

TAMWORTH REGIONAL COUNCIL

NON EXCLUSIVE LICENCE PURSUANT TO SECTION 125

This document is a Non Exclusive Licence and is comprised of the following:

1. This Schedule of Items.
2. Annexure A being the terms and conditions of the Licence.
3. Annexure B being the plan of the Site to which this Licence relates.

This Licence is dated the _____ day of _____ in the year 2020.

Schedule of Items

Item 1 (<i>the identity of the Proprietor</i>)	
Item 2 (<i>the Site of the Licence</i>)	
Item 3 (<i>the Licence Fee</i>)	
Item 4 (<i>the commencement date for the Licence</i>)	
Item 5 (<i>the termination date of the Licence</i>)	
Item 6 (<i>the street address of the building in which the business seeks to use the footpath is located</i>)	
Item 7 (<i>items which the Proprietor is permitted to leave on the site during business hours</i>)	

ANNEXURE A

**Terms and Conditions of Non Exclusive Footpath Licence Granted by
Tamworth Regional Council Pursuant to Section 125 of the Roads Act**

1. Interpretation:

The words in Column 1 have the meaning prescribed by the words in Column 2 unless the context necessarily requires otherwise.

<u>Column 1</u>	<u>Column 2</u>
The Council	The Tamworth Regional Council its Administrators and successors
The Proprietor	The person named in Item 1
The Site	The area identified in Item 2
The Plan	The Plan annexed hereto and marked Annexure B
The Term	The period from the Commencement Date to the Termination Date
The Licence Fee	The sum referred to in Item 3 including any variation made pursuant to these terms
The Commencement Date	The date referred to in Item 4
The Termination Date	The Date referred to in Item 5
The Building	The building or premises identified in Item 6
The Approved Use	Restaurant seating
The Improvements	The objects referred to in Item 7

2. Grant of Non Exclusive Licence

- 2.1 The Council in its capacity as the relevant determining authority has granted the Proprietor's Application for Approval to use part of the footway adjacent to the Building for the Approved Use subject to the terms of this Non-Exclusive Licence.
- 2.2 The Approval authorises the Proprietor to use the Site for the Approved Use from the Commencement Date to the Termination Date and subject to compliance with the terms of this Non-Exclusive Licence.

3. Licence Fee Payable

- 3.1 The Proprietor will pay the Licence Fee to the Council. The Licence Fee for the period from the Commencement Date to the next occurring 30 June will be the amount referred to in the Tamworth Regional Council Management Plan for the current financial year.
- 3.2 The Licence Fee in Item 3 must be paid on or before the Commencement Date unless the Council agrees to accept payment at a later date.
- 3.3 The Licence Fee for each financial year after the Commencement Date will be determined at the absolute discretion of the Council. The reviewed Licence Fee will be payable from the beginning of each financial year notwithstanding that the actual fee may not be determined by the Council at that date.
- 3.4 The Licence Fee for each financial year after commencement of the Licence must be paid within four (4) weeks of Council giving the Proprietor a notice specifying the amount payable.
- 3.5 The Licence Fee is a non refundable payment. Without detracting from the general nature of this term it is specifically agreed that no part of the Licence Fee is refundable in the event that the Proprietor does not or cannot use the Site for the full period during which the Licence Fee is paid.

4. Goods and Services Tax (GST)

- 4.1 GST means any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act (GST Act) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.
- 4.2 Each payment made by you must be made with an additional amount equal to any Goods and Services Tax applying to that payment.
- 4.3 This clause is an essential term of this Licence.
- 4.4 The Council shall provide a Tax Invoice in accordance with the GST Act and Regulations on or prior to the Proprietor being required to perform its obligations under the preceding sub-clause.

