

ITEM 4. PREPARATION OF A PLANNING PROPOSAL TO ALLOW MOBILE FOOD VENDING VEHICLES - FOOD TRUCKS - TO BE EXEMPT DEVELOPMENT**FILE NO: S102371****SUMMARY**

The City is developing a Night Time City Policy, informed by extensive research and community feedback. Common themes from the consultation process included concerns about safety, a lack of night time diversity and suggestions for late night dining options, such as the food trucks found in New York City, Los Angeles, Bangkok and London. One of the key aims of OPEN Sydney is to ensure that Sydney's night time economy achieves sustainable economic growth and adding the option of multiple night-time experiences in Sydney.

Open Sydney identified the need to expand the diversity of take away food offerings currently available in Central Sydney and the wider Local Government Area. Mobile food vending vehicles or food trucks will cater for people looking for inexpensive and quality take away dining.

The Sydney Food Trucks Trial emerged from the OPEN Sydney consultation in mid-2011 where many people said they wanted more and better quality late night food options, including Food Trucks. The Trial was one of the initiatives included in the OPEN Sydney Discussion Paper which was on exhibition from October to December 2011.

The Sydney Food Trucks 12 month trial will permit 10 vendors to serve hot food, operating under appropriate Plans of Management and health compliance requirements. The purpose of the closely monitored Trial is to manage and respond to impacts as the trial proceeds. Two out of 10 operators selected for the Trial have commenced trading. The operators are able to trade off-street on nine sites where development consent has been granted.

The Trial also envisaged allowing on-street vending locations. The on-street trading of mobile food vending vehicles or food trucks triggers the requirement for either development consent under Part 4 or an activity assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*.

In Central Sydney, development consent is required for the on-street operation of food trucks as all of the streets are zoned under the provisions of the *Sydney Local Environmental Plan 2005*. In areas outside of Central Sydney, the streets are unzoned and the on-street operation of food trucks requires Council to undertake an activity assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*.

The recently endorsed and soon to be gazetted *draft Sydney Local Environmental Plan 2011* (the LEP), being a Standard Instrument LEP, dramatically changes longstanding zoning principles and zones all streets throughout the Local Government Area. Once the LEP is in force, the on street trading of food trucks will require development consent throughout the Local Government Area.

In order to reduce red tape and enable the timely operation of the Trial, it is recommended that a Planning Proposal be endorsed for public exhibition to exempt the need for development consent or a Part 5 assessment under the *Environmental Planning and Assessment Act 1979* for the on street trading of mobile food vending vehicles or food trucks. This would be consistent with the roads being unzoned with minimal environmental impact. Any individual proposal which is not considered to be of minimal environmental impact will not be exempt development and will require assessment under the *Environmental Planning and Assessment Act 1979*.

To support the amendment, it is also proposed to develop a Local Approvals Policy under the *Local Government Act 1993* which will provide the framework and outline the detailed circumstances and conditions under which the mobile food vending vehicles operate. This approach is preferred because it reduces the duplication of processes and red tape. The existing Guidelines for Sydney Food Trucks Trial 2012 will work in conjunction with the Local Approvals Policy.

The Local Approvals Policy will be the subject of a separate report to Council and will be required to go on public exhibition for comment.

To initiate the process to amend the future planning controls, a Planning Proposal is the required process and has been prepared which appears at Attachment A to this report. It is recommended the Planning Proposal be submitted to the Department of Planning and Infrastructure to obtain a Gateway Determination to allow public exhibition. It is also recommended the Planning Proposal be endorsed for public exhibition.

On 12 March 2012, Council approved the operation of Food Trucks on appropriate City streets, provided they do not trade within 200m of a food business, as defined under the Food Act 1993, while that business is open. However, the broad definition of food business and the requirement for the food trucks to trade more than 200m from an open food business in accordance with that definition has been found to unintentionally restrict the on-street trading opportunities for the trucks to a small number of streets within the City. This, combined with the trading restrictions, will greatly limit their capacity to trade.

