



**DATE ADOPTED: 24 AUGUST 2018**

**VERSION: 1.1**

## **POLICY OBJECTIVES**

The objective of this policy is to minimise the risks associated with the consumption of food sold within the Maitland local government area (LGA) by implementing an integrated education and enforcement approach.

## **POLICY SCOPE**

This policy applies to all premises or activities involved in the preparation, handling, storage or sale of food for retail purposes including food premises, mobile food vehicles, temporary food businesses (eg stalls at special events), canteens, home-based food businesses and the like.

## **POLICY STATEMENT**

Maitland City Council will provide support to the NSW Food Authority as an appointed Category B Enforcement Agency within the agreed Food Regulation Partnership with the following responsibilities for retail food businesses:

- Inspects retail food businesses (selling food products direct to the public) for compliance with the national food safety standards and labelling of food for retail sale
- Low risk home based food businesses
- Investigation of single case food borne illness complaints
- Referral to NSW Food Authority and assistance where required for complaints relating to two or more cases from unrelated individuals, households or groups
- Provide assistance to NSW Food Authority Assist where there is an imminent threat to public health and safety or the health of any individual in connection with food

Council's authorised officers will undertake routine inspection and enforcement activities relating to the preparation, handling and sale of food within the Maitland LGA; and, assist in the assessment of planning and development applications incorporating food activities; provide fee-for-service pre-purchase inspections on request; coordinate food training seminars for charitable organisations involved in the food industry and generally provide advice on safe food handling practices and where to find further information.

This policy is intended to outline the framework for Council's food safety program and does not provide a comprehensive list of all of the specific requirements.

### **1. LEGISLATION, STANDARDS AND GUIDELINES**

Where any discrepancies may occur between a council policy and the relevant legislation, then the Australian Standards and NSW legislation must take precedence. To assist the reader in locating the relevant information, a reference to the relevant document name and website have been provided where possible.

## 1.1. Legislation

All NSW state legislation is freely available on the internet at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

- NSW Food Act 2003
- NSW Food Regulation 2015
- NSW Local Government Act 1993
- Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy - (Exempt and Complying) Codes 2008

## 1.2. Australian Standards

- *Food Standards Code* (Food Standards Australia and New Zealand) [www.foodstandards.gov.au](http://www.foodstandards.gov.au)
- Food safety standards place obligations on Australian food businesses to produce food that is safe and suitable to eat. There are also health and hygiene obligations for food handlers. The standards aim to lower the incidence of food-borne illness.
- A food business is any business or activity that involves the handling of any type of food for sale, or the sale of food in Australia. The requirements apply to all commercial, charitable or community activities including 'once-only' projects that involve the handling or sale of food.  
The term 'food business' includes, but is not limited to, fixed food premises (shops, cafes, restaurants, grocery stores, bakeries etc), mobile food vehicles, temporary food stalls and the like.
- There are five food safety standards, Standards 3.2.2 (Food Safety Practices and General Requirements) and 3.2.3 (Food Premises and Equipment) are mandatory for all food businesses.
- *Australian Standard AS 4674 – Construction and Fit-out of Food Premises* - Available for purchase at [www.saiglobal.com](http://www.saiglobal.com)

## 1.3. Guidelines (advisory documents)

Specific guidelines are provided in the relevant section of this policy for: mobile food vehicles; temporary food businesses; temporary events and home-based food businesses.

## 2. INVESTIGATION OF FOOD COMPLAINTS

Common complaints include:

- foodborne illness,
- foreign matter found in food,
- unhygienic practices observed (e.g. foods not handled, stored, or processed in accordance with legislation),
- labelling breaches, and
- a business trading without the appropriate licence(s) or notification

### 2.1. Role of each responsible enforcement agency

- Council is the responsible agency for investigating foodborne illness complaints about a retail business that relate to one individual or household/family.
- NSW Food Authority are the responsible agency where complaints relate to two or more cases from unrelated individuals, households or groups, though may seek assistance from council as needed.



## 2.2. Information to collect

Appropriate information to be collected includes:

- complainant's name and contact details,
- how the complaint was submitted (e.g. phone, email),
- date and time the complaint was received and the name of the recording officer,
- whether the complainant has already contacted the business and/or wishes to remain anonymous,
- a description of the issue,
- purchase details – business name and address, date, time and any receipt,
- product or article details – description, supplier's name and address, lot identification, size, barcode number, date marking and type,
- whether there is any article or product to be collected (collection decision will be made by the investigating agency), and
- if it is suspected food poisoning:
  - time and date food was consumed, and what was eaten, and
  - time and date illness began, symptoms and their severity.
- A variety of questions are routinely asked at the time a complaint is received, but not all questions are relevant in all circumstances
- Any outstanding questions will be considered by the investigating officer where appropriate and relevant

## 2.3. Assessing Risk

Council is not expected to investigate all single-incident/household foodborne illness complaints and will deal with complaints based on council's own risk assessment.

Factors to be considered include:

- effects on consumer health,
- exposure of vulnerable persons (e.g. the elderly, children),
- how widely the product is distributed,
- timeframe over which the problem has occurred, and
- compliance history of the food business, both in general and with respect to the complaint.

