

PLANNING AND SUSTAINABILITY COMMITTEE**10 OCTOBER 2012****11**

SUMMARY OF LOCAL LAWS ISSUES FROM THE AUDIT OF LAKE STREET AND ESPLANADE CAIRNS, AUGUST 2012.

Carole Todd: 18/25/1: #3743668

RECOMMENDATION:

That Council notes the report

EXECUTIVE SUMMARY:

Council's Local Laws Compliance Unit has recently conducted an audit of parts of Lake Street and the Esplanade outlined in the map below. This report provides a synopsis of the issues the Unit identified.



A full audit of the Cairns region is underway and will take some time to complete and analyse. It is anticipated that the audit should be completed by early December and presented to Council soon after.

The information gathered so far indicates that: -

- 30% of portable signage displayed is not approved by Council;
- 15% of outdoor dining permit holders are extending the area of use without approval;
- 35% of business audited had non-permitted goods displayed on the footpath.
- 10% of those permitted to display goods on footpaths were extending the area.

BACKGROUND:

Council's Environmental Assessment Branch currently issues permits for the use of Council controlled roads and public footways; to conduct outdoor dining, display goods on footpaths and exhibit portable signage. The items that may be placed on a footpath under such permits include tables, chairs, items for sale and portable signage.

Outdoor dining fees are calculated using the size of the area (square meter) being used and the location (as per attached fees and charges schedule). Portable signage and goods on footpaths are a set annual fee, throughout the entire Cairns Regional Council area, however there are limitations on size and position.

From the audit it is clear that a number of businesses utilise the footpath area outside their premises without a permit, displaying goods such as clothing on racks, plastic boxes containing stock for sale, sunglass stands, various types of portable signage and tables. This creates hazards for pedestrians, especially the vision impaired, wheel chair users and people with prams.

COMMENT:

The main problems identified by the audit are: -

- The unlawful display of portable signage on the footpaths;
- Businesses extending their outdoor dining areas outside the approved area;
- Unpermitted placing of goods on the footpath;
- Businesses permitted to display goods on footpaths, extending outside the allotted area.

The audit took place during a seven day period and from our observations these problems more than double over the weekend, as there is no inspection regime out of normal working hours.

A full audit of the Cairns region is being conducted with the intention of addressing any variation between the interpretation of policy and the inconsistency of enforcement, together with fees and charges, including those between the former Cairns City Council and the former Douglas Shire areas.

Local Laws Officers carry out inspections of these and other areas every day and inform business owners when they are outside the permitted area. This approach is sometimes met with hostility as owners are requested to remove items that are not within the parameters of the permit. Council officers have taken a conciliatory approach in the past and in most cases this results in compliance whilst the Officer is on site. However, return visits later in the day or at the weekend show that compliance is sometimes no longer being met. To date, Officers have not issued infringement notices or revoked/cancelled permits; however this situation is continuing to grow and needs a consistent and considered approach to enforcement to ensure a favourable outcome.

CONSIDERATIONS:

Corporate and Operational Plans:

This report is in accordance with Corporate Plan Goal 1.9 – Implement relevant Legislation and Local Laws. The report is also in accordance with the Operational Plan aim – to ensure that the enforcement of and compliance with Council’s Local Laws, Cairns Plan and relevant Legislation is taken efficiently and effectively.

Statutory:

Outdoor Dining is regulated in the whole of the Cairns Regional Council area under *Local Law No. 59 (Commercial Use of Roads) 2002* and *Subordinate Local Law No. 59 (Commercial Use of Roads)*.

Portable advertising is regulated in the former Cairns City Council area under *Local Law No. 28 (Control of Advertising) and Local Law Policy No. 6 (Control of Advertising)*. In the former Douglas Shire area advertising is regulated under the Planning Scheme.

Goods on footpath is regulated in the whole of the Cairns Regional Council area under *Local Law No. 1 (Administration), Subordinate Local Law No. 1 (Administration) and Schedule 8 (Commercial Use of Local Government Areas and Roads)*.

Upon commencement of the new Planning Scheme in 2014 both Outdoor Dining and Advertising are to be regulated under the Planning Scheme in the whole of the Cairns Regional Council area.

Policy and Procedures:

There are no Policies, Guidelines or Manuals dealing with goods on footpaths within the Cairns Regional Council area. However, in assessing permit applications for outdoor dining and portable signage, reference is made to relevant guidelines or manuals. They include those adopted by the former Cairns City Council in early 2000, namely the Portable Advertising Guideline and Outdoor Dining Manual. It is intended over the coming months to develop formal policies for assessment of all permits, for Council’s endorsement.