This report recommends that Council approve the operation of Food Trucks on appropriate City streets, providing they are not trading within 50 metres of an existing, lawful take away food and drink premises while that premises is open, and comply with parking controls and all conditions of approval under the Local Government Act 1993.

RECOMMENDATION

It is resolved that the Central Sydney Planning Committee:

- (A) commence the process to amend the *Sydney Local Environmental Plan 2012*, with an amendment to be known as *Sydney Local Environmental Plan 2012 (Amendment No.1)* in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979*;

- (B) endorse the *Planning Proposal: Sydney Local Environmental Plan 2012 (Amendment No.1) - Schedule 2 Exempt Development* to include Mobile Food Vending Vehicles (food trucks), shown at Attachment A to the subject report, for submission to the Department of Planning and Infrastructure with a request for a Gateway Determination in accordance with Section 56(1) of the *Environmental Planning and Assessment Act 1979* and, following receipt of the Gateway Determination, carry out public exhibition in accordance with the Gateway Determination;
- (C) note that the report to the Planning Development and Transport Committee on 18 June 2012 recommends that Council delegate authority to the Chief Executive Officer to make any minor variations to the Planning Proposal following receipt of the Gateway Determination, to enable the commencement of public exhibition;
- (D) approve, for public exhibition of at least 14 days, the Planning Proposal to amend Schedule 2 of the Sydney Local Environmental Plan 2012 (Amendment No 1), as shown at Attachment A to the subject report, in accordance with Section 57 of the *Environmental Planning and Assessment Act 1979*;
- (E) note that a Local Approvals Policy will be developed and reported back to Council at a later date for public consultation prior to the amendment coming into force;
- (F) note that the report to the Planning Development and Transport Committee on 18 June 2012 recommends that Council approve the operation of Food Trucks on appropriate City streets, providing they are not trading within 50 metres of an existing, lawful take away food and drink premises while that premises is open, and comply with parking controls and all conditions of approval under the Local Government Act 1993; and
- (G) at the conclusion of the trial period, the success and/or any issues arising from the proposal be reported to Council and inform any ongoing policy.

ATTACHMENTS

Attachment A: Planning Proposal

Attachment B: Resolution of Council of 12 March 2012

BACKGROUND

1. The City is developing a Night Time City Policy, informed by extensive research and community feedback. One of the key aims of OPEN Sydney is to ensure that Sydney's night time economy achieves sustainable economic growth and creates a variety of opportunities for multiple night-time experiences in Sydney.
2. Mobile food vending already occurs in the City, but it is mainly a narrow range of choices dominated by pre-prepared packaged food. The Trial was introduced to provide a variety of quality, affordable, take away food options.
3. The Sydney Food Trucks Trial emerged from the OPEN Sydney consultation in mid 2011 where many people said they wanted more and better quality late night food options in Sydney. Food Trucks were included in the OPEN Sydney Discussion Paper which was on exhibition from October to December 2011 regarding the broader work of OPEN Sydney projects.
4. The City of Sydney conducted an Expression of Interest process to select a group of mobile food vending operators to trade within nine locations at nine sites and operating conditions for a trial period of up to 12 months within the City of Sydney Local Government Area. The Trial will permit only 10 selected vendors to serve hot food, while operating under strict Plans of Management and health compliance requirements. The purpose of the trial is to manage and respond to any impacts.
5. The Trial will involve on-street and off-street vending locations. On 12 March, 2012 Council resolved to develop a schedule of appropriate on-street trading locations. It is intended that the approved 10 vendors will rotate between the approved locations throughout the City and be permitted to operate for a maximum of three hours at a time. Other cities and local government areas are closely watching our work, as they hope to activate their streets and public spaces with alternatives to alcohol.
6. Two out of the 10 operators selected for the Trial have commenced trading. The operators are able to trade in nine sites where development consent has been granted. Each of these sites has time restrictions for when trucks can trade, limiting options for trading in the daytime as most of the sites only allow trading after 9pm.
7. To fulfil the aims of the Trial and to enable a chance for business viability, the food trucks need an opportunity to operate on streets. In Central Sydney, development consent is required for the on-street operation of food trucks, as all of the streets are zoned under the provisions of the *Sydney Local Environmental Plan 2005*. In areas outside of Central Sydney, the streets are unzoned and the on-street operation of food trucks requires Council to assess the activity under Part 5 of the *Environmental Planning and Assessment Act 1979*.
8. The recently endorsed and soon to be gazetted *Sydney Local Environmental Plan 2012*, being a Standard Instrument LEP, zones all streets. Once the LEP is in force, a consequence is that on street trading of food trucks will require development consent.

