

POLICY NAME: Mobile Vending on Public Land
POLICY REF: M03
MEETING ADOPTED: 23 November 2017
Resolution No. 2311177
POLICY HISTORY: Policy commencement 1 February 2018



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OBJECTIVE

The objectives of this policy are to:

- Identify the types of Mobile Vending activities that are permitted on public reserves and public roads in Ballina Shire.
- Establish a framework and associated requirements for the operation of Mobile Vending businesses in Ballina Shire.
- Establish a process for Council's receipt of applications for Mobile Vending and determination of applications.

POLICY

Section A – Permitted Vending

This policy permits Mobile Food Vending on public land and on public roads (as nominated in Section B) through a mobile outlet such as a food truck, van or cart or other similar vehicle where the outlet meets the definition set out under Subdivision 27A Mobile food and drink outlets under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Subdivision 27A as at March 2017 is reproduced in Attachment 1.

No other forms of Mobile Vending are permitted on public land or public roads unless otherwise authorised by development consent under the terms of the *Environmental Planning and Assessment Act 1979*.

In the case of proposals for Mobile Vending on public land or roads that require development consent, Council's authority to lodge a development application may only be granted by agreement with the General Manager or as directed by the elected Council or Reserve Trust (as applicable). Any such proposals must be able to demonstrate a clear significant public and economic benefit to the shire. Typical small business activities such as the sale of flowers, clothes, handicrafts and other goods are unlikely to demonstrate the required level of public and economic benefit to the shire.

The effect of the above is that Mobile Food Vending that meets the set definition may be authorised on public land and public roads without the need for development consent.

This policy does not apply to Mobile Vending that is otherwise carried out as part of another activity (such as markets or festivals) that is authorised by Council.

Where there is inconsistency between this policy and Council's Commercial Activities on Public Land Policy, this policy prevails.

Section B – Locations Where Mobile Food Vending is Permitted

Mobile Food Vending is permitted under this policy in the following circumstances:

1. Location Specific (Reserve Areas)

Mobile Food Vending is permitted from within the Council managed reserves specified in Table 1 for a period of up to six hours per day (i.e. enabling temporary but fixed Mobile Food Vending Vehicles to trade).

Table 1: Mobile Food Vending Locations Within Council Reserves

Location	Site Description
Missingham Park	Missingham Park adjacent to the spit as shown in the plan contained in Attachment 3 (Three sites).
Pop Denison Park	Pop Denison Park adjacent to playground equipment as shown in the plan contained in Attachment 3 (Two sites).
Sharpes Beach	Sharpes Beach in the vicinity of the car park as shown in the plan contained in Attachment 3 (Two sites).

Each reserve identified in Table 1 has nominated sites for Mobile Food Vending to be located. These sites are available to all licensed vendors, with use of a site on a given day available to the first vendor to set up their operation. That is, there is a limited number of nominated sites within reserve trading areas but there is no limitation on the number of vendors that may be permitted to operate from the nominated sites (noting that sites may only be occupied by one vendor at a time).

Mobile Food Vending within Council reserves may be from a registered vehicle that is self-contained or capable of being towed lawfully on the road (e.g. a trailer or caravan), provided that the Mobile Food Vending Vehicle can be wholly located within an area of 5m x 5m.

Where nominated reserve sites are otherwise lawfully occupied by members of the public, a Mobile Food Vending Permit does not require that the area is vacated to enable Mobile Food Vending to be undertaken.

A Mobile Vending Permit holder is allowed to trade within 20m of a nominated site on a reserve. This provides flexibility for traders in the event that an on reserve site is occupied (e.g. by a parked car).

Where a nominated site becomes unavailable due to Council operational requirements (e.g. construction, reserve maintenance and repairs) for a period of more than four weeks, Council may identify an alternate site within the same reserve to enable authorised trading to continue.

