

Form 4 – Outdoor Dining

Application for Approval to Conduct Outdoor Dining on a Road

Douglas Shire Council Local Law No. 59 (Commercial Use of Roads) 2002
Douglas Shire Council Subordinate Local Law No. 59 (Commercial Use of Roads) 2002

Year: 2012/2013

You **MUST** complete ALL questions unless the form indicates otherwise. Incomplete forms or forms without all necessary information and documentation will result in your application not being a properly made application.

For all applications, you must:

- complete this form
- complete any other forms relevant to your application
- provide any mandatory supporting information identified on the forms as being required to accompany your application
- submit the fee applicable

Business details

Trading name	<input style="width: 100%;" type="text"/>
Business name	<input style="width: 100%;" type="text"/>
ABN	<input style="width: 100%;" type="text"/>
Business address	<input style="width: 100%;" type="text"/>
Applicant's name	<input style="width: 100%;" type="text"/>
Postal address	<input style="width: 100%;" type="text"/>
Manager's name	<input style="width: 100%;" type="text"/>
Manager's contact phone number	<input style="width: 100%;" type="text"/>
Business phone number	<input style="width: 100%;" type="text"/>
Business fax number	<input style="width: 100%;" type="text"/>
Business e-mail address	<input style="width: 100%;" type="text"/>

Proposed Location of Activity

Street Address	<input style="width: 100%;" type="text"/>
Locality/Suburb	<input style="width: 100%;" type="text"/>

Type of Approval	(Please tick)
New Application	<input type="checkbox"/>
Renewal Application	<input type="checkbox"/>
Transfer Application	<input type="checkbox"/>

Further information	<i>(Please tick)</i>
Is decking proposed?	
Yes, the area to be used will be _____ m ²	<input type="checkbox"/>
No	<input type="checkbox"/>
Are you intending to use any promotional or advertising material in connection with the outdoor dining activity?	
Yes, please attach details to application.	<input type="checkbox"/>
No	<input type="checkbox"/>
Are you intending to use any amplification equipment in connection with the outdoor dining activity?	
Yes, please attach details to application.	<input type="checkbox"/>
No	<input type="checkbox"/>

Method of Storage/security of tables, chairs, etc.
What is the method of storage/security of the proposed tables and chairs, etc?

Supporting documents, information and materials required to complete this application. Please complete this checklist in full	<i>(Please tick or indicate N/A where the question is not applicable)</i>	
Please attach a copy of your Public Liability Insurance to the value of \$10,000,000.00 noting Cairns Regional Council as an interested party.	<input type="checkbox"/>	
Please attach a site plan (see attached detailed information).	<input type="checkbox"/>	
Please attach colour photographs/brochures (see attached detailed information).	<input type="checkbox"/>	
Please provide details of any promotional or advertising material intended to be used in connection with the activity.	<input type="checkbox"/>	
Please provide details about any procedures which will be taken to ensure that the amenity of the surrounding area will not be adversely affected.	<input type="checkbox"/>	
Please provide details about any procedures which will be taken to ensure that the activity will not cause a nuisance to neighbouring residents.	<input type="checkbox"/>	
Please attach a plan of any temporary structures that will be placed on the road.	<input type="checkbox"/>	
Please provide details about procedures which will be taken to ensure that the activity does not significantly detract from the capacity of the road to provide a vehicular and, where relevant, pedestrian thoroughfare.	<input type="checkbox"/>	

Please indicate below the maximum length of time for which the outdoor dining would be in place.
Example: The trading hours of a business might be 9:00am to 5:00pm, Monday to Friday and it is intended that the outdoor dining will be placed on the footpath during those hours of operation.