**Any allegation regarding multiple-incident foodborne illness or any matter presenting a 'clear and present danger' will be redirected to the Food Authority along with a copy of the most recent business inspection report.**

The following table is a guide to assessing complaint handling priorities. Timeframes are approximate only:

Risk	Type of incident	Timeframe
Urgent	<ul style="list-style-type: none"> <li>• has caused, or has potential to cause, serious harm or injury to the consumer <i>eg. pest infestation, unsanitary premises, interrupted water supply</i></li> </ul>	Investigate as soon as possible
High	<ul style="list-style-type: none"> <li>• will not cause serious physical harm to a consumer <i>eg. foreign matter detected in food that could result in minor injury</i></li> </ul>	Investigate within one week
Medium	<ul style="list-style-type: none"> <li>• more than one complaint about a food business regarding poor hygiene, poor handling practices, unsound structures of premises or incorrect labelling</li> </ul>	Investigate within one month
Low	<ul style="list-style-type: none"> <li>• single report of poor hygiene, poor handling or food quality related issues <i>eg. handling money and food using the same hand, untidy waste area</i></li> </ul>	Inspect at a convenient time



### 3. FOOD BUSINESS NOTIFICATION

Council is to be notified of any food business (regardless of the risk classification or type of business) prior to commencement of operation of that business. Details to be provided include:

- contact details (including name of business and address),
- nature of their operations (eg fixed premises, mobile food vehicle, temporary food stall, charity or community group selling potentially hazardous foods) and
- the location of all premises (eg fixed premises, private property, designated public land, or special events) operating within the Maitland LGA events

Notifications may be made in writing or electronically using the designated form available on Council's website.

No fees are required for lodging a food business notification form. Other fees and charges may apply dependent on the type of business, risk classification, and inspections or activities undertaken by council officers.

It is the responsibility of the food business proprietor to ensure that any changes to the original notification are advised to Council within seven days of any change.

Council will keep a register of all food businesses with the register to be revised annually. The register is not a publicly available document, however information may be legally shared with NSW Health and/or NSW Food Authority under specific circumstances.

### 4. RISK CLASSIFICATION OF A FOOD BUSINESS

The NSW Food Authority requires that councils implement a risk-based inspection regime (high, medium or low) consistent with the nationally agreed framework.

**For ease of use, risk classification and inspection programs for Fixed Food Premises, Mobile Food Vehicles, Temporary Food Businesses / Temporary Events; and, Home-based Food Businesses are dealt with in separate sections of this policy.**

The risk classification assigned to a food business is dependent on the type of activity conducted, the types of food produced at the premises/outlet and the potential for harm to consumers.

#### 4.1. Low Risk

Some businesses are unlikely to cause a food borne illness outbreak, and are considered low risk. Examples include:

- businesses that only handle pre-packaged or non-potentially hazardous foods (e.g. some service stations, newsagents, confectionery stores, fruit and vegetable shops, bars and liquor stores, and the like)
- vehicles used to transport food between retail business premises or from a retail premises to a customer (e.g. takeaway delivery vehicle, or vehicle used to move food between a preparation kitchen or market stall),
- childcare (including home based childcare) not preparing potentially hazardous food (e.g. children bring lunch from home)
- Air B&Bs (home based business)
- Wine tasting/cheese and biscuits
- Low risk food businesses are not inspected routinely and are inspected in response to complaints or food borne illness investigations.

#### 4.2. Medium and High Risk

The risk classification for most hospitality-type retail food premises LGA is 'medium' and include cafes, restaurants, school canteens, takeaways, juicing activities, supermarkets and mobile food vending vehicles that



prepare and sell potentially hazardous food.

If a business does any of the following high-risk activities, it is classified as 'high':

- prepares or supplies to vulnerable populations (e.g. childcare facility that prepares food on site for children including home based childcare preparing potentially hazardous food, or
- undertakes high risk processes/activities (e.g. raw egg products, smoking meats, sous vide), or
- large scale operations (e.g. function centre/large restaurant that employs more than 10 full time equivalent food handlers).

There are also a small range of medium and high risk retail food premises that may handle potentially hazardous food but do not require regular inspection. NSW Food Authority advise that these premises are not associated with foodborne outbreaks or are regulated by other means. Examples include:

- potentially hazardous food vending machines (vending machine inspection impractical to control risk),
- boarding houses and group homes (low volumes of food prepared),
- government institutions such as correctional facilities and armed force bases (Commonwealth/state government audit scheme in place).

## 5. FIXED FOOD PREMISES

In this policy the term 'fixed food premises' is used to describe any food business retailing direct to the public from a fixed commercial premises (eg service station, shop, café, restaurant, and the like).

### 5.1. Construction Standards

A person using a fixed premises store, prepare or sell food for human consumption, is deemed to be a 'food business'. This includes not-for-profit operations.

The Code defines a food business as any business or activity that involves the sale of food or the handling of any type of food for sale in Australia, with the exception of some primary food production activities.

A food business is required to sell safe and suitable food in accordance with the provisions of:

- AS 4674-2004, Design, construction and fit out of food premises (Australian Standard)
- Food Standards Code (Australia and New Zealand), particularly,
  - 3.2.2 Food Safety Practices and General Requirements
  - 3.2.3. Food Premises and Equipment

Copies of the Food Standards Code are available on the Food Standards Australia New Zealand website at [www.foodstandards.gov.au](http://www.foodstandards.gov.au)

- NSW Food Act 2003
- Food Regulation 2015

Anyone wishing to build, fit-out or modify premises for a food business should contact Council's duty planner to establish if development consent is required and then make contact with Council's Environmental Health Officer to discuss the proposal. An Environmental Health Officer can be contacted by phone (49 349 700) or email ([info@maitland.nsw.gov.au](mailto:info@maitland.nsw.gov.au)).

