

POLICY DES005

BOGAN SHIRE MOBILE FOOD AND DRINK VENDING VEHICLES LOCAL APPROVALS POLICY



Adopted by Council Resolution xxxxx 2017

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1. PURPOSE

The purpose of this Policy is to provide the framework for the operation of Mobile Food Vending Vehicles within the Bogan Shire Local Government Area. The Policy sets out the relevant legislative requirements for safe food handling and preparation practices and establishes vending parameters for applicants.

The purpose of the Policy is to supplement provisions of the *Local Government Act 1993*, the *Local Government (General) Regulation 2005*, and the *Food Act 2003*.

The Approvals Policy is divided into three parts in accordance with the requirements of the *Local Government Act 1993 (s158)*:

Section 3 of the Policy specifies any exemptions from this Policy;

Section 4 of the Policy specifies the criteria which Council must consider when determining whether or not to grant approval for a particular activity; and

Section 5 of the Policy specifies other matters relating to approvals not dealt with by the *Local Government Act 1993*, the *Local Government (General) Regulation 2005*, the *Food Act 2003* or the *Food Regulation 2010*.

1.1 Objective

The Policy aims to:

- (a) Ensure the Mobile Food Vending Vehicles operate in accordance with the rules and restrictions within lawful parking spaces on Council-owned roads;
- (b) Ensure Mobile Food Vending Vehicles operate in accordance with the approval for off-street trading sites in public places;
- (c) Ensure that food sold through Mobile Food Vending Vehicles is safe and fit for human consumption;
- (d) Provide guidance and assistance for people wanting to operate Mobile Vending Vehicles within the Bogan Shire Local Government Area;
- (e) Ensure the construction, fitting out and facilities for cleaning utensils, articles, fittings and appliances in vehicles are adequate for food preparation;

- (f) Minimise any potential adverse impacts of Mobile Food Vending Vehicles including public risk, litter and residential amenity; and
- (g) Ensure that trading improves the mix and diversity of takeaway food available, and having regard to existing comparable trading takeaway food and drink premises.

2. STATEMENT

2.1 Citation

This Policy may be cited as "The Policy" or "The Bogan Shire Mobile Food and Drink Vending Vehicles Approvals Policy".

2.2 Commencement

This Policy is to commence when adopted by Council.

2.3 Local Approvals Policy

The policy is a Local Approvals Policy prepared and adopted in accordance with section 158 of the Local Government Act 1993.

2.4 Application

This Policy applies to all mobile food and drink vending vehicles seeking to retail within the Bogan Shire Local Government Area including on Council owned roads and public places.

This policy does not apply to mobile food and drink vending vehicles:

- a) trading in accordance with a development consent on private land
- b) trading on public land in conjunction with a major event
- c) providing catering services to private events
- d) not operating as a food business

2.5 Definitions

- (a) A Mobile Food and Drink Vending Vehicle is any registered vehicle used on land that is either self-driven, or that can be towed down Council-owned roads and that is used in connection with the sale of food.
- (b) Mobile Food and Drink Vending Vehicles that are used for on-site food preparation (e.g. hamburgers and pizzas) and one-step food preparation (e.g. popcorn, fairy floss, coffee, fresh juice) and the sale of any type of food, including pre-packaged food and drink.
- (c) All Mobile Food and Drink Vending Vehicles requires Section 68 approval issued by its 'home' Council prior to operating in any public place.
- (d) The criteria for approval to be used in the assessment of a Mobile Food and Drink Vending Vehicles will include all the relevant provisions contained in the approved standards as set out in Part 2 & 3 of this Policy, the *Food Act 2003*, and the *Food Standards Codes*.

3. EXEMPTIONS FROM APPROVAL

3.1 Exemptions under the Policy

There are no exemptions from the necessity to obtain approval under this Policy for Mobile Food and Drink Vending that is used for the sale of food and drink in public places within the Bogan Shire Local Government Area.

4. COUNCIL APPROVAL REQUIREMENTS

Council must consider the criteria as outlined in this Policy when determining applications for Mobile Food and Drink Vending approvals to operate within the Bogan Shire Local Government Area.

4.1 Section 68 Approvals

- (a) The Policy applies to approvals for an activity as per s 68 F Item 7 of the *Local Government Act 1993*, namely:

'7. Use a standing vehicle or any article for the purpose of selling any article in a public place'.