9. The draft LEP was on public exhibition between 2 February 2012 and 2 April 2012. Following the public exhibition, Council considered reports on the submissions received to the *draft Local Environmental Plan 2011* and draft Development Control Plan 2010. On 8 March 2012 and 12 March 2012, the Central Sydney Planning Committee and Council, respectively, approved the draft Local Environmental Plan for referral to the Department of Planning and Infrastructure, with the request that the Minister make the Plan.
10. Any process to amend the *Sydney Local Environmental Plan 2012*, Council and the Central Sydney Planning Committee requires that a Planning Proposal be prepared in accordance with Section 55 of the Act.
11. The Planning Proposal at Attachment A to this report seeks to enable the operation of mobile food vending vehicles or food trucks on Council-owned streets to be exempt development under Schedule 2 of the *Sydney Local Environmental Plan 2012*. This will remove the requirement to submit a development application or Council undertaking an activity assessment under Part 5 of the *Environmental Planning and Assessment Act 1979* to allow Food Trucks to trade on street locations.
12. The Planning Proposal to amend the *Sydney Local Environmental Plan 2012* seeks to extend the opportunity to allow food trucks to operate on Council-owned streets, subject to an approval under Section 68 of the *Local Government Act 1993* and the existing parking rules and restrictions.
13. Exempt Development is defined as minor or small-scale development that will have minimal environmental impact that can be carried out without development consent or a construction certificate as long as it meets pre-established definitions and standards set by the consent authority. In the case of mobile food vending vehicles or food trucks, the key pre-established criteria will be detailed in the Section 68 approval under the *Local Government Act 1993*.
14. Council will be required to develop a Local Approvals Policy which will outline the criteria and conditions for mobile food vending vehicles or food trucks, including appropriate distances from existing take away food and drink premises. This Local Approvals Policy will be the subject of a separate Council report and will require public exhibition.
15. Council should note that each application will be considered on its own merits. In the event that Council considers that a particular proposal is not of minimal environmental impact the proposal will not be considered to be exempt development and as such will require development consent or assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*.

Approved Development Applications

16. Development consents have been issued for 10 food truck vendors on nominated sites, subject to detailed operation measures contained within a Plan of Management.

17. The Plan of Management addresses hours of operation, access, risk management, trading intervals and recommended conditions by which to manage noise and emissions to ensure that food trucks have a minimal environmental impact. The development assessment process concluded that they will not significantly impact the public interest, the environment, public safety and convenience or any heritage items. The approvals process has demonstrated that the operation of food trucks, subject to appropriate conditions, will have a minimal impact on the environment.
18. The Section 68 approval process under the *Local Government Act 1993* also allows Council to impose conditions to manage the overall impact of food trucks. The operation of food trucks is not likely to have a significant impact and could be carried out without the need for development consent or assessment under Part 5 of the *Environmental Planning and Assessment Act 1979* as Council will still have to issue the Section 68 approval.
19. Assessment of applications for approval will be undertaken in accordance with a Local Approvals Policy, which will be the subject of a separate report to Council and requires public exhibition. This Policy will address matters including the following:
 - (a) Appropriate distances from existing take away food and drink premises;
 - (b) Hours of operation;
 - (c) Food preparation and hygiene;
 - (d) Parking controls; and
 - (e) Waste disposal.

