

# Mobile Vendor Location Rules Policy

Version No:	1.3		
Issued:	October 2017		
Last Review:	March 2022		
Next Review:	March 2025		

Name of Council	Wudinna District Council
File reference	9.63
Responsibility:	Governance
Policy Level	Discretionary
Minutes reference:	15 March 2022 – 10.4.1
Next review date:	Council will endeavour to review this policy every 3 years, or as required by legislative
Applicable Legislation:	or other changes.  Local Government Act 1999  Statutes Amendment (Local Government Review) Act 2021  Local Government (Transitional Provisions) Regulations 2021  Food Act 2001  Planning, Development and Infrastructure Act 2016  Development Act 1993  SA Public Health Act 2011  Road Traffic Act 1961 and the Motor Vehicle Act 1959  Operational Instruction – Mobile Food Vending 20.29  Environment Protection Act 1993  Local Nuisance and Litter Control Act 2016  Local Government (General) (Mobile Food Vendors) Variation Regulations 2017  Work Health and Safety Act 2012  Water Industry Act 2012  Legislation relating to electrical or gas installations or appliances, and Relevant legislation relating to health, safety or the environment
Related Policies and Documents:	Risk Management Policy & Risk Management Framework Safe Environment Policy Public Consultation Policy Outdoor Dining Policy SA Food Safety Passport System SA Foods Standards Safety Code

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### 1. INTRODUCTION

The Wudinna District Council recognises both opportunities and challenges associated with mobile vending. This policy serves as a basis to consider and assess applications for mobile vendors. Mobile vending is the temporary use of the public domain for offering products, good and services. All mobile vendors must apply for approval or authorisation unless they form part of an authorised event.

### 2. POLICY OBJECTIVES

The objectives of the policy are to ensure:

- Applications are assessed in accordance with guiding risk management principles.
- Mobile vendor location and activities are compatible and consistent with Council's Planning and Design Code.
- Any Community Land Management Plan provisions are considered.
- The community's health, safety, convenience and well-being are not compromised.

### 3. LEGAL CONSIDERATIONS

### Community Land

Section 200 of the *Local Government Act 1999* provides for the use of community land for business purposes and states that:

- (1) A person must not use community land for a business purpose unless the use is approved by the council.
- (2) The council cannot approve the use of community land for a business purpose contrary to the provisions of a Community Land Management Plan.
- (3) The council's approval may be given on conditions the council considers appropriate.
- (4) A person must not—
- (a) Use community land for a business purpose in contravention of Subsection (1); or
- (b) Contravene a condition of an approval for the use of community land for a business purpose. Maximum penalty: \$5,000.

### Roads

Section 222 of the *Local Government Act 1999* provides for Permits for business purposes in regards to public roads and states that:

- (1) A person must not use a public road for business purposes unless authorised to do so by a permit. Examples:
  - Carrying on business from a pie-cart drawn up on the side of the road;
  - Establishing a kiosk on the side of a road;
  - Extending the business of a restaurant or café to outside tables situated on a footpath or roadside;
  - Depasturing stock;
  - · Cropping.

Maximum penalty: \$2,500.

Expiation fee: \$210.

- (2) A permit may grant rights of exclusive occupation in relation to part of a public road.
- (3) A permit may be granted for a particular occasion or for a term stated in the permit.
- (4) The term of a permit cannot exceed five years.
- (5) This section does not apply to a person who is simply travelling along a road.
- (6) This section does not apply to any water/sewerage infrastructure established or used (or to be established or used) by or on behalf of a water industry entity under the *Water Industry Act 2012*.
- (7) In this section— water/sewerage infrastructure has the same meaning as in the Water Industry Act 2012.



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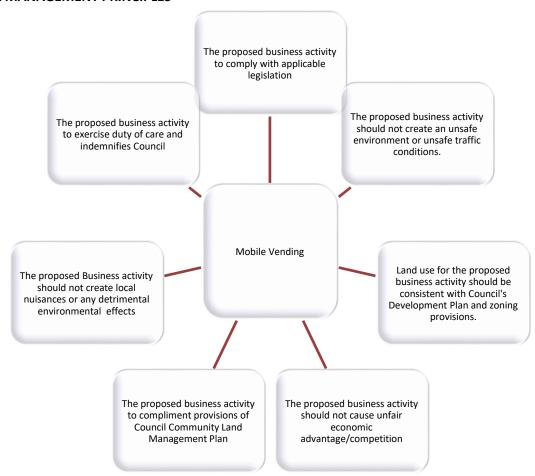
Section 223 of the Local Government Act 1999 provides for Public Consultation and states that:

- (1) If a council proposes to grant an authorisation or permit—
  - (a) That would result in any part of a road being fenced, enclosed or partitioned so as to impede the passage of traffic to a material degree; or
  - (b) In relation to a use or activity for which public consultation is required under the regulations, the council must, before granting the authorisation or permit, follow the relevant steps set out in its Public Consultation Policy.
- (2) The council must also give written notice of the proposal to agencies that are, under the regulations, to be notified of the proposal.
- (3) The regulations may prescribe exceptions to the operation of Subsection(1)(a).

