WEST COAST COUNCIL
STREET DINING BY-LAW

By-Law No. 1 of 2017

A by-law of the West Coast Council made under Section 145 of the *Local Government Act 1993* (Tas) for the purpose of regulating and controlling the conduct of street dining within local highways situated with the municipal area of the West Coast Council.

PART 1 - PRELIMINARY

1. Short title

This By-Law may be cited as the *Street Dining By-Law* No. 1 of 2017.

2. Application

(1) This By-law applies to Street Dining conducted within a Local Highway situated within the Municipal Area.

(2) This By-Law does not apply to Street Dining authorised by any permit issued by Council pursuant to Part 4 of the *Land Use Planning and Approvals Act 1993* (Tas).

3. Interpretation

In this By-Law, unless the contrary intention appears –

'Act' means the *Local Government Act 1993* (Tas);

'Authorised Officer' means the General Manager and any employee of the Council appointed by the General Manager as an authorised officer for the purposes of this By-Law;

'By-Law' is a reference to this Street Dining By-Law No. 1 of 2017;

'Certificate of Registration' means the certificate of registration issued pursuant to section 87 and/or section 88 of the Food Act with respect to the Food Business to which the application for a Permit, or a Permit, is related;

'Council' means the West Coast Council (ABN 20 448 787 926) constituted pursuant to the Act;

'Food Act' means the *Food Act 2003* (Tas);

'Food Business' has the meaning given to that term in section 4(1) of the Food Act;

'Footpath' means those parts of a Local Highway, other than the road pavement, intended for use by pedestrians and whether constructed or not;

'Furniture' includes chairs, tables, umbrellas, screens, barriers, awnings, waste bins, heaters, portable lighting or portable signage;

'General Manager' means the person appointed by Council from time to time to the position of general manager in accordance with section 61 of the Act;

'Highways Act' means the *Local Government (Highways) Act 1982* (Tas);

'Infringement Notice' means a notice complying with section 149 of the Act;

'Local Highway' has the meaning given to that term in section 3(1) of the Highways Act;

'Municipal Area' means the municipal area of the West Coast Council as defined in section 16 of the Act;

'Permit' means a permit issued under this By-Law;

'Person' includes a body corporate;

'Premises' means the premises with respect to which a Certificate of Registration is issued;

'Street Dining' means the consumption of food and/or beverages by customers of a Food Business seated in an area within a Footpath external and adjacent to the relevant Food Business;

'Street Rubbish Bins' means rubbish bins installed by Council within a Footpath;

'Trading Day' means each day that the holder of a Permit opens a Food Business for trading;

'Vehicle' has the meaning given to that term in section 3(1) of the *Traffic Act 1925* (Tas).

PART 2 – STREET DINING OFFENCES

4. Street Dining offences

(1) Any person who conducts Street Dining without first obtaining a Permit is guilty of an offence under this By-Law.

Penalty: a fine not exceeding 5 penalty units.

PART 3 – APPLICATION FOR STREET DINING PERMIT

5. Application for Permit

(1) An application for a Permit to conduct Street Dining must be made in writing using the form set out in Schedule 2 of this By-Law, be lodged with Council's General Manager and set out:

(a) the full name and address of the applicant;

(b) the location for which the Permit is sought;

(c) a plan showing the location and dimensions of the proposed Street Dining area and the details and placement of all proposed Furniture;

(d) the proposed days and hours of dining;

(e) where the applicant is a body corporate, the full name and address of the natural person responsible for ensuring compliance with the proposed Permit and the provisions of this By-law;

(f) a certificate of currency for a policy of insurance concerning the carrying out of the proposed Street Dining and insuring against public liability and product liability in an amount of no less than $10 million per insurable event;

(h) any other material or information that the General Manager may deem necessary.

(i) a copy of a current Certificate of Registration; and

(j) details of the proposed methods for disposing of waste generated by the proposed Street Dining.

(2) Each application for a Permit must be accompanied by the fee prescribed by Council pursuant to section 205 of the Act.

6. Granting of Permits

(1) Following receipt of a valid application, an Authorised Officer may:

(a) grant a Permit on such terms and conditions as the Authorised Officer thinks fit in addition to the standard terms and conditions specified in Part 4 of this By-Law; or

(b) refuse to grant a Permit for one of the reasons set out in clause 8 of this By-Law and, in the event of a refusal, the Authorised Officer will notify the applicant in writing and provide reasons for the refusal.

