

## 11.2 Adoption of Draft Council Policy 406 - Temporary Food Businesses and Itinerant Food Vendors

<b>Location</b>	Town-wide
<b>Reporting officer</b>	Leigh Parker
<b>Responsible officer</b>	Robert Cruickshank
<b>Voting requirement</b>	Simple majority
<b>Attachments</b>	<ol style="list-style-type: none"> <li>1. Attachment 1 - Draft Policy 406 'Temporary Food Businesses and Itinerant Food Vendors' [<b>11.2.1</b> - 4 pages]</li> <li>2. Attachment 2 - Modified Draft Council Policy HLTH6 Mobile Food Vendors (Vic park Vendor's) Policy [<b>11.2.2</b> - 19 pages]</li> <li>3. Attachment 3 - Ordinary Council Meeting Minutes of 9 October 2018 [<b>11.2.3</b> - 24 pages]</li> <li>4. Attachment 4 - Ordinary Council Meeting Minutes of 10 July 2018 [<b>11.2.4</b> - 15 pages]</li> </ol>

### Recommendation

That Council adopt draft Council Policy 406 'Temporary Food Businesses and Itinerant Food Vendors', as contained in Attachment 1.

### Purpose

To consider the outcomes of the workshop held with local businesses further to Council's deferral of the consideration of Draft Council Policy HLTH6 'Mobile Food Vendors (Vic Park Vendor's) Policy' at the Ordinary Council Meeting held on 9 October 2018, and to consider the recommendation of Council's Officers to adopt the further redrafted policy entitled Council Policy 406 'Temporary Food Businesses and Itinerant Food Vendors'.

### In brief

- At the Ordinary Council Meeting held on 9 October 2018, Council deferred its decision to adopt the modified version of Draft Council Policy HLTH6 'Mobile Food Vendors (Vic Park Vendor's) Policy' on a trial basis from 1 November 2018 to 31 March 2019.
- The deferral was to allow a workshop to be convened with local business owners to consult with them directly about the policy and report the outcomes of the workshop to Council before a decision is made.
- A workshop with local businesses was held on 10 June 2019, which has informed the position of Council Officers and resulted in a change of direction and substantial redrafting of the policy.
- On balance, the moderate amenity benefits that may be enjoyed by local residents supportive of mobile food vendors at public open spaces within the Town is not considered to offset the potentially more significant and deleterious impacts to local business confidence and customer trade in the current economic climate.

- It is recommended that Council no longer progress implementation of a trial of mobile food vending at several open spaces within the Town, and that the current practice of allowing only temporary, events-associated trading remain.
- A policy is still required to address the current deficiency that exists in terms of the Council not having an adopted position with regard to itinerant food vending and the trading of mobile food vendors in the Town.
- The draft policy has been revised to clarify that the Council will not permit the trading of itinerant food vendors on public land or thoroughfares under the care and management of the Town, and that mobile food vendors will only be granted approval to trade in association with authorised events.

## Background

1. Preliminary community consultation undertaken in January to February 2018 suggested a high level of support for mobile food vendors to trade at a number of public open spaces throughout the Town.
2. A draft policy to allow mobile food vendors to trade at several community nominated public open spaces was prepared over several months in consultation with Council's former Future Planning Committee, with Council consenting to publicly advertise the draft policy in July 2018.
3. The draft policy proposed to establish a new form of 'trader's permit' under the *Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000*, with approved permit holders being able to trade on the public open spaces identified under the draft policy. The draft policy included 12 potential locations for mobile food vending to occur.
4. Consultation occurred on the draft policy for 21 days from 13 August to 3 September 2018 with 76 submissions being received, comprising:
  - 22 supporting submissions (no concerns raised);
  - 14 supporting submissions (raising concerns);
  - 9 submissions raising concerns (neither supporting nor opposing); and
  - 31 objections.
5. The submissions received were summarised and responded to in the report presented to the Council on 9 October 2018 (refer Attachment 3).
6. Consideration of the submissions resulted in 6 (half) of the 12 public open spaces being removed from the proposed draft policy, as well as several other changes to address concerns regarding environmental waste, the number of mobile food vendors trading at any one time, and the extent of permissible trading hours (see Attachment 2 for the modified version of the policy responding to public submissions).
7. The Council considered the outcomes of the community consultation and the modified draft policy at its Ordinary Council meeting held on 9 October 2018, with Council Officers recommending that the modified draft policy be adopted on a trial basis from 1 November 2018 to 31 March 2019.
8. At this meeting the Council heard from a number of local businesses and other members of the public regarding the proposed policy trial and determined to defer its decision until such time as Council Officers had convened a workshop with local business owners to consult with them directly about the policy, and to report the outcomes to the Council to help inform their decision.

