

TOWN OF COTTESLOE



DEVELOPMENT SERVICES COMMITTEE MINUTES

MAYOR'S PARLOUR, COTTESLOE CIVIC CENTRE
109 BROOME STREET, COTTESLOE
6.00 PM, MONDAY, 7 DECEMBER 2015

MAT HUMFREY
Chief Executive Officer

9 December 2015

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DEVELOPMENT SERVICES COMMITTEE

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member announced the meeting opened at 6:01 PM.

2 DISCLAIMER

The Presiding Member drew attention to the Town's disclaimer.

3 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil.

4 PUBLIC QUESTION TIME**4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

4.2 PUBLIC QUESTIONS

Nil.

5 PUBLIC STATEMENT TIME

Mr Kevin McCabe – Proprietor Vans Sidewalk Café, for item 10.1.1

Mr McCabe promoted the proposal which he believed would bring vibrancy to the street and support the Town Centre with a fresh approach that offered amenity for the community.

6 ATTENDANCE**Present**

Cr Katrina Downes	Presiding Member
Mayor Jo Dawkins	
Cr Jay Birnbrauer	
Cr Sandra Boulter	
Cr Rob Thomas	
Cr Phil Angers	

Officers Present

Mr Mat Humfrey	Chief Executive Officer
Mr Andrew Jackson	Manager Development Services
Mrs Liz Yates	Development Services Administration Officer

6.1 APOLOGIES

Cr Helen Burke

Officer Apologies

Mr Ed Drewett
Mr Ronald Boswell

Senior Planning Officer
Planning Officer

6.2 APPROVED LEAVE OF ABSENCE

Nil.

6.3 APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

7 DECLARATION OF INTERESTS

Nil.

8 CONFIRMATION OF MINUTES

Moved Cr Angers, seconded Mayor Dawkins

[Minutes October 26 2015 Development Services Committee.docx](#)

The Minutes of the Ordinary meeting of the Development Services Committee, held on 26 October 2015 be confirmed.

Carried 6/0

9 PRESENTATIONS**9.1 PETITIONS**

Nil.

9.2 PRESENTATIONS

Nil.

9.3 DEPUTATIONS

Nil.

10 REPORTS

10.1 PLANNING

10.1.1 1 NAPOLEON STREET - VANS - PROPOSED ALFRESCO STRUCTURE

File Ref: 3194
Attachments: [1 Napoleon Aerial](#)
[Planning Consultant Letter](#)
[Applicant Submission](#)
[Application Plans](#)
[Submissions on Proposal](#)

Responsible Officer: **Mat Humfrey**
Chief Executive Officer

Author: **Andrew Jackson**
Manager Development Services

Proposed Meeting Date: 7 December 2015

Author Disclosure of Interest: Nil

Property Owner: Crown / Town of Cottesloe

Applicant: Vans Café – Kevin McCabe

Date of Application: 8 June 2015

Zoning: LPS3 Local Road Reserve

Use: Outdoor eating facility

SUMMARY

This report presents a proposed substantial structure for an outdoor eating facility for Vans Café, occupying part of the adjacent footpath on the corner of Napoleon and Railway Streets.

The proposed structure is called a “parklet”, which is the term coined to describe innovative structures created in the public domain, such as mini “parks”, constructed outdoor eating facilities, rest areas, etc.

Parklets and similar creative or pop-up structures and their associated activities are a modern urban trend. Typically they are placed on and around existing infrastructure rather than significantly affecting it, whether they are temporary or longer-term, and are readily removable.

It is necessary to distinguish between public and private parklets. A public parklet is an informal place freely available to all and usually managed by the local government. A private parklet for an alfresco facility is essentially a fancy outdoor eating area dedicated to the adjacent food/beverage business. They do, nonetheless, share some common considerations.

PROPOSAL

The application is supported by:

- Plans and images showing the layout and design of the development.
-

- The proprietor's submission describing and explaining the proposal.
- A submission from TPG planning consultants elaborating on the proposal, including examples of how parklets are permitted elsewhere.

Proprietor's submission

This submission accompanies the plans. It outlines the concept of parklets and their role in place-making, as well as the design details. The structure is designed to integrate with the public infrastructure and to form an anchor element in the street. It would comprise modular components that can be removed if necessary and would respect the functioning of existing infrastructure (eg drainage). Materials, finishes, colours and planting would complement the street. The structure, furniture and planting would be continually maintained in accordance with a Maintenance Plan; whilst the outdoor eating health requirements would be adhered to.