2. Roads and Car Parking Areas

Mobile Food Vending is permitted from Council owned roads and formed roads and car parking areas within Council managed reserves where:

- The vending is undertaken from a rigid axle vehicle that is inclusive of the infrastructure required to carry out the vending (i.e. not trailers, caravans or the like), and

- The vending involves single step food preparation only and is predominately comprised of coffee and hot beverage sales and/or ice cream sales and the like, and
- The carrying out of the vending is compliant with NSW road rules including safe operation and parking of vehicles, and
- The Mobile Food Vending Vehicle is stationary on the land (inclusive of the immediate surrounds of the location at which the vehicle is parked) for a period of less than 45 minutes.

Section C – Approval Documentation Required and Responsible Council Sections

All mobile food vendors must initially make an application for approval to operate. Where approval is granted, approvals must be renewed upon expiry and an annual licence/ approval fee paid (where vendors wish to continue trading).

Where appropriate Council will authorise Mobile Food Vending to occur on public land or roads via a Mobile Food Vending Permit. A permit provides for approval under the relevant legislation as indicated in Table 2.

Table 2: Permit Approval Types

Land Type	Approval Type (Permit)	Maximum Permit Term	Responsible Section(s)
Crown Land	S108 and S109 Temporary Licence – Crown Lands Act	1 Year	Open Space and Reserves, Community Property.
Council Owned Land	S68 Local Government Act Approval	1 Year	Open Space and Reserves, Community Property.
Road	S138 Roads Act Approval	1 Year	Infrastructure Planning and Community Property

In addition to the above, all mobile food vendors must obtain relevant approvals relating to the handling and sale of food.

Permits are granted on a per vehicle basis and are not transferable. No refund of fees payable will be given where a business ceases to trade or a vending operation is sold. Where a business is sold, the new proprietor is required to make a new application for a Mobile Food Vending Permit and obtain the necessary permit prior to trading.

Section D – Permit Application Process and Fees

New proposals for Mobile Food Vending must complete the Application for Mobile Food Vending in Ballina Shire application form. Applications must be accompanied by the required application fee as set out in Council’s adopted fees and charges.

To continue trading beyond a granted licence/ approval period, existing approved mobile food vendors must complete the Mobile Food Vending Renewal Form. Renewal applications must be accompanied by the applicable annual licence/ approval fee set out in Council’s adopted fees and charges. Renewal applications must be made four weeks prior to the expiry of the current permit (alternatively, a new application and payment of the applicable fee is required).

Applications that are consistent with the terms of this policy and adequately address the matters set out in Section E may be approved by staff within the responsible sections noted above (consistent with delegations). Applications that do not meet the requirements of this policy will be declined or in certain cases, may be reported to the elected Council for direction.

Council will not grant donations or reductions in fees and charges to charitable organisations (or others) wishing to hold a Mobile Food Vending Permit.

This policy does not establish a limitation on the number of Mobile Food Vending approvals that may be issued.

Section E – Approval Requirements and Considerations

A Mobile Food Vending Permit must not be granted until food approvals are in place or a suitable condition is applied to require relevant food approvals to be in place before trading commences.

Mobile Food Vending operations must meet the following requirements:

- Operate in accordance with the NSW Food Authority *Guidelines for Mobile Food Vending Vehicles*, and
- Have the consent of the owner of the land on which the vending is to be carried out (in the case of this policy, this is Ballina Shire Council), and
Explanatory Note: Where a permit is granted for Mobile Food Vending under this policy, this is taken to constitute the consent of Council (but this only applies in circumstances where a permit is able to be granted under this policy)
- Not restrict any vehicular or pedestrian access to or from the land or entry to any building on the land, and
- Not obstruct the operation of, or access to, any utility services on the land or on adjacent land, and
- Not be located under the canopy of, or result in damage to, any tree growing on the land or on adjacent land, and
- Not result in any damage to public property on the land or on adjacent land, and
- If carried out on land within or immediately adjacent to a residential zone - only be carried out between 7.00 am and 7.00 pm on any day, and
- If located on a public place - have any approval required under s68 of the *Local Government Act 1993*, s34A of the *Crown Lands Act 1989*, or s138 of the *Roads Act 1993*, and
- Operate in a safe manner and in accordance with applicable road rules, and
- Operate in accordance with the Mobile Food Vending Guidelines contained in Attachment 2.