Section 224 of the *Local Government Act 1999* provides for a council to grant an authorisation or permit on conditions the council considers appropriate.

Section 225 of the *Local Government Act 1999* provides for a council to cancel an authorisation or permit by notice in writing to the holder of an authorisation or permit, cancel the authorisation or permit for breach of a condition.

### 4. RISK MANAGEMENT PRINCIPLES



### 5. DECISION-MAKING PROCESS

Mobile vending on community land or public roads may not be undertaken without authority or approval from Council. In considering and granting approval or authority, Council will assess the application in accordance with the identified risk management principles or locations rules and may impose conditions.



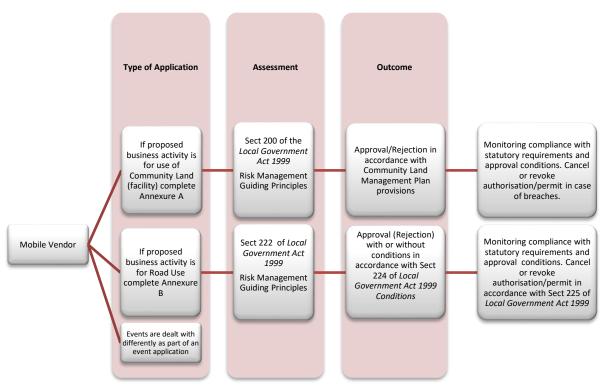
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The risk management principles for considering and approving an application include but not limited thereto:

- The proposed business activity should not create an unsafe environment or unsafe traffic conditions.
- Land use for the proposed business activity should be consistent with Council's Development Plan and zoning provisions.
- The proposed business activity should not cause unfair economic advantage/competition.
- The proposed business activity to compliment provisions of Council Community Land Management Plan.
- The proposed business activity should not create local nuisances or any detrimental environmental
- The proposed business activity should exercise duty of care and indemnifies Council.
- The proposed business activity to comply with applicable legislation.

The Chief Executive Officer or delegated officer to consider and approve or refuse applications. Council is not liable for injury, damage or loss resulting from anything done under such approval/authorisation and the permit holder to indemnify the Council, its employees and/or agents against all actions, costs, claims and demands arising out of any negligent act or omission or otherwise in relation to any activities under the permit. Applications deemed to be of a controversial nature may be referred to Council for consideration. Council reserves the right to cancel the authorisation or permit for breach of a condition/s or could cancel an authorisation or permit by notice in writing to the holder of an authorisation or permit.



\*Note: In the case of community land already leased out or private land, the mobile vendor should seek consent from the respective lessee or private landowner. In observing competitive neutrality and not to unfairly restrain trade, Council will not unnecessarily object to mobile vendors on private land within appropriate land use zones and subject to compliance with any applicable legislation. Mobile vending that forms part of an event is assessed and considered separately as part of Council's event application process. This does not abrogate the applicant, lessee, event planner/organiser or private landowner from their respective responsibilities in terms of any existing lease agreements, event application process or to comply with other relevant statutory requirements and to exercise duty of care.



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### 6. FEES

To cover administration cost which also foster business equity, Council may charge fees. Fees will be set annually and prescribed in Council's Fees and Charges Register.

### 7. REVIEW

This policy may be amended from time to time by council or if directed by the Small Business Commissioner or to satisfy a requirement of the Minister for Local Government or as required by legislative change or other change.

### 8. AVAILABILITY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website <a href="www.wudinna.sa.gov.au">www.wudinna.sa.gov.au</a>. Copies will also be provided to interested members of the community upon request and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.



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### **APPENDIX A**



### APPLICATION TO USE COMMUNITY LAND FOR BUSINESS PURPOSES

Version No:	1.1	
Issued:	29 September 2017	
Reviewed	October 2019	
Next Review:	September 2021	

### Permit to use Community Land for Business Purposes Section 200 of the Local Government Act 1999

I/We
(the "Applicant")
of address(Address)
hereby apply to
(the "Council")
for a Permit to use all/part of the Community Land at (exact location of proposed business activity)
for a business purpose pursuant to Section 200 of the Local Government Act 1999.
Proposed business purpose:
Proposed term of the Permit: From To
Weekdays: (please circle) Mon / Tues / Wed / Thurs / Fri / Sat / Sun
Hours of activity: From am / pm <u>To</u> am / pm

### ■ THE PERMIT IS NOT EFFECTIVE PENDING:

- 1. The Applicant agreeing to the General Conditions as contained herein.
- The Applicant agreeing to the Special Conditions that the Council may determine and attach to the Permit.
- 3. The Applicant paying the prescribed fee.
- A copy of this document approved and signed by the Council has been returned to the Applicant.
- The Applicant providing to the Council evidence of all insurances as required by the General Conditions and/or the Special Conditions.