Planning consultant's submission

TPG's letter provides additional information about parklets generally, specific policy examples from other local governments and key features of the proposal. It references the Cities of Fremantle, Vincent, Adelaide and San Francisco and summaries common considerations. It then analyses the characteristics of Napoleon Street and the potential for parklets, as well as suggests appropriate controls; and outlines how the proposal would satisfy established parameters for parklets. The submission appends expressions of support and sample parklet policies (not attached due to large volume), and an image of the proposal (attached).

In response to the submissions received, TPG has commented as follows:

To accommodate the proposed Vans Café Parklet, we understand that one car parking bay would be temporarily resumed for such a purpose; however, following this, the car parking bay will be returned to its former condition at the end of the approval period.

In the context of the number of car parking bays available within the immediate locality (within a 120 metre catchment area, 263 bays excluding those within Napoleon Street are available for public use), the proposed Parklet is considered to have minimal impact on the accessibility and parking needs of the locality, with a number of subsequent benefits being achieved as a result – importantly the proposed Parklet will enhance the interest, amenity and vitality of Napoleon Street.

REQUIREMENT FOR PLANNING APPLICATION

Outdoor eating or alfresco areas are regulated under the Town's *Activities On Thoroughfares and Trading In Thoroughfares and Public Places Local Law*, by way of a permit to conduct an outdoor eating facility. The permit controls the area, furniture, number of patrons and operating days/hours. It entails: compliance with Health laws; having regard to sightlines at intersections; not impeding pedestrian movement; and assigning public liability to the permit holder (ie indemnifying the Crown and Town). An annual fee is levied.

Traditional footpath alfresco areas involve the furniture being placed out and taken in each day, whilst any remaining objects such as planter boxes or awnings can be moved or retracted if required – that is, they are essentially temporary installations. It is only when a substantial structure of a fixed nature is proposed to be built in the public domain that planning approval is required in addition to an outdoor eating permit. The alfresco structure for Elba small bar in Napoleon Street involved a planning application/approval.

Under LPS3 Napoleon Street is “zoned” as a Local Road Reserve. In the event of proposed use and development of such land for a substantial alfresco structure, the Scheme in clause 3.4 requires an application for planning approval in the normal manner. In determining the application Council is to have due regard to the matters set out in clause 10.2 (ie relevant planning considerations) and the ultimate purpose intended for the Reserve.

As vestee the Town has authority to consent to the application being made on behalf of the landowner (the Crown) and the CEO has signed the form accordingly. This is purely to enable the application and does not imply support for the proposal.

In the event of a planning approval, a separate outdoor eating permit will be required to operate the alfresco facility. Extending the liquor licence to the new alfresco area would require a separate approval via the Department of Racing, Gaming and Liquor.

STRATEGIC IMPLICATIONS

Relates to future of Town Centre.

POLICY IMPLICATIONS

May influence a policy or guidelines for such.

FINANCIAL IMPLICATIONS

No direct cost to Town.

STATUTORY ENVIRONMENT

- Local Planning Scheme No. 3.
- Activities On Thoroughfares and Trading In Thoroughfares and Public Places Local Law.

SUSTAINABILITY IMPLICATIONS

Fosters sustainability of Town Centre.

CONSULTATION

Initially the proprietor of Vans Café liaised with relevant Officers and some Elected Members to float the idea and discuss how it could be progressed, with input from an urban designer who prepared a preliminary concept.

The proposal was firmed-up and a planning application lodged. Discussions ensued in relation to the recent Napoleon Street improvements, while the proprietor continued to liaise with Elected Members and other traders about the proposal.

The Town advertised the application to all property owners and business proprietors in Napoleon Street, and three submissions were received as follows:

Procott Inc – Michael Tucak, Co-President

The proposal was presented to Procott by the proprietor and is supported as a positive approach for the street and town centre, subject to appropriate safety and consideration of parking, as described; while observing that the parklet would be integrated with the public domain infrastructure in its location. The sentiment is that the loss of a car bay would be compensated by the contribution to the street and activation/attraction of the town centre.

Cimbalino – David Morgan, co-proprietor

Objects to the proposed loss of a car bay, given the need for parking and the retail downturn. This business withdrew its own application to expand its alfresco area, which would have occupied a car bay. Considers that market umbrellas as depicted would be hazardous and obtrusive. Considers that the proposal would be dominant in the street, to the detriment of other businesses and limiting choice.

Motion Lifestyle – Jane Crump, proprietor

Opposed to the proposal if the loss of a car bay cannot be replaced elsewhere in the street, such as in front of the former Dome café which recently closed.