## Strategic alignment

Civic Leadership	
Strategic outcome	Intended public value outcome or impact
CL02 - A community that is authentically engaged and informed in a timely manner.	Community consultation and public advertising occurring in accordance with Council Policy
CL10 - Legislative responsibilities are resourced and managed appropriately, diligently and equitably.	The draft policy addresses an existing policy deficiency and provides certainty and clarity to Council Officers, the public, temporary food businesses and itinerant food vendors.

Economic	
Strategic outcome	Intended public value outcome or impact
EC01 - A desirable place for commerce and tourism that supports equity, diverse local employment and entrepreneurship.	The redrafted policy formalises the Town's approach to mobile food vending and applicable regulatory requirements, providing certainty and clarity to existing and prospective local businesses seeking to operate in the Town.
EC02 - A clean, safe and accessible place to visit.	Establishing and formalising appropriate policies and procedures to ensure compliance and public confidence in the regulation, safety and operation of food businesses in the Town.

## Engagement

Internal engagement	
Stakeholder	Comments
Environmental Health	Redrafted policy has been prepared in close collaboration with Environmental Health Officers, who will be the custodians of the policy if adopted by Council.
Governance	Redrafted policy has been referred to Governance for comment and feedback to ensure consistency with relevant Local Laws and current policy formatting and content requirements.
Community Development (Clubs and Bookings)	No concerns raised as redrafted policy will not result in any impacts to existing resources or practices.

External engagement	
Stakeholders	Comments
Stakeholders	Residents, land owners, local businesses, mobile food vendors, industry bodies/organisations.
Period of engagement	13 August to 3 September 2018

Level of engagement	2. Consult
Methods of engagement	Written submissions, community workshops.
Advertising	Mail, email, newspaper notices, Your Thoughts, social media, workshop with mobile food vendors.
Submission summary	76 submissions, comprising: 22 supporting submissions (no concerns raised); 14 supporting submissions (raising concerns); 9 submissions raising concerns (neither supporting nor opposing); and 31 objections.
Key findings	Refer to Ordinary Council Meeting Minutes of 9 October 2018 (Attachment 3).

### Other engagement - Workshop held with local businesses on 10 June 2019

Attendance:	Comments (note the comments listed below reflect individual comments made by attendees):
14 registrants representing 10 local businesses; 10 persons representing 7 local businesses in attendance. 1 of these businesses was a mobile food vendor.	Low attendance or inability of local businesses to attend this workshop should not be construed as a lack of objection, indifference or support of mobile food vending occurring as per the draft policy. It costs money for local businesses to attend with additional staffing costs or businesses having to close during the workshop. This is particularly the case for hospitality businesses where customer demand may be unpredictable or staff may be unexpectedly sick, etc. Several of the registered attendees could not attend due to unforeseen circumstances such as these.
	The direction of the changes, in terms of reducing the number of locations and food trucks at each location is supported/welcome, however all businesses (aside from the mobile food vendor) do not support the operation of food trucks in the Town as proposed under the draft policy.
	Local businesses don't understand why the Town would be considering supporting mobile food vendors when it has potential to adversely affect local businesses along Albany Highway. This seems counterproductive when the Place Planning Team is trying to encourage and support local businesses with their projects.
	Local businesses rely on trade from passing foot traffic and the introduction of food trucks (e.g. at the Causeway end of McCallum Park) will reduce/deviate passing foot traffic and therefore potential customers.
	Businesses are already struggling with several businesses closing recently. Several of

us have had to reduce our trading hours/close on some weeknights as we are losing more money by staying open than if we are shut. Some of us try to stay open anyway in a hope to support the strip and our businesses to avoid/slow further decline.

It is the weekends, Friday and Saturday nights that provide a large amount of weekly earning and enable local businesses to continue trading during the week. If food trucks are permitted to trade at these busier times it will undermine local businesses who rely on the income generated during these periods to stay afloat.