Existing Approvals	(Please tick)
Have any approvals relating to the outdoor dining activity been provided by Council or another department, agency or body pursuant to another law (for example, the <i>Liquor Act 1992</i> or the <i>Food Act 2006</i>)?	
Yes, please attach any approvals	<input type="checkbox"/>
No	<input type="checkbox"/>

Application Fees	\$
New Application Fee	\$ 368.00
Renewal Fee	\$ 169.00
Transfer Fee	\$ 169.00

Upon approval of your licence the following footpath rental fees will apply (invoices are usually generated quarterly):

Area A - \$175.00 per m²

Area B - \$ 93.00 per m²

Area C - \$ 54.00 per m²

Area D - \$ 32.50 per m²

Area E - \$ 19.50 per m²

Area F - \$ 12.00 per m²

Area G - \$ 8.00 per m²

To find out which area applies to your location, please contact Council on telephone (07) 4044 3044.

Term of approval: The term of approval is the period stated on the approval.

Term of renewal of approval: The term of any renewal of an approval is the same term as the original approval subject to compliance with all conditions stated on the approval.

Conditions that will ordinarily be imposed on approvals

The following conditions are the conditions that will ordinarily be imposed on an approval where applicable, in the opinion of an authorised person —

- (1) The conditions of a permit may, for example –
 - (a) restrict activities under the permit to specified days and times; and
 - (b) prohibit or limit activities under the permit during periods of poor visibility; and
 - (c) limit the activities authorised by the permit to a single specified location or to a specified area; and
 - (d) require the holder of the permit to display the permit in a specified position or to produce the permit for inspection on demand by an authorised person or, if the permit relates to a State-controlled road, a person authorised by the chief executive; and
 - (e) require the holder of the permit to take specified measures to protect the safety of persons who may be involved in, or affected by, the activities authorised by the permit; and
 - (f) require the holder of the permit to take out insurance against personal injury or property damage resulting from activities authorised by the permit; and
 - (g) require the holder of the permit to take specified measures to ensure that the activities authorised by the permit do not cause a nuisance; and
 - (h) if the permit authorises the holder to use a specified part of a road for carrying on a business - require the permit holder to pay specified rental to the local government at specified intervals.

Example of a condition under subsection (2)(g) -

If a permit authorises use of a road for serving food or drink, the condition could, for example, require the permit holder to provide and maintain receptacles for waste and to clean the area thoroughly at the conclusion of business on each day.

For the purposes of section 9(3) of the Local Law, the conditions that may be imposed on a permit are as follows –

- (a) the holder of the permit must take out a public liability insurance policy to the value of TEN MILLION DOLLARS (\$10,000,000.00) with the local government being endorsed as an insured party; and
- (b) the public liability insurance policy referred to in paragraph (a) must be submitted to the local government prior to the carrying out of the activity; and
- (c) the holder of the permit must enter into a binding agreement with the local government to indemnify the local government against claims (including claims made against the holder of the permit by the local government) for personal injury (including death) and damage to property (including economic loss) arising by, through or in connection with the permit; and
- (d) if relevant, the holder of the permit must comply with the provisions of the *Public Health Act 2005*, and the *Food Act 2006*; and
- (e) if the holder of the permit or the holder's employee or agent damages the road it must pay to the local government the amount it would cost the local government to rectify the damage to the road; and
- (f) notwithstanding paragraph (e), the local government may allow the holder of the permit to carry out the rectification works at their cost for damage caused to the road if this is appropriate in the circumstances; and
- (g) any rectification works carried out under paragraph (f) must be to the satisfaction of the local government and will be without prejudice to its rights to carry out any further works needed to rectify the damage to the road at the cost of the holder of the permit; and
- (h) the holder of the permit must not adversely obstruct the movement of vehicles and pedestrians along the road; and
- (i) the holder of the permit must ensure that the activity (including any disposal of waste water as part of that activity) does not cause a danger or nuisance to neighbouring residents or users of the road; and

- (j) the holder of the permit must ensure that the activity does not have an adverse effect on the amenity of the surrounding area; and
- (k) the holder of the permit must not interfere with the existing services located in, on or over a road; and
- (l) the holder of the permit must properly dispose of any waste generated as a result of the activity and provide a rubbish receptacle for customers visiting their business; and
- (m) any advertising signs intended to be erected must be in accordance with any local law or planning scheme requirements relating to the regulation of advertising and advertising devices or any development permit given under the *Sustainable Planning Act 2009*.