Note: a new café is intended for the former Dome premises, including an alfresco area, which will prevent creation of another car bay.

PLANNING COMMENT

Planning considerations

Relevant matters to be considered by Council are set out in the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, which replace clause 10.2 of LPS3. These include: the Scheme aims; orderly and proper planning; compatibility of the development with its setting; amenity, including character of the locality and any social impacts; landscaping and tree preservation; risk to human health and safety; traffic generation; loss of any community benefit (excluding commercial competition); the site's history; impact on the community as a whole; any submissions received; and any other appropriate consideration.

Against this framework the overall assessment is that alfresco structures can be supported in-principle as suitable for the street and that the proposal represents a logically-located and well-designed facility that would enhance the visual interest and social enjoyment of the place.

In terms of the purpose of the Local Road Reserve, an alfresco facility is consistent with the use of footpaths for such and with the established food and beverage premises along Napoleon Street featuring varied alfresco areas.

Consultation and submissions

The application has had above-average exposure through direct liaison by the proprietor and comprehensive advertising by the Town. Informal feedback to the proprietor indicates a good degree of support from a number of owners, businesses and elected members (on a preliminary basis). Formal submissions to the Town comprise support from Procott, plus two objections from other businesses to the loss of a car bay (but not to the proposal *per se*). From this it is apparent that the support clearly outweighs the objections.

Loss of car bay

It is appreciated that property owners, businesses and customers are sensitive about the provision of car bays in Napoleon Street. At the same time these stakeholders have supported alfresco areas as important to the attraction and life of the street/Town Centre, yet which often occupy a car bay. It is difficult to sustain that the loss of one bay to the proposal would be so detrimental that it should not be supported for that reason. TPG for the applicant has referred to the availability of ample parking in the immediate vicinity. In 2012 the Town surveyed parking for the Town Centre and tallied in excess of 1000 public and private bays in the locality.

When outdoor eating permits occupying car bays have been granted under the Local Law, the Town has not been empowered to charge a cost for that, instead deriving income from the annual fee for the alfresco area. The parking demand from alfresco areas is seen to be part of the total demand from patrons of premises and catered for by private or public parking.

With this application, the Town is in effect approving development on its own land, as distinct from development or a new use on private land. As the café use exists, the application does not raise a parking requirement; and in any case the Scheme allows Council to reduce or waive parking for changes of use in the Town Centre. Neither is the option of cash-in-lieu of parking raised, as the land in question is Local Road Reserve rather than Town Centre Zone.

Infrastructure and safety

The Manager Engineering Services has participated in discussions about the proposal from conception and supports the application. The design takes into account the Town's infrastructure and can be partially or wholly removed if necessary (which the Town can readily enforce).

As to traffic safety, the structure would be setback from the carriageways of both streets and behind the light pole and signposts, with a barrier edge of planter boxes. The physical presence and visual prominence of the parklet would calm traffic, whilst affording sightlines and pedestrian passage.

The parklet would coexist with the current alfresco area adjacent to the shopfront. The plans indicate this being rationalised to be narrower, to ensure sufficient pedestrian passage, which is suitable.

As to lighting, the parklet would be lit by the street lights and café lights.

CONCLUSION

The introduction of a parklet-style alfresco facility to Napoleon Street would be an innovative addition to the public domain. The proposed corner location would serve to define the Town Centre's main-street and would not unduly affect existing infrastructure.

The loss of one car bay in the street would be inconsequential in itself; although over time the cumulative loss of car bays to alfresco areas or parklet installations could become a concern. However, the incidence of parklets is likely to be fairly low, as not all sites or associated businesses lend themselves to structures. If Council wished to formulate a policy or guidelines for future parklets in the district that could be done, which for the Town Centre would be linked to the proposed Activity Centre Plan.

It is concluded that the application may be approved subject to conditions as below. The Town's ability to remove the infrastructure or discontinue the outdoor eating permit would prevail should the structure or alfresco operation become problematic.

