

Mobile Food Vending (Local Approvals) Policy

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City of
Newcastle

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INTRODUCTION

1 Purpose

- 1.1 The City of Newcastle (CN) supports the operation of mobile food vending vehicles (food trucks and food vans) to enliven the Newcastle Local Government Area (LGA) and encourage diversity in takeaway food options.
- 1.2 The purpose of the Mobile Food Vending (Local Approvals) Policy (this Policy) is to provide the framework for the approval and the operation of mobile food vending vehicles in the Newcastle LGA.
- 1.3 This Policy provides guidance to assist applicants in how to operate a mobile food vending vehicle in a lawful, safe and environmentally sustainable manner.
- 1.4 This Policy is a Local Approvals Policy prepared and adopted under section 158 of the *Local Government Act 1993* (the Act).
- 1.5 This Policy is divided into three parts in accordance with the requirements of the Act:
 - a) Part 1 of the Policy specifies any exemptions from the Policy;
 - b) Part 2 of the Policy specifies the criteria which CN must consider when determining whether or not to grant approval for a particular activity; and
 - c) Part 3 of the Policy specifies other matters relating to approvals.

2 Scope

- 2.1 This Policy applies to all CN-owned roads within the Newcastle LGA.
- 2.2 This Policy applies to all approvals relating to any mobile food vending vehicle that has stopped to make a sale, or with the intention to sell, on any CN-owned road.
- 2.3 This Policy does not apply to any mobile food vending vehicle that is operating pursuant to a separate “events” authorisation and/or sporting ground licence issued by CN. The use of CN-owned parks, reserves and the like by mobile food vending vehicles is prohibited unless expressly authorised by CN.
- 2.4 This Policy does not apply to the use and operation of any mobile food vending vehicle 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 (SEPP Codes).
- 2.5 This Policy does not apply to food carts, and applications will not be accepted for food carts under this Policy.

3 Principles

- 3.1 CN commits to the following:
 - d) **Accountability and transparency** – This Policy aims to ensure that CN determines applications in a manner that is accountable and transparent.
 - e) **Activation of public spaces** – Mobile food vending locations will be identified for use in areas that support CN's strategies, including the activation of public spaces and support and encouragement for local business.

ROLES AND RESPONSIBILITIES

4 Applicants

- 4.1 Applicants are to ensure that all information required on the approved form is submitted and the relevant application fee is paid. Applicants will also need to provide their vehicle for inspection on request and pay for any inspection conducted in accordance with CN's current fees and charges.
- 4.2 Mobile food vending vehicle operators are required to comply with all the conditions on the approval as well as the relevant legislation applicable to their activity.

5 CN Officers

- 5.1 CN Officers will review the application to ensure it is complete on lodgement and request any further information required to allow the application to proceed in a timely manner.
- 5.2 CN Officers will assess the application and recommend determination of the application in accordance with this Policy and related legislation.
- 5.3 CN Officers will enforce compliance with this Policy and related approvals in accordance with the CN's Compliance and Enforcement Policy.
- 5.4 CN will maintain a register of approvals as required by section 113 of the Act.

PART 1: EXEMPTIONS FROM THE NECESSITY TO OBTAIN APPROVAL

6 No current exemptions

- 6.1 Section 158(3) of the Act 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 CN.
- 6.2 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 FOR ASSESSMENT OF APPLICATION

7 General requirements

- 7.1 An application is to be made on the Approved form. The prescribed fee is also to be paid before the application is assessed.
- 7.2 The vehicle must be able to comply with the vehicle design and construction requirements in this Policy. CN may inspect the vehicle to determine compliance with this Policy and charge the associated fee in accordance with CN fees and charges.
- 7.3 Only the sale of food 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 permissible.
- 7.4 The applicant is to submit a copy of their public liability insurance that complies with CN's insurance requirements, 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 CN as an interested party.
- 7.5 The applicant is to submit copies of their current motor vehicle insurance policies that complies with CN's insurance requirements, and that protect the applicant:
 - a) Against injury to any third party or parties under Compulsory Third Party Insurance as required by the *Motor Accidents Compensation Act 1999*; and
 - b) Third Party Property Damage that provides against loss of, or damage to, any property whatsoever caused by the use of the vehicle by the Licensee, 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.
- 7.6 These insurance policies must be kept current for the term of the approval.