These matters may be addressed by conditions attached to a Mobile Food Vending Permit.

Section F – Breaches of Policy and Enforcement

Where the terms of this policy and associated permits for mobile food vendors are breached, Council may take enforcement action under the terms of the relevant legislation.

Council Rangers and other Authorised Officers may take enforcement action for non-compliance.

BACKGROUND

This policy has been prepared to provide a decision making framework to address proposals for Mobile Vending activities on public land and public roads.

The policy identifies the types of Mobile Vending that are permitted in Ballina Shire along with nominated locations for such uses and key considerations and requirements. The policy also addresses application, approval and fee matters.

The policy is important in determining what types of Mobile Vending may be approved on public land and under what circumstances such an approval may be granted.

The policy applies to Council owned land, Crown Reserves where Council is Reserve Trust Manager and public roads administered by Council as a roads authority.

This policy constitutes a local approvals policy under the terms of the *Local Government Act 1993*.

DEFINITIONS

Mobile Food Vending means the sale of food, drinks and associated products from a registered vehicle.

Mobile Food Vending Permit means a written authorisation issued by Council for the operation of a Mobile Food Vending outlet on public land or public roads under the terms of the applicable legislation.

Mobile Food Vending Vehicle means a vehicle used for the sale of food, drinks and associated products from a registered vehicle that is either self-contained or that can be towed lawfully on the road (including a registered trailer, push cart or caravan)

Mobile Vending means the sale of goods or services from a vehicle or associated trailer or any other form of temporary trading from or associated with a vehicle.

SCOPE OF POLICY

This policy applies to:

- Council employees
- Councillors
- Community members

RELATED DOCUMENTATION

Related documents, policies and legislation:

- Ballina Coastal Reserve Plan of Management 2011
- Ballina Shire Council Commercial Activities on Public Land Policy 2014
- Crown Lands Act 1989
- Environmental Planning and Assessment Act 1979
- Food Act 2003
- NSW Food Authority Guidelines for Mobile Food Vending Vehicles 2013
- Local Government Act 1993
- Local Government (General) Regulation 2005

REVIEW

The Mobile Vending on Public Land Policy is to be reviewed within one year of the election of each new Council.

ATTACHMENT 1 - EXEMPT DEVELOPMENT CRITERIA – MOBILE FOOD AND DRINK PREMISES

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Current version for 5 August 2016 to date (accessed 9 March 2017 at 11:30)

[Part 2](#) > [Division 1](#) > [Subdivision 27A](#)

Subdivision 27A Mobile food and drink outlets

2.54A Specified development

The carrying out of the retail sale of food, drinks and related products on land from a mobile outlet such as a food truck, van, cart or other similar vehicle is development specified for this code.

2.54B Development standards

The standards specified for that development are that the development must:

- (a) have the consent of the owner of the land on which the development is carried out or, if a council or public authority has the control and management of the land, the consent, in writing, of the council or public authority, and
- (b) not restrict any vehicular or pedestrian access to or from the land or entry to any building on the land, and
- (c) not obstruct the operation of, or access to, any utility services on the land or on adjacent land, and
- (d) not be located within the canopy of, or result in damage to, any tree growing on the land or on adjacent land, and
- (e) not result in any damage to public property on the land or on adjacent land, and
- (f) if carried out on land within or immediately adjacent to a residential zone—only be carried out between 7.00 am and 7.00 pm on any day, and
- (g) if located on a public place—have any approval required under section 68 of the *Local Government Act 1993*, and
- (h) if located on private land—be limited to 1 development on that land and not contravene any conditions of a development consent for any other use carried out on the land.