The current economic downturn and conditions within the hospitality industry are very tough and are likely to continue to be for some time. The Town should focus on policies/programs that support and attract business along the Albany Highway strip, not detract or take away from it.

If the trial does proceed it should not be fee-free, as in order to be a realistic trial of the viability of food trucks in the Town, appropriate fees should be set and applied, as the Town would effectively be subsidising their operating costs.

The initial success of food trucks (if trialed) may be the 'nail in the coffin' for already struggling bricks and mortar businesses. Once their initial success/popularity has waned the food trucks are able to move on elsewhere, with the damage and loss of further bricks and mortar businesses being left in their wake.

Food trucks should only be permitted to operate on an occasional events basis only, not ongoing/every day/every week. Local businesses could then be worked into the events so they can also benefit. For example, running a free shuttle bus from events held at McCallum Park up to Albany Highway businesses.

Up to 6 trucks is too many at a single location. If any trial is to proceed it should start small and then slowly increase over time – for example one truck at a single location the first month, then two trucks the following month, etc.

The experience of local bricks and mortar businesses in the Town is that customers, families etc. have a constrained budget/weekly spend (particularly in the current economic climate) and that the attraction of food trucks if successful would reduce this available spend leading to reduced sales/customers to local bricks and mortar businesses. This can occur regardless of the degree of proximity of local businesses to the food trucks, as it is this constrained disposable income that is diminished by the introduction of additional food businesses within the Town. This adverse impact extends to retail businesses/shops as well as food businesses as locals have reduced spending available at retail businesses as well.

As local residents without a business interest in the Town, we can appreciate the attraction that food trucks may have in terms of convenience, increase in vibrancy etc. at local parks. However, from a business perspective we cannot see how this policy makes sense and has any positive impacts. We can already point to the examples of Mt Lawley/Inglewood and South Perth where food trucks have had significant adverse impacts for local businesses, amongst other contributing factors, to the decline of these strips. We should not be making the same mistakes for Albany Highway and the Town of Victoria Park.

The food trucks will not be adding anything new that is currently missing from the Albany Highway strip in terms of the food offer, so it is only duplicating what is already available. Therefore any business they take is taking away from Albany Highway businesses and we do not see any potential for trickle down or complementary effects of food trucks trading in the Town.

Other general comments/feedback from some in attendance that the Town would introduce the same or similar proposed policy regardless of the comments of local businesses and so the workshop, while a welcome forum, was a futile exercise.

## Legal compliance

[\*Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000\*](#)

## Risk management consideration

<b>Risk and consequence</b>	<b>Consequence rating</b>	<b>Likelihood rating</b>	<b>Overall risk analysis</b>	<b>Mitigation and actions</b>
<b>Compliance and Reputational</b> – Continued ad hoc consideration of mobile food vending applications, and itinerant food vending requests if a Policy is not adopted.	Moderate	Likely	Medium	Adopt the redrafted policy as recommended by Council Officers.
<b>Reputational</b> – Significant opposition from local residents and existing food businesses if the non-events-associated trading of mobile food vehicles is	Moderate	Likely	Medium	Adopt the redrafted policy as recommended by Council Officers.

permitted to occur.				
<b>Reputational</b> – Loss of opportunities to attract and realise the potential benefits of mobile food vending at several of the Town’s public open spaces on an ongoing basis (in addition to event-based trading which already occurs in the Town).	Minor	Likely	Low	The moderate amenity and activation benefits that may arise from additional non-events based mobile food vendor trading are not considered to offset the potentially more adverse impacts to local bricks and mortar businesses or impacts on local business confidence arising from real or perceived increased competition and reduced customer attraction to the Town’s established commercial strips.

## Financial implications

<b>Current budget impact</b>	Sufficient funds exist within the annual budget to address this recommendation.
<b>Future budget impact</b>	Not applicable.