COMMITTEE COMMENT

Committee clarified a few technical details and expressed support for the proposal as advantageous to the vibrancy of the street and Town Centre.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Birnbrauer, seconded: Mayor Dawkins

THAT Council grant planning approval to the proposed outdoor eating facility parklet for Vans Café at 19 Napoleon Street, Cottesloe, to be located on the road reserve adjacent to the premises, as shown on the plans received on 15 June 2015, subject to the following conditions:

- 1. This approval is for an initial period of one year, whereby continuation of the parklet beyond the expiry date shall require a prior further planning approval.**
- 2. At the end of the approval period, unless otherwise allowed (ie a renewal application is under consideration) the applicant/proprietor shall remove the parklet and the Town's infrastructure shall be repaired/reinstated to its satisfaction.**
- 3. All costs of construction, maintenance and removal of the parklet and of the repair/reinstatement of the Town's infrastructure shall be borne by the applicant/proprietor.**
- 4. Prior to installation of the parklet, the applicant shall submit to the Town to its satisfaction:**
 - a) detailed construction plans for a building permit and engineering approval as appropriate, including universal access;**

- b) details of all proposed materials, finishes and colours, as well as of the proposed furniture and planting;
 - c) a maintenance and management plan for the parklet and the Town's infrastructure it affects, including the plants being well-maintained and replaced/refreshed as needed so as to be continuously attractive;
 - d) a certificate of currency for public liability/indemnity insurance of \$10 million minimum for the parklet structure and its use; and
 - e) a bond estimated by the Town to cover the default costs of removal of the parklet and repair/reinstatement of its infrastructure.
5. The existing tables and chairs for outdoor eating along the shopfront shall be rearranged as shown in the approved plans, in order to ensure a minimum 2m wide pedestrian passage between them and the parklet, to the Town's satisfaction.
6. This approval excludes any awning, canopy, shade sail or shelter structure. Market umbrellas may be approved by the Town, subject to the submission of details showing their location and anchoring to avoid being a physical or visual obstruction or a safety hazard, and will be required to be taken-in overnight.

Advice:

1. To operate the parklet as an alfresco facility an Outdoor Eating Permit will be required from the Town.
2. A separate application to the Department of Racing, Gaming and Liquor will be required for the service/consumption of alcohol at the parklet.

Carried 6/0

**10.1.2 LOCAL PLANNING SCHEME NO. 3 - RESTRICTED FORESHORE CENTRE
ZONE DESIGN GUIDELINES - REPORT FOLLOWING ADVERTISING**

File Ref: SUB/335
Attachments: [Previous Report 21 Sept 2015](#)
[Advertised Guidelines](#)
Responsible Officer: Mat Humfrey
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services
Proposed Meeting Date: 07 December 2015
Author Disclosure of Interest: Nil

SUMMARY

This report presents finalised Local Planning Scheme No. 3 (LPS3) Design Guidelines for the Restricted Foreshore Centre Zone for Council adoption.

BACKGROUND

In September 2015 Council received a report on the proposed Design Guidelines and resolved that they be advertised, which was undertaken during October.

The previous report, attached, explains the reason for the Design Guidelines, how they are created, how they would operate and their detail. In summary, LPS3 requires design guidelines specifically for setbacks in the subject zone, to enable development proposals and their assessment.

Attached to the report is the Scheme Map showing the locations of the zone and cadastral plans showing the subject lots.

Also attached is the actual Design Guidelines document, which is a concise policy statement describing the setback controls.

STRATEGIC IMPLICATIONS

Nil.

POLICY IMPLICATIONS

Scheme Local Planning Policy Design Guidelines are to be had regard to.

STATUTORY ENVIRONMENT

LPS3.

FINANCIAL IMPLICATIONS

Nil.

SUSTAINABILITY IMPLICATIONS

Nil.

CONSULTATION

The proposed Design Guidelines were advertised for 21 days as required, including notices in the *Post* newspaper, at the Town's office and on its website, as well as letters to all affected property owners (63 in total, due to strata units).

One submission was received, attached, which drew attention to a technical error. This is useful as the identified reference in the proposed policy to *north-west* should read *north-east*. The Design Guidelines document attached has been corrected accordingly.

STAFF COMMENT

Following adoption of the Design Guidelines policy by Council, notification of such will be published in the *Post* newspaper, whence it becomes applicable, and the policy will be available for inspection at the front counter and on the website.

COMMITTEE COMMENT

Committee discussed whether 150 Marine Parade on the corner with Eric Street should have nil or 2m setbacks to the two street boundaries. The Manager Development Services explained the planning rationale for nil setbacks, which overall were considered justified.

VOTING

Simple Majority

OFFICER RECOMMENDATION**Moved Cr Angers, seconded: Mayor Dawkins**

THAT Council note the submission and resolve to proceed with the Restricted Foreshore Centre Design Guidelines local planning policy, subject to modification of the words *north-west* in the second paragraph of section 5 of the document to *north-east*.

AMENDMENT**Moved Cr Birnbrauer, seconded Cr Boulter**

That for 150 Marine Parade on the corner with Eric Street, the street boundary setback specified in the *Northern Node Minimum Boundary Setbacks* table of the Restricted Foreshore Centre Design Guidelines be changed from "Nil to both street boundaries" to "2m".