Note. A registrable vehicle within the meaning of the *Road Transport (Vehicle Registration) Regulation 2007*, or a cart, bicycle cart or the like must operate in accordance with the *Guidelines for mobile food vending vehicles* (NSW/FA/F1055/1302) published by the NSW Food Authority in February 2013, and any requirements of the *Food Act 2003*.

ATTACHMENT 2 - MOBILE FOOD VENDING GUIDELINES

1. Parking and Site Occupation

- 1.1 Mobile Food Vending Vehicles must operate in full compliance with existing road rules and parking restrictions when operating on Council-owned roads, including no parking on footpaths or across driveways.
- 1.2 Where a designated trading area within the nominated trading locations on public land is occupied by the general public (e.g. a parked car) a Mobile Food Vending Vehicle is allowed to trade within 20m of that nominated trading location.
- 1.3 Except as provided for under 1.2, where a designated trading area within the nominated trading locations on public land is occupied by the general public or a reserve user group, mobile food vendors may not trade from an alternate site at that location whilst ever the designated areas are occupied.
- 1.4 Where a designated trading area within the nominated trading locations is unavailable due to construction, maintenance or other like activities, Council may make an alternative site available on request.
- 1.5 Nominated sites for trading within public reserves must only be occupied by one vendor at a time.
- 1.6 Once a Mobile Food Vending Vehicle has vacated a site within the road and car parking network, the vendor must wait at least two hours before returning to that site or any area within 500m of that site.

2. Deliveries

- 2.1 Mobile Food Vending Vehicles must arrive fully equipped at all trading locations and are not permitted to receive any deliveries.

3. Serving of Food

- 3.1 Mobile Food Vending Vehicles must not sell with their serving window opening onto any part of a roadway to ensure the safety of pedestrians.
- 3.2 Mobile Food Vending Vehicles must not vend with their serving window opening onto a cycleway, to ensure the safety of pedestrians and to minimise pedestrian traffic across the cycleway.

4. Liquor Licencing

- 4.1 No Mobile Food Vending Vehicle is to sell or provide alcohol to the public.

5. Customer Seating

- 5.1 The placement of tables, chairs or other seating apparatus is not permitted at any time.
- 5.2 The erection of awnings, marquees, pergolas or the like is not permitted at any time.

6. Council Authorised Events and Occupation of Public Land

- 6.1 Mobile Food Vendors must not trade unless separately authorised to do so where an area is occupied or otherwise is being used for or in association with a Council authorised event or market.
- 6.2 Mobile Food Vendors must not trade unless separately authorised to do so where an area is occupied or otherwise is being used for or in association with another Council approval for the use of public land.

7. Public Access

- 7.1 Mobile food vendors must not unduly impede public access and must wait for nominated reserve sites to be vacated where they are otherwise lawfully occupied by members of the public.

8. Signage and Advertising (Including Corporate Advertising, Third Party Advertising and Promotional Hire)

- 8.1 A Mobile Food Vending Permit under this Policy does not provide approval for the erection or display of any sign or sign structure not directly attached to the Mobile Food Vending Vehicles.
- 8.2 Mobile Food Vending Vehicles are not permitted to trade if the vehicle is re-branded or re-appropriated for a temporary promotion, third party advertising purposes or corporate sponsorship.

9. Hours of Operation

- 9.1 Operating a Mobile Food Vending Vehicle is restricted to between the hours of 7am and 7pm.

10. Proximity to Existing Premises

- 10.1 No Mobile Food Vending Vehicle is to trade within 200m of an existing trading takeaway food or drink premises open for business that is serving the same or similar food types. This minimum distance requirement is measured in a straight line from the closest point of the Mobile Food Vending Vehicle location to the main entrance of the takeaway food and drink premises.
- 10.2 For the purposes of the Mobile Vending on Public Land Policy, existing take away food and drink premises includes only the types of take away food and drink premises that are used predominantly for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.
- 10.3 The 200m trading exclusion provisions in 10.1 and 10.2 do not apply in relation to other mobile food vendors (operating under a mobile food vending permit) trading at nominated reserve locations.