### 5.2. Guidelines (advisory documents)

- Safe Food Australia A Guide to the Food Safety Standards Chapter 3 of the Australia and New Zealand Food Standards Code, Appendix 10: Home based food businesses, 3rd Edition November 2016

### 5.3. Notification of Operation of a Food Business within the Maitland LGA

Notification is a compulsory requirement - Refer to Section 3 of this policy for details.

## 5.4. Inspection Program

The majority of fixed food premises in the Maitland LGA fall within the high or medium risk rating requiring routine inspection by Council at least once per year.

All inspections will be conducted by authorised Council officers without prior notice.

If an issue cannot be immediately rectified then reinspections will occur and where necessary regulatory action taken to ensure compliance with the relevant standards.

All inspections will be charged and invoiced in accordance with the approved fees and charges for that year.

Additional inspections may be undertaken or the risk classification may be escalated if:

- a routine inspection identifies problems that require further attention, or
- Council receives credible complaints resulting in an inspection which identifies any significant non-compliance resulting in enforcement action, or
- there is an ongoing history of poor performance at previous inspections

If any of the following apply, then a medium or high risk premises will be inspected within six months of notification or last inspection, after which it may be inspected on a performance based frequency:

- new business, or
- business changes ownership, or
- is the subject of a foodborne illness investigation or complaint investigation where a significant non-compliance with the Australian New Zealand Food Standards Code is identified (e.g. if the non-compliance resulted in enforcement action).

Low risk food businesses are not inspected routinely but will be inspected in response to complaints or food borne illness investigations.

## 6. MOBILE FOOD VEHICLES

*'Mobile food vehicles'* include vans, trucks, caravans and trailers as well as boats fitted out for the handling and sale of food directly to consumers e.g. coffee vans, ice cream vans, sandwich trucks and boats and the like. Each vehicle is considered a separate food premises. A mobile food vehicle can operate at multiple locations provided the appropriate approvals are in place.

The mobile food vehicle and its fit out is usually the same regardless of its location. The vehicle is self-contained with its own hand wash basin, equipment and consistent operational conditions regardless of the location and environmental factors.

### 6.1. Construction Standards

A person using a mobile food vending vehicle to store, prepare or sell food for human consumption, is deemed (by the *Food Standards Code*) to be a 'food business'. This includes not-for-profit operations.

A food business is required to sell safe and suitable food in accordance with the provisions of:

- AS 4674-2004, Design, construction and fit out of food premises (Australian Standard)
- Food Standards Code (Australia and New Zealand), particularly,
  - 3.2.2 Food Safety Practices and General Requirements
  - 3.2.3. Food Premises and Equipment

Note that 'food premises' includes 'vehicles'. Copies of the Food Standards Code are available on the Food Standards Australia New Zealand website at [www.foodstandards.gov.au](http://www.foodstandards.gov.au).

- NSW Food Act 2003



- Food Regulation 2015

## 6.2. Guidelines (advisory documents)

- Food Standards Australia New Zealand
  - Link to web: [InfoBites](#) – a series of information on food safety standards and practical tips to reduce food safety risks
  - InfoBite – [Mobile food businesses](#)
- NSW Food Authority
  - Link to web: [Mobile food vendors](#)
  - [Guidelines for Mobile Food Vending Vehicles](#)
  - Link to web: [Markets and temporary events](#)
  - [Guidelines for Food Businesses at Temporary Events](#)

For advice on vehicle construction standards and food handling requirements refer to Councils website in the first instance. If you require further information an Environmental Health Officer can be contacted by phone (49 349 700) or email ([info@maitland.nsw.gov.au](mailto:info@maitland.nsw.gov.au)).

## 6.3. Notification of Operation of a Mobile Food Vehicle within the Maitland LGA

Notification is a compulsory requirement - Refer to Section 3 of this policy for details.

Mobile Food Vehicles must notify their home jurisdiction council (i.e. where they garage the vehicle, and the location where they prepare food for sale), and, all the local council areas where they intend to trade.

Council may review Food Business notifications for Mobile Food Vehicles and Temporary Food Businesses on an annual basis.

## 6.4. Inspection Program – Mobile Food Vehicles

### 6.4.1. *What is the Home Jurisdiction Rule ?*

For [mobile food vehicles](#), the home jurisdiction is the council where the vehicle is ordinarily garaged, even if the business does not intend to trade in that council area

The home jurisdiction is generally responsible for the regular inspection of mobile food vehicles and risk-based inspection of temporary food businesses based in their area (eg prepare food at a fixed premises in the area for sale at an event elsewhere).

### 6.4.2. *Mobile food vehicles – where MCC has home jurisdiction*

When Maitland Council has the home jurisdiction for mobile food vehicles, then Maitland Council will conduct the annual 'primary' inspection of the vehicle

The vehicle inspection would ideally be conducted whilst trading under operational conditions. Alternatively construction of the mobile food vehicle may be inspected for compliance with food construction standards in the first instance, with a further 'primary' inspection taking place under operational conditions at a later time.

Inspection of any associated fixed premises where food is prepared will be at the discretion of the home jurisdiction for that activity. When Maitland Council has the home jurisdiction for the fixed premises, inspections will be dependent on the relevant risk classification and planning requirements. Refer to Section 8 of this policy for further details on Home-based businesses

### 6.4.3. *Mobile food vehicles – where MCC does not have home jurisdiction*

As a non-home jurisdiction, MCC will only inspect mobile food vehicles in situations where there is a perceived risk to food safety and public health.

