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LOCAL GOVERNMENT ACT 1995

CITY OF FREMANTLE
LOCAL LAWS RELATING TO
OUTDOOR EATING AREAS

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In pursuance of the powers conferred upon it by the Local Government Act 1995 and of all other powers enabling it, the Council of the City of Fremantle hereby records having resolved on 16th March 1998, to make and submit for confirmation of the Minister for Local Government the following Local Law relating to outdoor eating.

Interpretation

1. In this Local law unless the context otherwise requires—

“Local law” means a local law of these local laws.

“Council” means the Council of the municipality of the City of Fremantle.

“CEO” means Chief Executive Officer of the City of Fremantle

“Eating house” means premises which are either—

- (a) registered as an eating house under the Health Act 1911; or
- (b) the subject of a hotel licence, a limited hotel licence, special facility licence or a restaurant licence granted under the Liquor Act 1970.

“Health Act” means the Health Act 1911 and includes the Health (Food Hygiene) Regulations 1993 made pursuant to the provisions of the Health Act 1911.

“Licence” means a licence as per Schedule 2 issued by the Council under these local laws to set up and conduct an eating area.

“Licence Plan” means a plan attached to and forming part of a licence depicting those parts of a street or public place within which an eating area may be set up and conducted.

“Proprietor”—

- (a) has the same meaning given to it in and for the purposes of Division 3 of Part V of the Health Act 1911 where the premises in question are registered as an eating house under that Act; or
- (b) means the holder of a licence granted under the Liquor Act 1970 where the premises in question are the subject of a hotel licence, a limited hotel licence or a restaurant licence granted under the Act.

“Public facility” means any structure, item or fitting whether in a street or public place that is the property or has been provided by a Government department, instrumentality of the Crown or the Council.

“Public Place” means any place on public or private land that the public have access to at all times and is an open air non enclosed pedestrian thoroughfare.

“Restricted Tables and Chairs” means tables and chairs on private land the subject of an outdoor eating licence that are restricted by the proprietor to be used only by patrons of the eating house”

“Schedule” means a schedule to these local laws.

“The scheme” means the gazetted town planning scheme in force at the date of approval.

“Table and chairs” means a table with up to four chairs.

“Licensee” means the holder of a licence or supplementary licence granted pursuant to these local laws.

“Unrestricted Tables and Chairs” means tables and chairs on public land the subject of an outdoor eating licence that are available for use by the general public.

(Note: both tables and chairs are to be available for unrestricted use during times of operation)

Application of local laws

2. These local laws apply to any road reserve within the municipality or within the areas designated on Map 1. Any application on private property not described as a public place must comply with the requirements of any town planning scheme in force within the city.

Purpose

3. These local laws are to provide for the management and control of outdoor eating areas, the demarcation of spaces within the licensed areas, the placement of bollards, railings or flower boxes within the licensed area, advertising control within licensed areas, cleanliness of the licensed area and the handling of food from between the licensed area and the registered eating house.

Prohibitions

4. (i) No person shall set up or conduct an eating area that prohibits public access to that area unless that area is located on private land.
- (ii) No person shall set up or conduct an eating area in a portion of a street or public place adjoining an eating house—
- (a) unless the person is the proprietor of the eating house referred to in local law 1 of these local laws, and;
 - (b) unless the person is the holder of a valid and current licence issued pursuant to these local laws, and;
 - (c) otherwise than in accordance with the licence plan and any conditions on the licence.

Application for Licence

5. A proprietor of an eating house seeking the issue of a licence shall make application to the Council in writing as per the form in Schedule 1 and such application shall be accompanied by—

