

1. POLICY OBJECTIVES

1.1 The purpose of this Policy is to:

1.1.1 Ensure that food safety standards are met and maintained to protect public health with regard to food businesses operating from Non-Fixed premises within the Wollondilly Shire Local Government Area.

1.1.2 Meet responsibilities of the Food Regulation Partnership (FRP) with NSW Food Authority and all relevant legislation.

2. BACKGROUND

2.1 Recent years have seen a growth in the number of markets, festivals, fetes and agricultural shows throughout the Wollondilly Shire Council LGA. This increase in interest and popularity is attributed to a number of factors including community participation, consumer demand and our favourable climate for outdoor events.

Temporary food stalls may trade at the aforementioned events. These events are temporary in nature (i.e. occur on an occasional basis) and range in duration from several hours to several weeks.

2.2 Changes to legislation to be enforced as from 1 July 2018, require all councils to undertake mandatory inspections of temporary food businesses that operate in their Local Government Area.

2.3 This Policy aims to provide clear direction in the administration and inspection of retail food businesses operating at temporary events within the Wollondilly Shire LGA to meet Council's public health objectives of:

- Ensuring that food businesses operating within the Wollondilly Shire LGA are inspected for food safety at least once annually;
- Recognising the recommendations of the 2013 IPART review into Local Government Compliance and Enforcement;
- Not placing undue burden on event or market organisers;
- Not placing undue burden on food businesses operating from non-fixed premises;
- Not placing undue burden on Council's resources;
- Recouping reasonable costs incurred by Council for service provision.

3. APPLICABILITY

3.1 This Policy applies to **all** Non-Fixed Food businesses operating at markets and temporary events within Wollondilly Shire Council.

This Policy does not consider applications for mobile food vending vehicles, roadside stalls or permanent street stalls, which are subject to a *Local Government Act 2003* section 68 approval for using a standing vehicle or any article for the purpose of selling any article in a public place.

4. GUIDELINES

4.1 **All Non-Fixed Food businesses** operating at markets and/or temporary events shall comply with the NSW Food Authority's 'Guidelines for Food Businesses at Temporary Events', and/or the NSW Food Authority's 'Guidelines for Mobile Food Vending Vehicles'. (whichever applies)

4.2 **Notification**

It is a requirement of the Food Act 2003 that the proprietor of a food business gives written notice to the appropriate enforcement agency, (being Wollondilly Shire Council), before the business is conducted. The notice must be in the approved form as specified in the Food Safety Standards. A Non-Fixed Food business proprietor can notify Council of their business undertaking by completing a **Food Business Notification Form**.

The appropriate details for notification include:

- Contact details for the food business including the name of the food business and the name and address of the proprietor of the food business.
- The nature of the food business, and
- The location of all food premises of the food business that are within the jurisdiction of Wollondilly Shire Council.

On receipt of a notification the business details are registered in Council's Authority system.

4.3 **Non Fixed Food Premises Operating at Markets and Temporary Events**

4.3.1 **Markets**

Non-Fixed Food businesses trading at markets do so under an approved Council development consent for the Market. In accordance with licencing provisions, markets are more likely to have consistent organisation/management processes and to be conducted at the same venue each time. Infrastructure will have been considered and services, such as control of waste and access to potable water, will be in place.

Market organisers are required to keep an up-to-date list of the trading food businesses for traceability. Market organisers should also, as minimum, ensure that non-fixed food businesses:

- hold a current food business notification form which has been lodged to Wollondilly Shire Council or other Local Government Authority from which the business is based; and
- have at least one trained Food Safety Supervisor where applicable, (except for charitable organisations and community groups), and a copy of the NSW Food Authority issued Food Safety Supervisor Certificate issued by NSW Food Authority, on site; and
- hold a current Certificate of Currency of no less than \$10,000,000, and
- the aforementioned documents are to be maintained on site whilst trading and shall be produced upon request by an Authorised Officer, as evidence of compliance with the requirements above.

