



**Application for Permit to use a Road for a Business Purpose
[Footpath Dining]**

[Pursuant to Sec 222 – Local Government Act 1999]

Please complete this form in BLOCK LETTERS and return to:-

District Council of Robe
PO Box 1, [Royal Circus]
Robe SA 5276

Applicant Details:

Name of Business Applicant: _____

Name of Person making the application: _____

Address _____ Telephone: _____

Email: _____

Application

The Applicant applies to the Council for a permit to use:

Details of Road _____
(insert street address)

Specifically that part of the Road which is shown on the plan attached to this Application and marked "Footpath Dining Area" for the purpose of:

Details of Business Purpose:

Note: A detailed list of all structures, fittings and fixtures you intend on using for carrying out the Business Purpose, whether erected or installed temporarily or permanently must be included with this Application including how the structure fixture or fitting is to be erected or installed.

Period of Permit:

Commencing the _____ day of _____ 20 _____

AND

Expiring the _____ day of _____ 20 _____

Renewal

Does the Applicant require a right of renewal Yes No

If yes, what period does the Applicant require the renewal period for _____ [Note: the total period of the permit cannot exceed 5 years, including any renewal].

Payment

An Application Fee is required to be paid at the time this Application is lodged. The Council will not consider this Application until the Application Fee is paid.

Public Consultation

The Council may, prior to granting a Permit in respect of this Application in accordance with s223(1) and (2) of the Act, be required to follow the steps outlined in its public consultation policy. Accordingly, there may be a delay in considering and/or granting its approval to this Permit. The Applicant agrees that it shall not make any claim against the Council as a result of any delay by the Council in considering or granting the Permit or not granting the Permit applied for, as a result of the Council complying with s223(1) and (2) of the Act.

Acknowledgement

The Applicant acknowledges and agrees:

1. that if granted a permit from the Council to use the Road for the Business Purpose, the Applicant shall comply with the terms and conditions of this Application and the Permit (a copy of which is attached to this Application) and any other special conditions the Council may impose, in its absolute discretion, in granting the Permit; and
2. it has read and understands the terms and conditions of this Application and the proposed Permit.

Payment

Cash/ Cheque/ Postal Order - please make payment at Council's Administration office at Royal Circus, Robe SA 5276 or post to PO Box 1, Robe SA 5276 to reach Council 5 days before the date of commencement or the event.

Credit Card - card type visa/mastercard,

Card Number _____ Amount \$ _____

Name on the card _____ expiry date _____

Executed by the Applicant

Signature: _____

Name: _____
Applicant/ Authorised Person of Applicant)

Dated: _____

Office Use Only

The Council has considered the Applicants application for a Permit to carry out the Business Purpose specified in the Application on the Road and the Council approves the Application and hereby grants a Permit to the Applicant on the attached terms and conditions.

Signature of Authorised Council Officer:

Name: _____

Position: _____

Date: _____

Reference of Council Resolution if applicable: _____

Copy of Insurance Policy attached: _____

Terms and Conditions Permit

Grant of Permit

In consideration of payment the Permit Fee, the Council permits the Permit Holder under Section 222 of the Local Government Act 1999 to carry out and use the Road during the Permit Period for the Business Purpose.

Background

- a. The District Council of Robe ("the Council") is a council constituted under the *Local Government Act 1999* ("the Act") and it is entitled to exercise the powers conferred on it under the Act.
- b. The Council is vested with the fee simple of the whole of the Roads (which includes all footpaths) within the Council's area ("the public Roads").
- c. The Permit Holder wishes to use a portion of public Road being the area specified for the purpose specified for the period specified.
- d. The Permit Holder is not permitted to carry out the Business Purpose on the Road without a Permit from the Council issued in accordance with the Act.
- e. The Council has received an Application from the Permit Holder applying for the grant of a Permit from the Council under s22 of the Act.
- f. The Council has, if required, complied with s223(1) and s223(2) of the Act.
- g. The Council has agreed to grant a Permit to the Permit Holder to carry out the Business Purpose on the Road in accordance with the terms and conditions of this Permit.

1. Permit Holder's Covenants

The Permit Holder expressly covenants and agrees with the Council that during the Permit Period the Permit Holder shall comply with the covenants, terms and conditions of this Permit as follows:

1.1 Fee

To pay to the Council the Permit Fee as determined by Council from time to time.