- (a) the Council shall apply a fee and or charge for the space occupied or the number of tables placed within the public street. Areas described as a public place on private land are exempt from payment for the space occupied.
- (b) a plan and specification of the proposed eating area at a scale of 1:50 showing—
 - (i) the location and dimensions of the proposed eating area and the means, if any, by which the eating area is to be separated from the balance of the street or public place;
 - (ii) the areas, if any, designated for placement of restricted tables and chairs, (relevant to areas of private land only);
 - (iii) the position of all tables, chairs and other structures proposed to be provided in the eating area and which of such items, if any, are to be retained within the eating area at all times;
- (c) a plan and specification at a scale of 1:200 showing the eating area and all land and improvements thereon within 30 metres of the boundaries of the eating area including any public facility and parking restriction within the street or otherwise;
- (d) specification of tables and chairs and other structures to be set up in the eating area including specification as to how the tables and chairs are to be removed to enable unimpeded City cleaning;
- (e) a management plan detailing operations of the outdoor eating area including the following—
 - (i) the manner in which foodstuffs and other dining accessories are to be conveyed to and protected from contamination within the eating area;
 - (ii) the proposed days and times of operation;
 - (iii) written particulars of arrangements made in respect of public liability insurance of not less than \$5,000,000;
 - (iv) location number and form of table and chairs to be used;
 - (v) location and form of barrier, if any, to be used;
 - (vi) the time and method of cleaning and maintaining of the outdoor eating area to provide for—
 - a) frequent (with a minimum of hourly) cleaning of the licence area and tables and chairs therein, including the removal to a private waste receptacle of all rubbish, foodstuffs and cigarette ends regardless of origin.
 - b) provision of cigarette ashtrays that are cleaned after use by each customer.
 - c) provision of weighted cigarette ashtrays to ensure that the ashtray and contents are not blown onto the paved footpath and licensed area.
 - d) proprietor being responsible for advising patrons not to throw rubbish and cigarette ends onto the footpath.
 - e) adjustments of all tables, chairs and other structures so as to be contained within the licenced area in accordance with the approved plans and specifications.
 - f) daily cleaning of the licence area and immediate surrounds by sweeping, washing and/or scrubbing of the paved surfaces including the removal of all rubbish, cigarettes and foodstuffs emanating from within the licenced area.
 - (vii) Type and form of advertising signs and devices to be used;
 - (viii) Entering into a cleaning contract with the Council or any other organisation for the weekly steam cleaning of the outdoor eating area;
 - (ix) For the serving of alcohol and;
 - (x) Provision for the sealing of the licensed area to the satisfaction of Council.

Council Consideration of an Application

6. The Council shall not be obliged to consider an application for a licence which is incomplete in relation to the requirements of local law 5.

7. The Council may in respect of an application—

- (a) refuse the application; or
- (b) approve the application with such terms and conditions as it thinks fit.

8. Where the Council approves of an application—

- (a) it shall issue a Licence in the form of Schedule 2, such licence expiring on 30 June next, and shall cause to be attached to the licence a licence plan which shall form part of the licence; and
- (b) subject to the Local Government Act 1995 and these local laws approving the application on such terms and conditions as it thinks fit including (but not limited to) the fees, charges and conditions adopted.
- (c) except in the case of a transfer under local law 9 (a) (iii) where a licence is to be issued on or after 1 August in any year, the charge specified by local law 8 (b) divided by 12 months less number of full months since 1 July shall apply.

Renewal or Amplification of Licence

9. (a) A licensee may—

- (i) in writing apply to the Council prior to 1 June in each next year for the renewal of the licence and shall submit with the application for renewal the fee prescribed by Council.
 - (ii) at any time seek the Council's consent to alter any of the conditions of the licence and such application shall be treated as though it were an application for a licence to the extent of the alteration.
 - (iii) in the event of impending change of proprietorship of the eating house, apply for the Council's consent to transfer the licence to the incoming proprietor prior to such transfer becoming effective.
- (b) Where the Council approves of the transfer or a licensee, it shall cause to be issued to the incoming proprietor a supplementary licence in the form of Schedule 2 for the period remaining of the licence and is not obliged to refund any part of the fee or charge paid by the former proprietor.

10. The Council shall each year adopt a fee schedule pursuant to the provisions of the Local Government Act 1996 to be imposed on licensees for outdoor eating areas. Fees shall be structured on the three zones as identified in Map 2.