Contact details for Market organisers are displayed on Council's website.

4.3.1.1 **Market Inspection Policy**

Whenever possible, market organisers are to be advised in advance of a planned inspection. However organisers will not be advised of an actual inspection date, with inspections to be undertaken unannounced to allow Authorised Officers to obtain a true reflection of standards.

High and medium risk Non-Fixed Food businesses that have not been inspected within the financial year, will be priority inspected at the market visit.

4.3.2 **Temporary Events**

Events may re-occur annually and the venue may change between events. Venues may have varying standards of infrastructure provision, such as access to potable water and waste collection etc. Large events are more likely to attract non-fixed food businesses from other LGAs. Event notification may come directly from the event organiser, through DA application or via Council's internal notification processes.

On notification of the event the organiser is to be sent the **Special Events Application Form** 28 days before the event (where possible). The notification form will require the organiser to obtain the following information from food businesses:

- Copy of a current food business notification form which has been lodged with Wollondilly Shire Council or another Local Government Authority; and
- A copy of a current Food Safety Supervisor Certificate where applicable, (except for charitable organisations and community groups), issued by NSW Food Authority; and
- A current Certificate of Currency of no less than \$10,000,000, and
- If available, a copy of a report from food safety inspection undertaken the last 12 months, by an authorised officer of a Local Government Area or NSW Food Authority.

This information is to be returned to Council no later than 10 working days prior to the event.

4.3.2.1 Temporary Event Inspection Policy

Inspections at all temporary events may not be possible. Small events where low risk foods are sold may not require inspection. Large events, particularly where high risk food is sold, or those that have had a poor compliance history are likely to be inspected.

Council adopts a risk based approach when inspecting food businesses at temporary events and to determine which businesses to inspect. The risk factors considered are:

- Number of food businesses trading at the event;
- Type of food being sold at the event (potentially high risk food vs non potentially high risk food);
- Estimated number of visitors to the event;
- Duration of the event;
- Any complaints made against food businesses trading at the event;
- Compliance history of the event;
- Access to facilities and services such as hand wash basins, potable water, wastewater management, staff toilets, waste management, electricity, camping and shower provisions.

4.3.3 Fees and Charges

Market and event organisers must ensure that food businesses are advised they will be invoiced directly by Council for the inspection fees incurred.

Non-Fixed Food businesses will be charged an inspection fee in accordance with Council's adopted fees and charges.

Should an event organiser fail to provide the requested information or provide insufficient information, site inspections are to be carried out. In such cases Council retains the right to invoice the event organiser for any costs incurred that cannot be otherwise received from the food businesses operating.

4.3.4 Administration

Non-Fixed Food businesses are to be advised they should have a copy of their most recent inspection report on site when trading. This will help ensure that businesses are not inspected, and therefore charged, unnecessarily.

4.4 **Section 68 Approval**

Section 68 of the Local Government Act 1993, states that ‘*use of a standing vehicle or article for the purpose of selling any article in a public place*’ requires approval under the Act. Provisions of the Environment Planning and Assessment Act and the Local Environment Plan allow trading in public places to occur where development consent has been given such as regular markets and planned events that take place in the Wollondilly LGA.

Non-Fixed Food businesses that are operating in public places, but do not have a specified council approval, must obtain a Local Government Act 1993, Section 68 Approval in addition to notifying Council of their food business.

Food businesses approved under Section 68 must adhere to approval conditions when trading.

Copies of this approval and confirmation of Food Business Notification are to be kept on site at all times whilst trading and are to be produced at the request of an authorised officer.

Where a Non-Fixed Food business wishes to trade on private property, Council should be contacted to determine whether Development Consent is required.

When operating outside the boundaries of the Wollondilly Local Government Council Area, it is the responsibility of the food business to ensure compliance with local Section 68 approval conditions in all other Local Government Areas where trading occurs¹.