## Analysis

9. The workshop held on 10 June 2019 has provided Council Officers with valuable additional insight from the local business community, further to Council’s decision to defer its consideration of a mobile food vending trial as recommended by Council Officers in October 2018.
10. The ability for local businesses to attend the workshop held by the Town has proven difficult as demonstrated by the low numbers in attendance and the wide discrepancy in available attendance times provided by businesses that registered their interest. This resulted in Council Officers extending the registration deadline on three occasions in an effort to recruit additional attendees. Notwithstanding, Council Officers believe the feedback received at the workshop was valuable and this has helped to inform the direction of the further redrafting of the policy.
11. Council Officers made significant changes to the originally advertised draft policy in an attempt to address concerns from both local residents and businesses received during the community consultation carried out in August to September 2018. Most significantly, these changes saw the number of public open space locations proposed for mobile food vending halved from 12 to 6, with the remaining 6 locations being major public open spaces on the periphery of the Town. It is acknowledged that in making these changes to address the objections and concerns raised (predominantly from residents of smaller, centrally located parks as well as food businesses along Albany Highway and Lathlain Place), that one of the draft policy’s main objectives to increase the activation, use and enjoyment of underutilised public open spaces in the Town was partly

compromised. This is due to the fact that the remaining trading locations presented to Council in the draft modified policy in October 2018 (namely McCallum Park, G O Edwards Reserve, Higgins Park and Carlisle Reserve) are some of the most highly utilised and active reserves in the Town, both in terms of sports/leisure activities and community events.

12. The workshop held with local businesses has underscored the significant financial strain that a number of local businesses within the Town find themselves under and the low confidence and outlook that a number of local businesses have within the current economic climate. On balance, the moderate amenity benefits that may be enjoyed by local residents supportive of mobile food vendors at public open spaces within the Town is not considered to offset the potentially more significant and deleterious impacts to local business confidence and customer trade in the current economic climate. Local businesses also refer to the decline of bricks and mortar businesses in established commercial strips in other metropolitan local government areas, and contend that one of a number of the factors that has contributed to this, is mobile food vendors.
13. Council Officers would continue to recommend a trial of mobile food vending to occur in the upcoming 2019/2020 Summer trading period if this lack of business confidence in the current economic climate were not so evident. Additionally, two of the remaining public open spaces within the October 2018 version of the draft policy (Taylor St Reserve/McCallum Park and G O Edwards Park) are either undergoing major upgrade works or are scheduled for such works in the near future. It is therefore recommended that any non-events based mobile food vending not occur at these sites until after these works have been completed so that their appropriateness for such trading to occur (having regard to their increased enjoyment/use by the public as well as their altered designs/available infrastructure) can be assessed.
14. In view of the above, it is recommended that Council no longer progress implementation of a trial of mobile food vending at several public open spaces within the Town, and that the current practice of only allowing trading associated with authorised events continue to remain.
15. Council Officers have redrafted the policy accordingly, which is still required as the Town remains without an adopted policy with regard to itinerant food vending or the trading of mobile food vendors in the Town. The redrafted policy clarifies that the Town will not permit the trading of itinerant food vendors on public land or thoroughfares under the care and management of the Town, and that mobile food vendors will only be granted approval to trade in association with authorised events.
16. While trading in a public place requires a Temporary Food Business permit (whether or not the trading is occurring on private land), it does not circumvent or exempt the trade from applicable planning legislation, particularly where the trade is not occurring on a temporary basis (for example, a coffee van trading daily from a private office car park). In these circumstances the trade must be carried out in accordance with the Town Planning Scheme No. 1, and may or may not require development approval from the Town, similar to a café or restaurant. Accordingly, the redrafted policy only restricts the length/duration of trading of temporary food businesses on Town controlled public land (i.e. temporary, events-based trade) as it is the relevant planning requirements applicable to private property that determine the permissibility for non-temporary/ongoing trading to occur on private property. The carrying out of temporary uses (including temporary food business trading in association with an event such as a school fete or a private wedding function) is exempt from the requirement for development approval.
17. Re-advertising of the redrafted policy is not considered necessary in view of the following:  
The already extensive community engagement undertaken during the lifetime of this project has ascertained the views of the community and relevant stakeholders with respect to the trading of mobile food vendors on the Town's public open spaces;



The revised policy reverts to and formalises the Town's existing procedures and practices with respect to the approval of temporary food businesses in the Town, including the restricted trading of food vehicles and food stalls to events only trading where that trading is occurring on Town owned or controlled land, such as the Town's public open spaces;

The provisions relating to non-permissibility of itinerant food vending remain unaltered and consistent with those contained in the advertised policy and no concerns or objections were raised with respect to this direction during previous consultation;

Advertising of the redrafted policy is considered unlikely to generate any new or significantly different views with respect to the trading of mobile food vendors on the Town's public open spaces that have not already been received or considered; and

All persons who made submissions, registered for or attended workshops during the consultation stages of the project have been informed of the details of the Agenda Briefing Forum and Ordinary Council Meeting at which this matter is being considered, and have been provided with directions on how to access the officer report and redrafted policy.