1.2 Additional Charges

To pay any taxes, rates or charges levied by any government civic or municipal authority whether federal, state or local in respect of the use of the Road by the Permit Holder;

1.3 Authorisations, Certificates etc

To provide to the Council prior to entering upon and using the Road for the Business Purpose a copy of all authorisations, permits, certificates and any other permits which may be required from the Council or some other governmental, civic, or municipal authority or otherwise to use the Road in the manner permitted under this Permit;

1.4 Indemnification & Release

1.4.1 To indemnify the Council from and against all actions, costs, claims and damages, which may be brought or claimed against the Council arising out of or in relation to the granting of this Permit or the use of the Road for the Business Purpose by the Permit Holder, except where any action, cost claim or damage is caused by the negligence or default of the Council, its officers, employees or its agents;

1.4.2 Without limiting Clause 1.4.1 the Permit Holder acknowledges and agrees that the Council shall in no way be responsible or liable for any loss or damage caused to any structure fixture or fitting located on or adjacent to the Road (whether it forms part of the Permit Holder's use of the Road or not) and the Permit Holder releases the Council from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from the structure fixture or fitting except where any liability or claim is caused by the negligence or default of the Council its officers, employees or its agents;

1.5 Public Risk Insurance

1.5.1 To effect and maintain during the Permit Period a public risk insurance policy from a reputable insurer in the joint names of the Council and the Permit Holder for the minimum amount of **TWENTY MILLION DOLLARS (\$20,000,000.00)** per claim or such other amount as the Council may reasonably require from time to time and such policy must;

1.5.1.1 bear an endorsement from the insurer indicating the insurer accepts the indemnity given by the Permit Holder to the Council under Clause 1.4.1; and

1.5.1.2 cover the injury, loss or damage to persons or property arising directly or indirectly from;

- a. the use of the Road;
- b. the maintenance of any structure fixture or fitting (if any);
- c. damage to the Road or any structure fixture or fitting (if any);

and

- d. the making good of the Road, including the removal of any structure fixture or fitting on the Road at the expiration or earlier determination of this Permit;

1.5.2 The Permit Holder must not enter on to the land and undertake the Business Purpose on the Road until the Permit Holder has provided to the Council a copy of the public risk insurance policy specified in Clause 1.5.1.

1.6 Industry Standards

Notwithstanding Clause 2.7, at its own cost and expense, to comply with any applicable construction industry or public health and safety standards in relation to the Business Purpose of the use of the Road.