Declaration:

To the Chief Executive Officer, Cairns Regional Council

I / We make application under *Douglas Shire Council Local Law No. 59 (Commercial Use of Roads) 2002* for approval to conduct outdoor dining on a road as outlined in this form.

Print Name:

Signature:

Dated:

Cairns Regional Council – Information Privacy Statement

Your personal information has been collected for the purpose of assessing your Application for Approval. The collection of your information is authorised under the *Local Government Act 2009*. You are providing personal information which will be used for the purpose of delivering services and carrying out Council business. Your personal information is handled in accordance with the *Information Privacy Act 2009* and will be accessed by persons who have been authorised to do so. Your information will not be given to any other person or agency unless you have given Council permission or the disclosure is required by law.

OFFICE USE

Does the application fit the criterion for granting of approval?

YES

NO

5. Local Law – Section 7(2) – Grant of a permit

For the purpose of section 7(2) of the Local Law, the granting of the permit will be consistent with the relevant criteria if –

- (a) the applicant holds all other necessary statutory approvals for the activity;
- (b) the activity will not be inconsistent with the terms and conditions of the trust and any statutory provisions relevant to the land; and
Example of section 5(b) – The activity is intended to be carried out on trust land under the Land Act 1994 but if carried out would be inconsistent with the terms of the trust for that land.
- (c) plans showing any temporary structure intended to be erected on the road as part of the activity indicate that it is structurally sound; and
- (d) the activity will not be conducted within close proximity of a business carrying out another commercial activity or, if it will be conducted within close proximity of that business – the activity will not be likely to have an adverse effect on that other business; and
- (e) if relevant, the activity will not significantly detract from the capacity of the road to provide a vehicular and, where relevant, pedestrian thoroughfare; and
- (f) the activity will not constitute a nuisance to any person; and
- (g) the activity will not constitute a danger to any person or property; and
- (h) if relevant, the activity will not obstruct access from the footpath to kerbside parking; and
- (i) the activity will not have an adverse effect on the amenity of the area; and
- (j) the activity will not have an adverse effect on existing services located in, on or over the road.

PAYMENT DETAILS:

Receipt Type 392

Payment Amount \$

Receipt No:

APPLICATION FOR PERMITS

Section 6 – Application for a permit

An application for a permit must include or be accompanied by –

- (a) details of the nature, time and place of the proposed activities for which the licence is sought; and
- (b) if the applicant wants to use a particular part of a road for serving food or drink or for other business purposes - a plan showing the relevant part of the road; and
- (c) other information and material required by a subordinate local law.

Section 7 – Grant of a permit

(1) The local government may grant a permit if satisfied that –

- (a) the activities for which the permit is sought would not unduly interfere with the proper use of a road; and
- (b) if criteria for the grant of a permit have been laid down by subordinate local law - the grant of the permit is consistent with the relevant criteria.

(2) A subordinate local law may specify criteria for the grant of a permit.

(3) A permit cannot be granted for a State-controlled road unless the chief executive agrees in writing.

Section 8 – Term of a permit

(1) A permit may be granted for a specified occasion or for a specified term.

(2) If a permit is granted for a specified term, the local government may, from time to time, on application by the holder of the permit, renew the permit.

(3) The term for which a permit is granted or renewed is to be –

- (a) fixed as required by a relevant subordinate local law; or
- (b) in the absence of a relevant subordinate local law - decided by the local government when it grants the permit or the renewal.

(4) However, the local government must, on application for renewal of a permit made before the end of the term for which the permit was granted or last renewed, renew the permit for a further term unless –

- (a) the local government has given the operator reasonable written notice of its intention not to renew the permit; or
- (b) there are proper grounds for cancellation of the permit.

