



## Local Approvals Policy for Mobile and Transportable Food and Retail Premises

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<b>AUTHORITY</b>	Planning and Growth
<b>CONTACT OFFICER</b>	Director Planning and Growth

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## 1 PURPOSE

- 1.1 Council supports the operation of mobile foods vans to activate public spaces within the Forbes Shire. Supporting the operation of mobile and transportable food and retail outlets encourages diversity in takeaway food options and the activation of our urban centres and rural communities.
- 1.2 The purpose of the Policy is to provide the framework for the operation of mobile and transportable food and retail outlets on public land within the Forbes Local Government Area (LGA) in accordance with s. 158 of the *Local Government Act 1993 (the Act)*. The Policy sets out the relevant legislative requirements for safe food handling and preparation, safe operation of food vans and trucks within Council's road reserves, car parks, parks and public land.

## 2 SCOPE

- 2.1 The Policy applies to Council owned or managed roads, parks and public reserves within the Forbes LGA where the development is an exempt development in accordance with Subdivision 27A mobile food and drink outlets of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or where development consent has been granted specifically for Mobile Food Vending.
- 2.2 This following are excluded from the provisions of this Policy:
- i. Trading in accordance with a development consent on private land;
  - ii. Trading on public land in accordance with an approved event;
  - iii. Providing catering services to private events;
  - iv. Non-stationary mobile food vans; and
  - v. Not operating a food business.

### 2.3 Council Approval Requirements

- 2.3.1 Council must consider the criteria in this Policy when determining
- a. Section 68 Approvals under the Act for: "use of a standing van or any article for the purpose of selling any article in a public place". OR
  - b. Development applications where the proposal is not exempt development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*

## 3 DEFINITIONS

- 3.1 For the purposes of this Policy, the following definitions apply:

Term	Definition
Act	<i>Local Government Act 1993 (NSW)</i>
Council	<i>Forbes Shire Council</i>
The Policy	<i>Means the Forbes Shire Council Local Approvals Policy for Mobile Food Vans and Portable Permanent Food Outlets.</i>

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<b>Mobile outlet</b>	<i>Any registered vehicle that has stopped to make a sale or with the intention to sell or hire a retail or food or drink product</i>
<b>Transportable outlet</b>	a van, container or other structure that is used as a shop, hire premises or food and drink premises and is stationary on a permanent basis, except for times of emergencies such as flood, fire or the like.

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## 4 POLICY STATEMENT

The Policy aims to:

- i. Ensure mobile and transportable outlets operate in accordance with the rules and restrictions within lawful car parking spaces on public land within the Forbes LGA;
- ii. Ensure the operation of the mobile and transportable outlets are located within appropriate locations within Council's parks and public reserves;
- iii. Ensure that food sold through mobile and transportable outlets is safe and fit for human consumption;
- iv. Provide guidance and assistance for people wanting to operate mobile and transportable outlets within the Forbes LGA;
- v. Ensure the construction, fitting out and facilities for cleaning utensils, articles, fitting and appliances in the Vans are adequate;
- vi. Minimise any potential adverse impacts of the operation of mobile and transportable outlets;
- vii. Ensure the safe operation of mobile and transportable outlets for staff and patrons;
- viii. Ensure the operation of the mobile and transportable outlets considers and minimises adverse impacts on the surrounding amenity; and
- ix. Ensure that trading improves the mix and diversity of takeaway food available, and has regard to existing comparable trading takeaway food and drink premises.

### 4.1 Criteria for the determination of applications

Council must consider the following when determining applications made under this Policy:

#### 4.1.1 General Requirements of mobile and transportable outlets:

- i. Approval under the Local Government Act 1993 and/or the Roads Act 1993 is required prior to commencement of operation of a mobile and transportable outlets on Council-owned or managed roads or parks;
- ii. An application for approval to use a mobile and transportable outlets is to be made on the relevant application forms. The prescribed fee is also to be paid before the application is assessed;

- iii. Prior to the issue of an approval for the sale of food and drink under this Policy, the outlet is to be made available for inspection by Council's delegated Officer. Council will charge a fee for inspecting the food outlets as per Council's adopted fees and charges schedule;
- iv. An applicant will need to provide a plan detailing the layout for outdoor dining associated with the operation of any proposed food or drink outlet; and
- v. Operators are to notify the food business to Council;
- vi. Applications to renew approvals are to be lodged with Council prior to the expiration of current approvals;
- vii. The criteria to be used in the assessment of a mobile food van for approval will include all the relevant provisions contained in the standards as set out in cl. 2.3.2 of the Policy, the Food Act, The Food Regulation and the Food Standards Codes;
- viii. Approvals will be issued subject to conditions, including but not limited to compliance with the Policy;
- ix. Should an applicant propose to sell alcohol, this is to be detailed in the application to Council, with consideration to the responsible service of alcohol.
  - a. A license may be required for the service of Alcohol.
- x. The applicant is to submit a copy of a broad form public liability 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;
- xi. The applicant is to submit copies of valid insurance policies that protect the applicant:
  - a. Against any injury to any third party or parties under compulsory third party insurance as required by the *NSW Motor Accidents Act 1988* and the *Motor Accident Injuries Act 2017 No 10*.
  - b. Against loss of, or damage to, any property whatsoever caused by the use of the vans 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 insurance is to be valid at all times from the date of approval through to the date the approval lapses.
- xii. If the proposal is for a food or drink outlet, applicant is to provide a copy of their Food Safety Supervisors Certificate;
- xiii. On command of the SES or Council, any structures must be moved during flood events or other emergencies at the Licensee's expense.

