



CITY OF HOBART

# **AGENDA**

## **City Planning Committee Meeting**

### **Open Portion**

**Monday, 12 August 2019**

**at 5:00 pm**

**Lady Osborne Room, Town Hall**

### **SUPPLEMENTARY ITEM**

#### **ORDER OF BUSINESS**

##### **REPORT**

12. Regulation of Social Food Delivery Vehicles ..... 3

**The General Manager reports:**

“That in accordance with the provisions of Part 2 Regulation 8(6) of the *Local Government (Meeting Procedures) Regulations 2015*, these supplementary matters are submitted for the consideration of the Committee.

Pursuant to Regulation 8(6), I report that:

- (a) information in relation to the matter was provided subsequent to the distribution of the agenda;
- (b) the matter is regarded as urgent; and
- (c) advice is provided pursuant to Section 65 of the Act.”

**12. Regulation of Social Food Delivery Vehicles**  
**File Ref: F19/99341; 16/243**

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Report of the Manager Environmental Health and the Director City Planning of 9 August 2019.

Delegation: Council

**REPORT TITLE:                   REGULATION OF SOCIAL FOOD DELIVERY VEHICLES****REPORT PROVIDED BY:** Manager Environmental Health  
Director City Planning**1.     Report Purpose and Community Benefit**

- 1.1.    The purpose of this report is to respond to the Council's resolution of the 20 May 2019 to examine the capacity for the Council to provide a by-law to regulate the carriage of food in social food delivery vehicles.
- 1.2.    The recommendation not to proceed to create a by-law acknowledges that food safety is adequately regulated within the existing state, national and trans-Tasman legislative framework.
- 1.3.    The community benefit of undertaking the recommendations is to protect public health by reminding drivers of social food delivery vehicles of their obligations under the *Food Act 2003 (the Act)*, and to avoid the Council proposing duplicitous legislation.

**2.     Report Summary**

- 2.1.    A report to Finance and Governance Committee on 14 May 2019 summarised a range of concerns raised by members of the North Hobart Traders Association (NHTA) which included a perceived lack of food safety regulation of the carriage of food in social food delivery vehicles.
- 2.2.    The carriage of food in social food delivery vehicles is regulated under Tasmanian legislation via the *Food Act 2003* incorporating the national Food Safety Standards (the Standards). Social food delivery vehicles are, along with many other types of food transport vehicles utilised in the food industry, defined in the Act as 'vehicles used for the transport of food for sale'.
- 2.3.    Section 86 of the Act provides the power for the Director of Public Health to, by notice in the Gazette, require any food business or class of business to register in accordance with an approved risk-classification system for business types. The Director has exempted from the requirement to register, businesses or activities whose only involvement with food is using a vehicle to transport it.
- 2.4.    Following standard compliance protocols, concerns in relation to food safety can be investigated by council officers. Where information from the registers pertaining to the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* is required to enable an investigation to commence, this information can be requested from the Department of State Growth.

- 2.5. The Red Tape Reduction Coordinator was contacted for comment in relation to the matter of social food delivery vehicles and has advised that he would not support additional regulation to govern food delivery.
- 2.6. External legal advice was sought on whether or not, in the context of the concerns outlined by the NHTA, it would be possible for the Council to create a by-law to regulate social food delivery vehicles. The legal view was that it was not appropriate for council to create a by-law given the existing regulation of the food industry.
- 2.7. It is proposed that authorised officers undertake an audit of social food delivery vehicles operating in North Hobart to assess compliance with the Act, and that council distribute information regarding the food safety requirements of the Act to social food delivery drivers.