As a non-home jurisdiction, MCC will not inspect a mobile food van unless one of the following factors applies:

- a food safety complaint made against the business, and the business handles open high-risk potentially hazardous food, or
- business has lack of access to relevant services (e.g. potable water, refrigeration, electricity), or
- business has a poor compliance history, or
- business fails to produce a satisfactory recent inspection report (i.e. within the last 12 months), or
- business fails to produce an inspection report completed under operational conditions (i.e. for mobile food vehicles) or
- an Authorised Officer observes instances of poor food handling, a potential for food contamination or non-compliance

Note: Inspection results may be provided to the home jurisdiction to assist them in prioritising inspections of food businesses within their area.

#### 6.5. Other Council programs (on public land)

Note: Where there is any discrepancy in the information provided in Council policies and the requirements of the NSW Food Act and Regulations, and the Australian Food Code, then the State and Federal requirements take precedence (i.e. override) council policy.

- Street Eats - A council program to encourage mobile food in designated public places. Further information on the [Street Eats](#) program is available on Council's website.

#### 6.6. Mobile food vehicles operating on private land

The *State Environmental Planning Policy – Exempt and Complying Development Code*, provides that mobile food vehicles may in some circumstances be exempt from requiring Council development consent to operate on private land. If planning to operate on private land then Council's Duty Planner should be consulted to determine whether consent is required.

For further details refer to NSW Planning and Environment website and the NSW Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

#### 6.7. Mobile food vehicles operating at a Temporary Event

If participating at a temporary event then either the food business operator or the event organiser must notify MCC that the mobile food vehicle is operating at that specific event.

### 7. TEMPORARY FOOD BUSINESSES AND TEMPORARY EVENTS

A **temporary food business** trades at temporary events. The business may prepare food at a fixed premises before the event or prepare all food at the event.

A **temporary event** where food businesses may trade include fetes, markets, festivals, agricultural shows and the like. These events range in duration from several hours to several weeks. Food businesses trading at these events may operate from premises such as a tent, stall or marquee.

#### 7.1. Construction Standards

A person operating a temporary food business to store, prepare or sell food for human consumption, is deemed to be a 'food business'. This includes not-for-profit operations and charities.

The Code defines a food business as any business or activity that involves the sale of food or the handling of any type of food for sale in Australia, with the exception of some primary food production activities.

A food business is required to sell safe and suitable food in accordance with the provisions of:



- AS 4674-2004, Design, construction and fit out of food premises (Australian Standard)
- Food Standards Code (Australia and New Zealand), particularly,
  - 3.2.2 Food Safety Practices and General Requirements
  - 3.2.3. Food Premises and Equipment

Note that 'food premises' includes temporary food businesses. Copies of the Food Standards Code are available on the Food Standards Australia New Zealand website at [www.foodstandards.gov.au](http://www.foodstandards.gov.au).

- NSW Food Act 2003
- Food Regulation 2015

## 7.2. Guidelines (advisory documents)

- Food Standards Australia New Zealand
  - Link to web: [InfoBites](#) – a series of information on food safety standards and practical tips to reduce food safety risks
  - InfoBite – [Temporary food businesses](#)
- NSW Food Authority
  - Link to web: [Markets and temporary events](#)
  - [Guidelines for Food Businesses at Temporary Events](#)

## 7.3. Notification of Operation of a Temporary Food Business within the Maitland LGA

Notification is a compulsory requirement - Refer to Section 3 of this policy for details.

Temporary Food Businesses must notify their home jurisdiction council (i.e. where they prepare food for sale), and all other local council areas where they intend to trade.

Council may review Food Business notifications for Mobile Food Vehicles and Temporary Food Businesses on an annual basis.

## 7.4. Inspection Program – Temporary Food Business

### 7.4.1. *What is the Home Jurisdiction Rule ?*

For [Temporary Food Businesses](#), the home jurisdiction council, is generally responsible for the risk-based inspection of temporary food businesses that trade at temporary events but prepare their food off-site at a fixed premises (eg domestic kitchen, café or restaurant), the home jurisdiction rule recognises the council in whose area that the fixed premises is located.

### 7.4.2. *Food Business Trading at a Temporary Event – where MCC has home jurisdiction*

When Maitland Council has the home jurisdiction for a home-based business preparing food for sale from a mobile food vehicle or a temporary food business, inspections will be dependent on the relevant risk classification and relevant planning requirements. Refer to Section 8 for details relevant to home-based businesses.

### 7.4.3. *Food Business Trading at a Temporary Event – where MCC does not have home jurisdiction*

As a non-home jurisdiction, MCC will only inspect a food business trading at a temporary event within the Maitland LGA in situations where there is a perceived risk to food safety and public health.

As a non-home jurisdiction, MCC will not inspect a temporary food business unless one of the following factors applies:

- a food safety complaint made against the business, and the business handles open high-risk potentially hazardous food, or

- business has lack of access to relevant services (e.g. potable water, refrigeration, electricity), or
- business has a poor compliance history, or
- business fails to produce a satisfactory recent inspection report (i.e. within the last 12 months), or
- business fails to produce an inspection report completed under operational conditions (i.e. for mobile food vehicles) or
- an Authorised Officer observes instances of poor food handling, a potential for food contamination or non-compliance

Note: Inspection results may be provided to the home jurisdiction to assist them in prioritising inspections of food businesses within their area.

If participating at a Temporary Event then either the food business operator or the event organiser must notify MCC that the temporary food business is operating at each specific event.