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#### GENERAL CONDITIONS OF PERMIT

- For the term of the Permit, to comply with all applicable industry standards, health or safety standards, current standards of Standards Australia or any applicable Codes of Practice.
- To indemnify the Council, its employees and/or agents against all actions, costs, claims and demands for injury, loss or damage arising out of any negligent act or omission of the Applicant in relation to any activities under the Permit or arising out of breach of any condition attaching to the Permit.
- For the term of the Permit, to take out and keep current a public liability policy of insurance to an appropriate level of cover per claim in respect of any negligent act or omission of the Applicant in relation to any activities under the Permit.
- To not assign or otherwise transfer this Permit without first obtaining the consent of the Council in writing.
- The Council may cancel the Permit for breach of a condition, state guideline or any relevant legislation applicable.
- This Permit does not derogate from the Council's powers arising under the Local Government Act 1999, Food Act 2001 and Food Safety Standards Code, Development Act 1993, Planning Development and Infrastructure Act 2016 and Local Nuisance and Litter Control Act 2016 but not limited thereto.

In making this application, I/we agree to be bound to the conditions of the Permit and declare that the particulars provided by me/us with regard to the proposed business use are true and accurate.

Signature .....

COUNCIL AUTHORISATION				
Satisfies Community Land Management Plan Provisions	;	Yes	No	
Insurance		Yes	No	
Permit		Approved	Denied	
Special Conditions attached		Yes	No	
Fee Paid	Receip	t#		
Name of Council Authorised Officer				
Signed Date				

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### **APPENDIX B**

### APPLICATION TO USE PUBLIC ROAD FOR BUSINESS PURPOSES

Version No:	1.1
Issued:	29 September 2017
Reviewed	October 2019
Next Review:	September 2021

### Permit to use a Public Road for Mobile Vendor Business Purposes Section 222 of the Local Government Act 1999

I/We(the "Applicant")
of address (Address)
hereby apply to
for a Permit to use all/part of the public road at (exact location of proposed business)
for a business purpose pursuant to section 222 of the Local Government Act 1999.
Proposed business purpose:
Proposed term of the Permit: From To
Weekdays: (please circle) Mon / Tues / Wed / Thurs / Fri / Sat / Sun
Hours of activity: From am / pm To am / pm
Note 1: A public road includes the carriageway, footpaths and verges.
Note 2: Section 5 of the Act is that land may be used for a "business purpose" even if it is not intended to make a profit.

- intended to make a profit.

  Note 3: If the Applicant proposes to make an alteration to a public road, in addition to a Section 222.
- permit, the Applicant will also require an authorisation under Section 221 of the Act.

  Section 221(2) is that a person makes an alteration to a public road if the person:
  - alters the construction or arrangement of the road to permit or facilitate access from an adjacent property;
  - erects or installs a structure (including pipes, wires, cables, fixtures, fittings or other objects) in, on, across, under or over the road;
  - 3. changes or interferes with the construction, arrangement or materials of the road;
  - changes, interferes with or removes a structure (including pipes, wires, cables, fixtures, fittings or other objects) associated with the road; or
  - plants a tree or other vegetation on the road, interferes with vegetation on the road, or removes vegetation from the road.



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#### THE PERMIT IS NOT EFFECTIVE PENDING:

- The Applicant agreeing to the General Conditions as contained herein.
- The Applicant agreeing to any/all Special Conditions that the Council may determine and attach to the Permit.
- 3. The Applicant paying the prescribed fee.
- 4. A copy of this document signed for the Council has been returned to the Applicant.
- The Applicant providing to the Council evidence of all insurances as required by the General Conditions and/or the Special Conditions.
- If, in addition to the Permit, the Applicant requires an authorisation to alter a public road under section 221 of the Act, the Council issuing and the Applicant agreeing to the conditions of such authorisation.

#### GENERAL CONDITIONS OF PERMIT

- For the term of the Permit, to comply with all applicable industry standards, health or safety standards, current standards of Standards Australia or any applicable Codes of Practice.
- To indemnify the Council, its employees and/or agents against all actions, costs, claims and demands for injury, loss or damage arising out of any negligent act or omission of the Applicant in relation to any activities under the Permit or arising out of breach of any condition attaching to the Permit.
- For the term of the Permit, to take out and keep current a public liability policy of insurance to an appropriate level of cover per claim in respect of any negligent act or omission of the Applicant in relation to any activities under the Permit.
- To not assign or otherwise transfer this Permit without first obtaining the consent of the Council
  in writing.
- 5. Subject to section 225 of the Act, the Council may cancel the Permit for breach of a condition.
- This Permit does not derogate from the Council's powers arising under the Local Government Act 1999.

