

Mobile Food Vendor Trading in Public Places (Parks and Reserves)

Reference number:	POL 062
Approval date:	21 November 2022
Policy owner:	Director Regional Activation
Next review:	November 2023

Wagga Wagga City Council vision for the future is:

In 2040 Wagga Wagga will be a thriving, innovative, connected and inclusive community on the Murrumbidgee River. Rich in opportunity, choice, learning and environment, Wagga is a place where paths cross and people meet. (Wagga View - Community Strategic Plan 2040).

One way to encourage people to meet and the community to thrive is to further activate the city's public spaces with expanded access to food outlets. This policy has been developed to guide mobile food vendor activity. It seeks to be well balanced by facilitating mobile food vendor operations while protecting public health, safe-guarding local business proprietor interests and maintaining community welfare in public spaces.

Purpose

The Policy aims to:

- a) Guide the consideration of Trader Permits for high quality food-vending activities in a balanced manner that enhances usage and achieves positive community outcomes;
- b) Encourage the use of parks and reserves for mobile food vendors as a means of enhancing community experiences that flow from the activation of shared public spaces;
- c) Enhance community wellbeing; economically, socially and environmentally. Through this policy, Council seeks to support business activities that do not have a detrimental impact on surrounding businesses, residences or public property;
- d) Ensure that mobile food vendors operate in accordance with the rules and restrictions on lawful parking spaces on Council-owned roads;
- e) Ensure that food sold through mobile food vendors is safe and fit for human consumption;
- f) Provide guidance and assistance to people wanting to operate a mobile food vendor on Council owned roads in the Wagga Wagga Local Government Area;
- g) Ensure the construction, fitting out and facilities for cleaning utensils, articles, fittings and appliances in vehicles are adequate;
- h) Minimise any potential adverse impacts of mobile food vendors;
- i) Ensure the safe operation of mobile food vendors;
- j) Ensure the operation of mobile food vendors does not increase litter or waste in, or from the trading location; and
- k) Ensure that the operation of the mobile food vendor does not adversely impact any surrounding sensitive land uses, and in particular residential amenity.

Scope

Council supports the operation of mobile food vendors to enliven the Wagga Wagga LGA and encourage diversity in food options.

The purpose of the Policy is to provide the framework for the operation of mobile food vehicles in the Wagga Wagga LGA. 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 Local Government (General) Regulation 2005, the Roads Act 1993, the Roads Regulation 2008, the Food Act 2003 and the Food Regulation 2015.

The Policy applies to Council owned roads and other public places within the Wagga Wagga LGA.

This Policy does not apply to mobile food vendors who are:

- trading in accordance with a development consent or the provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 on private land
- trading on public land in accordance with an approved event

Responsibilities

Councils have general responsibilities for the stewardship and management of public roads and public places. Councils have specific powers and responsibilities under the Local Government Act 1993 to control street vending activity and the Roads Act 1993, gives Councils power to control footway restaurants and structures on public roads. Under the Local Government Act 1993, Councils may use local approval policies to establish formal criteria for street vending approvals.

Roads and Maritime Services (RMS), in principle, does not favour street vending activities on classified roads for traffic flow and safety reasons. However, (RMS) encourage mobile food vendors to utilise rest areas on highways in accordance with the Mobile Vending in Rest Areas policy (PN 271).

NSW Police may undertake enforcement of the road transport legislation in relation to street vending activities.

Mobile Food Vehicle operator

In the first instance discuss your mobile food vendor proposal with Council by phoning 1300 292 442. If the proposal is considered feasible, continue with the following steps:

1. Register the Mobile Food Vehicle with Council using the relevant form. See www.wagga.nsw.gov.au. The appropriate application form is the Application for Food Stall at Temporary/Special Event document. Allow 2 weeks for processing.
2. Provide Council with written documentation outlining operator processes for ensuring the safety of users and the general public. This will include details regarding; vehicle, types of goods and services to be traded, a site risk assessment and safe operating procedures.
3. All mobile food vendors should be fully self-contained and not rely on Council to provide power, water or sewer services.

Approval Arrangements

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 vehicle that has stopped to make a sale, or with the intention to sell.

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.

Review procedures

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 12 months from the date of commencement.