(2) Permits will contain the following details:

(a) the full name and residential address of the holder of the Permit;

(b) a Permit number;

(c) the Permit's date of issue and the date of expiry;

(d) the area, location or place to which the Permit applies;

(e) in the case of an application made by a body corporate, the full name and address of the natural person specified for the purposes of clause 5(1)(e) of this By-Law;

(f) the days and hours when trading may occur pursuant to the Permit; and

(g) any other requirements, terms or conditions that an Authorised Officer may consider to be necessary or appropriate.

(3) Permits are non-transferrable.

(4) Any person who breaches or fails to comply with any term or condition of a Permit is guilty of an offence under this By-Law.

Penalty: a fine not exceeding 3 penalty units.

7. Duration of Permit and renewals

(1) Subject to clause 9 of this By-Law, each Permit issued or renewed will remain in force until the 30th day of June following the date of issue or renewal (as applicable) at which time it will automatically expire unless it is renewed in accordance with this clause 7.

(2) No earlier than three (3) months prior to the expiration of a Permit, the holder of that Permit may make application to the General Manager for a renewal of that Permit

(3) An application to renew a Permit must include:

(a) a certificate of currency for all policies of insurance required to be taken out and held under this By-Law;

(b) the fee prescribed by Council pursuant to section 205 of the Act;

(c) a copy of the relevant Certificate of Registration; and

(d) and other material or information that the General Manager may consider necessary or appropriate.

8. Refusal to issue Permit

An Authorised Officer may refuse to issue a permit if:

(1) the applicant is in breach of, or has previously breached, this By-Law;

(2) the proposed activity, in the Authorised Officer's opinion, is undesirable;

(3) the application does not contain all of the relevant information specified in clause 5 of this By-Law; or

(4) the applicant has not demonstrated that it holds a current policy of insurance which complies with clause 5(1)(f) of this By-Law.

9. Revocation of Permits

(1) An Authorised Officer may revoke a Permit in accordance with clause 9(2) of this By-Law in the event that:

(a) there is a failure to comply with the conditions of the relevant Permit;

(b) a breach of this By-Law (including the commission of an offence) has occurred with respect to any activity authorised by the relevant Permit; or

(c) with respect to the insurance policy required to be taken out and held by a permit holder pursuant to clause 5(1)(f) of this By-Law:

i. a permit holder refuses to produce a certificate of currency for inspection by an Authorised Officer upon request; or

ii. the policy has lapsed.

(2) An Authorised Officer may revoke a Permit by serving the holder of the Permit with seven (7) days written notice of revocation.

PART 4 – STANDARD PERMIT CONDITIONS

10. Standard Permit conditions

(1) Each Permit issued pursuant to this By-Law is subject to the following conditions:

The permit holder must:-

(a) *hold and maintain a Certificate of Registration for the Food Business pertaining to the Street Dining activity and keep a copy of such registration in the relevant Premises.*

(b) display the Permit in a conspicuous place with the area which is the subject of the Permit;

(c) produce upon request a copy of the Permit to any Authorised Officer or police officer;

(d) hold and maintain a policy of insurance concerning the carrying out of the Street Dining authorised by this Permit which insures against public liability and product liability in an amount of no less than $10 million per insurable event;

(e) produce upon request a copy of the certificate of currency for the policies of insurance required to be held and maintained by the Permit to any Authorised Officer;

(f) ensure that the Street Dining area and the area immediately adjacent to it is maintained in a clean, tidy and sanitary condition;

(g) ensure that Street Rubbish Bins are not used for the disposal of waste associated with the Street Dining activity;

(h) regularly empty all waste bins, and wash the pavement of the relevant area of Footpath at least once per day; and

(i) immediately once dining tables are vacated, clean and wash any liquid, food debris, broken glass, cigarette butts or other waste from the tables and the area around the dining tables.

A permit holder must not:-

(a) obstruct the free passage of pedestrians on any Footpath;

(b) obstruct the free passage of vehicle on any Local Highway;

(c) create any noise or disturbance at the location to which the Permit applies which adversely affect the occupants of nearby premises or pedestrians; or

(d) use or permit to be used any flashing or intermittent lighting apparatus or device on or from the location to which the Permit applies.