### 3. **Recommendation**

#### ***That:***

1. ***The Council not proceed to create a by-law to regulate the carriage of food in social food delivery vehicles.***
2. ***Council's Environmental Health Officers undertake an audit within the next four (4) months of social food delivery vehicles operating in North Hobart in order to determine compliance with the Food Act 2003 and Food Safety Standards.***
3. ***Council develop and distribute to relevant persons and companies an information brochure that summarises the food safety obligations of social food delivery vehicle drivers.***
4. ***The Council write a follow up letter to the State Government seeking a response to the letter sent to the Minister in early July.***

### 4. **Background**

- 4.1. The Director City Innovation and Group Manager Parking Operations reported to the Finance and Governance Committee on 14 May 2019 on possible actions the Council could take to address the concern from some traders in North Hobart regarding the growth of social food delivery services.
- 4.2. The report summarised a range of concerns raised by members of the NHTA which included a perceived lack of food safety regulation of the carriage of food in social food delivery vehicles.
- 4.3. Specifically the NHTA members perceived a high degree of visible regulation placed on food providers in relation to food safety, versus that on delivery drivers. Examples included alleged instances of poor food handling and hygiene by delivery drivers.

- 4.4. The carriage of food in social food delivery vehicles is in fact regulated under Tasmanian legislation via the *Food Act 2003* (the Act) incorporating the national Food Safety Standards (the Standards).
- 4.5. Social food delivery vehicles are, along with many other types of food transport vehicles utilised in the food industry, defined in the Act as 'vehicles used for the transport of food for sale'. Some examples of the use of delivery vehicles include meals on wheels, home delivered pizza and other takeaway foods, catering, supermarket grocery delivery, business to business movement, school fair and market stall delivery, and country women's association food movement.
- 4.6. Standard 3.2.2 clause 10 requires that during transport, food is to be protected from contamination. It further requires that food must not be transported in the same part of a vehicle that is carrying live animals, or be transported with unpackaged chemicals.
- 4.7. Food that is packaged should be protected from contamination by that packaging during transport, however care should be taken not to damage or contaminate the packaging through poor handling or exposure to environmental factors such as extreme heat or rain.
- 4.8. Deliveries of ready-to-eat hot foods are not required to be kept above 60 degrees during transportation as long as the practice is safe using time as a control. It would be a sensible business decision to take reasonable steps to keep a ready-to-eat meal acceptably warm for the customer, and there are a variety of methods to achieve this including using insulated heat bags.
- 4.9. Standard 3.2.3 clause 17 requires that all vehicles used for the transport of food are designed and constructed to protect food and are able to be effectively cleaned.
- 4.10. Section 86 of the Act provides the power for the Director of Public Health to, by notice in the Gazette, require any food business or class of business to register in accordance with an approved risk-classification system for business types. Historically, the Director has exempted from the requirement to register, businesses or activities whose only involvement with food was using a vehicle to transport it.
- 4.11. The most recent s.86 notice issued by the Director on 5 July 2019 continues this long established risk-based approach to food business regulation. The Risk-Classification System is based on the national food safety risk-profiling framework which categorises businesses into priority based on food types and levels of food handling activities. The system provides for both the Department of Health and councils to target resources at areas of highest risk to the community, with recommended inspection frequencies assigned for each risk category.

- 4.12. Part D clause 2 of the risk-classification system exempts a business handling food only by transporting or delivering it in a vehicle, from being classified and therefore registered under the system. This does not however exempt the vehicles from being maintained in accordance with the Standards, and for responsible persons to ensure food is not contaminated during transport.
- 4.13. Through the red tape reduction program in 2015, the State Government reduced administration in the Act through the introduction of the state-wide registration system for mobile food businesses. This was an acknowledgement that the requirement to register a mobile business with each council in which the business sold food, was a significant inefficiency for both the Council and the proprietor with no positive benefit to food safety.
- 4.14. The Red Tape Reduction Coordinator was contacted for comment in relation to the matter of social food delivery vehicles and has advised that he would not support additional regulation to govern food delivery.
- 4.15. Complaints concerning food transport vehicles are rare. Council records indicate that in the last 3.5yrs only two complaints have been received. The vehicles in these cases were easily identifiable, however traceability in relation to unidentified (non-branded) vehicles is possible via licence plate data. Council requires sufficient evidence to enable an investigation to commence.
- 4.16. Advice was sought from the Department of State Growth with respect to access to information kept in the registers pertaining to the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010*. Advice confirmed that, whilst unlimited access to this information is granted to some organisations for certain purposes (parking and littering offences for example) individual requests for this information, where specific enforcement or other statutory activities give rise to the need for the information, would be considered.
- 4.17. External legal advice was also sought on whether or not, in the context of the concerns outlined by the NHTA, it would be possible for Council to create a by-law to regulate social food delivery vehicles. The legal view was that it was not appropriate for council to create a by-law given the existing regulation of the food industry.
- 4.18. The advice is summarised as follows;
  - 4.18.1. It is a fundamental requirement when creating by-laws that they are consistent with existing legislation.
  - 4.18.2. A by-law must not expressly contradict a requirement which is contained in other legislation – for example a by-law cannot state that a permit is required in order to carry out a certain activity if there is legislation stating that a permit is not required.