Lost 2/4

OFFICER & COMMITTEE RECOMMENDATION

THAT Council note the submission and resolve to proceed with the Restricted Foreshore Centre Design Guidelines local planning policy, subject to modification of the words *north-west* in the second paragraph of section 5 of the document to *north-east*.

THE SUBSTANTIVE MOTION WAS PUT

Carried 4/2

For: Cr Angers, Mayor Dawkins, Cr Downes and Cr Thomas
Against: Cr Birnbrauer and Cr Boulter

10.1.3 DELEGATION OF POWERS FOR DETERMINATION OF PLANNING APPLICATIONS DURING THE 2015-2016 HOLIDAY PERIOD RECESS OF COUNCIL

File Ref: SUB/39
Responsible Officer: Mat Humfrey
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 07 December 2015
Author Disclosure of Interest: Nil

INTRODUCTION

Under Local Planning Scheme No. 3 (LPS3) Council has delegated its Scheme powers to the CEO, who in turn has delegated them also to the Manager Development Services (MDS). In practice, decision-making on planning applications is governed by a Delegation of Planning Powers Statement approved by Council, effectively a policy managing which proposals are done under delegation and which are referred to Council or called-up from the weekly Delegation Notice.

Each December, to cover the period when Council is in summer recess so is not available to make decisions on the more substantial applications, a report is presented for Council to agree to the Delegation Statement to be operated by special arrangement as described below.

BACKGROUND

LPS3 commenced on 1 August 2014. The Delegation Statement was reviewed and streamlined by Council in September 2014 consistent with the new Scheme and the revised Residential Design Codes.

The annual arrangement for the summer recess is to extend the Delegation Statement to allow planning applications that would ordinarily proceed to Council to be determined by the CEO or MDS under delegation, should the need arise. Traditionally this has been subject to consultation with the Presiding Member or Deputy Presiding Member of the Development Services Committee (DSC).

This arrangement has worked well and ensured that the processing of applications is not unduly delayed, for efficiency and as there is a right of appeal after certain periods. Also, during the holidays there are usually fewer applications, while any significant or problematic ones can be identified for referral to Council from February onwards. Experience has been that the extended delegation is sometimes not required or there is only a small number of such applications.

However, as the arrangement is only useful if the DSC Presiding Member or Deputy is available to be consulted and satisfied with such delegated decisions, it is now suggested that the Mayor or another DSC member could be included on behalf of Council.

Further, if Council is satisfied with this new arrangement, it could be added to the Delegation Statement as a standing arrangement rather than requiring a report to Council each December.

COMMITTEE COMMENT

Committee clarified that the recommendation required one more elected member to operate the special delegation, and felt that it was beneficial to have the delegation in place, even if seldom used; while noting that the usual call-up procedure would still apply.

VOTING

Absolute Majority

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Angers, seconded: Cr Birnbrauer

THAT Council:

- 1. Pursuant to clause 11.3 of Local Planning Scheme No. 3 and in relation to the adopted Delegation of Planning Powers Statement for determination of planning applications, extend its decision-making authority to the Chief Executive Officer and the Manager Development Services to determine all types of applications during the Council recess period from Tuesday 15 December 2015 to Friday 12 February 2016, subject to:**
 - a. the relevant officer discussing each application that falls within the extended delegated authority with the Presiding Member or Deputy Presiding Member of the Development Services Committee, together with the Mayor or one other Committee member, prior to a decision being made on the application; and**
 - b. a list of applications intended to be determined under this extended delegated authority being included and highlighted in the weekly Delegation Notice circulated to all Councillors and subject to the normal call-in arrangement.**
- 2. Agree to this annual procedure being incorporated into the Delegation of Planning Powers Statement as a standing arrangement.**

Carried 5/1

**For: Cr Angers, Cr Birnbrauer, Mayor Dawkins, Cr Downes and Cr Thomas
Against: Cr Boulter**

11 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING BY:

12.1 ELECTED MEMBERS

Nil.

12.2 OFFICERS

Nil.

13 MEETING CLOSED TO PUBLIC

13.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil.

13.2 PUBLIC READING OF RECOMMENDATIONS THAT MAY BE MADE PUBLIC

Nil.

14 MEETING CLOSURE

The Presiding Member announced the closure of the meeting at 6:55 PM.

CONFIRMED MINUTES OF 7 December 2015 PAGES 1 – 16 INCLUSIVE.

PRESIDING MEMBER:
POSITION:

.....

DATE: / /