For advice on temporary food stall construction standards and food handling requirements refer to Councils website in the first instance. If you require further information an Environmental Health Officer can be contacted by phone (49 349 700) or email (info@maitland.nsw.gov.au).

### 7.5. Temporary Events – Inspection by MCC

Council will undertake a risk assessment of temporary events in the local government area to determine whether the food businesses at these events should be inspected.

As a general rule, small events selling low risk food may not be routinely inspected, however, food businesses at larger events may need to be inspected.

The following factors will be considered when determining whether MCC resources will be allocated to inspecting businesses at a temporary event having regard to the perceived risk:

- number of food businesses trading at the event,
- whether those businesses can, in advance, provide evidence of a satisfactory inspection by their home jurisdiction or other enforcement agency, whether of the stall or the fixed premises,
- poor compliance history of businesses at the event,
- food safety complaints made against food businesses trading at the event,
- type of food being sold at the event (e.g. high-risk potentially hazardous food),
- estimated number of visitors to the event,
- duration of the event, and
- access to facilities and services (e.g. potable water, refrigeration, electricity).

## 8. HOME-BASED FOOD BUSINESS

Home-based food businesses typically use a home (domestic) kitchen to prepare food for sale directly to the public (e.g. preparing and storing food for sale at local markets).

If preparing food at home for sale or consumption, on a hobby, charity (including not-for-profit organisations offering in-kind rewards) or commercial basis, then there are a number of standards that must be met.

The *NSW Environmental Planning Policy (Exempt and Complying Development Codes) 2008* allows a dwelling to be used as a home business for the purpose of the manufacture of food for sale (subject to conditions). The development must:



- Not involve the change of building use, and
- Comply with AS 4674-2004, Design, construction and fit out of food premises. These standards provide details on minimum construction and health safety requirements for food preparation areas.

The premises must also comply with all requirements under the Food Act 2003 and regulations under that Act, and the Food Standards Code. These documents contain further requirements on design, construction and operation of a food manufacture premises.

For further details refer to NSW Planning and Environment website and the NSW Environmental Planning Policy (Exempt and Complying Development Codes) 2008. It is also recommended that you contact Council's Duty Planner to check if there are any specific requirements in relation to your property.

**Before you start any works you must obtain a complying development certificate (CDC) from your local council or a private accredited certifier. The certificate is effectively a combined planning and building approval.**

### 8.1. Construction Standards

All food businesses, including home-based businesses and not-for-profit operations, must comply with the relevant parts of the Food Standards Code (the Code) which are largely outcome based.

The Code defines a food business as any business or activity that involves the sale of food or the handling of any type of food for sale in Australia, with the exception of some primary food production activities.

A food business is required to sell safe and suitable food in accordance with the provisions of:

- AS 4674-2004, Design, construction and fit out of food premises (Australian Standard)
- Food Standards Code (Australia and New Zealand), particularly,
  - 3.2.2 Food Safety Practices and General Requirements
  - 3.2.3. Food Premises and Equipment

Note that 'food premises' includes 'vehicles'. Copies of the Food Standards Code are available on the Food Standards Australia New Zealand website at [www.foodstandards.gov.au](http://www.foodstandards.gov.au).

- NSW Food Act 2003
- Food Regulation 2015
- Environmental Planning and Assessment Act
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
  - Part 4A Division 1 Subdivision 2 [Home Businesses](#)

The Food Code does provide some exemptions for home based businesses. Food Standards Australia New Zealand has developed practical guidance for home based businesses and enforcement agencies on how home-based food businesses can demonstrate compliance with parts of the Code.

### 8.2. Guidelines (advisory documents)

- NSW Food Authority [Factsheet – Home Based Food Business](#)
- Safe Food Australia A [Guide to the Food Safety Standards Chapter 3](#) of the Australia and New Zealand Food Standards Code, Appendix 10: Home based food businesses, 3<sup>rd</sup> Edition November 2016
- Safe Food Australia web-page [Home-based food businesses](#)

### 8.3. Notification of Operation of a Home-based Food Business within the Maitland LGA

Notification is a compulsory requirement - Refer to Section 3 of this policy for details.



Home-based food businesses must notify their home jurisdiction council (i.e. where they prepare food for sale), and advise of any changes to the operational practices (structural change, types and quantities of food produced, use of eggs, number of employees etc).

Notification of a home-based food business does not negate the need to confirm whether the business meets the requirements of planning legislation.

Council may review Food Business notifications for Home-based Food Businesses on an annual basis.

#### **8.4. Risk-based Inspection Program for Home-based Food Businesses**

The risk classification assigned to a food business is dependent on the type of activity conducted, the types of food produced at the premises/outlet and the potential for harm to consumers.

##### **8.4.1. Low risk home-based food businesses**

Home-based businesses typically use a home (domestic) kitchen to prepare food for sale directly to the public (e.g. preparing and storing food for sale at local markets). Home-based food businesses are considered low risk if they are not handling potentially hazardous food or packaged food, OR if the business meets all the following criteria:

- it does not produce food that has a very high level of inherent risk and a potentially unreliable critical control point (e.g. raw egg foods such as aioli and mayonnaise),
- it does not supply food to vulnerable populations or businesses that service vulnerable populations (e.g. childcare facility, care home),
- it has at least one certified Food Safety Supervisor appointed by the business (if required),
- it produces less than 10kg of food for sale per week from the domestic kitchen (equivalent to forty 250g serves), and
- it notifies the local enforcement agency if any of these circumstances change.