8 Vehicle design and construction requirements

- 8.1 Mobile food vending vehicles must be no wider than 2.5m. Additionally, mobile food vending vehicles that are 7.5m or greater in length require separate Road Occupancy Permits.
- 8.2 The design and construction of a mobile food vending vehicle is to comply with the requirements contained within NSW Food Authority Guidelines for Mobile Food Vending Vehicles.

PART 3: OTHER MATTERS RELATING TO APPROVALS

9 Processing and determining applications generally

- 9.1 CN will process and determine applications in accordance with the general provisions of Division 3 of the Act.

10 Approval conditions and review

- 10.1 All approvals will be issued with an end date of 30 June each current financial year, to enable an annual review.
- 10.2 Approvals will be issued subject to conditions, including but not limited to compliance with the requirements of the *Food Act 2003*, Food Standard Codes and compliance with this Policy.
- 10.3 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.

11 Stopping locations and time

- 11.1 No mobile food vending vehicle 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 vehicle to the main entrance of a food and drink premises or kiosk or boundary of a licensed event area.
- 11.2 Mobile food vending vehicles are to arrive at a location fully equipped. Deliveries are not to be made to a vehicle while it is in operation.
- 11.3 Food trucks may only operate in the areas specified in Annexure C (the schedule of streets may be updated from time to time). Maps of the approved locations are also available on CN's website.
- 11.4 Each food truck will be able to trade for a maximum period of four hours. After four hours, the truck will need to move to another location before trading again.
- 11.5 Food vans may only operate in the areas specified in Annexure D. Maps of the approved areas are also available on CN's website.
- 11.6 Each food van will be able to trade for a maximum period of one hour. After one hour the van will need to move to another location before trading again.

12 Additional locations

- 12.1 When determining the suitability of any additional food truck locations to those specified in Annexure C, CN will have regard to:
- a) Land use zoning and permissible uses within that zone (compatibility considerations)
 - b) Proximity to residential properties (potential residential amenity impacts)
 - c) Proximity to other food and drink premises
 - d) Road, road-user, and pedestrian safety
 - e) Availability of existing locations for approved vehicles.

13 Parking

- 13.1 Mobile food vending vehicles are to park legally at all times and 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 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.

14 Permitted days and hours of operation

- 14.1 The use of CN-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, unless the location is within or immediately adjacent to a residential zone, in which case the operation is restricted to 7am to 7pm on any day.
- 14.2 Mobile food vending vehicles are not to remain in any on-road location overnight.

15 Serving

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

16 Customer seating

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

17 Waste management and recycling

- 17.1 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 CN for any cleaning cost incurred by CN 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 CN 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) Packaging used for the sale of food must be recyclable or compostable in line with the *Plastics Reduction and Circular Economy Act 2021*. Details of recyclable materials are available on the City of Newcastle website.

18 Signage

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

19 Animals and pests

- 19.1 All practicable measures are to be taken to prevent pests (including birds, spiders and flying insects) from entering or remaining in the vehicle.
- 19.2 No animal is permitted to enter any vehicle, whether the vehicle is in operation or not.

20 Water supply

- 20.1 The mobile food vending 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.

20.2 The mobile food vending vehicle is to be equipped with a wastewater tank external to the vehicle, of at least 50 litre capacity with an outlet of sufficient diameter to facilitate easy flushing and cleaning.

20.3 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.

21 Maintenance

21.1 The mobile food vending 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.

22 Control of pollution

22.1 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.

23 Noise

23.1 The emission of noise associated with the use of the mobile food vending 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 CN Officer, the CN 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 CN 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, while the vehicle is moving or stationary.

24 Odour

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

25 Food handling

25.1 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. 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.

26 Preparing food at home

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

27 Related food premises

27.1 Where the operation of the mobile food vending vehicle involves the use of premises within the Newcastle LGA 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*.

27.2 Any change in the related food premises is to be notified to CN.

ANNEXURE A – CONTACT INFORMATION

Please contact CN for further information relating to this Policy or questions on the application, approval or operation of mobile food vending vehicles in the Newcastle LGA.