18. The redrafted Policy has been reviewed by Council's Environmental Health and Governance Officers and is recommended for adoption by Council.

## Relevant documents

[Policy 001 Policy management and development](#)

[Policy 103 Public participation](#)

## Further consideration

Resulting from questions asked at the Agenda Briefing Forum held on 6 August 2019, the following additional information has been provided for clarity.

19. The intent of the draft Policy was to principally establish a position on the use of Council's parks and reserves by mobile food trucks. The proposed Policy will allow mobile food vendors to trade on private property subject to obtaining a Temporary Food Business Permit, and additionally a development approval if occurring on a regular, ongoing basis. It is considered that allowing food trucks to operate on private property in association with events will have a minimal impact, as this is effectively maintaining the status quo.
20. Discussions occurred with the Cities of Fremantle and Vincent in the development of the original draft Policy, in particular seeking feedback on what had worked, not worked and the level of uptake. No contact has been made with other local governments in relation to the redrafting of the Policy.
21. A total of 76 submissions were received when the previous draft Policy was advertised for public comments. 12 of these submissions were from business owners, and around 60 submissions were from residents.
22. It is not expected that any mobile food vendors will be required to cease operating if the draft Policy is adopted. Existing mobile food vendors are either operating at events or at a location with a valid permit.

## AMENDMENT:

**Moved:** Cr Ronhhda Potter  
That Council

**Seconded:** Cr Jennifer Ammons Noble

1. Adopts draft Council Policy 406 'Temporary Food Businesses and Itinerant Food Vendors', as contained in Attachment 1.
2. Reviews the policy after 18 months from its adoption to measure its success, and consider any changes that could be made to address the needs of all stakeholders.

**CARRIED (8 - 0)**

**For:** Cr Bronwyn Ife, Cr Ronnhda Potter, Mayor Trevor Vaughan, Cr Karen Vernon, Cr Claire Anderson, Cr Jennifer Ammons Noble, Cr Vicki Potter, Cr Brian Oliver

**Against:** nil

**Reason:**

I believe the intentions of this policy are to stop itinerant food trucks impinging on the rights of our local bricks and mortar businesses and I am pleased to see this, however, there has been much community feedback resulting from the original draft and subsequent decision of council to defer this item and go back to the drawing board.

Preliminary community consultation undertaken in January to February 2018 suggested a high level of support for mobile food vendors to trade at a number of public open spaces throughout the Town. Council heard from a number of local businesses regarding the proposed policy trial and had convened a workshop with local business owners to consult with them directly about the policy, and to report the outcomes to the Council to help inform their decision.

With 10 persons representing 7 local businesses in attendance, I was somewhat surprised by the low numbers, considering the initial response to this policy, only 1 mobile food vendor business in attendance. I still believe we haven't quite struck the right balance here and I would really like to see how in the future, town staff, local businesses owners, residents and food truck owners/operators work together to achieve an outcome that ideally meets all of their needs.

Administration Regulation 11 requires the minutes to include written reasons for each decision that is significantly different from the written recommendation. Members must therefore provide a written reason in the space provided.

**COUNCIL RESOLUTION (151/2019):**

**Moved:** Cr Karen Vernon

**Seconded:** Cr Claire Anderson

That Council

1. Adopt draft Council Policy 406 'Temporary Food Businesses and Itinerant Food Vendors', as contained in Attachment 1.
2. Reviews the policy after 18 months from its adoption to measure its success, and consider any changes that could be made to address the needs of all stakeholders.

**CARRIED (8 - 0)**

**For:** Cr Karen Vernon, Cr Ronnhda Potter, Cr Bronwyn Ife, Cr Vicki Potter, Cr Claire Anderson, Cr Jennifer Ammons Noble, Mayor Trevor Vaughan, Cr Brian Oliver

**Against:** nil

**11.3 Etwell Street Revitalisation Concept Design Report**

<b>Location</b>	<b>East Victoria Park</b>
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