Section 9 – Conditions of a permit

(1) A permit may be granted on conditions the local government considers appropriate.

(2) The conditions of a permit may, for example –

- (a) restrict activities under the permit to specified days and times; and
- (b) prohibit or limit activities under the permit during periods of poor visibility; and
- (c) limit the activities authorised by the permit to a single specified location or to a specified area; and
- (d) require the holder of the permit to display the permit in a specified position or to produce the permit for inspection on demand by an authorised person or, if the permit relates to a State-controlled road, a person authorised by the chief executive; and
- (e) require the holder of the permit to take specified measures to protect the safety of persons who may be involved in, or affected by, the activities authorised by the permit; and
- (f) require the holder of the permit to take out insurance against personal injury or property damage resulting from activities authorised by the permit; and
- (g) require the holder of the permit to take specified measures to ensure that the activities authorised by the permit do not cause a nuisance; and
- (h) if the permit authorises the holder to use a specified part of a road for carrying on a business - require the permit holder to pay specified rental to the local government at specified intervals.

Example of a condition under subsection (2)(g) -

If a permit authorises use of a road for serving food or drink, the condition could, for example, require the permit holder to provide and maintain receptacles for waste and to clean the area thoroughly at the conclusion of business on each day.

(3) The local government may, by subordinate local law, prescribe conditions that may be imposed in a permit.

Section 10 – Compliance with conditions of a permit

The holder of a permit must ensure that the conditions of the permit are complied with.

Maximum penalty - 50 penalty units

Section 11 – Power to change conditions of a permit

- (1) The local government may, by written notice given to the holder of a permit, change the conditions of the permit.
- (2) However, the local government may only change the conditions of a permit if –
 - (a) the holder of the permit agrees to the proposed change; or
 - (b) the change is urgently necessary in the interests of safety, to prevent a nuisance, or to improve access to the road or the efficiency of vehicle or pedestrian traffic; or
 - (c) the change is necessary to allow for roadworks; or
 - (d) the local government –
 - i) gives the permit holder written notice of the proposed change inviting the holder to make written representations about the proposed change within a reasonable time fixed in the notice; and
 - ii) if the permit holder makes written representations within the time allowed in the notice - takes the representations into account.

Section 12 – Transfer of a permit

- (1) The holder of a permit may, with the local government's approval, transfer the permit to another person.
- (2) The local government may impose conditions on the transfer of a permit.
- (3) However, the local government cannot –
 - (a) unreasonably refuse to approve the transfer of a permit; or
 - (b) impose unreasonable conditions on the transfer of a permit.

Section 13 – Chief executive of department may give directions

The local government and the permit holder must comply with any directions and guidelines issued by the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994* about the exercise of its powers under this local law over permits for State-controlled roads.

GUIDE TO SITE PLAN

A site plan to a scale of approximately 1:100 should be attached which extends:

- (a) from the kerb's edge, the full width of the footpath, to the frontage of the building; and
- (b) from within 2 metres of one adjoining premises, the full length of the property frontage, to within 2 metres beyond the other adjoining premises, and shows:
 - the boundaries of the site, the outline of buildings, and the use of adjoining buildings;
 - the area (including dimensions) intended to be used for displaying goods (shown in red) and the location of all proposed outdoor dining facilities; and
 - any trees, fire hydrants, transformers, telephone booths, mail boxes, bus seats and shelters, traffic signal boxes, fixed rubbish bins, pillars and posts (supporting signs or other objects) and other obstructions.

GUIDE TO PROVIDING PHOTOGRAPHS/BROCHURE

The following should be attached to the application:

- (a) a colour photograph of the site frontage and proposed area to be used for outdoor dining; and
- (b) a photograph (or brochure) detailing furniture, accessories and fittings intended to be placed on the footpath.