Maitland Council will only inspect low risk home-based food businesses on a reactive basis i.e., in response to a food safety complaint or foodborne illness investigation (i.e. no routine inspection).

The Food Authority will periodically review the low risk home-based food businesses criteria in consultation with enforcement agencies to ensure it remains fit for purpose.

##### **8.4.2. Medium risk and high risk home-based food businesses**

A home kitchen may not be suitable for high-volume 'medium' or 'high' risk retail operations. A home-based food business is considered at least medium risk if it does not meet one or more of the low risk home-based businesses criteria (see above s 8.4.1), or if a significant non-compliance with the Code is identified at an inspection following a food safety complaint or foodborne illness investigation (e.g. resulted in enforcement action).

In these situations, council may conduct routine inspections of the home-based business at a frequency determined by the type of food produced and its compliance history (see Fixed Premises).

## **9. ENFORCEMENT – ESCALATING METHODS OF REGULATION TO ACHIEVE COMPLIANCE**

Instances of non-compliance with the Food Standards Code can range from minor issues with very small food safety risks through to serious issues that represent a significant threat to public health and safety.

It is important that compliance interventions properly reflect these differing levels of risk. The NSW Food Authority advocates the use of an escalating enforcement model consistent with the nationally agreed framework. Under this approach, compliance action escalates based on severity of the issue and response to any previous warnings.

Compliance tools to be used for enforcement include:



- **Verbal warning** – Council's officer may issue verbal warnings for non-compliance with food standards where the risk of the non-compliance is considered low or can be immediately rectified.
- **Written warning** – Council's officer may issue a written warning via a letter to the owner/proprietor where the risk of the non-compliance is considered low, or is the first offence and not an immediate risk to public health.
- **Improvement notice** – Council's officer may issue a written improvement notice by mail together with a fee\* where previous warnings have been ignored or insufficiently executed and the risk of non-compliance with relevant standards is medium to high (\*as stated in the approved fees and charges for that year).
- **Prohibition Order** – Council's officer may issue a prohibition order where previous warnings/ improvement notice have been ignored and the risk of non-compliance with standards has escalated or is a serious threat to public health.
- **Power of seizure** – Council's officer has the authority under the provisions of the Food Act to seize any food, equipment, advertising material or any other thing that the officer believes has contributed to a non-compliance or offence against the Act.
- **Penalty notices** – Council's officer may issue a penalty notice (fine) under the provisions of the Food Act & Regulation when escalating a breach that has not been rectified in accordance with a graduated enforcement approach or for a serious food safety breach.
- **Prosecution** – Council may elect to proceed with prosecution under the provisions of the Act & Regulation in a court of law.

Note that this escalating enforcement approach does not negate the immediate use of penalty notices or other more severe interventions where required to effectively mitigate serious risks.

Food business owners should be aware that the NSW Food Authority has the legislated power to name businesses issued with a penalty notice or prosecuted by Council. The "name and shame" program is intended to provide an open and transparent system which allows the community to make an informed decision on where they choose to eat.

## 10. FEES AND CHARGES

### 10.1. Notification of Food Business

- ALL food businesses (including fixed premises, mobile food vehicle, temporary food business and home-based businesses) must notify council (refer to Section 3 of this policy).
- No applicable fee

### 10.2. Annual Administration Charge (cl 15 Food Regulation)

- There are significant indirect administrative costs in undertaking food regulatory work eg complaints must be recorded and investigated, other enforcement agencies must be consulted and reports must be prepared
- To recover administrative costs Council will impose an annual Administration Charge on a food business it has inspected during the same 12-month period.
- Annual Administration Charge does not apply to food businesses operating for the sole purpose of raising funds for a community or charitable cause
- Annual Administration Charge may change from year to year. Refer to Maitland Council's Fees and Charges for the relevant year.



### 10.3. Inspection Fees (s608 Local Government Act)

- An inspection fee can be charged for all visits made by an authorised officer to a food business this includes re-inspection or inspections associated with complaint or incident investigations
- Maitland Council will only charge a separate inspection fee for a complaint or incident investigation when a primary inspection for that year has already been completed, AND the most current inspection results in identification of a significant non-compliance (eg resulting in enforcement action).
- Where an inspection of a low risk food activity is triggered the appropriate inspection fee may be applied
- A reinspection fee may be charged for reinspection of all food business types
- Council will issue each person who is liable to pay a charge with a notice in writing that specifies the following:
  - The amount of the charge
  - The period for which the charge relates, and
  - The period within which the charge must be paid
- Annual Inspection Fee and Reinspection Fee may change from year to year. Refer to Maitland Council's Fees and Charges for the relevant year.

### 10.4. Improvement Notice Fee (s 66AA Food Act, and cl 11 Food Regulation)

- Fee is designed to cover the cost of preparing and serving the Improvement Notice on the proprietor of the food business
- The Improvement Notice Fee also covers the cost of one reinspection. Any further reinspections will be subject to additional reinspection fees.
- Improvement Notice Fee is specified by legislation – Council may extend the time given for payment of the fee, or reduce or waive the payment of the fee.

