casual purpose in respect of community land. Similarly, Section 2.20 of the *Crown Land Management Act 2016* (NSW) permits Crown Land Managers the authority to grant a short-term licence over dedicated or reserved Crown land. Prescribed purpose, conditions and maximum terms apply.

SOCIAL IMPACT

Food Trucks have the potential to invigorate various parts of Shellharbour's Local Government Area (LGA) and encourage activation of public spaces and bring communities and visitors together. If complaints are received from community members during any Food Truck public space occupation enabled as part of an adopted Policy, Council officers will review the circumstances and act where necessary in accordance with Policy requirements.

Should the Policy be adopted a specific trial including extended operational hours and set locations will be progressed by the Council staff subject to a separate and future Council report. Locations will be recommended after assessment against criteria that considers competition, safety, environmental and amenity impacts, access, and planning policy. This process will allow Council officers to propose locations where adverse impacts are minimised and activation potential is maximised.

SUSTAINABILITY CONSIDERATIONS

The draft Policy sets out operational requirements including a requirement for Food Truck operators to not use single use plastics and requirements around waste management.

LEGAL CONSIDERATIONS

Not Applicable

RISK CONSIDERATIONS

There is a risk that the Policy creates tension between pre-existing businesses who have set up bricks and mortar style retail premises and pay rates to Council to run their small businesses. The draft Policy sets out a 400m buffer requirement between any Food Truck and any already established business with similar food or beverage offerings (Note: “similar food or beverage offerings” are determined at the sole discretion of Council staff). Should the Policy be endorsed (after exhibition) and any circumstance arise where there is conflict between a bricks and mortar business and Food Truck's, Council staff will seek to establish an outcome that doesn't place an unreasonable impost or disadvantage on the operations of the bricks and mortar business.

The Policy seeks to reduce Council risk by removing its reliance on a state guidelines and adopting a tailored, specialised policy that has been developed for Shellharbour City Council's specific needs whilst also adhering to all relevant Local, State and National codes.

There are risks associated with the Policy relating to public health and safety issues arising from the operation of the Food Trucks. These risks are mitigated through Council's annual food inspection program, complaint-based inspections, conditions of approval and the requirement for Food Truck operators to hold current insurance policies to cover public liability, third party property damage and registered vehicle insurance.

Link to Community Strategic Plan

This report supports the following objectives, strategies and actions of the Community Strategic Plan:

3.1 We support a strong local economy

- 3.1.1 Our businesses are well-connected and thrive in an environment that supports innovation and economic growth

3.1.1.05 Identify new business opportunities that Council can investigate for development and investment

Previous Council Resolutions

Not Applicable

Consultation

Internal

Commercial Agreements Specialist
Executive Director Planning and Environment
Statutory Planning and Urban Release Manager
Senior Transport Engineer
Environmental Health Coordinator
Property Services Manager
Governance Officer

External

Nil

Political Donations Disclosure

Not Applicable

Options

Option 1:

Council endorse the draft Mobile Food Vending Vehicle Policy to be placed on public exhibition for a period of 28 days.

This recommended option would allow the community to provide feedback on the draft Policy and if no submissions are received as a result of public exhibition that require further consideration, then Council will have adopted the Policy.

Option 2:

Council does not endorse the draft Mobile Food Vending Vehicle Policy to be placed on public exhibition for a period of 28 days.

This option (not recommended) would not provide the community with an

opportunity to provide feedback on the draft Policy and by extension not provide an opportunity for Food Trucks to operate more regularly on public land under Council controls.

Conclusion

This report seeks approval from Council for the exhibition of the draft Mobile Food Vending Vehicle Policy (Policy).

The Policy is to provide the framework for the operation of Food Trucks on public land in Shellharbour City Council's Local Government Area. The Policy sets out the relevant legislative requirements for safe food handling and preparation practices and establishes the trading parameters on public land.

Attachments

1. Mobile Food Vending Vehicle - Council Policy