Resolution of Council of 12 March 2012

20. On 12 March 2012, Council resolved to approve the operation of mobile food vending vehicles or food trucks on appropriate City streets, providing they are not trading within 200m of a food business while that business is open, comply with parking controls and all conditions of approval under the *Local Government Act 1993*. A copy of this resolution appears at Attachment B.
21. The 200m provision was based on a model from Los Angeles that was designed to mitigate problems with conflict of trade with existing businesses. Sydney is geographically very different to Los Angeles, which is a sprawling city with wider streets and large parking lots. By comparison, the City of Sydney is more compact and a 200m exclusion radius from food trucks to a broad definition of an existing food business unintentionally excludes almost all streets in Central Sydney.
22. Los Angeles has many mobile food vending vehicles that are largely unregulated which prompted the 200m restriction. The City of Sydney Trial includes a maximum of 10 operators, which the City continues to work closely with and can monitor through the smart phone application compliance tool.

23. To enable mobile food vending vehicles or food trucks to trade on streets in Central Sydney, a further Resolution of Council is required to address two areas of concern. Firstly, the recommendation that food trucks are to trade more than 200m from an existing food business and, secondly, the broad definition of a food business under the Food Act 1993 captures all nature of businesses from hotels with room service and convenience stores.
24. Under the Food Act 1993, a “food business” is defined as a business, enterprise or activity that involves:
- (a) *the handling of food intended for sale, or*
 - (b) *the sale of food,*
- 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.*
25. This definition captures all nature of businesses that handle food, including hotels with room service, convenience stores, restaurants and cafes and take away food premises. The use of this definition, coupled with the 200m radius restriction, unintentionally and effectively excludes the operation of any mobile food vending vehicle within Central Sydney due to the nature of the existing food businesses in a relatively small area.
26. In order to resolve this issue, it is recommended that the Standard Instrument LEP definition of “take away food and drink premises” be used, as it is similar in nature to the type of food that is sold in the food trucks. The Standard Instrument defines “take away food and drink premises” as *premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.*
27. The 200m radius from an existing “food business” is recommended to be amended to a 50m radius from an existing, lawful take away food and drink premises, as defined under the Standard Instrument. The reduction in the radius to 50m also has regard to the relatively small geographic area that makes up Central Sydney. It is recommended that the 50m radius be measured from the street edge of the existing, lawful take away food and drink premises. The exclusion radius will be dealt with under the Local Approvals Policy to be prepared later in 2012.

KEY IMPLICATIONS

Strategic Alignment - Sustainable Sydney 2030 Vision

28. *Sustainable Sydney 2030* is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. Enabling Food Trucks greater flexibility to trade on streets provides opportunities for the realisation of many aspects of Sustainable Sydney 2030. Of particular relevance are:
- (a) Direction 1 - A Globally Competitive and Innovative City - The City has identified the need to expand the range of inexpensive quality take away food offerings at night. Mobile food vending vehicles (food trucks) will improve the mix and diversity of take away food available in the City and will complement other late night activities. The Sydney Food Trucks Trial has been modelled on gourmet food vans that operate in metropolitan areas in the United States, such as Manhattan and Los Angeles.

- (b) Direction 5 - A Lively and Engaging City Centre - The 12 month trial of mobile food vending vehicles (food trucks) within the City will create a vibrant nightlife, part of the initiative of the Night Time Economy Policy. The introduction of food trucks will provide opportunities for multiple night time experiences in Sydney.
- (c) Direction 6 - Vibrant Local Communities and Economies - The 12 month trial of mobile food vending vehicles (food trucks) within the City of Sydney Local Government Area is part of the Sustainable Sydney 2030 objective of creating a vibrant nightlife and is also an initiative of the Night Time Economy Policy. The mobile food vending vehicle (food truck) initiative is intended to add vibrancy and activity of Sydney at night.

Organisational Impact

- 29. The City is required to develop a Local Approvals Policy to address the matters for consideration for the operation of mobile food vending vehicles (food trucks) on street locations.
- 30. If Council and the Central Sydney Planning Committee do not endorse the Planning Proposal with the request to exempt mobile food vending vehicles (food trucks), shown at Attachment A, for submission to the Department of Planning and Infrastructure, Council will be required to assess development applications under Part 4 or assess an activity under Part 5 of the EP&A Act.