- 1.7 **Compliance with Statutory Requirements**
At its own cost and expense to comply with any Act of Parliament, regulation or by-law relating to the Business Purpose of the use of the Road including but not limited to the sale or consumption of any alcohol on the Road under the Liquor Licensing Act 1997;
- 1.8 **Compliance with Direction of Government Department or Authority**
- 1.8.1 To ensure that the Business Purpose and the use of the Road by the Permit Holder and those permitted by the Permit Holder does not interfere with or cause damage to or effect in any way any wire, post, cable, pipe or other property or infrastructure belonging to a service provider including but not limited to Telstra, SA Water and/or United Water, Boral, Origin Energy Limited or any other Federal, State or local government department or authority; and
- 1.8.2 If any damage specified in Clause 1.8.1 does occur, without limiting the provisions contained in Clause 1.4, the Permit Holder agrees to indemnify the Council to the full extent permitted by law against any claim made against the Council for such damage and the Permit Holder agrees to make good any such damage or to reimburse the Council for any cost or expense it incurs in making good the damage.
- 1.9 **Authorised Use**
Not use the Road for a business purpose or allow any other part of the Road to be used other than in accordance with this Permit including but not limited to permitting any unauthorised use or unlawful activity to take place on the Road;
- 1.10 **Maintenance & Repair**
- 1.10.1 At its own cost and expense during the Permit Period to maintain any structure, fixture or fitting on the Road associated with the authorisation or permit and keep the structure, fixture or fitting in good, safe and proper repair and condition; and
- 1.10.2 Where the Permit Holder undertakes maintenance work to the Road or any structure, fixture or fitting on or near the Road, the Permit Holder must during the period in which the works are being carried out, erect warning signs and install appropriate warning devices on the Road in the immediate vicinity of the Road in accordance with the South Australian Field Guide and AS1742.3 Manual of Uniform Traffic Control Devices.
- 1.11 **Inspection of Alteration**
- 1.11.1 To permit the Council at any time to inspect the Road and the Permit Holder's use of the Road and to comply with all reasonable requests of the Council in relation to the use of the Road, and any maintenance or repair to the Road; and
- 1.11.2 If the Permit Holder does not repair and maintain the Road to the satisfaction of the Council, the Council may without formal notice having been given to the Permit Holder, carry out any such repair and maintenance to the Road and the Council shall be entitled to recover from the Permit Holder any costs incurred in doing so as a liquidated debt;
- 1.12 **Notification of Damage**
- 1.12.1 To take all reasonable precautions to avoid damage to the Road or any part of the Road when using the Road; and
- 1.12.2 If the Permit Holder does cause damage to the Road or any part of the Road, or any of Council's property as a result of the Permit Holder's use or misuse of the Road, the Permit Holder must at its own cost and expense rectify the damage and reinstate the Road to the reasonable satisfaction of the Council.
- 1.12.3 If the Permit Holder fails to rectify and repair any such damage to the Road, or any Council owned property pursuant to Clause 1.12.2, the Council may undertake the rectification and repairs itself, without formal notice having been given to the Permit Holder and the Council shall be entitled to recover from the Permit Holder as a liquidated debt any costs incurred in doing so.
- 1.13 **Location of Alteration**
- To ensure that use of the Road permitted under this Permit, remains within the confines of the Road and that no other part of the Road is used by the Permit Holder for the Business Purpose or any other business purpose without a formal written Permit from the Council; and
- 1.14 **Control of Patrons**
- To ensure that its use of the Road including the use of it by its employees, agents, contractors and invitees does not obstruct, inconvenience or cause any disturbance or annoyance to any neighbour or other person using the Road and that the behaviour of its employees, agents and invitees is controlled and managed.

2. Mutual Covenants

2.1 Permit Not Transferable

This Permit is not transferable to another location, but is transferrable to a new owner of a business premise with an approved license under the same terms and conditions of approval granted to the original applicant, provided the business use is not significantly changed from that of the original applicant

2.2 Execution of Permit

This Permit is not effective until the Permit Holder has received a copy of this Permit signed by the Council.

2.3 Contractual Rights Only

This Permit does not confer on the Permit Holder any exclusive right, entitlement or proprietary interest in the Road.

2.4 Cancellation of Permit

2.4.1 This Permit will immediately cancel on the earlier of;

2.4.1.1 the expiration of the Permit Period;

2.4.1.2 the cancellation of the Permit by the Council as permitted under this Permit; or

2.4.1.3 subject to Clause 3.7, the expiration or earlier cancellation of an authorisation issued to the Permit Holder under s221 of the Act ("the Authorisation"), which Authorisation was granted to the Permit Holder in association with this Permit;

2.5 Consequences of Cancellation

2.5.1 Upon the expiration or earlier cancellation of this Permit and subject to the Permit Holder being granted either a renewal of this Permit in accordance with **Clause 2.6** of this Permit or the granting of a new Permit pursuant to s222 of the Act, the Permit Holder shall at its own cost and expense;

2.5.1.1 return the Road to its condition prior to this Permit having been issued, including but not limited to;

a. removing any structure, fixture or fitting; and

b. repairing any damage caused to the Road in removing the structure, fixture or fitting;

2.5.2 If the Permit Holder fails to comply with **Clause 2.5.1**, the Council may undertake the work itself and any costs incurred by the Council in doing so, may be recovered from the Permit Holder as a liquidated debt.

2.6 Renewal of Permit

2.6.1 If applicable, the Permit Holder may, prior to the expiration of the Permit apply to the Council for a renewal of this Permit ("Further Permit") and provided the Permit Holder is not in breach of any provision of this Permit ("the Original Permit") the Council agrees to grant a Further Permit to the Permit Holder for the period specified in Item

2.6.1.1 the period of the Further Permit shall not be for a term such that the aggregate of the Original Permit and Further Permit does NOT exceed five (5) years;

2.6.1.2 the Council may, in its absolute discretion, vary the amount of the Permit Fee to be paid by the Permit Holder to the Council; and

2.6.1.3 the Further Permit shall exclude this Clause 2.6.