¹ Some Councils may require the food business to obtain additional Section 68 Approval to operate within their borders. It is the responsibility of the food business to ensure they are familiar with and adhere to all applicable conditions.

4.4.1 **Food Safety Inspections**

Businesses subject to Section 68 will be inspected in line with the inspection process for other non-fixed food businesses, however because of the transient nature of their business, officers may use discretion to carry out inspections by appointment if no other option is available to inspect unannounced. However wherever possible the inspection should be undertaken when the business is operating.

4.4.2 **Fees and Charges**

Where an inspection is carried out on Non-Fixed Food businesses subject to Section 68 Approval, an inspection fee will be lodged in accordance with Council’s adopted fees and charges.

4.4.3 Home Jurisdiction - Food Safety Inspections

Council officers will not routinely carry out food safety inspections of Non-Fixed Food businesses that are registered/notified and, where required, approved by another government authority unless:

- The business cannot produce valid evidence of the registration/notification and approval, as applicable, immediately at the request of an authorised officer; and
- The business cannot produce a valid food safety inspection report, issued by another government authority within the current financial period, immediately at the request of an authorised officer; or
- A complaint has been received regarding the business; or
- Officer discretion deems it necessary, following identification of potential food safety risks.

Should an inspection be undertaken, Wollondilly Shire Council will recoup inspection costs in accordance with Council's adopted fees and charges. Copies of any inspection reports, letters or compliance actions are to be forwarded to the 'Home Council'.

In the event that the business cannot produce evidence of valid registration or approval, Council may require the business to notify and, if applicable obtain Section 68 Approval, from Wollondilly Shire Council.

Any non-compliance with the Food Act 2003 and associated legislation is to be addressed under Council's normal enforcement and compliance Policy's.

To assist pursuance of enforcement actions and recovery of costs, identification details should be obtained from the driver's licence of the business operator on site at the time of the inspection and a record kept of the Australian Business Number (ABN) and vehicle registration, where applicable. If the food business is trading as part of an organised market or event, the organiser should also be contacted to access their records for the contact details provided by the operator.

Copies of any inspection reports, letters or compliance actions are to be forwarded to the 'Home Council'.

4.4.4 Non-fixed food businesses operating as not for profit

A charitable or not-for-profit organisation (as defined by NSWFA) that sells food for fundraising purposes is defined as a 'food business' under the Food Act 2003 (NSW).

The food safety requirements in the Food Standards Code apply to their food activities, including the preparation and transport of food for sale. Council cannot exempt food businesses from legislated requirements.

The provisions in this document apply, however there may be a waiver of fees in accordance with Council's fees and charges.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Manager – Compliance
- 5.2 Team Leader – Compliance
- 5.3 Senior Environmental Health Officer
- 5.4 Environmental Health Officer
- 5.5 All staff providing information to the community in relation to temporary events.

6. RELATED POLICIES/PROTOCOLS

- 6.1 NSW Food Authority Guidelines for mobile food vending vehicles
- 6.2 NSW Food Authority Guidelines for food businesses at temporary events
- 6.3 Fact Sheet – Home Based Food Businesses

7. RELATED PROCEDURES

- 7.1 Nil

8. RELATED LEGISLATION

- 8.1 The Food Act 2003
- 8.2 Food Amendment (Food Safety Supervisors) Act 2009 No 85
- 8.3 Food Regulation 2010 (incorporating the Australia New Zealand Food Standards Code)

9. ATTACHMENTS

- 9.1 Definitions

10. RESOURCES

- 10.1 NSW Food Authority Guidelines for mobile food vending vehicles
- 10.2 NSW Food Authority Guidelines for food businesses at temporary events
- 10.3 Australia New Zealand Food Standards Code
- 10.4 NSW Food Authority Risk-Based Inspection Frequency for Retail Food Businesses

