

MOBILE FOOD VENDOR PROCEDURE

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Responsible Division	Resources
Related Documents	Lease, Licence and Permit Policy Alexandrina Council Annual Fees and Charges Alexandrina Pop up Business Activation Policy Events Permit
Applicable Legislation	<i>Local Government Act 1999</i> <i>Road Traffic Act 1961</i> <i>Motor Vehicle Act 1959</i> <i>Food Act 2001</i> <i>Work Health and Safety Act 2012 (WHS Act)</i> <i>South Australian Public Health Act 2011</i> <i>Environment Protection Act 1993</i> <i>Local Nuisance and Litter Control Act 2016</i>

Introduction

A vibrant and successful mobile food vendor sector can showcase and take advantage of the inherent strengths of our region with its array of quality food, wine, tourism and lifestyle experiences. Mobile food vending represents an opportunity to expand the business landscape within our region. The contribution of vendors, complementing our existing food and drink businesses to urban vibrancy and micro-economies are key economic growth and investment enablers.

Context

Council continues to support and encourage existing fixed food businesses to thrive, expand and diversify to meet customer demand. Council consent to the operation of a Mobile Food Vendor within the district will be determined giving due regard to retaining an appropriate balance between existing business operators, local residents and community/visitor demand for variety and services.

Principles Objectives

The key principles of this procedure are:

- Ensure the Permit process for Mobile Food Vendors is administered in accordance with the requirements under the Local Government Act 1999 and Local Government Regulations 2013.
- Define the Guidelines for the operation of Mobile Food Vendors.
- Define the General Terms and Conditions for the operation of Mobile Food Vendors.
- Ensure that Mobile Food Vendors do not cause a public nuisance or place the public at risk.

Definitions

Council:	Alexandrina Council.
Council Authorised Officers	an officer assigned by Council's General Manager with the delegated authority to undertake specified responsibilities.
Community land:	all local government land (except roads) that is owned or under the care and control of the Council unless excluded for operational purposes by a resolution of Council.
Event:	a planned public assembly that takes place one time or infrequently occurring of limited duration, that provides the consumer with a leisure and social opportunity beyond everyday experience.
Fixed food business	is 'a business the primary purpose of which is the retail sale of food or beverages that is carried on at fixed premises'. Fixed food businesses include cafes, restaurants, delicatessens, takeaway food businesses, bakeries, greengrocers, health food shops, butchers, supermarkets and service stations.
Food Business:	a business the primary purpose of which is the retail sale of food or beverages.
Mobile food vending business:	a business involving the sale of food or beverages from a vehicle (within the meaning of the Road Traffic Act 1961).
Mobile food vending vehicle:	any vehicle, whether mobile or stationary, used for the purpose of selling food and/or drink. This definition includes vehicles used for on-site food preparation (e.g. hamburgers or kebabs), one-step food preparation (e.g. coffee or juices) or pre-made or pre-packaged food sales.
Public Toilet:	A Council owned and operated toilet facility for general public use.
Road:	a private or public street, road or thoroughfare to which public access is available.
Road Related Area:	a footpath or nature strip adjacent to a road, an area that is not a road and that is open to the public and designated for use by cyclists or animals, an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles (includes road verges and footpaths).
Vehicle:	means a motor vehicle, trailer and tram; a bicycle; an animal-drawn vehicle, and an animal that is being ridden or drawing a vehicle; a combination; a motorised wheelchair that can travel at over 10 kilometres per hour (on level ground), but does not include another kind of wheelchair, a train, or a wheeled recreational device or wheeled toy as defined by The Road Traffic Act 1961 (the RTA).

Legislative Principals

Community Land - Section 200 and 202 of the Local Government Act 1999 specifies that a person must not use community land for a business purposes unless the use is approved by the council.

Road/Road Related Area - Section 222 of the Local Government Act 1999 specifies that a person must not use a public road, including any part of the road reserve such as the footpath area, for business purposes unless authorised to do so by a permit from the council.

Event - Section 200, 221 and 222 of the Local Government Act 1999 and section 9.19.2 of the Local Government Land Bylaw 2016 specifies that a person must not use community land for a business purpose, or conduct or hold a concert, festival public gathering or use a public road without the permission of the Council.

Procedure

The Procedure has been prepared to:

- Ensure mobile food vendors operate in a way which complements existing food businesses and continues to support a food culture in the Alexandrina Council area.
- Ensure mobile food vendors do not unreasonably compromise the amenity of the surrounding area.
- Ensure mobile food vendors practice safe food handling in accordance with the Food Act 2001.
- Oversee the number, locations, times and conditions of mobile food vendor operations.
- Ensure Mobile Food Vendors operate from sites that are safe, with appropriate infrastructure.
- Provide clear, consistent instructions and information to Mobile Food Vendors.
- Provide adequate monitoring and enforcement of Mobile Food Vendor activities.