Policy Provisions

1.1 Exemptions from the necessity to obtain Approval

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

1.2 Criteria Council must consider when determining applications for mobile food vendors

1.2.1 General Requirements of mobile food vendors

- a) Approval under the Local Government Act 1993 is required prior to commencement of operation of a mobile food vehicle on a Council owned road. A mobile food vendor operating without the required approval is an offence.
- b) An application for approval to use a mobile food vehicle is to be made on the approved form. The prescribed fee is also to be paid before the application is assessed.
- c) A maximum of 20 mobile food vendor permits are to be active at one time.
- d) Prior to the issue of an approval under this Policy, the mobile food 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 vehicle as per Council's adopted Fees and Charges Schedule.
- e) All approvals will be issued with an end date of 30 June every second year, to enable a semi-annual review and re-issue of approvals.
- f) If the permit application is a renewal, the applicant must submit a report to Council outlining a minimum of 26 instances per year where they have been trading on Council land covered by this policy. If this minimum requirement is not met, the applicant will not be granted a renewal for the next period.
- g) Operators are to notify the food business to Council using the relevant form found on Council website at www.wagga.nsw.gov.au

- h) Applications to renew approvals are to be lodged with Council prior to the expiration of current approvals.
- i) The criteria to be used in the assessment of a mobile food vendor 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, Food Regulation 2015 and the Food Standards Codes.
- j) Approvals will be issued subject to conditions, including but not limited to compliance with the Policy.
- k) Only the sale of foodstuffs and drinks will be allowed by mobile food vendors. No sale of alcohol, cigarettes or other products from mobile food vehicles will be approved.
- l) The applicant is to submit a copy of a broad form 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 \$10,000,000 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.
- m) 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 NSW Motor Accidents Act 1988; 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.
 - iii The Insurance is to be valid at all times from the date of approval through to the date the approval lapses.

1.3 Criteria Council must consider when determining an application to operate a food vehicle

1.3.1 Location

Authorised food vehicles may operate in the Wagga Wagga LGA except in the area indicated in Appendix 1.

Mobile food vendors permitted to operate on Council-owned roads are to:

- a) Be located within existing lawful parking spaces
- b) Comply with the local parking restrictions
- c) Comply with relevant road rules

Mobile food vendors permitted to operate on Council-owned roads must not:

- a) Operate within 200 metres of a food and drink premise or boundary of an event licensed or approved to occur on Council land (this includes sporting group canteens)
- b) Sell to any person that is standing on a roadway (restriction includes carparks and other areas where customers could be standing in active vehicle pathways)
- c) Be within five (5) metres of an intersection when making a sale, or attempting to make a sale

- d) Impact on bicycle lanes, pedestrian ramps, footpaths, public street furniture, fire hydrants, telephone booths and post boxes, or the like
- e) Be longer than 7.5m unless a separate Road Occupancy Permit is sought
- f) Remain in any public, on-road location overnight
- g) Provide tables or chairs, or other seating or furniture

1.3.2 Proximity to existing comparable premises

No operating mobile food vendor is to be positioned within 200m of an operating food service premise or kiosk. This minimum distance requirement is measured in a straight line from the closest point of the food vehicle (location) to the main entrance of a food and drink premise, or kiosk, or boundary of a licensed event area.

1.3.3 Parked mobile food vendors are to operate so as to:

- a) Not impact on or conflict with any marked bicycle lanes;
- b) Ensure access to pedestrian ramps and footpaths are not compromised;
- c) Ensure that access or egress from any building is not restricted by the operation of the food vehicle; 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.

Note: Council will use the following principles in determining the suitability of any mobile food vendor locations:

- 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

1.3.4 Vehicle Specifications

- Food vehicles must be no wider than 2.5m.
- Additionally, vehicles 7.5m or greater in length may require separate Road Occupancy Permits.

1.3.5 Registration Requirements

- If the mobile food vendor is based in the Wagga Wagga LGA, the operator will need to complete and submit the Food Business Registration form available from Council's website at www.wagga.nsw.gov.au. Upon being registered, the mobile food vendor will be inspected in accordance with their risk category.
- Should the mobile food vendor be based outside of the Wagga Wagga LGA, the operator will need to complete the Temporary Food Staff Application Form and provide a copy of a current (within the last 12 months) inspection report from the Council that the vehicle is registered.