11. Proximity to Residential Buildings

- 11.1 Mobile Food Vending Vehicles cannot trade directly in front of any residential building (house or apartment) or buildings that contain residential premises (mixed use sites) on the same side of the road as the building frontage.

12. Food Premises and Equipment

- 12.1 Without limiting the requirements of the Food Safety Standard 3.2.2, 3.2.3, and AS4674 and any conditions of approval, the general requirements for the design, fit out, and operation of a Mobile Food Vending Vehicle must have a layout and construction that:
- Is appropriate for the types of food produced and activities conducted, and
 - Provides adequate space for all activities and for all equipment to be used or stored, and
 - Allows easy cleaning or sanitising procedures of all structures and equipment, and
 - Prevents entry of pests, dust, fumes, smoke and other contaminants, and
 - Excludes favourable sites for pests to harbour (live and breed), and
 - Provides for hand washing facilities, washing up area, food preparation areas, cooking facilities, adequate food storage and refrigeration facilities and waste disposal areas commensurate with the type of food vending to be undertaken.

13. Obligations on People Selling Food

- 13.1 All food businesses are required to sell safe and suitable food in accordance with the provisions of the NSW Food Act 2003.
- 13.2 Failure to comply with the requirements of the Act may result in prosecution, penalty infringement notices, product being seized, improvement notices or warning letters being issued, or prohibition orders (e.g. prohibiting the sale of food or the use of certain equipment) being served.

14. Vehicle Inspections

- 14.1 All Mobile Food Vending Vehicle operators must make their vehicle available for inspection for food safety requirements prior to issue of an approval, and/or from time to time as requested by Council.
- 14.2 Random inspections of Mobile Food Vending Vehicles may be conducted by Council officers.

15. Maintenance of the Vehicle

- 15.1 The vehicle must be kept clean and in a good state of repair and working order, ensuring road worthiness and that noise, fumes, smoke, foul odours and other contaminants are not generated.

16. Waste Management

- 16.1 Suitable garbage receptacles with close fitting lids are to be provided in the vehicle.
- 16.2 When directed, a suitable receptacle shall be provided outside the vehicle for depositing of take away food containers and other litter.

- 16.3 Garbage generated within the vehicle is not to be disposed of at public garbage bins.
- 16.4 Mobile Food Vending Vehicle operators are responsible for the waste materials generated during the trading period. Waste materials such as food packaging should be collected in bins or suitable receptacles, bagged or contained, stored within the vehicle and disposed at the cost of the operator.
- 16.5 Any waste produced by the Mobile Food Vending Vehicles must be removed from the site by the Mobile Food Vending Vehicle operators at the end of the trading period.
- 16.6 The trading area must be left in a clean and tidy condition at the end of each trading interval.
- 16.7 Liquid waste must not be discharged to the ground or in any stormwater drain.

17. Water Supply

- 17.1 The vehicle must be provided with an adequate supply of potable water stored in food grade water storage containers and suitably protected against contamination for hand washing, cleaning equipment and for use of food preparation. There must also be an adequate supply of hot water for these purposes.
- 17.2 The vehicle must be equipped with a waste water tank of sufficient capacity to contain all stored potable water with extra capacity for the containment of other discarded liquid waste, with an outlet of sufficient diameter to facilitate easy flushing and cleaning.
- 17.3 Disposal of all liquid wastes generated within the food van must be through the sewer (and grease trap where necessary) or as approved by Council.
- 17.4 All hot water for washing purposes should be supplied from a suitable hot water system and should be piped so it can be mixed with cold water. Hot water must be available at all times during the preparation and sale of food.

18. Control of Pollution

- 18.1 Operators must also comply with the *Protection of the Environment Operations Act 1997*

19. Copies of Approvals

- 19.1 A copy of the Mobile Food Vending Permit and Commercial Food Licence applicable to the Mobile Food Vending Vehicle is to be kept in the vehicle at all times and made available to Council officers on request.