- (b) For the purposes of this Policy a 'standing vehicle' includes any Mobile Food and Drink Vending vehicle that has stopped to make a sale.
- (c) The operation of a Mobile Food and Drink Vending Vehicle, or the selling of any food from a mobile vehicle in a public place within the Bogan Shire Local Government Area without prior approval is an offence under the *Local Government Act 1993*.
- (d) Mobile Food Vending Vehicles will be issued an approval that will contain conditions of operation to be complied with at all times.
- (e) Council will charge an application fee for the s 68 Mobile Food and Drink Vending Vehicle approval as per the *Fees and Charges* within Council's Operational Plan and Budget located on Council's website; www.bogan.nsw.gov.au.
- (f) Approvals shall take effect from the date stated thereon and shall expire 12 months after the date of the approval or any other time as stated on the approval.

4.2 Approval Conditions

The Mobile Food and Drink Vending Vehicle approval conditions are based on the items they serve and can only serve menu items within its approval category.

Category 1 – Food Vehicles

- a) **Retail Items:** Food and drinks that do not require a kitchen and are not potentially hazardous with the exception of processes that have a minimal food safety risk such as the frothing of milk, or the serving of frozen dairy are included as a Category 1 Food Vehicle. Foods may be pre-packaged, or served directly from its package/container and do not require heating or cooking.
- b)

- c) The vehicle must meet relevant design and layout standards to ensure food safety requirements are met. Examples food types include tea, coffee, drinks, cakes, sweets, frozen yoghurt, pre-packaged ice-cream, soft serve ice-cream or other similar foods.
- d) **Trading conditions:** Each Category 1 Food Vehicle can trade in public places in accordance with this policy. Please refer to section 4.5 “Locations” of this Policy for further details.
- e) **Public Liability Insurance** cover to the value of \$20,000,000.

Category 2 – Food Vehicles

- a) **Retail Items:** There are no restrictions to the menu for Category 2 food vehicle approval and includes the service of any potentially hazardous food. This vehicle can be a mobile kitchen and must have access to an approved fixed premises or commercial kitchen. Examples of the types of food this category can serve include pasta, pizzas, flame-grilled meats, stir fry noodles, grilled skewers, fish and chips, or other similar foods.
- b) **Trading conditions:** Each Category 2 food vehicle can trade in public places. Please refer to section 4.5 “Locations” of this Policy for further details.
- c) **Concept design:** Operators wishing to apply for a Category 2 approval must also submit a concept design of their vehicles including floor layout which must comply with the Food Act 2003.
- d) **Public Liability Insurance** cover to the value of \$20,000,000.

4.3 Applications for Approval

A completed Section 68 Application form with the accompanying fee and supporting documentation (including a completed Operational Plan of Management) must be provided to Council. This application must be approved by Council prior to operating either a Category 1 or 2 Food Vehicle in the Bogan Shire Local Government Area.

4.4 Vehicle Inspections

All Mobile Food and Drink Vending Vehicle operators must have their vehicle inspected for food safety requirements prior to approval, or from time to time as requested by Council. Random inspections of Mobile Food and Drink Vending Vehicles may be conducted by Council officers during trading locations and times, and any associated fees and charges will be charged to the business in accordance with Council's Schedule of Fees and Charges.

A copy of the Vehicle's Plan of Management (PoM) must be kept within the vehicle at all times and made available to an authorised Council officer on request.

4.5 Issuing of approval

- (a) Approvals issued by Council will be on a per vehicle basis.
- (b) Any modifications to the vehicle or business including; major changes to the food menu, or food items sold, or changes to the design of the vehicle requires prior approval of Council.
- (c) Any change of address of the commercial kitchen for Category 2 Vehicles, or modification to the approved Plan of Management must be applied for in writing to Council, and be accompanied by the appropriate paperwork. An additional assessment fee may be applicable.
- (d) Approvals are specific to each Mobile Food and Drink Vending vehicle and they are not transferable between vehicles.
- (e) No ownership transfer of Council approval (section 68) is permitted. All applicants will be required to pay the appropriate fee, and lodge all new application paperwork specific to their business prior to any approvals being issued to the new owner.
- (f) Approvals will be issued subject to conditions including, but not limited to, compliance with this Policy.
- (g) Applications for the renewal of approvals must be lodged with Council 3 weeks prior to the expiration of the current approvals.
- (h) If an operator had ceased trading, or does not trade for a period of longer than 6 months, Council will reserve the right to revoke their approval.