Records management

All documents, notes, photographs and correspondence must be retained and stored in accordance with Council's Records Management protocols as required by s.125 of the *Local Government Act 1999*.

Availability of Procedure

This procedure is available on the Council's website www.alexandrina.sa.gov.au. Hard copies will also be provided to interested members of the community upon payment of a fee in accordance with Council's Fees and Charges.

More Information

For more information please visit the Alexandrina website at www.alexandrina.sa.gov.au or contact the Council on (08) 8555 7000 or email at property.officers@alexandrina.sa.gov.au

MOBILE FOOD VENDOR GUIDELINES

Permission

Prior permission from Council is required in order to operate a Mobile Food Vending business within any area of the Alexandrina Council district, other than on privately owned land.

There are 2 options for obtaining permission.

- Council supported Event
- Alexandrina Pop-Up Business Activation Policy

Permission - Event

- A Mobile Food Vendor operating on public land or road related area as part of a Council supported event will be included within the Event authorisation obtained from Council by the Coordinator of that event.
- It is the responsibility of the Event Coordinator and the Mobile Food Vendor attending the event, to ensure that they have fulfilled their legislative obligations and any operational requirements stipulated by the Event Coordinator.
- Permit fees are set by the Event Coordinator.

Permission – Alexandrina Pop-Up Business Activation Policy

Adopted at the 15 November 2021 Council Meeting, the Alexandrina Pop-Up Business Activation Policy (the Activation Policy) provides opportunity for mobile food vendors to apply to operate from a location included within the Activation Policy, at a fee determined in accordance with the Activation Policy.

An application to operate in accordance with the Alexandrina Pop-Up Business Activation Policy is administered independently of this Policy. Please contact Council on 8555 7000 or via email at alex@alexandrina.sa.gov.au for further information on how to apply.

Permission - existing tenancies

Council supports the inclusion of Mobile Food Vending under existing Council (leased or licensed) tenancies, only in instances where the addition of a Mobile Food Van is deemed by Council to be consistent with the permitted use of the facility and the facility is open / operating.

Tenants cannot permit a Mobile Food Vendor to operate from their tenanted area if the facility is not being used by the tenant.

Council retains the right to refuse the placement of a Mobile Food Vendor within a tenanted Council premises, if the proposed use is deemed to be inconsistent with the intent of the tenancy agreement.

Permission not granted - Community Land or road related area

Council supports proposals to temporarily activate the district, which do not have a significant adverse impact on fixed 'bricks and mortar' businesses within the food and beverage industry.

The temporary activation of spaces for the purpose of food and drink sales by a Mobile Food Vending Permit is considered to have a significant adverse effect on local business without the provision of a local commitment through a lease or licensing tenancy.

Mobile Food Vending Permits will not be granted for use of community land or road related area within the Alexandrina Council district.

Permission not required

The permission of Council is not required if:

- The catering (by invitation) is for an event on community land or road related area where a permit or licence has already been issued to the Event Holder in accordance with Council's Event Permit Procedure as outlined within this document.
- A Mobile Food Vendor is trading on privately owned land and the mobile food vendor appropriately satisfies Schedule 4, Part 5 (1) & (2) of the *Planning, Development and Infrastructure Act 2017 (PDI)*, as follows:
 - (1) The use of land and the use of any lawfully erected building which is ordinarily regarded as (and is in fact) reasonably incidental to any particular use of the land and the building, or the land or the building, and which is for the substantial benefit of the person or persons who, in any capacity, are making use of the land and the building, or the land or the building.
 - (2) The following uses of land or buildings (whether or not within the ambit of subclause (1)):
 - a. the carrying on of a home activity on land used for residential purposes;
 - b. without limiting paragraph (a), the use of any land or building for the display and sale of food produce if -
 - (i) the total floor area of the display does not exceed 30 m²; and
 - (ii) the use of the land for the display and sale of food produce does not have a significant detrimental effect on the amenity of the locality or any part of the locality.

MOBILE FOOD VENDOR – GENERAL TERMS AND CONDITIONS

Insurance

- The Mobile Food Vendor must keep an Insurance Policy in respect to vehicle, public and products liability of an amount of not less than \$20 million (for each accident or event).
- An Insurance Policy confirming compliance with this requirement must be submitted and must cover injury, loss or damage to persons or property arising out of the activity carried out by the Mobile Food Vendor.
- The Insurance Policy must be retained for the period for which an approval to operate is applicable.