Summary of Applicable Fees	Notification Fee	Annual Administration Charge	Primary Inspection Fee	Re-inspection Fee	Improvement Notice Fee
<b>Fixed Food Premises</b>	Notification is required but no fee applicable				\$330 includes cost of 1 further reinspection. Additional reinspection will be subject to appropriate fee
low risk		No	Yes - if triggered	Yes	
medium / high risk		Yes	Yes	Yes	
<b>Mobile Food Vehicle</b>					
MCC home jurisdiction		Yes	Yes	Yes	
non-home jurisdiction		No	Yes - if triggered	Yes	
<b>Temporary Food Business</b>					
MCC home jurisdiction		Yes	Yes - if triggered	Yes	
Non-home jurisdiction		No	Yes - if triggered	Yes	
<b>Home-based Food Business</b>					
low risk		No	Yes - if triggered	Yes	
medium / high risk		Yes	Yes	Yes	
<b>Charity / Not for Profit</b>					
	No	Yes	Yes		



## 10.5. Pre-purchase Inspections

- Offered on a fee for service basis. Refer to Maitland Council's Fees and Charges for the relevant year.

## 11. ADVICE, SERVICES AND TRAINING

Education forms an integral part of the Food Safety program and is delivered through a diverse range of strategies.

### 11.1. Advice to the public

Open and honest communication with local food businesses is vital in maintaining food safety. Council's Environmental Health Officer is available to discuss any issues with food business operators and can be contacted by phone, email or during an inspection.

Inspections of food premises/outlets aims to not only provide enforcement of food standards, but also an opportunity to increase the knowledge of food handlers.

Council will also aim to provide support information to food businesses as the need arises on a range of topics and issues including: food safety, food handling and legislative changes.

### 11.2. Pre-purchase inspection (by request)

Pre-purchase inspections are conducted on request as a fee for service activity where a person is considering buying an existing food business and may require confirmation of the status of the premises/outlet and operations. A report identifying any non-compliance with relevant statutory requirements will be provided to the applicant upon completion of the inspection.

### 11.3. Newsletters, factsheets and calendars

Council produces an annual newsletter which aims to provide food handlers and business owners with regular updates on food safety issues including temperature control, food handling, hand washing, food safety supervisors and any relevant changes to food legislation.

Factsheets and calendars developed in association with other councils will be available in both printed format and as downloadable documents accessible from Council's website.

### 11.4. Food handling workshops

Throughout the year Council will endeavour to provide a workshop providing food handlers from community based groups with the opportunity to update their knowledge and skills in the food industry, discuss relevant food safety issues, changes to legislation, practical solutions and requirements for food safety supervisors. Availability of workshops will be subject to sufficient resourcing and attendance numbers.

The Food Act 2003 (NSW) requires certain food businesses in the NSW hospitality and retail food service sector to have at least one trained Food Safety Supervisor (FSS). The [NSW Food Authority's FSS program](#) was established to help reduce foodborne illness in the hospitality and retail food service sectors in NSW by improving food handler skills and knowledge. The program also aims to provide food businesses with high quality and consistent training by a Registered Training Organisation (RTO) that has been approved by the Food Authority.

### 11.5. Food safety campaigns

The food safety campaigns are generally rolled out in conjunction with the NSW Food Authority and other local councils targeting specific food safety issues such as personal hygiene, cross contamination, temperature control, or any other issue which could have a direct impact on the transmission of a food borne illness.



## 12. NSW FOOD AUTHORITY PROTOCOLS

Council, as an appointed enforcement agency must comply with the following NSW Food Authority Protocols.

1. Activity report
2. Food complaint referral
3. Reporting legal proceedings
4. Submitting food samples for testing, and
5. Urgent food safety response

Following is a brief overview of the key principles contained in each Protocol. Each Protocol has been reproduced as an Appendix to this Policy and Council MUST comply with all protocol requirements.

### 12.1. Activity Report (implement as per Appendix 1)

- Annual report (1 July to 30 June)
- Required statistics in response to specific questions
- Signoff by General Manager
- Submitted on line by 28 July each year

### 12.2. Food Complaint Referral (implement as per Appendix 2)

Common complaints include:

- foodborne illness;
- foreign matter in food;
- unhygienic practices observed (eg foods not handled, stored or processed in accordance with legislation);
- labelling breaches; and,
- a business trading without the appropriate licence or notification

Foodborne illness is caused by consuming foods

- contaminated with pathogenic bacteria, toxins, viruses, prions or parasites arising from improper handling, preparation or storage of food, or
- caused by the introduction of chemicals, pesticides or medicines to food, or
- by consuming poisonous substances naturally occurring in certain foods

Council responsibility for complaints:

- Checking compliance with Food Safety Standards and food labelling at retail food businesses with the LGA
- Investigating foodborne illness that relate to one individual or household/family
- Council is not expected to investigate all single-incident/household foodborne illness complaints, nor obtain food samples
- Council is not required to report to the Food Authority about complaint investigations unless specifically requested

NSW Food Authority responsibility for complaints:

- Foodborne illness complaints related to two or more cases from unrelated individuals, households or groups for the same food premises (or food commodity/product) are to be directed immediately by council to the NSW Food Authority helpline, along with a copy of the most recent inspection report relating to the business
- Council may be asked to assist eg checking compliance at a retail food business in the LGA or providing an inspection history of the business



- Council are required to assist the NSW Food Authority and NSW Health in urgent foodborne illness investigations. This may include securing a particular food item for testing, or ensuring that a high risk food is no longer served

#### Contact Details:

- Council must provide the NSW Food Authority with the details of its complaint referral/customer service helpline
- Recommended that this is not an individual officer but a generic email address and contact number
- NSW Food Authority will refer complaints to the appropriate enforcement agency by providing the complainant with the contact phone number or email address, or by transferring the complainant via phone to council

#### Privacy Matters:

- Enforcement agencies (including the NSW Food Authority) are empowered to provide information to each other and NSW Health under certain conditions