2.7 Breach

2.7.1 If the Permit Holder breaches a provision of this Permit, the Council may give the Permit Holder a written notice in respect of the breach and the proposed cancellation of this Permit;

2.7.2 If the Council does give the Permit Holder a written notice such notice must advise the Permit Holder;

2.7.2.1 that it is in breach of this Permit;

2.7.2.2 the grounds on which the Council proposes to cancel the Permit; and

2.7.2.3 allow the Permit Holder a reasonable time period within which it may give the Council written representations on the proposed cancellation;

2.7.3 If the Council receives written representations from the Permit Holder with respect to the proposed cancellation of this Permit, the Council must consider all representations.

2.7.4 The Council must, after having considered all representations from the Permit Holder confirm in writing to the Permit Holder that;

2.7.4.1 the Council accepts the written representations made by the Permit Holder and that the Permit will not be cancelled; or

2.7.4.2 the Council does not accept the written representations and that the Permit is cancelled, effective immediately.

2.7.5 If the Council serves a notice on the Permit Holder in accordance with Clause 2.7.2, the time period specified in the notice must be at least one (1) month unless the Council determines that a shorter period should apply to protect the health or safety of the public or otherwise to protect the public interest.

2.8 **GST**

For the purposes of this agreement “**GST**” has the same meaning as that term in s195-1 of the Act.

2.9 **Costs**

The Permit Holder shall reimburse the Council all of its reasonable costs incurred in granting this Permit (or any renewal thereof) and any other reasonable costs incurred by the Council as a consequence of the Permit Holder's default or breach or anticipated breach of any provision of this Permit including exercising or enforcing any rights or remedies available to the Council arising either at law or under this Permit.

3. **Interpretation**

3.1 In this Permit reference to:

3.1.1 “**Act**” means the Local Government Act 1999;

3.1.2 “**Annexure**” means the Annexure attached to this Permit;

3.1.3 “**Permit Holder**” means the entity specified in the application

3.1.4 “**Application**” means the application made by the Permit Holder for the granting of this Permit;

3.1.5 “**Authorisation**” means any authorisation granted by the Council to the Permit Holder to alter the Road in accordance with s221 of the Act;

3.1.6 “**Commencement Date**” means the date of commencement or a single event date.

3.1.7 “**Council**” means the District Council of Robe of PO Box 9 Robe South Australia and includes its members, employees, agents and authorised representatives;

3.1.8 “**Permit**” means this Permit granted by the Council;

3.1.9 “**Permit Period**” means the period specified.

3.1.10 “**Road**” means that part of the Road within the Council's area, the subject of this Permit;

3.1.11 “**Schedule**” not applicable

3.1.12 “**structure, fixture or fitting**” means any structure, fixture, fitting or property erected installed either permanently or temporarily on the Road by this Permit Holder for the Business Purpose and approved by the Council;

3.1.13 reference to a Statute shall include all amendments for the time being in force and any other statute enacted in substitution therefore and regulations and by-laws for the time being under the statute and any notice demand order direction requirement or obligation under or pursuant to that statute or those regulations or by-laws and the expressions “statute” “act” “by-laws” shall mean any federal, state or local government statute, act, regulation or by-law from time to time in force and any notice demand or direction requirement or obligation issued made given or imposed under or pursuant to the same;

3.1.14 words importing the singular embrace the plural and words importing one gender shall embrace the other gender and vice versa respectively;

3.1.15 any reference to a person shall be deemed to include a corporate body and vice versa;

3.1.16 all moneys payable by the Permit Holder to the Council under this Lease shall be recoverable as a debt or at the option of the Council as payment of the Permit Fee in arrears;

3.1.17 headings are for convenience of reference only and shall not affect the construction or interpretation of this Permit;

3.1.18 where the words “not applicable” or “nil” appear opposite any part of any item that part shall so far as the context be null and void and of no effect.

3.1.19 any Council policy relating to the issue of a permit under Sec 122 of the Act or an authorisation under Sec 221 of the Act does not override or derogate from the permit or an authorisation to the extent of any inconsistency unless the permit holder has been notified in writing of a variation to such a permit or authorisation.