20. Insurance

- 20.1 The Mobile Food Vendor the subject of the Mobile Food Vending Permit must maintain an insurance policy for Public Liability for an amount which may be payable arising out of any one single accident or event of not less than \$20 million or such other sum as is reasonable as determined by Council.

20.2 The Mobile Food Vendor must provide to Council a copy of the certificate of currency for the Public Liability insurance held on request.

21. Work Health and Safety

21.1 Mobile Food vendors must operate in a manner that is compliant with applicable work health and safety laws.

22. Management Plan

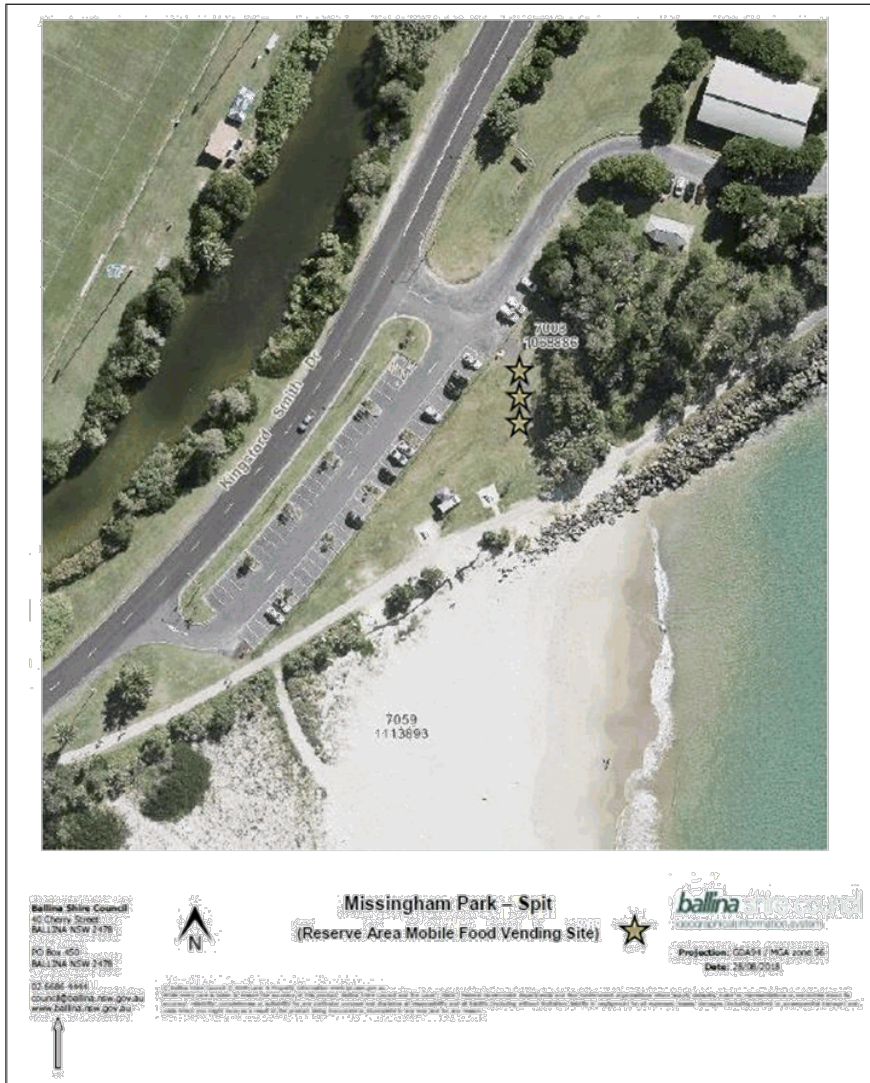
22.1 Where Mobile Food Vending is to be undertaken from one of the nominated sites within a Council managed reserve, the Mobile Food Vendor must have in place a site management plan addressing the requirements of Council's Mobile Vending on Public Land Policy and its associated guidelines as a minimum.