Indemnification of Council

The Mobile Food Vendor agrees to indemnify and to keep indemnified and to hold harmless the Council, its servants and agents and each of them from and against all actions, costs, claims, charges, expenses and damages whatsoever which may be brought or made or claimed against them or any of them arising out of or in relation to the permission to operate.

Operation of Permit

The Applicant shall not commence any activity associated with an approval until a copy of the public liability insurance policy is given to the Council, payment has been made and the documentation signed by Council and returned to the applicant.

Documentation

A mobile food vendor operating in the Alexandrina Council area must:

- Hold a valid Alexandrina Council Mobile Food Vending approval; and
- Have a Food Business Notification Number issued by the relevant authority.

Locations

Mobile food vendors are permitted to trade at approved locations only.

No Exclusive Occupation

A Mobile Food Vendor does not have any exclusive right, entitlement or interest in the area of permitted use.

Activity to be within defined area

All persons, equipment and activities associated with the permission shall remain wholly within the defined area at all times.

Fees

Fees will be determined in accordance with Council's Annual Fees and Charges or by the Event Coordinator.

Hours of Operation

Mobile food vendors are permitted to operate in accordance with the times stipulated on the permission from Council or as otherwise associated with an approved Council supported event.

Approval

- The approval of Council is required prior to commencing a mobile food vendor operation.
- The operation of mobile food vending within the Alexandrina Council area without approval, is an offence under the Local Government Act 1999 and penalties apply.

Breach

A person must not breach or fail to comply with a condition of permission for the purposes of operating a Mobile Food Vending business.

Cancellation of permission

Council or its delegated Officer may by notice in writing, cancel the permission for a breach of a condition in accordance with the process stipulated within the Local Government Act 1999 and Council's Bylaws.

Signage

- No advertising signage is allowed, except for one (1) 'A' frame or sandwich board sign or an inverted 'T' sign, with an advertisement area of not more than 0.36 square metres (e.g. 1200mm x 300mm or 600mm x 600 mm) and located no further than a distance of 5 metres from the 'open for trade' Mobile Food Vendor that the sign relates to.
- The construction and design and placement of an 'A' frame or sandwich board sign, an inverted 'T' sign must comply with Alexandrina Council current Moveable Signs By-law.

Serving of Liquor

- Where the Permit holder desires (and is permitted by Council) to serve alcoholic beverages from the mobile food vehicle, a separate application must be made to the Office of Liquor and Gambling for a licence to serve alcoholic beverages.
- All conditions set by the Licensing Court must be complied with.

Animals

No animal is to be kept within any part of the mobile food vending vehicle.

Fixed equipment

Awnings, free standing canopies, benches, seating and any other equipment or fixture which necessitates a 'fixed' trading position is strictly prohibited.

Moving objects

No additional flashing, rotating lights or the like are permitted to be used on road related areas, except as required or permitted under relevant vehicle registration legislation.

Transfer

The Mobile Food Vendor permission is not transferable.

Change of business owner

In the event that the Mobile Food Vehicle and its business changes ownership, the new business operator and vehicle owner must apply for permission as if it were a new Mobile Food Vendor applying for the first time.

Change of goods for sale

Any changes to the approved mobile food vending vehicle, equipment or goods sold must not be undertaken without first obtaining permission from Council.

Presentation of documentation of Permission

The Mobile Food Vendor is obligated to produce a copy of permission to operate to any Authorised Officer of the Council on demand.

Vendors

Vendors must comply with all provisions of the Australian Road Rules.

Compliance with legislative requirements

There are many legislative requirements which apply to the provision of food, the operation of a business and the use of a motor vehicle. A mobile food vending business must operate in a manner which does not breach any of these or any other relevant legislative requirements:

- the *South Australian Public Health Act 2011* and the *Food Act 2001*;
- the *Environment Protection Act 1993*;
- the *Local Nuisance and Litter Control Act 2016*;
- the *Motor Vehicle Act 1959* and the *Road Traffic Act 1961*;
- legislation relating to electrical or gas installations or appliances; and
- relevant legislation relating to health, safety or the environment.

Work Health and Safety Act 2012

- A mobile food vending business must comply with the *Work Health and Safety Act 2012* (WHS Act).
- Consideration should be given to the 'primary duty of care' under the WHS Act which is, so far as reasonably practicable, to ensure the health and safety of workers when operating.

Local Nuisance and Litter Control Act

- A mobile food vending business must not commit a 'local nuisance' under the Local Nuisance and Litter Control Act.
- A local nuisance includes any adverse effect on the amenity value of an area that is caused by noise, odour, smoke, fumes, aerosols or dust which unreasonably interferes with, or is likely to interfere unreasonably with, the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area.
- A mobile food vending business which omits smoke or odours should consider these requirements.