Obligations of a Licensee

11. A proprietor who is the person named in a licence—

- (a) shall ensure that the eating area is conducted at all times in accordance with the provisions of these local laws and the submitted management plan;
- (b) shall ensure that the eating area is steam cleaned once per week and kept in a clean and tidy condition at all times;
- (c) shall seal the paving area between the shop frontage and the curb annually to the specification and satisfaction of the Council;
- (d) shall be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of the Eating Area or any part thereof arising from the carrying out or proposed carrying out of any works in the street by or on behalf of a Government department, instrumentality of the Crown or the Council and does not have any claim for compensation or damages on account of any disruption of business or loss suffered on account of any such works;
- (e) shall be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of the street, carriageway or footpath or any part thereof arising from the conduct of the eating area or persons therein;
the Council may recoup from the licensee such costs in a court of competent jurisdiction;
- (f) shall be solely responsible for all rates, taxes, charges and fees levied upon the land occupied by the eating area;
- (g) shall ensure that the eating area does not impede pedestrian flow, a minimum 1.8 metre wide accessway for pedestrians shall be maintained either adjacent to the building or adjacent to the kerb and free from public facilities, in site specific circumstances an additional width of upto 2.4 metres may be required;
- (h) all tables and chairs shall be removed after operating hours to enable cleaning of the paved areas. Any enclosed outdoor eating area not readily accessible to Council cleaning staff or contractors must be cleaned each day by the licensee;
- (i) outdoor eating areas may be defined by means of fixed railings, planter boxes or modified paving materials at the expense of the licensee and to the satisfaction of the Council. Any details to be submitted as part of an application for a licence.

Offences and Penalties

12. A person who commits a breach of these by-laws commits an offence and is liable on conviction to a maximum penalty of—

- (a) \$1,000 in the case of a breach of local law 4 (c); or
- (b) \$500 in the case of a breach of any other local law, and;
- (c) where a penalty is imposed for a breach of any local law pursuant to (b) above for a breach that is of a continuing nature an additional \$50 per day for every day during which the breach is continued.

13. The Council may cancel a licence where the proprietor has been convicted of an offence against these local laws, the Health Act 1911 or any other law relating to the setting up or conducting or eating areas

or has transferred or assigned or attempted to transfer or assign the licence without the consent of the Council or is in breach of any condition of the licence and shall not be obliged to refund any part of the fee or charge to the proprietor.

14. (a) The establishment of outdoor eating areas will only be permitted in areas where the positioning of tables and chairs is not in conflict with existing street furniture of the Council.
- (b) The permissible times of operation shall be 6.00 am to 1.00am Monday to Saturday and 7.00 am to midnight on Sunday or as otherwise restricted in the conditions of licence.
- (c) No table, chair or structure shall be provided or permitted to remain upon the eating area at any time other than on the days and during the hours specified in local law 14(b).

Specifications

15. (a) The following conditions shall apply where the existing footpath is widened to accommodate an eating area—
 - (i) the intersections of the relevant streets being treated in such a manner as to position vehicles on the alignment of the kerblines of the widened footpath so as to provide safety for pedestrians and diners;
 - (ii) the conventional raised kerb being maintained as a physical delineation between the widened footpath and the carriageway for the safety of pedestrians and diners;
 - (iii) the existing footpath and the widened footpath area paved with paving units of a type agreed by the Council;
 - (iv) the Council resolving in each case concerning provision being made for the planting of suitable trees in the widened section of the footpath, pending the preparation and adoption of a master plan for each street indicating inter alia, the location for street trees;
 - (v) the imposition of a no parking restriction associated with the widening of the footpath; adequate provision being made for loading zones and other kerbside requirements.
- (b) Canopies: The licensee may erect subject to obtaining Council Planning Approval, a canopy over the eating area subject to—
 - (i) the canopy complying with the relevant Council town planning scheme, policies, building and other local laws;
 - (ii) the canopy being supported from the adjacent building in a manner acceptable to the Council;
 - (iii) the canopy having sufficient clearance from the ground to allow cleaning vehicles access.
- (c) Lighting: Where the licensee intends to operate during the hours of darkness light fittings are to be affixed to the adjacent building, or alternatively suspended from or attached to the supporting structure of the canopy, if one is provided.
- (d) Bollards or barriers: Upon request by the licensee the Council may agree to the installation at the expense of the licensee of bollards or barriers to Council satisfaction within the footpath area.
- (e) Quality of Tables and Chairs: Tables and Chairs placed in any public area shall be of suitable quality satisfactory to the Council. Use of plastic or resin tables and chairs may be permitted dependant on location and where they are deemed by Council not to reduce the amenity of the locality and streetscape.
- (f) Flower boxes: Upon request by the Licensee the Council may permit the placement of flower boxes at the corners of the licensed area to enable the delineation of the licensed area. The Licensee is responsible for maintaining the flower boxes and plants contained within the flower boxes. The Council may require the removal of the flower boxes where inadequate maintenance is carried out.