5 Restrictions on Use of the Site

- 5.1 The Proprietor will not erect or cause to be erected or place any structures or improvements upon the Site other than the improvements listed in Item 7.
- 5.2 The Proprietor will be responsible for ensuring that a 2.5 metre unobstructed public thoroughfare is maintained on the footpath in front of the Building at all times. The location of the public thoroughfare is more particularly identified in the Plan annexed hereto and marked "B".
- 5.3 The Proprietor will be responsible for the removal of the improvements at the close of trading each day. This Licence shall not extend to authorise the improvements or any other thing on the Site when the Building is not open to the public.
- 5.4 The Proprietor undertakes to keep the Site in a clean condition and in particular to ensure that rubbish is not accumulated on the Site. All trade refuse is to be removed regularly in a manner acceptable to the Council.
- 5.5 The Proprietor agrees not to allow:
 1. Any overcrowding on the Site;
 2. Any activities on the Site which would be a distraction to motorists;
 3. Lighting or noise on the Site which would be a distraction to motorists;
 4. Sign writing or notices within the Site without the prior consent of the Council.
- 5.6 All outdoor furniture used within Peel Street must be of a style and construction to suit the Peel Street beautification works. The suitability of furniture will be at the absolute and sole discretion of Council's Director Planning and Compliance or such other Council Officer as the General Manager may nominate.
- 5.7 The area must be barricaded off from the remainder of the street so as to delineate the area.
- 5.8 Alcohol must be served by the proprietor of the restaurant. Under no circumstances may alcohol be stored under or near the tables at BYO restaurants.
- 5.9 Alcohol must only be served where a meal is provided by the restaurant to patrons seated in the outdoor dining area.
- 5.10 Consumption of alcohol at outdoor dining facilities is not permitted during the annual Country Music Festival.
- 5.11 Furniture, umbrellas or barriers advertising alcoholic beverages are not permitted.
- 5.12 Alcohol consumption at approved dining facilities is restricted to between 12 midday and 10.00pm daily.

5.13 A copy of this licence agreement shall be maintained on the premises at all times and shall be produced to the Police on demand.

6. Ownership of Proprietors Improvements in Event of Default

The Council have the right to seize and dispose or sell any property located on the site in the following circumstances:

1. The Licence has been terminated; or
2. The Licence does not expressly authorise the Proprietor to leave the property on the site.

7. Licence At All Times Subject To Necessary Consents

This Licence is subject at all times to the Council being able to obtain from time to time all necessary consents that may be required to enable the Site to be used and to continue to be used by the Proprietor for the Approved Use.

8. The Proprietor To Release And Indemnify The Council

8.1 The Proprietor agrees to release and, indemnify and keep released and indemnified the Council, its officers, servants and agents from and against all actions, suits, claims and demands by and on behalf of the Proprietor or any person or corporation whatsoever in respect of:

1. Damage to personal property;
2. The personal injury or death of any person which may arise directly or indirectly out of the Proprietor's business at the Site or the occupation or use by the Proprietor, its servants, workmen or agents, clients, customers, visitors, invitees or licensees of the Site.

8.2 The Proprietor agrees to arrange and maintain during the whole of the term suitable insurances with a reputable insurance company in the names of the Proprietor and the Council providing an indemnity in an amount of not less than \$20,000,000.00 for any one claim against any claims for damage to property or personal injury or death to any person resulting from the use of the premises or the obstruction caused by the premises and the Proprietor shall produce such Policy of Insurance at the offices of Tamworth Regional Council when so requested by the General Manager of the Council.

9. Termination

9.1 The Council shall have the right to terminate this Licence by giving 7 days notice in writing to the Proprietor in the following circumstances;

1. Notwithstanding anything contained or implied by the Conveyancing Act 1919 as amended if the Licence Fee hereby reserved or any part thereof shall be in arrears or unpaid for a period of one (1) calendar month after

the Licence Fee was due for payment (irrespective of whether a demand for payment has been made or not); or

2. The Proprietor neglects or fails to perform or observe any covenants, conditions, restrictions, stipulations or agreements herein contained or implied which on the part of the Proprietor is to be performed or observed; or
3. The Proprietor fails to comply with any proper notice given pursuant to the terms of this Licence within the time specified;

9.2 Immediately upon the termination of this Licence the Council will have the right to expel and remove the Proprietor from the Site without being guilty of any manner of trespass and may use such force as may be required to remove the Proprietor and any property from the Site.