Financial and Risk:

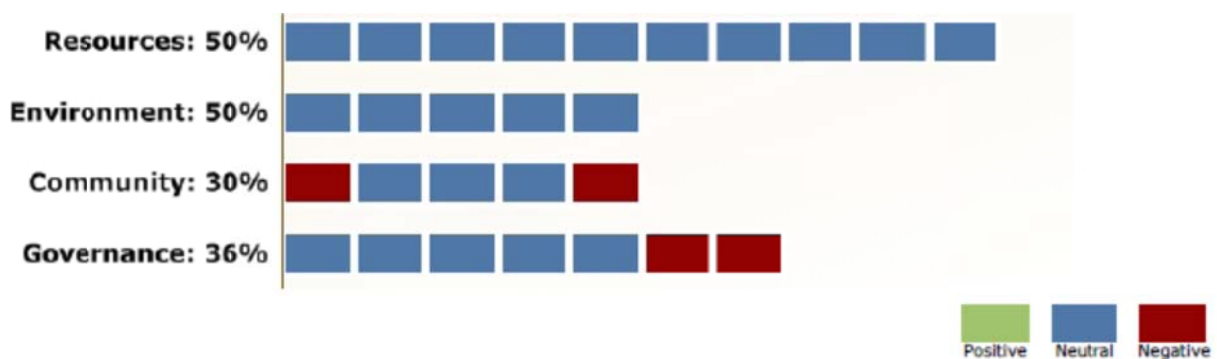
The issues referred to above create unsightly streets and block footpaths which adversely affect the local community and tourists alike. A number of outdoor dining areas have cross overs where food/hot drinks are carried by staff across public thoroughfares causing a risk to pedestrians.

There is also the risk of civil litigation, from unlawful and unapproved goods being displayed on the footpath, where personal injury or property damage occurs.

The issues raised in this report also create unrest between good operators who pay invoices promptly and do not display unlawful goods on footpaths and those that are non-compliant.

There is a large amount of outstanding fees owed by outdoor dining permit holders: to date \$34,671. This is in the main due to the lack of more rigorous enforcement action and will be addressed in a separate report.

Sustainability:



Actions undertaken in relation to this activity will have a mainly neutral effect on Council's sustainability in the Resources and Environment assessments, as the activity does not relate to use of materials or resources nor affect habitats or waterways.

The activity has some negative effects in the Community assessment relating to the reduction of the quality and quantity of community space available. In particular, this activity has implications for visually impaired, wheelchair users and people with prams, as well as impacting on the perception of Cairns by visitors to the region.

The activity also has some negative effects in the Governance assessment which relates to staff undertaking enforcement of compliance.

CONCLUSION:

This report is for noting only.

ATTACHMENTS:

1. Copy of Fees and Charges Schedule of 2012/2013.

Carole Todd

Manager Environmental Assessment

Attachment 1: -

Outdoor Dining						
Permit Application	392	05111	01.2700.2585.1468	Application	353.60	368.00
	392	05111	01.2700.2585.1468	Renewal	162.50	169.00
	392	05111	01.2700.2585.1468	Transfer	162.50	169.00
* Additional Cost per Sq. Metre						
Permit Fee per m ²	38	05077	01.2700.2585.1483	A	168.50	175.00
<i>NOTE : Zones (i.e. A, B, C, D, E,F,G) defined by Councils</i>	38	05074	01.2700.2585.1480	B	89.50	93.00
<i>Outdoor Dining Maps</i>						
<i>NOTE : Pro-rata fee applies for New Registration</i>	38	05075	01.2700.2585.1481	C	52.00	54.00
<i>1 October: 75%</i>	38	05076	01.2700.2585.1482	D	31.20	32.50
<i>1 January: 50%</i>	38	05078	01.2700.2585.1484	E	18.80	19.50
<i>1 April: 25%</i>	38	05079	01.2700.2585.1485	F	11.50	12.00
	38	05080	01.2700.2585.1486	G	7.80	8.00
<i>Note: Ex DSC Areas will be divided as follows:</i>	38	05090	01.2700.2585.1487			
<i>Port Douglas - Macrossan St ONLY = Area B</i>						
<i>Port Douglas - OTHER THAN Macrossan St = Area C</i>						
<i>Mossman = Area E</i>						
<i>NOTE : Permit holders are required to maintain a current Public Liability Risk Policy of at least \$10,000,000 with Council as an interested party - a copy must be lodged with Council.</i>						