16. The licensee shall indemnify and keep indemnified the Council against all action, suits, claims, damages, losses and expenses made against or incurred by the Council by reason of the eating area and any equipment used by the licensee, or by reason of the non-observance or non-performance by the licensee of the agreed conditions.

In this connection the licensee shall sign a hold harmless agreement indemnifying the Council for any liability arising out of the tables, chairs and any other furniture placed on the footpath, public place or street.

The licensee shall also effect and keep in force a public liability insurance policy for not less than \$5,000,000 covering the operation and shall furnish proof of this cover to the Council.

17. The CEO may give notice requiring the work specified in the notice to be carried out within a specified period not less than 14 days from the giving of such notice and if the work specified in the notice has not been completed within the specified period contained within the notice the Council may by notice in writing signed by the CEO cancel the licence forthwith.

18. The licence shall be produced to any officer of the Council on demand therefor.

19. The licensee shall comply with the requirements of the Health Act, the Liquor Act and any other Acts, including regulations and local laws made thereunder and which may affect the operation of the outdoor eating area.

20. All umbrellas and sunshades provided in the eating area shall have a base constructed so as to prevent—

- (a) damage to the surface of the eating area; and

(b) falling over or being blown away.

21. All electrical wiring connected to lights, devices or appliances which are situated on or above the eating area shall not be placed—

- (a) on or under the eating area;
- (b) above any part of a street or public place so as to interfere or obstruct the passage of vehicles or pedestrians; or
- (c) in any place or in any manner which may be prejudicial to public safety.

22. All persons, equipment and activities associated with the operation of the outdoor eating area shall remain wholly within the defined area, except for the conveying of food, drink, tableware and furniture across the footpath.

23. The licensee shall, to the satisfaction of the Council, cleanse daily and keep clean at all times the pavement of the eating area, the tables, chairs and umbrellas and also shall keep the footway and roadway in the vicinity of the eating area of litter and waste materials and remove all sweepings and washdown waste from the street.

24. The eating area or any part thereof shall be cleared of obstructions as required by the Council for pavement maintenance and repair work, except in emergencies, at least 72 hours notice shall be given to this requirement.

25. The licensee shall bear the cost of all pavement repairs carried out by the Council within the eating area or part thereof, which in the opinion of the Council have been rendered necessary by the existence or use of the eating area.

26. In areas where there is no policy for pavement requirements, the paving of the eating area required to be used shall be undertaken by the Council and the applicant shall pay the Council the cost incurred.

SCHEDULE 1

APPLICATION FOR LICENCE TO CONDUCT AN OUTDOOR EATING AREA

To: Chief Executive Officer
City of Fremantle

Full Name:

Address:

hereby make application for registration of an Outdoor Eating Area (premises described as a:)

- * (a) Restaurant
- * (b) Take-away Food Premises
- * (c) Tea Room
- * Delete which is not applicable

Address of premises:

Name of premises:

.....

.....

Dated this day of 19

.....
Signature of applicant.

* * *Application fee must be included with this application.*

SCHEDULE 2

Local laws Relating to Outdoor Eating Areas

LICENCE FORM

This licence is issued to:

Full Names:

Address:

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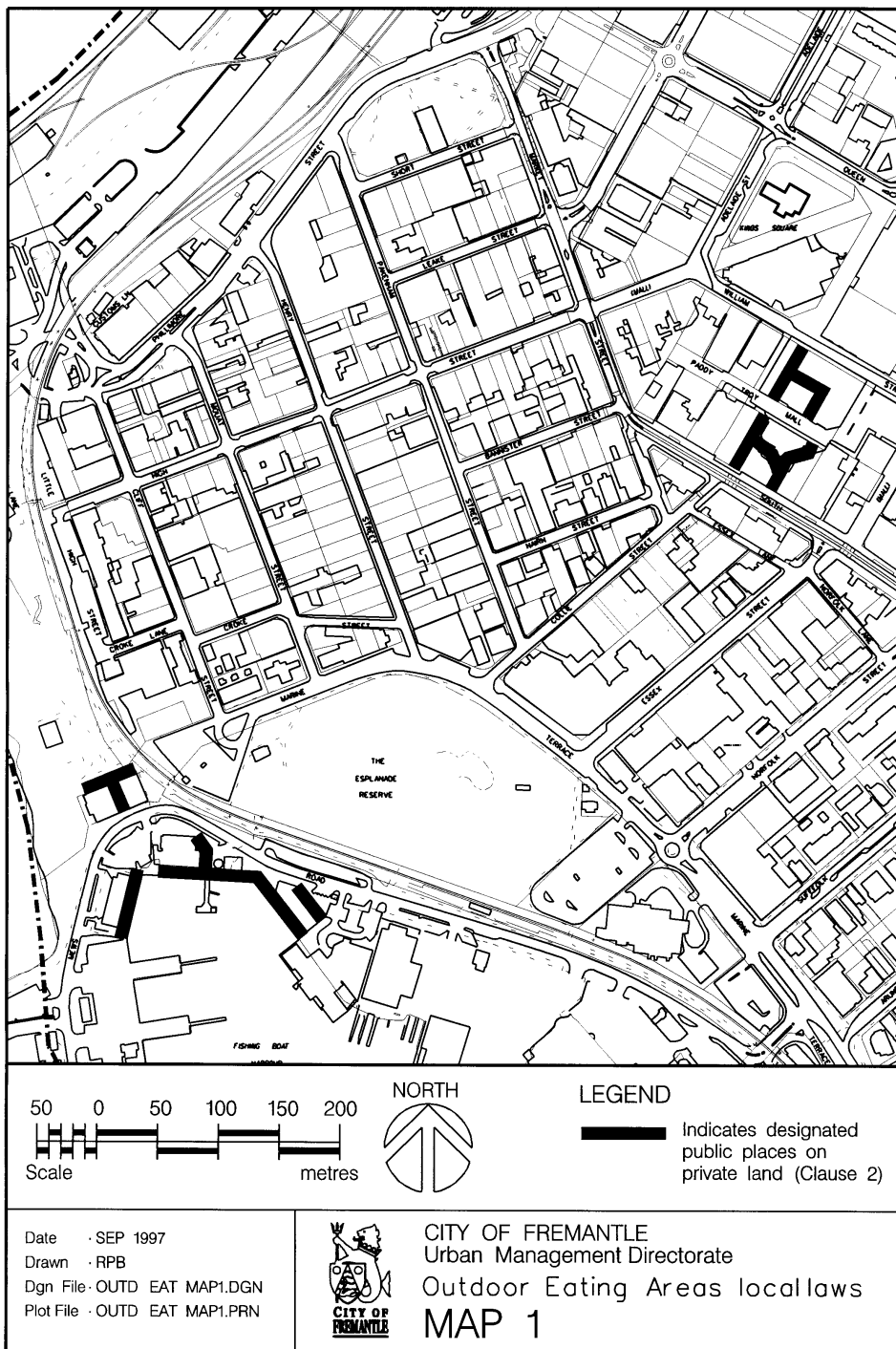
This Licence authorises the person named above to set up and conduct an eating area—

- (a) On those portions of the street or public place shaded in on the licence plan attached hereto and forming part of this licence; and
- (b) In compliance with the attached conditions specified hereunder - (insert conditions)