City of Newcastle

Tel: (02) 4974 2000

Website: www.newcastle.nsw.gov.au

Further food safety information can be obtained from:

NSW Food Authority

Tel: 1300 552 406

Fax: (02) 9199 8253

Website: www.foodauthority.nsw.gov.au

Email: food.contact@dpi.nsw.gov.au

Food Standards Australia New Zealand

Website: www.foodstandards.gov.au

ANNEXURE B - DEFINITIONS

The Act means the *Local Government Act 1993* (NSW).

Approved form means the current mobile food vending vehicle application form as found on CN's website.

City of Newcastle (CN) means Newcastle City Council.

CN-owned roads means all the land used for vehicular traffic, plus any footway, shoulder, kerb and gutter.

CN Officer means an officer who works for CN.

Food truck means 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.

Food van means a vehicle used for the purposes of selling tea, coffee, drinks, cakes, sweets, packaged sandwiches, or other similar food (low risk food category). Food vans routinely change location and can make intermittent stops of up to 1 hour at any one time.

Food cart means 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. Food carts are not supported under the Policy.

Mobile food vending vehicle includes food trucks and food vans and means a vehicle located on CN-owned roads used in connection with the preparation and/or sale of food. It includes vehicles used for on-site food preparation (e.g. hamburgers, hot dogs and kebabs), one-step food preparation (e.g. popcorn, fairy floss, coffee) and the sale of any type of food, including pre-packaged food.

For the purposes of this 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*.

Unless stated otherwise, a reference to a section or clause is a reference to a section or clause of this Policy.

ANNEXURE C - PERMITTED TRADING LOCATIONS – FOOD TRUCKS

Location No.	Site Name	Street Address	Suburb
1	National Park	Union Street	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	Melville 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 shown in a map linked to CN's website.

ANNEXURE D - PERMITTED AND 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 Newcastle LGA. 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. 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 Transport for NSW website which provides NSW road network classifications. 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 CN-owned roads within the Newcastle LGA 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 CN-owned roads within the Newcastle LGA 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 C1 National Parks and Nature Reserves

Zone C2 Environmental Conservation

Zone C3 Environmental Management

Zone C4 Environmental Living

Zone W2 Recreational Waterways

Maps: The approved locations for food vans are shown in a map linked to CN's website.

ANNEXURE E - POLICY AUTHORISATIONS

Title of authorisation	Description of authorisation	Position Number & Title
Nil.		

DOCUMENT CONTROL

Policy title	Mobile Food Vending (Local Approvals) Policy
Policy owner	Manager Planning, Regulation and Assessment
Policy expert/writer	Environmental Health Coordinator
Associated Guideline or Procedure Title	Nil.
Guideline or Procedure owner	N/A
Prepared by	Regulatory, Planning and Assessment
Approved by	Council
Date approved	28/02/2023
Commencement Date	28/02/2023
Next review date	30/09/2025
Termination date	30/09/2026 (one year post revision date)
Version #	3
Category	Regulatory, Enforcement and Compliance
Details of previous versions	Version #2 – ECM: 5926573
Keywords	Mobile food vending vehicles, food vending trucks, vans, trailers
Relevant strategy	Night-time Economy Strategy - Newcastle After Dark (2018-2022)
Relevant legislation/codes (reference specific sections)	<p>This Policy supports CN's compliance with the following legislation:</p> <ul style="list-style-type: none"> – <i>Local Government Act 1993</i> (NSW) (s68, s75-113, s158-161) – <i>Environmental Planning and Assessment Act 1979</i> (NSW) – <i>Food Act 2003</i> (NSW) (s37) – <i>Motor Accidents Act 1988</i> (NSW) OR <i>Motor Accidents Compensation Act 1999</i> – <i>Protection of the Environment Operations Act 1997</i> (NSW) – <i>Road Transport Act 2013</i> (NSW) – <i>Roads Act 1993</i> (NSW) (Dictionary, Part 5 Classification of roads) – <i>Food Standards Code - Standard 3.2.2</i> – State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
Other related documents	<p>NSW Food Authority – Guidelines for Mobile Food Vending Vehicles (July 2020)</p> <p>Department of Local Government Street Vending Control Guidelines 2017</p>
Related forms	Mobile Food Vending Vehicle Application Form
Required on website	Yes
Authorisations	Functions authorised under this Policy at Annexure E