1.3.6 General Requirements in Accordance with Food Safety Standard 3.2.3

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

- a) Be appropriate for the types of food produced and activities conducted;
- b) Provide adequate space for all activities and for all equipment to be used or stored;
- c) Allow easy cleaning/sanitising procedures of all structures and equipment;
- 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 the Guidelines for Mobile Food Vending Vehicles, prepared by the NSW Food Authority. All mobile food vendors approved by Council are required to comply with these guidelines.

1.4 Other matters relating to approvals for mobile food vendors

1.4.1 Permitted days and hours of operation

The use of Council-owned roads for the purpose of operating a mobile food vehicle is restricted to 6:00am to 10:00pm each day, inclusive of set up and pack up times. Mobile food vehicles are not to remain in any on-road location overnight.

1.4.2 Serving

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

1.4.3 Customer seating

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

1.4.4 Waste Management and Recycling

Provisions for waste management are to include the following:

- a) Mobile food vendors 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 vendor is to be removed from the site via the mobile food 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 vehicle.
- e) Disposal of all liquid wastes generated within the mobile food vehicle 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 vehicle.

- g) Where feasible the packaging used for the sale of food should be selected for its suitability for recycling in the Wagga Wagga LGA. Details are available on the Council website on <http://www.wagga.nsw.gov.au>

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

The mobile food vendor approval 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.

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

1.4.6 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.

1.4.7 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.

1.4.8 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 wastewater discharges.

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

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 vehicle/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 vehicle is not to involve the use of any bell, music or other sound device to attract customers, nor while the vehicle is stationary.

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.

1.4.9 Food handling

The requirements for the handling of food for sale and human consumption are outlined in the Food Standards Code. 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).

1.4.10 Preparing food at home

A separate application and approval will be required for the preparation of food as part of a home business.

1.4.11 Use of separate premises

Where the operation of the mobile food vehicle involves the use of premises within the Wagga Wagga LGA, for the storage or preparation of food in conjunction with a mobile food 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.

1.4.12 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.

1.4.13 Non-compliance

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

1.4.14 Fees and charges

The mobile food vendor will be required to pay the following charges:

- a) A fee for inspecting the mobile food vehicle as per Council's adopted Fees and Charges Schedule
- b) A Section 68 Part F(7) Approval Fee as per Council's adopted Fees and Charges Schedule.

1.5 Contact Information

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

Wagga Wagga City Council

Tel: (02) 6926 9100

Website: www.wagga.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>

Food Standards Code: <http://foodstandards.gov.au/foodstandards/foodstandardscode/>

Legislative Context

The following documents are related to the Policy:

- Local Government Act 1993
- Local Government (General) Regulation 2021
- Food Act 2003
- Food Standards Code
- Food Regulation 2015
- Roads Act 1993
- Roads Regulation 2008
- Environmental Planning and Assessment Act 1979

Related Documents

The following documents are related to the Policy:

- Guidelines for Mobile Food Vending Vehicles (available on the NSW Government Authority Food website <http://www.foodauthority.nsw.gov.au/>)
- Office of Local Government Street Vending Control Guidelines

Definitions

Term	Definition
Mobile food vehicle	is a vehicle used for on-site food preparation/handling (e.g. hamburgers, hot dogs and kebabs), one-step food preparation (e.g. popcorn, fairy floss, coffee) and/or the sale of any type of food, including pre-packaged food.
Council-owned land	includes all of the land used for vehicular traffic and parking, as well as any footway, shoulder, kerb, and gutter.
Vehicular	involving or by means of a vehicle or vehicles.
Carriageway	each of the two sides of a dual carriageway or motorway, each of which usually have two or more lanes.
Cycleway	a path or road for bicycles and not motor vehicles.

Revision History

Revision number	Council resolution	Council meeting date
1	Res No: 19/380	28 October 2019
2	Res No: 19/280	12 August 2019
3	Res No: 19/380	28 October 2019
4	Res No: 20/249	13 July 2020
5	Res No: 22/354	17 October 2022
2	Res No: 22/396	21 November 2022

Appendix

Restricted Trading Location For Mobile Food Vendors