### 12.3. Reporting Legal Proceedings (implement as per Appendix 3)

#### Duty to Report

- Must notify NSW Food Authority within 21 days of conclusion of legal proceedings, whether successful or not. Information regarding convictions is published on a register on the NSW Food Authority website
- Legal proceedings commenced by way of a Court Attendance Notice (CAN) are required to be reported to the NSW Food Authority.
- This includes court elected Penalty Notices for which CANs are issued
- Penalty Notices are not considered legal proceedings for offences under the Food Act and are not required to be reported separately to NSW Food Authority

#### Procedure to report

- Refer to the NSW Food Authority protocol
- Following receipt of the reporting form the NSW Food Authority will assess whether information regarding a reported conviction is suitable for publication

### 12.4. Submitting Food Samples for Testing (implement as per Appendix 4)

#### Overview

- The Food Authority uses a risk-based approach to manage the areas that pose the greatest threat to the safety of NSW consumers' food.
- This includes engaging with a National Association of Testing Authorities (NATA) accredited food testing laboratory to undertake regular analysis of food samples.

#### When initiated by NSW Food Authority

- For urgent matters (e.g. foodborne illness investigations), the Food Authority may request enforcement agencies to take samples on its behalf
- For less urgent matters (e.g. surveys) enforcement agencies will be invited to participate on a voluntary basis.
- The Food Authority will coordinate sampling and communicate closely with those enforcement agencies involved, providing general support, copies of the results and interpretation of results.
- Clear instructions will be provided to enforcement agencies about sampling procedures, transport of samples, and the submission process.



- The Food Authority will also cover the cost of all urgent food samples requested of enforcement agencies. The cost of sampling for voluntary surveys will be agreed by participating enforcement agencies at the outset of the project.

When initiated by enforcement agency (council)

- All enforcement agency-initiated requests for the testing of food samples or examination of foreign matter are to be referred to the Food Authority in the first instance by completing the form Request from enforcement agency for approval of sample analysis.
- The Food Authority will assess each request and advise the enforcement agency contact of the outcome within 24 to 48 hours.
- Assessment is based on the laboratory's capabilities and capacity, and the validity and merit of the work requested, as well as a range of other factors.

## 12.5. Urgent food safety response (implement as per Appendix 5)

Food safety response

- Incidents that can threaten the safety of the food supply chain require an immediate on-the-ground response. The availability of food regulatory personnel to address urgent incidents is critical to protecting consumers.
- Incident response is primarily the responsibility of Commonwealth and State agencies with assistance from appointed enforcement agencies such as councils.
- Often an immediate on-the-ground response to these situations is necessary to reduce the risk of further illness or injury. In regional and remote areas, enforcement agencies' officers can usually be onsite more quickly than the NSW Food Authority (the Food Authority).

Determining an urgent food safety matter

- An urgent food safety response is required when there is reason to believe these issues indicate an imminent threat to:
  - public health and safety, or
  - the health of an individual, in connection with food.
- A threat to public health and safety, or the health of any individual, in connection with food is 'imminent' if the threat is likely to occur at any moment or is impending. A 'threat' means an indication of probable harm to come or something that gives indication of causing harm.

For example:

- flooding, extended power loss or a fire that is likely to affect food handling by food businesses,
  - food tampering,
  - urgent food recall or foodborne illness outbreak,
  - a marine biotoxin incident (e.g. sewerage spill), or
  - a truck carrying potentially hazardous food that rolls over.
- Unsure about whether a food safety response is warranted?

If council is in doubt as to whether something constitutes an imminent threat to public health and safety, or the health of any individual, in connection with food, then council should contact the Food Authority for guidance on a case-by-case basis.

## **POLICY DEFINITIONS**

AS	Australian Standard
Authority	NSW Food Authority
Code	Food Standards Code (Australia and New Zealand)
Policy:	A plan or course of action, as of a government, political party, or business, intended to influence and determine decisions, actions, and other matters
MCC	Maitland City Council



## POLICY ADMINISTRATION

BUSINESS GROUP:	PLANNING ENVIRONMENT & LIFESTYLE
RESPONSIBLE OFFICER:	GROUP MANAGER PLANNING ENVIRONMENT & LIFESTYLE
COUNCIL REFERENCE:	Ordinary Council Meeting 24/04/2018 Item No. 10.4
POLICY REVIEW DATE:	Three (3) years from date of adoption - 24 August 2021
FILE NUMBER:	150/1
RELEVANT LEGISLATION	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979 NSW</li> <li>• Food Act 2003 NSW</li> <li>• Food Regulation 2015 NSW</li> <li>• Local Government Act 1993</li> <li>• State Environment Planning Policy – (Exempt and Complying Development) 2008</li> </ul>
RELATED POLICIES / PROCEDURES / PROTOCOLS	<ul style="list-style-type: none"> <li>• Australian Standard AS 4647 – Construction and Fit-out of Food Premises</li> <li>• Food Standards Code (Food Standards Australia and New Zealand)</li> <li>• NSW Food Authority Guidelines for Mobile Food Vending Vehicles</li> <li>• NSW Food Authority Guidelines for Food Businesses at Temporary Events</li> </ul>

## POLICY HISTORY

VERSION	DATE APPROVED	DESCRIPTION OF CHANGES
1.0 (DRAFT)	For consideration by Council	Review and update of existing policy dated 26 November 2002 reflecting changes to food legislation and the revised Food Regulation Partnership 2017.
1.1 (final)	24 August 2018	Minor changes reflecting date adopted