- 4.18.3. A by-law must not impose an additional requirement on top of an already existing requirement – for example, a by-law cannot require an additional permit to be obtained prior to carrying out an activity if there is already a process under legislation for a permit to be obtained.
- 4.18.4. A by-law must not regulate matters which are broadly dealt with in legislation, even if they are regulated in a way which is not ideal from the Council's point of view.
- 4.18.5. The long title to the Tasmanian *Food Act 2003* is as follows;
- 4.18.5.1. 'An Act to ensure the provision of food that is safe and fit for human consumption and to promote good nutrition and for related matters.'
- 4.18.6. If the State Government is satisfied that there is sufficient concern it can take steps to ensure greater regulation through an amendment to the legislation.
- 4.19. A contemporary example of a by-law made in Tasmania to regulate food was the now replaced Glenorchy City Council *Environment and Health Services by-Law No 1 of 2010*. Council created a by-law which included a clause requiring a permit in addition to a permit required by legislation.
- 4.20. This clause was found to be duplicitous and once known the Council took proactive action to reimburse those affected by the duplication. This demonstrates there is significant risk to reputation by delving into areas already heavily regulated by state and national legislation.
- 4.21. Given the existing rigorous state, national and trans-Tasman framework already in place the creation of a by-law in relation to food safety appears to be unnecessary.

## 5. Proposal and Implementation

- 5.1. It is proposed that officers of the City of Hobart continue with the current approach to the regulation of the food industry incorporating the investigation of food safety complaints raised in relation to food delivery vehicles.
- 5.2. It is further proposed that authorised officers undertake a specific audit of social food delivery vehicles operating in North Hobart, as a result of the concerns raised, to determine compliance with the *Food Act 2003* and the Food Safety Standards.
- 5.3. Council will also develop an information brochure to summarise the obligations of social food delivery vehicle drivers in relation to food safety, to be distributed via business networks and by hand direct to drivers.

**6. Strategic Planning and Policy Considerations**

- 6.1. The City implements a significant regime of enforcement activity through the statutory requirement to regulate food safety. This work is represented in Goal 4 of the Capital City Strategic Plan 2015-2025 Strong, safe and healthy communities, *Strategic Objective 4.3 'Build community resilience, public health and safety'*.

**7. Legal, Risk and Legislative Considerations**

- 7.1. As discussed in the body of the report.

**8. Community and Stakeholder Engagement**

- 8.1. Discussions have been undertaken with Senior Food Safety Officers from the Department of Health, the Registrar of Motor Vehicles from the Department of State Growth, the Senior Associate Simmons Wolfhagen, the Small Business Advocate/Red Tape Reduction Coordinator from the Office of the Coordinator-General, and relevant City of Hobart staff during the preparation of this report.

**9. Delegation**

- 9.1. This matter is delegated to the Council.

*As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.*

Felicity Edwards  
**MANAGER ENVIRONMENTAL  
HEALTH**

Neil Noye  
**DIRECTOR CITY PLANNING**

Date: 9 August 2019  
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