9.3 Should a compulsory acquisition by a competent statutory authority occur which affects the Site or any area within ten (10) metres of the Site then either party shall have the right to terminate this Agreement upon giving written notice to the other party. A "compulsory acquisition" within the meaning of this clause does not mean a resumption but simply a written request to the Council that land is required either permanently or temporarily. The Council shall notify the Proprietor in writing of any such request received as soon as practicable.

10. Holding Over

Should the Proprietor continue to occupy the site after the expiration or sooner determination of the term of this Licence with the consent of the Council then the Proprietor shall occupy the site on a monthly basis and otherwise in accordance with the terms of this Licence. The Licence fee payable by the Proprietor in respect of any holding over period will be the Licence fee determined by the Council for the financial year or part thereof during which the Proprietor occupies the site pursuant to this holding over provision. The full Licence fee will be payable for the financial year regardless of the actual period the Proprietor occupies the site.

11. General

The Rights of the Council under the terms of this Licence are additional and without prejudice to any remedies which might otherwise be used for recovering arrears of the Licence Fee or consequent upon any antecedent breach of covenants herein contained or any of them and that upon its re-entering upon the Site or any part thereof the whole of this Agreement shall determine, cease and be at an end as if the same expired by effluxion of time unless the Council shall otherwise elect. This condition is an essential term of the Agreement.

12. Short Form Of Covenant

The Proprietor hereby covenants with the Council to the full extent of the covenants hereinafter shortly noted as the same are set forth in words at length in the Second Column of Part Eleven of the Fourth Schedule to the Conveyancing Act 1919 -

1. That the Lessee covenants with the Lessor to pay rent;
7. And that the Lessor may enter and carry out requirements of public authorities and repair under the Lease;
17. That the Lessee will not carry on any offensive trade;

(for the purpose of this Clause the use of the word "Lessee" shall mean the Proprietor, the use of the word "Lessor" shall mean the Council, the use of the word "Lease" shall mean this Licence and the use of the word "Rent" shall mean Licence Fee.

13. Assignment

The Proprietor has no right to assign this Licence. Any purchaser of the Proprietor's business must make a new Application to the Council for approval to use the Site for the Approved Use.

14. Adhere to Council's Policies

The Proprietor covenants to adhere to any Policy of the Council which relates to the use of public footpaths for restaurant seating. The Council has the right to amend this Policy from time to time and the Proprietor covenants to comply with any Policy amendments which may be made during the term of the Licence.

15. Service of Notices

All Notices or communications may be given to the parties as follows:

- A. The Proprietor may give a notice to the Council by posting the notice signed by the Proprietor by ordinary pre-paid post addressed to the General Manager of the Council or the person acting as such for the time being and addressed to:

The General Manager
Tamworth Regional Council
P O Box 555
TAMWORTH NSW 2340

- B. The Council may give the Proprietor a notice by posting the notice by ordinary pre-paid post addressed to the Proprietor care of the Building.
- C. Any notice or communication given or served by post shall be deemed to have been duly given seventy-two (72) hours after it was posted.

16. Severance

If any provision of this Agreement is void or unenforceable due to any statutory or other control binding upon the parties or for any other reason it shall, subject to Clauses 5.2 and 5.3, not apply.

If reading down a provision of the Agreement would prevent the provision being invalid or voidable it should be read down to the extent that it is necessary and capable of being read down.

If a provision of the Agreement is invalid or voidable and, the provision would not be invalid or voidable if a word or words were omitted, then that word or those words will be omitted.

<p><u>SIGNED</u> for and on behalf of TAMWORTH REGIONAL COUNCIL by its duly authorised officer</p>	<p>.....</p> <p>.....</p> <p style="text-align: center;">Witness</p>
<p>SIGNED SEALED AND DELIVERED by the Proprietor in the presence of:</p>	<p>.....</p> <p>.....</p> <p style="text-align: center;">Witness</p>