Road safety

- A mobile food vendor vehicle must not encroach or interfere with loading zones, disabled parks, taxi ranks, bus stops, permit or residential permit parking or no stopping conditions.
- A mobile food vendor vehicle, food truck or trailer must avoid encroachment on bike lanes at all times.
- A mobile food vendor must not install or display devices so as to be a cause of undue distraction to drivers of vehicles on the adjacent roadway.

Food safety

- Mobile Food Vendors are required to comply with all health and food safety aspects of the entire operation as contained in the Food Act 2001, Food Regulations 2002 and Food Safety Standards.
- Mobile Food Vendors may also be subject to routine food safety inspections by Council's Environmental Health Officers.
- Further information regarding the Food Act and Food Safety Standards may be obtained from Council's Environmental Health Officers.

General safety and amenity

- All cooking and heating equipment should be adequately screened to prevent accidental burn injuries from occurring among members of the public or staff.
- All sign boards, ropes, wires, etc and other equipment used in connection with the mobile food premises should be placed so as not to cause a hazard to members of the public and, in particular, must not slow down egress in the case of fire or other emergency.
- Electrical appliances, outlets and wiring must comply with all electrical safety requirements.
- Gas installations must comply with the requirements of the Gas Act 1997 and Regulations, with all valves, hoses and safety devices being maintained in good condition.
- Noise levels must comply as specified by the Environmental Protection (Noise) Policy 2007.

Design and construction

- All Mobile Food Premises must be constructed to the satisfaction of the Council's Environmental Health Officers. Sharp edges or projections should be avoided.
- Mobile Food Premises must be suitably constructed for the type of food preparation, handling and sale activities that are intended to take place.
- The Mobile Food Vendor must provide adequate protection for any food that is likely to be contaminated by adverse environmental effects such as dust, insects, birds, rain and direct sunlight.
- All surfaces such as floors, walls, ceiling, shelving, benches, etc. (where provided), must be smooth, impervious and easily cleanable.

Maintenance

- The Mobile Food Vendor shall keep the permitted, designated location free of litter and in a clean, hygienic state.
- The Mobile Food Vendor is responsible for cleaning the ground surface at the location and shall, if council is of the opinion that this area requires substantial cleaning as a direct result of the Mobile Food Vendors use of the location, be responsible for steam cleaning or reinstating the area.
- The Mobile Food Vendor shall carry the cost of any damage to council property at the location, including replacement of heavily stained, missing or broken pavers which is caused, in the opinion of the council, by reason of activities authorised by the Council.
- Trees and other significant streetscape elements such as public art, benches, rubbish bins and bus shelters shall not be obstructed, covered, removed, damaged, relocated or modified as a result of a mobile food vending operation.

Area to be Kept Clean

- The Applicant shall keep the area of permitted use clean, tidy and undamaged.
- All liquid waste (including waste water and waste oil) must be contained and removed or disposed of appropriately at the end of trading.
- No waste or other material is to be deposited into the storm water system or the area hosed down.
- Vendors must contact SA Water to determine appropriate disposal of trade waste for their business.

Compliance

The Mobile Food Vendor shall comply with and give all notices required by any Act of Parliament, Ordinance, Regulation or By-law relating to the activity.

Waste Management

- Mobile food vendors must provide their own bins for use by their customers and ensure the area around their site is kept clear of rubbish and refuse at all times.
- Refuse shall be removed by the operator at the completion of trading.
- Placement of commercial waste from the mobile food vendor in Public Litter Bins (PLB) is not permitted.

Ownership of Equipment

All equipment associated with the Mobile Food Vendor remains the property of the Mobile Food Vendor.

Removal of Equipment

- All equipment, rubbish, infrastructure and other associated with the Mobile Food Vendor, shall be removed from the area at completion of the permitted activity.
- Goods and equipment remaining on site on expiry of the permitted use are deemed abandoned and will be disposed of by Council.
- Council reserves the right to oncharge all removal and disposal costs associated with abandoned goods, to the Mobile Food Vendor.

Reinstatement

- The area of permitted use is to be reinstated to its original condition by the Mobile Food Vendor on completion of the activity.
- Repairing and/or replacing any damaged Council infrastructure, will be the responsibility of the Mobile Food Vendor.
- The Chief Executive Officer may give notice requiring certain work to be done by the Applicant within 14 days from the giving of such Notice, and if the work specified in the Notice has not been completed within the said 14 days, the Council may by notice in writing signed by the Chief Executive Officer cancel the permission forthwith.
- If any necessary repair or replacement is not undertaken within a reasonable time, Council may repair and/or replace and recover the costs from the Mobile Food Vendor.