- (i) Failure to adhere to any condition of approval and/or legislative requirement may result in modification, suspension or revocation of the approval, in addition to prosecution or the issue of fines.

4.6 Locations

A Mobile Food and Drink Vending Vehicle (s68) approval entitles operators to trade in the following locations:

a) On and Off Street vending

- All approved Mobile Food and Drink Vending Vehicles are permitted to operate on Council-owned roads and public places within existing lawful car parking spaces, subject to the exclusions noted within this Policy. The operation of a Mobile Food and Drink Vending Vehicle must also comply with the local car parking restrictions of that parking space. Vehicles must not park on the footpath or on driveways.
- A maximum of two (2) Mobile Food and Drink Vending Vehicles are permitted to trade on the same lawful car parking space at different times within the same 24 hour period.
- Mobile Food and Drink Vending Vehicles must arrive fully equipped at all trading locations and are not permitted to receive any deliveries.

b) Excluded Locations

- Mobile Food and Drink Vending Vehicles are not permitted to trade on any land without prior consent from the landowner. This includes Road Reserves managed by Roads and Maritime Services and Bogan Shire Council, Council Managed Parks and Reserves as well as those sporting organisations/clubs (or equivalent) operating from time to time within these [Reserve/s](#).
- Mobile Food and Drink Vending Vehicles are not permitted to trade within accessways / driveways into parks, reserves or private property.
- Mobile Food and Drink Vending Vehicles are not permitted to trade within 100 metres of existing food retail businesses during the normal operating hours of these business or as otherwise detailed within the conditions of approval.
- All areas outside of the Bogan Shire Local Government Area are excluded from any approval issued by Bogan Shire Council.

5. OTHER MATTERS RELATING TO APPROVALS

In addition to the Food Safety Standard 3.2.2, 3.2.3, and AS4674, along with any conditions of approval, the general requirements for the design, fit-out, and operation of the mobile food and drinking vehicle includes the following considerations:

- Each vehicle must provide hand washing facilities, adequate food storage and refrigeration facilities along with waste disposal area/s that are easy to clean and sanitize.
- Separation between the driving, food storage and handling / serving sections of the vehicle must be implemented.
- All vehicles must be kept clean and in good working order for the life of the approved use.
- Tables, chairs or any other forms of seating are not permitted at any time for customers.
- Suitable waste receptacles with close fitting lids are to be provided in the vehicle when not in use and immediately outside the vehicle when trading. Waste must not be disposed of in a public garbage bin and must be removed from each trading site which is also to be maintained in a clean and tidy state.
- No approval under this policy is granted for the display of any sign or signage structure not directly attached to the vehicle.
- All vehicles must be provided with adequate supply of potable water including hot water that is easily cleaned and maintained. This includes a separate sink with spout mixer provided for hand washing only.
- Under no circumstances are liquid wastes to be disposed of from the vehicle onto the ground.
- Operations must be undertaken and comply with the Protection of the Environment Operations Act 1997 including pollution, offensive noise, illegal waste disposal and odour.
- Probe-type thermometers must be accurately used to monitor all potentially hazardous foods at all times.
- All appliances must be kept in good working order with cold food kept at a temperature of 5°C or less and hot food at a temperature of 60°C or greater.
- The vehicle shall be fitted with an exhaust or ventilation system that discharges vertically and is regularly maintained.
- No lighting shall be operated that will have an impact on traffic or residential areas. Under no circumstances are flashing lights or signage permitted to be erected.

- Should food preparation or storage used in conjunction with the Mobile Food and Drink Vehicle be undertaken in a separate premises within the Bogan Shire Local Government Area, a Development Approval must also be obtained from Bogan Shire Council. This separate premises must also comply with the Food Act, Food Standards Code and AS4674.
- Food labelling requirements must be met and implemented at all times including food name, business details, batch ID, allergen/s, warning information and date marking. More information on labelling requirements can be obtained from the NSW Food Authority.
- Compliance with the NSW Food Act 2003 is mandatory and failure to comply may result in penalty infringement notices being issued or possible prosecution

6. IMPLEMENTATION

The Development & Environmental Services Division of Council will administer the Policy.

7. REVIEW

This policy will be reviewed by Council every 3 years.

Authority

Council Resolution No. XXXX

Policy Owner / Further Assistance

Manager – Development and Environmental Services

Related Information

Nil

Review Date

XXXX 2020

Revision History

Date	Description of Change	Sections Affected