Risks

- 31. The City's Food Truck team are currently working with the approved 10 operators. Regular workshops are being held to mitigate any potential issues that might arise from the Trial. Workshops have included presentations from the City's Parks and Events Teams and the NSW Police.
- 32. The 10 mobile food vending vehicles (food trucks) are operating on a trial basis, with each truck only being issued a 12 month permit. This small number of trucks and time limit on the permit will mitigate the environmental impacts and ensure they can be managed.
- 33. Risk is further mitigated through the smart phone application compliance tool which means the location of trucks can be tracked in real time. There is a reporting function if any complaints are received to identify the location of the truck.

Social / Cultural / Community

- 34. Evidence from the Night Time City Policy consultation established that mobile food vending vehicles or food trucks will create more diversity in the city, enhancing night life. The operators in the Trial will offer interesting, affordable take away food options while activating and diversifying spaces around the City. The focus will be on food, with no alcohol being served. This will provide more choices to enjoy the City at night time.
- 35. Through various public consultations undertaken as part of the Night Time City Policy, people thought that more diverse night time options were important for Sydney's future. They wanted a greater range of options at different times of the night, across different parts of the City that would appeal to older and younger people and family groups.

36. People saw diversifying the options as a way of transforming the current youth and alcohol-centred focus as a desirable outcome. Older and younger people noted they didn't always feel included in the life of the City and this has a lot to do with the limited choices available. People said that they would engage more at night if more choice was available.
37. Extending this opportunity on Council-owned roadways will provide further choice for people.

Economic

38. The City's recent Cost Benefit Analysis on Sydney's Night Time Economy, which was reported to Council in October 2011 as part of the Open Sydney: Future directions for Sydney at night, concluded that food-led businesses contributed more than drink-led. Destination NSW plans to promote Sydney as the dining destination of the Asia Pacific region. Food Trucks will add a new and deepening layer to the food offering in Sydney. Many of the operators are new business owners and the Trial has provided a platform for them to launch their business. It is important the Food Trucks can operate under conditions that will enable them to be viable.
39. The proposed exemption of mobile food vending premises will promote greater efficiency and more productive use of Council resources in the assessment of minor development proposals.

RELEVANT LEGISLATION

40. *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulations 2000* outline the requirements for amending a local environmental plan.
41. The preparation of the Local Approvals Policy is to be undertaken in accordance with the *Local Government Act 1993*

CRITICAL DATES / TIME FRAMES

42. It is essential that the Planning Proposal to exempt mobile food vending vehicles or food trucks and the further resolution to reduce the trading radius from 200m to 50m proceed as soon as possible to provide opportunity for on-street trading in Central Sydney.
43. In response to the City's initiative, there is significant interest in operating mobile food vending vehicles or food trucks in the City. However, food truck operators tell us that their business will not be viable unless they can operate in Central Sydney streets.

OPTIONS

44. Council and the Central Sydney Planning Committee have the option to not proceed with the Planning Proposal to amend the LEP to exempt mobile food vending vehicles or food trucks as shown at Attachment A to this report. This is not recommended, as this will result in development applications and modification applications and will add red tape for small business and increase the amount of development applications and impact on the City's development assessment resources. This is a consequence of the new LEP template. If the Council proceeds with the Planning Proposal, development consent will only be required for on street trading that is not of minimal environmental impact.

45. Council has the option to not adjust the definition of food business and trading radius as recommended, but this will result in mobile food vending vehicles not being able to trade in the City streets.

PUBLIC CONSULTATION

46. If endorsed, public exhibition will take place in accordance with the Gateway Determination made by the Minister for Planning and Infrastructure, in accordance with Sections 56 and 57 of the *Environmental Planning and Assessment Act 1979*.
47. It is proposed to commence public exhibition following the Gateway Determination for a period of 14 days.

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