10.5 Coffs Harbour Temporary Food Policy

10.6 Camden Council Temporary Food Policy

11. IMPLEMENTATION STATEMENT

11.1 To ensure this policy is implemented effectively, Council will employ a variety of strategies involving awareness, education and training. These strategies will be aimed at Councillors, staff and council representatives and will involve:

11.1.1 Providing information sessions for the relevant staff who will directly use this policy in their duties.

12. POLICY HISTORY

12.1 Date First Adopted	18 February 2019
12.2 Most Recent Adoption	18 February 2019
12.3 Next Review Date	18 February 2022
12.4 Responsible Officer	Manager Compliance

ATTACHMENT 9.1

Definitions

Authorised Officer	Means a person authorised or appointed under the Food Act 2003, or other legislation for the purposes of enforcement of the Act, or similar purposes, such as an 'authorised officer', 'environmental health officer', or 'inspector'.
Food	<p>(a) Any substance or thing of a kind used, or represented as being for use for human consumption. (whether it is live, raw, prepared or partly prepared), or</p> <p>(b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a), or</p> <p>(c) any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid, or</p> <p>(d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum, or</p> <p>(e) any substance or thing declared to be a food under a declaration in force under section 6 of the Food Standards Australia New Zealand Act 1991 of the Commonwealth,</p> <p>(f) whether or not the substance, thing or chewing gum is in a condition fit for human consumption.</p>
Food Authority	Means the NSW Food Authority constituted under Part 9 of the <i>Food Act 2003</i> .
Food Business	<p>A business, enterprise or activity that involves:</p> <p>(a) the handling of food intended for sale, or</p> <p>(b) the sale of food,</p> <p>regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.</p>
Food Safety Standards	Means the standards contained in Chapter 3 of the Food Standards Code .
Food Standards Code	Means the <i>Australia New Zealand Food Standards Code</i> as defined in the Food Standards Australia New Zealand Act 1991 of the Commonwealth, as modified in accordance with regulations referred to in section 140 or 141 of the <i>Food Act 2003</i> .
Handling of Food	Includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food .

<p>High/Medium /Low Risk Food Businesses</p>	<p>High Risk – If a business carries out any of the following high-risk activities, then it is classified as ‘High Risk’:</p> <ul style="list-style-type: none"> - large scale operation - prepare or supply to vulnerable populations (i.e. the elderly) - undertake high risk activities (raw egg products, smoking meats, sous vide) - changes ownership - is the subject of foodborne illness investigation or complaint investigation, or has recently failed an inspection. <p>Medium Risk – Most retail type food businesses fall under this category.</p> <p>Low Risk – A business that sells only foods that are non-Potentially Hazardous Food (PHF), and pre-packaged.</p>	
<p>Home Council</p>	<p>The Home Council is the one in which the food business is based or where the mobile food vending vehicle is ordinarily garaged. The Non-Fixed Food business should carry a copy of a recent complying inspection form from the Home Council, to be produced when requested by an Authorised Officer.</p>	
<p>Home Jurisdiction Rule</p>	<p>A process where food regulators in Australia and New Zealand coordinate responses to food standards matters across borders to avoid imposing unnecessary regulatory costs on businesses. The home jurisdiction is the Local Government Area in which a food business is based.</p>	
<p>Local Government Area (LGA)</p>	<p>The area of governance by Council as defined by Australian Standard Geographical Classification (ASGC).</p>	
<p>Markets</p>	<p>Regular markets such as those featured on Council’s website. Held weekly or monthly, in fixed location with a regular set of food businesses.</p>	<p>Examples: Appin Markets, Bargo Lions Club Markets, Picton Creative Traders Markets, Tahmoor Bronzewing Markets, The Oaks Creative Traders Markets, Thirlmere Rail Craft Markets, Thirlmere Creative Traders Market, Wilton Markets, Wollondilly Markets.</p>
<p>Non-Fixed Food premises</p>	<p>Any food business trading from a vehicle or temporary structure.</p>	

