

## Alfresco dining licence guidelines

Whangarei District Council has implemented a policy to allow alfresco dining on footpaths and in public places outside of restaurants. This information pack contains three documents:

- 1 An application form.
- 2 The alfresco dining policy.
- 3 The licence agreement.

To gain a licence there are two important steps for you to take but **first** make sure you read the alfresco dining policy and the licence agreement.

In being permitted to dine outside your restaurant, you will be required to operate within certain guidelines so that you do not affect other people using the footpath. This is fully explained in the policy. The steps you will need to take to obtain a licence are as follows:

- 1 Complete and return to Council, the application form together with a sketch plan showing the proposed location of tables and chairs in relation to the applicant's restaurant and a description of the materials and design of the furniture to be used (*see condition 12 of the Policy*).

### Fees

Please refer to Council's Schedule of Fees and Charges.

Your application can be received at Council's Customer Services Counter at Forum North.

### Important

If you are liquor licenced (On or BYO) you will also need to gain approval under Regulation 7 of the Sale of Liquor Regulations 1990 (*Redefinition of Premises*) so that you can extend the licenced premises into the public place. Your application for alfresco dining will be accepted and processed as an application under Regulation 7 for redefinition as well but for the purposes of Regulations 7 (*you must supply with your alfresco dining application, a scale plan showing the precise extent of the area in which your outdoor dining will be situated*).

Refer to the alfresco dining policy for guidance on where you can set up.

Council, as the owner of the land which will be subject to the redefinition, will advise approval to Council's liquor licensing inspector who will then report to the licensing authority in Wellington. The licensing authority considers the application and where approval is given, authorises the consumption of liquor within the extended premises. A replacement on/byo Licence is then issued. Consumption of alcohol must not commence outdoors until both the replacement liquor licence and the alfresco dining licence are granted.

### Completion of licence agreement

Once Council has processed and approved your application you will be required to sign the licence agreement. If you are a registered company you must also have a guarantor sign the agreement which can be a company director or other individual associated with the company. Council will contact you and arrange a day and time for this to occur at Forum North. At this time you will also need to provide a copy of your public liability insurance policy which must include cover for punitive and exemplary damage in accordance with condition 15 of the policy.

A Licence can then be issued.

**Note** If you require any further information about alfresco dining, please contact Council's environmental health team on 09 430 4200



# Alfresco dining permit application

## Applicant details

Name of applicant (*name to appear on licence*) \_\_\_\_\_

Address \_\_\_\_\_

Contact numbers \_\_\_\_\_

## Application details

Name of establishment \_\_\_\_\_

Address of establishment \_\_\_\_\_

Date from which licence is required \_\_\_\_\_ Property ID \_\_\_\_\_

Description of operation and planned use, with area sizes (*Please also attach detailed sketch showing streets with names, shop fronts and size of area required*)

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## Fees

Please refer to Council's Schedule of Fees and Charges

**Note** An additional rate per hour may be charged

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Alfresco licence agreement

Property ID \_\_\_\_\_

Licence agreement dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

### Parties

1 **Whangarei District Council**  
(*the licensor*)

2 \_\_\_\_\_  
(*the licensee*)

3 \_\_\_\_\_  
(*the guarantor*)

### 1 Background

- a The licensee wishes to use an area of the licensor's land ('the Area') for the purpose of outdoor dining
- b The licensor has agreed to grant to the licensee a licence to use the area and the parties have entered into this licence to record the terms and conditions on which the licensee will occupy the area.

### This licence witnesses

#### 1 Reference schedule

The terms defined in this schedule apply to this licence.

#### 1.1 The area

That part of the licensor's land shown outlined in red on the plan attached hereto and marked 'A'.

#### 1.2 Commencement date

\_\_\_\_\_

#### 1.3 Permitted use

The licensee shall only use or permit the area to be used for the purpose of outdoor dining

#### 1.4 Trading hours

\_\_\_\_\_

### 2 Grant of licence

The licensor grants to the licensee the Licence and right to use the area upon and subject to the terms of this licence.

### 3 Term of licence

The term of this licence shall be one month from the commencement date and then until determined by one month's written notice from either party to the other which notice may be given at any time, without cause.

### 4 No assignment or sub-licensing

The licensee shall not assign this licence, grant any sub-licence, cease to conduct the business conducted in the area personally, or otherwise deal in any manner with this licence or the right to use the area. An assignment for the purposes of this clause includes any change in the directors or shareholders of a company or any change of partners in a partnership.

## 5 Insurance and indemnity

- 5.1 The licensee agrees to occupy and use the area at the Licensee's risk and releases to the full extent permitted by law the licensor and the licensor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the area.
- 5.2 The licensee shall keep the licensor indemnified against all claims, actions, losses and expenses of any nature which the licensor may suffer or incur or for which the licensor may become liable in respect of or arising out of:
- a the neglect or careless use or misuse by the licensee and persons under the licensee's control of the area or any of the utilities or other services to the Area or arising out of any faulty fixture or fitting of the licensee
  - b any accident or damage to property or any person arising from any occurrence in or near the area wholly or in part by reason of any act or omission by the licensee and persons under the licensee's control.
- 5.3 The licensee at the licensee's expense shall effect and keep current in respect of the area and the licensee's use of the area a policy of public risk insurance for an amount not less than \$1,000,000.00, and that policy shall be extended to include cover for punitive and exemplary damages for not less than \$250,000.00 or such other amount from time to time required by the licensor, for any one event with a substantial reputable insurance office or company first approved in writing by the licensor (such approval not to be unreasonably or arbitrarily withheld).