### 4.1.2 General Requirements in Accordance with Food Safety Standard 3.2.3

The design and construction of a food outlet is to:

- i. Be appropriate for the types of food produced and activities conducted;
- ii. Provide adequate space for all activities and for all equipment to be used or stored;
- iii. Allow easy cleaning/sanitising procedures of all structures and equipment;
- iv. Prevent entry of pests, dust, fumes, smoke and other contaminants; and
- v. Exclude favourable sites for pests to live and breed.

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

## **4.2 Criteria for the determination of applications for operation**

### **4.2.1 Location**

Food outlets may operate on any public land in the Forbes LGA, subject to approval under Section 68 of the Act and a license/lease if required.

Council has pre-approved locations listed in Appendix 1 where no approval under the Act is required. However, owner's consent from Council is required, and therefore a license or lease may be required.

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

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

### **4.2.2 Parking**

Mobile and transportable outlets are to operate so as to:

- i. Not impact on or conflict with any marked bicycle lanes;
- 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 mobile food van; and

- 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 are not impacted upon.

#### 4.2.3 Mobile and transportable outlets specifications

Mobile outlets are to arrive at the location fully constructed in accordance with their approval.

Deliveries for mobile outlets are not to be made to a mobile food van while it is in operation.

Delivery location/loading areas for transportable outlets are to be detailed in the approval for operation.

#### 4.2.4 Proximity to Existing Comparable Premises

Mobile and transportable outlets are not to be positioned within 50m of an operating food and drink premises, shop, 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. Only one outlet may operate per permitted site excluding special events as described.

### 4.4 Other Matters

#### 4.4.1 Permitted Days and Hours of Operation

The use of Council owned roads for the purpose of operating a mobile food van is restricted to 7:00 am and 10:00 pm each day, inclusive of set up and set down times.

#### 4.4.5 Serving

Mobile and transportable outlets are not to operate with their serving window opening onto any part of a vehicular carriageway or a cycleway.

#### 4.4.7 Waste Management and Recycling

Provisions for waste management are to include the following:

- i. Mobile and transportable outlets 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;
- ii. Any waste produced by the operation of the food outlet is to be removed from the site via the mobile food van 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 costs incurred by Council during the length of the trading period as a result of the operation of the mobile food van;

- v. Disposal of all liquid wastes generated within a food outlet is to be discharged to the sewer or as approved by an authorised Council Officer. Under no circumstances is liquid waste to be discharged on the ground or in the stormwater drain; and
- vi. Details of liquid waste and garbage disposal arrangements must be supplied with the application for the mobile food van.

#### **4.4.8 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 van.

The Policy does not allow the use of any temporary signage (e.g. A-frame boards) in association with the operation of any outlet unless specifically identified in the application.

#### **4.4.9 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 van.

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

#### **4.4.10 Water Supply**

The outlet must be provided with an adequate supply of potable water stores 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 outlet is to be equipped with a waste water tank external to the vans, of at least 50 litre capacity with an outlet of sufficient diameter to facilitate easy flushing and cleaning.

#### 4.4.11 Electricity Supply

The outlet is required to be operated via a generator for electricity supply or may be connected to Council's electricity supply subject to approval and charges for the electricity where this is available.

#### 4.4.12 Noise

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

- i. The use of the outlet 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*; and
- ii. If any noise complaints are received and substantiated by an authorised Council Officer, the Officer may direct that the use of the outlet 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.

#### 4.4.13 Odour

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

#### 4.4.14 Maintenance

The outlet 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.

#### 4.4.15 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.

## 5 VARIATION

- 5.1 Council reserves the right to vary the terms and conditions of this Policy subject to a report Council.

## 6 APPENDICES

- 6.1 This Policy is supported by the following appendices:

Appendix No.	Description
1	Pre-approved sites



## Revision History

Version	Adoption Date	Authorised by	Approved by	Revision Date
V1	15/02/2018	Director Environmental Services & Planning	Council	15/02/2019
V2	17/10/2019	Director Planning & Growth	Council	17/10/2020
V4		Director Planning & Growth	Council	28/07/2022

## Change History

Version	Change Details
V1	Initial Policy
V2	Policy Revision undertaken in accordance with Council's Policy Development and Review Policy and incorporating amendments as per resolution of Council as follows:  Resolution 135/2019 (April 2019)  Resolution 297/2019 (August 2019)  Resolution 393/2019 (October 2019)
V3	Minute No: 27.8 – 16 September 2021 meeting: update policy to include a minimum seven (7) days' notice for booking cancellations.
V4	Review and adoption of local approvals and orders policies in line with the LG Act following 2021 LG Election.

## Related Documents

### Title

*Local Government Act 1993*

*Local Government (General) Regulation 2005*

*Roads Act 1993*

*Roads Regulation 2018*

*Food Act 2003*

*Food Regulation 2015*

*NSW Motor Accidents Act 1988*

*Protection of the Environment Operations Act 1997*

*Subdivision 27A Mobile food and drink outlets of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

## Version Draft Consultation History

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<b>Version 4</b>			
<b>Date</b>	<b>Consultation Point</b>	<b>Commentary/Proposed Amendments</b>	<b>Summary/Outcome</b>
18/02/2022	Draft Review		

**NOTE the page numbers must be adjusted to exclude this page.**