Notification and Registration	The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Wollondilly Shire Council uses the phrase ' <i>notification</i> ' however other councils may refer to this process as ' <i>registration</i> '.
Potentially Hazardous Food	Food that has to be kept at certain temperatures to minimise the growth of any pathogenic micro-organisms that may be present in the food and/or to prevent the formation of toxins. This may include meat, seafood, dairy products, orange juice and cooked rice.
Public Place	<p>(a) a public reserve, public bathing reserve, public baths or public swimming pool, or</p> <p>(b) a public road, public bridge, public wharf or public road-ferry, or</p> <p>(c) a Crown reserve comprising land reserved for future public requirements, or</p> <p>(d) public land or Crown land that is not:</p> <p style="padding-left: 20px;">(i) a Crown reserve (other than a Crown reserve that is a public place because of paragraph (a), (b) or (c)), or</p> <p style="padding-left: 20px;">(ii) a common, or</p> <p style="padding-left: 20px;">(iii) land subject to the <i>Trustees of Schools of Arts Enabling Act 1902</i> ,</p> <p>or</p> <p style="padding-left: 20px;">(iv) land that has been sold or leased or lawfully contracted to be sold or leased, or</p> <p style="padding-left: 20px;">(v) land that is declared by the regulations to be a public place for the purposes of this definition.</p>
Public Reserve	<p>(a) a public park, or</p> <p>(b) any land conveyed or transferred to the council under section 340A of the <i>Local Government Act 1919</i> , or</p> <p>(c) any land dedicated or taken to be dedicated as a public reserve under section 340C or 340D of the <i>Local Government Act 1919</i> , or</p> <p>(d) any land dedicated or taken to be dedicated under section 49 or 50 of the <i>Local Government Act 1997</i>, or</p> <p>(e) any land vested in the council, and declared to be a public reserve, under section 37AAA of the <i>Crown Lands Consolidation Act 1913</i> , or</p> <p>(f) any land vested in the council, and declared to be a public reserve, under section 76 of the Crown Lands Act 1989 , or</p> <p>(g) a Crown reserve that is dedicated or reserved:</p> <p style="padding-left: 20px;">(i) for public recreation or for a public cemetery, or</p> <p style="padding-left: 20px;">(ii) for a purpose that is declared to be a purpose that falls within the scope of this definition by means of an order published in the Gazette by the Minister administering the Crown Lands Act 1989 ,being a Crown reserve in respect of which a council has been appointed as manager of a reserve trust for the reserve or for which no reserve trust has been established, or</p>

Public Reserve (continued)	(h) land declared to be a public reserve and placed under the control of a council under section 52 of the <i>State Roads Act 1986</i> , or (i) land dedicated as a public reserve and placed under the control of a council under section 159 of the Roads Act 1993 , and includes a public reserve of which a council has the control under section 344 of the <i>Local Government Act 1919</i> or section 48 of the <i>Local Government Act 1997</i> , but does not include a common.	
Risk assessment	An assessment of the likelihood of an incident occurring against the projected severity/consequence of the incident.	
Temporary Events	<p>A temporary event is any occasion which is of limited duration or periodic in nature and where food is sold to consumers from a temporary structure or vehicle.</p> <p>Location, coordinator and businesses likely to change between events. Potential for more out of area businesses. Infrequency of event means infrastructure such as potable water and waste not automatically available.</p>	<p>Examples: Picton Rodeo, Australia Day, Secret Garden Festival, Picton Show, Wollondilly North Rotary Club Swap Meet and Market Day, Thirlmere Festival of Steam, Illuminart, Dilly Doggy Day Out, Teddy Bear Picnic, White Waratah Festival, Mad Hatters Tea Party, Christmas Carols Events.</p>
Temporary Food Stall	A temporary food stall includes any structure, or mobile food van, set up at a temporary event, that serves retail food to customers.	