PART 5 – GENERAL PROVISIONS

11. Removal of items from Local Highway

(1) Subject to compliance with clause 11(2) of this By-Law, an Authorised Officer may, with or without the assistance of any other Council's employees, remove any Furniture or Vehicle that is placed within a Local Highway in contravention of this By-Law and store same in a secure location until such time as any penalties that may be payable pursuant to this By-Law have been paid.

(2) An authorised officer intending to remove any item or items from a Local Highway pursuant to clause 11(1) must first give two (2) days written notice to the owner or controller (or the apparent owner or controller) of the item or items.

(3) Police officers are hereby authorised to carry out any action under clause 11(1) of this By-Law.

12. Requirement to give name and address

Where an Authorised Officer reasonably believes that a person is offending or has offended against a provision of this By-Law, that Authorised Officer may require that person to give his or her name and address to that Authorised Officer.

13. Council Expenses

In addition to any penalty imposed under this By-Law, the Council may recover any expense incurred by it in consequence of a failure to comply with, or a contravention of, this By-Law as a debt payable by the person so failing to comply or contravening.

PART 6 – INFRINGEMENT NOTICES & ENFORCEMENT

14. Infringement Notices

(1) In this clause 14, '**specified offence**' means an offence against the clause of this By-Law specified in Column 1 of the Table in Schedule 1 of this By-Law.

(2) An Infringement Notice may be issued in respect of a specified offence and the monetary penalty set out adjacent to the offence in Column 3 of the Table in Schedule 1 is the penalty payable under the Infringement Notice for that offence.

(3) An Authorised Officer may:

(a) issue an Infringement Notice to a person that the Authorised Officer has reason to believe is guilty of a specified offence; and

(b) issue one Infringement Notice in respect of more than one specified offence.

(4) In addition to any other methods of service, an Infringement Notice alleging that a Vehicle has been used in relation to a specified offence may be served by affixing it to that Vehicle.

(5) Payment of an Infringement Notice issued under this By-Law must be made to the General Manager within 28 days of the issue of the Infringement Notice to avoid the Infringement Notice being referred to the Director, Monetary Penalties Enforcement Service.

(6) The *Monetary Penalties Enforcement Act 2005* (Tas) applies to an Infringement Notice issued under this By-Law.

SCHEDULE 1 – STREET DINING BY-LAW NO 1 OF 2017

TABLE OF SPECIFIED OFFENCES

Column 1 Clause of By-Law	Column 2 General Description of Offence	Column 3 Penalty (Penalty Units)
4(1)	Street Dining without a Permit	2.5
6(4)	Failure to comply with conditions of Permit	1.5

SCHEDULE 2 – STREET DINING BY-LAW NO 1 OF 2017

WEST COAST COUNCIL

APPLICATION FOR STREET DINING PERMIT

Type of Permit Required - Street Dining

1. Applicant's Full name: _____
2. **Applicant's Address:** _____
3. Contact phone number/s: _____
4. **Email:** _____
5. **Trading name of Business:** _____
6. Address of Premises: _____
7. Owner or Occupier of the Premises.
8. Proposed days and hours of trade
   Days _____ Hours _____
   Dates (if applicable) _____
9. Specify proposed goods, wares, merchandise or services that will be traded under the permit

_____

_____

_____

10. Dimensions of proposed trading area (M^2) _____

Number of tables:	Colour of tables:
Number of chairs:	Colour of chairs:
Number of umbrellas:	Colour of umbrellas:
Other Furniture:	Colour of other Furniture
Vehicle Type:	Colour of Vehicle:

DOCUMENTS REQUIRED

- Insurances – certificate of currency (must show $10 Million public liability)
- Plan showing location of proposed Street Dining Area and configuration of Furniture and/or Vehicles
- Food Business Registration

Certified for the purposes of section 162(1)(a) of the *Local Government Act* 1993 as being in accordance with the law by:

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LEGAL PRACTITIONER

DATED this 27th day of JUNE 2017 at Hobart in Tasmania

Certified for the purposes of section 162(1)(b) of the *Local Government Act* 1993 as having been made in accordance with that Act by:

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GENERAL MANAGER

DATED this 28th day of JUNE 2017 at QUEENSTOWN

THE COMMON SEAL of the West Coast Council has been affixed to this document pursuant to a resolution of Council passed on the 20th day of June 2017 for the purposes of section 161 of the Local Government Act 1993 (Tas) in the presence of:

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Mayor

.....
Common Seal of the West Coast Council

.....
General Manager