

## Public Question Time

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### **Question from John Brooksmith:**

In relation to beach occupancy at the Sandbar Café. I understand the Council has recently authorised the café to fence off and privatise 50 square m of beach between the café and the High-water mark. This authorisation, I understand also increases the allowed number of patrons at the Café beyond the number allowed by VCAT. I also understand it is Council policy not to privatise the beach. Have Council officers the authority to privatise the beach and override the decisions of VCAT on the number of patrons allowed at this venue, bearing in mind this Cafe is adjacent to a residential property and operates from 7.00 to Midnight with private parties on most evenings?

### **Response:**

A planning permit has been issued for use of the building as a food and drinks premises (Planning Permit s2470) and an associated use of the land for the sale and consumption of liquor (restaurant and café) under Planning Permit 1186/200, as amended. The planning permits outline a number of conditions relating to the use of the land (including the area on which the uses can occur), hours of operations, management of amenity considerations (including as noise, patrons and venue management). The operator must comply and operate in accordance with these permit requirements.

Pursuant to Council's Local Law No 1 (Community Amenity) 2013, an Outdoor Events – Corporate Event Permit No BP3320 was issued on 2 December 2022. This permit allows the extension of the trade area into the beach area in front of the premises **until 30 April 2023**. The permit has been issued in accordance with Council's economic outdoor dining recovery initiatives that resulted from the COVID-19 pandemic.

Clause 52.18 *Coronavirus (Covid-19) Pandemic and Recovery Exemptions* was gazetted on 21 October 2020 pursuant to Planning Scheme Amendment VC193 and further amended on 28 October 2022 via Planning Scheme Amendment VC 224. (Link: [52.18 CORONAVIRUS \(COVID-19\) PANDEMIC AND RECOVERY EXEMPTIONS Port Phillip Planning Scheme - Ordinance](#)).

The planning scheme amendments updated Clause 52.18 of Victoria Planning Provisions and all planning schemes to support Victoria's social and economic recovery from the coronavirus (COVID-19) pandemic through temporary planning scheme and permit condition exemptions that enable outdoor dining and facilitate the reopening and safe operation of restaurants and other food and drink businesses throughout the state. The exemptions operate when a state of emergency declaration under the Public Health and Wellbeing Act 2008 in relation to coronavirus is in force and for 12 months after.

Council Planners have reviewed the exemptions contained within this Clause and the uses and works in the area occupying the beachside area of the SandBar Café meet the above exemptions and do not require a planning permit during the exemption period referred to in Clause 52.18 - *Coronavirus (Covid-19) Pandemic and Recovery Exemptions*. Upon the expiry of the exemption period, the use in the extended beach area must stop and all structures removed. We note however that the Local Law permit expires earlier on 30 April 2023.

1. There is no breach of relevant planning permits, occupation of the beach is not illegal and the operation is exempt from requiring any planning permits during the exemption

period. There is no requirement to direct caseation of the use or to remove the furniture and structures.

2. There is no breach of relevant planning permits during the aforementioned exemption period.
3. Council's Planning Compliance Team carry out periodic inspection of venues as appropriate.

Officers note the relevant consents from the Department of Energy, Environment and Climate Action (DEECA), formerly Department of Environment, Land, Water and Planning) have been obtained.

No consent under the Marine and Coastal Act 2018 is required subject to the following:

- sites are located within activity areas, existing locations where community markets are held or locations immediately adjacent to the applicant's existing hospitality operations;
- vegetation is not removed or destroyed.
- the placement of outdoor furniture or siting of temporary structures required to support outdoor dining activities are effectively managed to:
  - ensure safe and accessible access for people with a disability;
  - not expose any safety risks;
  - not restrict or prevent access for other users of the marine and coastal Crown land; and
  - no impact on marine and coastal functions and processes.

DEECA provided consent regarding the use of the land for an extension of immediately adjacent hospitality.

I hope the above provides further clarity regarding current planning scheme exemptions afforded to temporary uses and works associated with post-covid economic recovery during the aforementioned exemption period.

Further questions in relation to this matter should be directed to the following departments:

- Council's Statutory Planning Department on [Helpdesk-Planning@portphillip.vic.gov.au](mailto:Helpdesk-Planning@portphillip.vic.gov.au) or 9209 6424,
- Council's Events Teams on [eventpermits@portphillip.vic.gov.au](mailto:eventpermits@portphillip.vic.gov.au) or 9209 6320 or
- Planning Compliance Team on [PlanningCompliance@portphillip.vic.gov.au](mailto:PlanningCompliance@portphillip.vic.gov.au) or 9209 6239.

*\*Please note: answers to any questions in Public Question Time and Councillor Question Time which were answered at the meeting are included in the minutes of that meeting.*