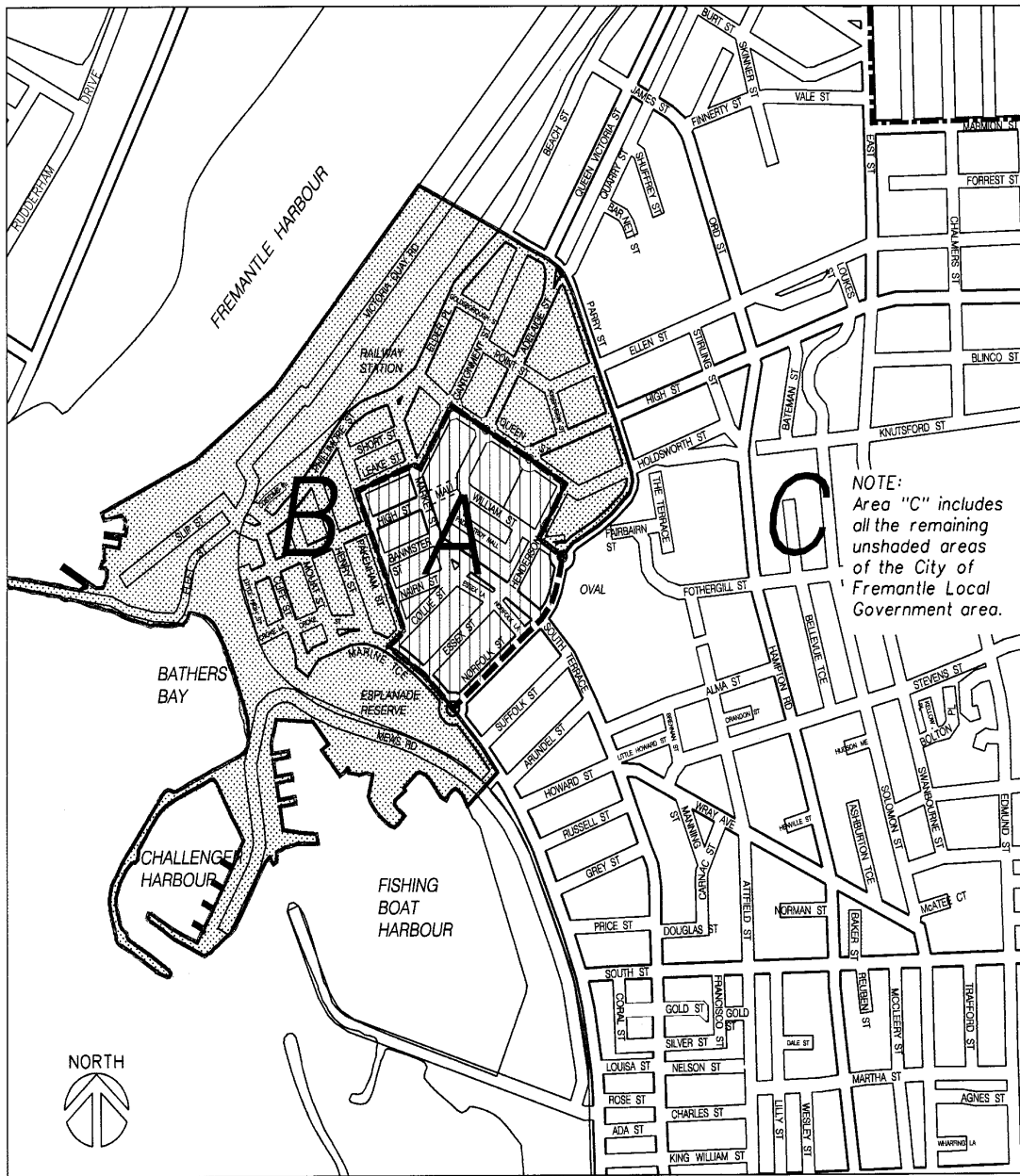
This Licence is valid from the day of 19 and expiring at 12 midnight on 30 June or on the sooner cancellation of this licence.

In accepting this licence, the person so named above hereby agrees to indemnify and hold indemnified the Crown and the Council against any claims for compensation howsoever arising from the operation of the eating area and further agrees not to seek from the Crown or the Council or any person acting on their behalf, compensation by way of damages or loss of income from any public work within the street.

Chief Executive Officer.



MAP 2 Outdoor Eating Area Zones



The Common Seal of the City of Fremantle was hereunto affixed in the presence of—

RICHARD UTTING, Mayor.
RAY GLICKMAN, Chief Executive Officer.



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