## 6 Use of area

The licensee shall only use the area for the permitted use.

### 6.1 Use of area by licensee

The licensee shall:

- a Abide by any directions of any authorised persons or officers of the licensor.
- b Keep and maintain the area in clean order repair and condition and will, at the determination of this licence, yield up the same in clean order repair and condition.
- c Have readily available a copy of this licence at all times to enable any authorised persons or officers of the Licensor to inspect the same.
- d Comply with all requirements of the Building Act 1991.
- e Comply with all requirements of the Sale of Liquor Act 1989.
- f Comply with all existing or future building or resource consents or other regulations of the licensor that affect the area.
- g Outside the trading hours remove all tables, chairs, signs, advertisements, names and notices from the area.

### 6.2 Restrictions on use of premises by licensee

The licensee shall not:

- a Store or use inflammable or dangerous substances upon the area;
- b Permit to be done on the area anything which in the opinion of the licensor may become a nuisance, disturbance or obstruction or cause damage whether to the licensor or members of the public.
- c Obstruct or interfere with any of the entrances or exits of the licensee's premises or any of the licensee's neighbours' premises.
- d Permit any tables or chairs or signs, advertisements, names or notices to be placed on any part of the area which is adjacent to any bus stop, taxi stand or pedestrian crossing without the prior written consent of the licensor; or
- e Use the area in any noisy, noxious, illegal or offensive manner or for any illegal purpose.

## 7 Rights reserved by licensor

### 7.1 Maintenance by licensor

The licensor may use, maintain and repair all services fixtures and fittings passing through the area but in doing so the licensor shall cause as little inconvenience as reasonably possible to the licensee.

### 7.2 Work by licensor to remedy licensee's default

The licensor may remedy any default made by the licensee under this licence at any time without notice. When the licensor remedies any default by the licensee under this licence all costs and expenses incurred by the licensor in rectifying the default (*including legal costs and expenses*) shall be paid by the licensee to the licensor on demand.

## 8 Default by licensee

If at any time:

- a The licensee fails to perform any of the covenants, conditions or agreement in this licence to be performed by the licensee; or
- b The licensee (*if an individual*) is declared bankrupt or insolvent according to law; or
- c Any assignment is made of the licensee's property for the benefit of creditors or if the licensee compounds with the licensee's creditors; or
- d The licensee (*a company*) has a receiver appointed or if a resolution is passed or order made by the Court for the winding up of the licensee (*except for effecting a reconstruction of the licensee approved by the licensor*) or if the licensee is placed under official or statutory management;

the licensor may at any time without notice or demand immediately terminate this licence, and remove the licensee from the area without being guilty of trespass or conversion. This licence shall then determine but without releasing the licensee from liability in respect of any breach by the licensee of this licence.

## 9 Notices

Any notice or other document required to be given or served under this licence (in addition to any other method permitted by law) shall be given or served by registered post or by delivery to the licensee at the licensee's last known place of abode or business.

## 10 Licence not an interest in land

The licensee has a right of occupation for the term of this Licence and has no interest in the area. The legal right to possession and control over the Area remains vested in the licensor throughout the term.

## 11 Guarantee

11.1 In consideration of the licensor entering into the licence at the guarantor's request the guarantor:

- Guarantees the performance by the licensee of the covenants in the licence; and
- Indemnifies the licensor against any loss the licensor might suffer should the licence be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

11.2 The guarantor covenants with the licensor that:

**No release delay or other indulgence given by the licensor to the licensee or any other thing whereby the guarantor would have been released had the guarantor been merely a surety shall release prejudice or affect the liability of the guarantor as a guarantor or indemnifier.**

- As between the guarantor and the licensor the guarantor may for all purposes be treated as the licensee and the licensor shall be under no obligation to take proceedings against the licensee before taking proceedings against the guarantor.
- Should there be more than one guarantor their liability under this guarantee shall be joint and several.

## Execution

THE COMMON SEAL of )  
WHANGAREI DISTRICT COUNCIL )  
was hereto affixed pursuant to )  
Standing Order 4.5.2 )

this \_\_\_\_\_ day of \_\_\_\_\_ in the presence of

\_\_\_\_\_  
Council Secretary

**Signed** by the licensee )  
in the presence of )

Witness \_\_\_\_\_ Occupation \_\_\_\_\_  
Address \_\_\_\_\_

**Signed** by the licensee )  
in the presence of: )

Witness \_\_\_\_\_ Occupation \_\_\_\_\_  
Address \_\_\_\_\_