23. Application Information

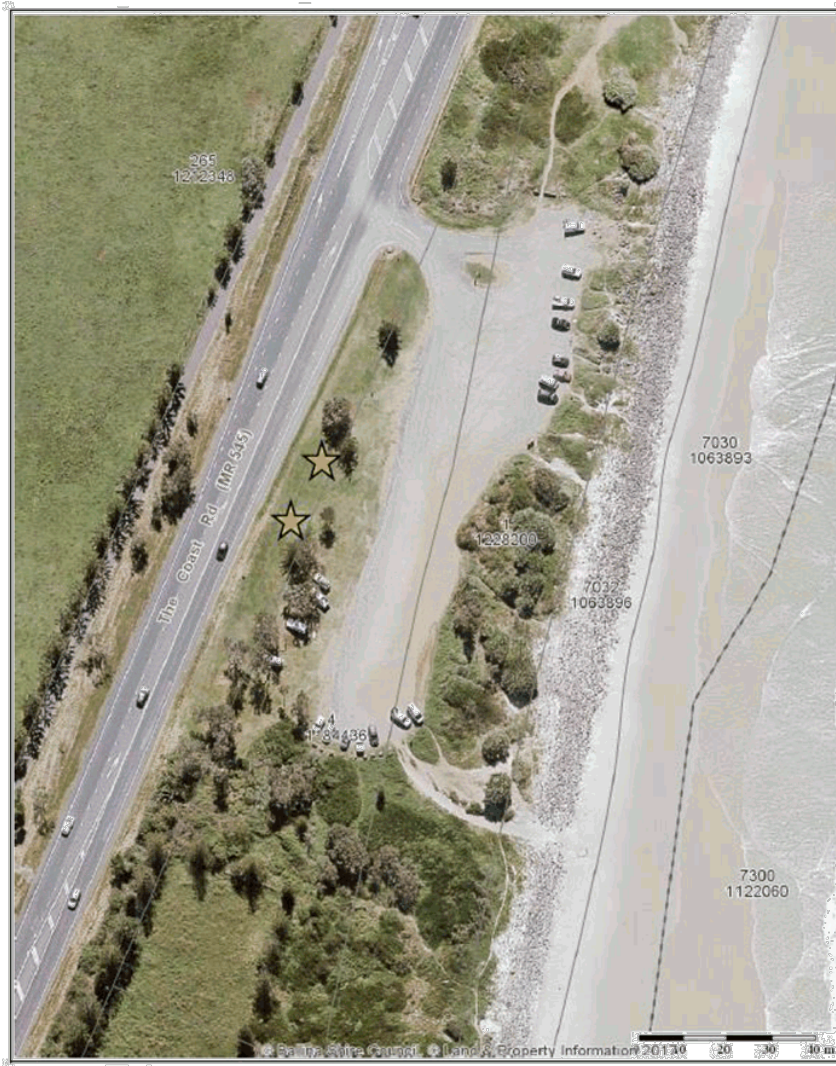
23.1 Applications for a Mobile Food Vending Permit must be accompanied by the following information in relation to the vehicle involved in the vending:

- Photograph of the vehicle, and
- Dimensions of the vehicle, and
- Vehicle number plate.

ATTACHMENT 3 - MAPS (LOCATION SPECIFIC RESERVE AREAS)



4.2 Policy (Review) - Mobile Vending on Public Land.DOC



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Sharpes Beach
(Road Reserve Area Mobile Food Vending Location)



ballina *Regional Council*
Regional Council of Ballina Shire
Projection: GDA94 / MGA zone 56
Date: 26/01/2018

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Pop Denison Park
(Reserve Area Mobile Food Vending Site)



ballina shire council
Geographical Information System
Projection: GDA94 / MGA zone 56
Date: 12/04/2017