In making this application, I/we agree to be bound to the conditions of the Permit and declare that the particulars provided by me/us with regard to the proposed business use are true and accurate.

Signature.

COUNCIL AUTHORISATION			
Satisfies Community Land Management Plan Provisions	Υe	es	No
Insurance	Υe	es	No
Permit	A	proved	Denied
Special Conditions attached	Ye	<u>:</u> s	No
Fee Paid	Receipt #		
Name of Council Authorised Officer			
Signed Date			



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APPENDIX C – Zone Map





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### **Appendix D - Location Rules**

### 1. Introduction

A mobile food vending business requires a permit under Section 222 of the *Local Government Act 1999* to operate a business on a public road in the Wudinna District Council area.

A condition of a permit authorising a mobile food vending business to operate on a public road in the Council area is that the permit holder complies with location rules adopted by the Council under Section 225A of the Local Government Act.

The Council has adopted the location rules set out in this document.

### 2. Council determined mobile food vending business sites

The Council has determined that mobile food businesses may operate from the sites shown on the attached map (Appendix C – Mobile Vendor Policy). The following Location Rules were adopted for determining sites for mobile food vendors.

### 2.1. Operate a reasonable distance from a fixed food business

### Location rule

Allows for a reasonable distance between the mobile food vending business and fixed food businesses during the operating hours of the fixed food businesses.

### **Examples**

Where there is a large number of fixed food businesses in a small geographic area then the reasonable distance from these fixed food businesses may be less than in other circumstances on the basis that there is already active competition between multiple food businesses in the location.

Where a mobile food vending business wants to trade outside of the central operating hours of a fixed food business then the reasonable distance may be less (e.g., a mobile food vending business trading from late afternoon in the vicinity of a bakery).

### 2.2. Take into account the effect of the operation of the mobile food vending business

### Location rule

Takes into account the effect of the operation of the mobile food vending business on:

- (a) vehicles and pedestrian traffic, footpaths, driveways, access points to buildings and parking areas for people with disabilities;
- (b) the requirements relating to, and availability of, parking spaces; and
- (c) residents and businesses.

### **Examples**

A site should not be selected:

- If the mobile food vending business would take up all, or a significant amount of, the parking available to other businesses;
- Where footpaths are narrow so that the mobile food vending business and its customers may cause an obstruction to other persons using the footpaths;
- If the mobile food vending business would obscure a pedestrian or driver's view of a road in an unsafe manner.



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### 2.3. No undue interference with vehicles or road related infrastructure

#### Location rule

The mobile food vending business will not unduly interfere with:

- a) vehicles driven on roads;
- b) vehicles parking or standing on roads;
- c) a parking area for people with disabilities (within the meaning of rule 203(2) of the *Australian Road Rules*);
- d) public transport and cycling infrastructure (including bus zones, taxi zones and bike lanes);
- e) other road related infrastructure; or
- f) infrastructure designed to give access to roads, footpaths and buildings.

### Examples

A site should not be selected if the mobile food vending business would interfere with access by a disabled person to a parking area for persons with disabilities.

Lengths of road with high public transport usage would not be suitable if the mobile food vending business was located so as to impede vehicle operations or passenger access (eg a bus interchange located on a road).

A site which restricts or interferes with access to facilities for parking bicycles would also not be suitable.

### 2.4. Compliance with legislative requirements

### Location rule

Does not breach any relevant requirements under:

- a) the *Food Act 2001*;
- b) the South Australian Public Health Act 2011;
- c) the Environment Protection Act 1993;
- d) the Local Nuisance and Litter Control Act 2016;
- e) the Motor Vehicle Act 1959 and the Road Traffic Act 1961;
- f) legislation relating to electrical or gas installations or appliances; and
- g) relevant legislation relating to health, safety or the environment.
- h) Work Health and Safety Act 2012

### **Examples**

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 to health and safety of workers when selecting a site.

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 when selecting a site.

### 3. Disputes may be referred to the Small Business Commissioner

If an operator of a food business in the Council area is directly adversely affected by these location rules, then the operator may apply to the Small Business Commissioner for a review of the location rules.

### 4. Amendment of these location rules

The location rules may be amended from time to time by the Wudinna District Council. The location rules must be amended by the Council if directed by to so by the Small Business Commissioner or to satisfy a requirement of the Minister for Local Government.