



**12.1 WEST BEACH PAVILION - PROPOSAL FOR LAND OWNER CONSENT TO INCREASE LIQUOR LICENCE BOUNDARY**

**EXECUTIVE MEMBER: CHRIS CARROLL, GENERAL MANAGER, CUSTOMER AND CORPORATE SERVICES**

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**1. PURPOSE**

- 1.1 To seek a Council decision to refuse Land Owner consent as Committee of Management for an extension to the 'red line plan', amending the current liquor licence for the for the West Beach Pavilion, Crown Land parcel at 330a Beaconsfield Parade.

**2. EXECUTIVE SUMMARY**

- 2.1 West Beach Pavilion is located at 330a Beaconsfield Parade upon Crown Land for which Council is the Committee of Management.
- 2.2 The Lessee of West Beach Pavilion is seeking Land Owner consent from Council to apply for an extension to the "red line plan" for the service and consumption of alcohol onto a leased area of beach. This would require an amendment to the current liquor licence (Licence No. 32298594, (Refer to Attachment 3).
- 2.3 Council is required to provide consent to the Lessee of the West Beach Pavilion prior to them being able to lodge a formal application for amendment. The application is lodged with the Victorian Commission for Gambling and Liquor Regulation.
- 2.4 Inclusion of an area of beach within a lease is an unusual arrangement. Including this area within the liquor licence to allow serving of alcohol is deemed an inappropriate use of Crown Land, particularly within the context of Council's recent concerns regarding alcohol consumption along the foreshore. It is also considered unnecessary for the purposes of attracting clientele, given the unique position of the venue.
- 2.5 Officers have provided feedback under delegation that Land Owner consent for an extension to the red line of the existing liquor licence will not be provided. The Lessee has requested a review of that decision.
- 2.6 Whilst officers do have delegation to provide land owner feedback on behalf of Council for leased premises, Officers will seek Council direction where an issue is considered to impact policy or is a significant change that may have impacts on the asset, surrounding area or user experience. In this case, a council decision is sought to respond to the Lessee's request that the Officer's decision be reviewed.



### 3. RECOMMENDATION

That Council:

- 3.1 Refuse Land Owner consent for extension of the “red line plan” within the current liquor licence which would allow for the serving and consumption of alcohol onto the leased area of beach at the West Beach Pavilion.

### 4. KEY POINTS/ISSUES

#### Background

- 4.1 Council is Committee of Management for the Crown Land parcel at 330a Beaconsfield Parade (*Refer to attachment 4 for aerial view*).
- 4.2 Council entered into a 15 year lease commencing on 1 December 2009 with “West Beach Development Consortium”.
- 4.3 Intended use of the premises is Retail sales and food/beverage service with provision of recreational activity and publicly accessible amenity.
- 4.4 The building on site is divided into two sections for different business purposes with sub leases from “West Beach Development Consortium” to “Katani Retail” and “West Beach Bathers Pavilion” (in accordance with the head lease).
- 4.5 The Lessee currently holds a liquor licence for the West Beach Bathers Pavilion allowing service of alcoholic beverages (including the external decking area to the West) facilitating for service of alcohol to a maximum of 575 people externally and 650 people internally (*Refer to attachment 3 for the Liquor Licence*).
- 4.6 Planning permit 28/2006 states the Premises can be used “as a food and drink premises (*including restaurant and take away food premises but excluding hotel and tavern*)” (*Refer to Attachment 1*).
- 4.7 It should be noted the Lessee has a section of publicly accessible beach and public footpath within the prescribed Lease footprint (*note: the lease cannot be changed without mutual agreement – refer to Attachment 4 for site plans*).
- 4.8 The Lessee has been granted temporary liquor licences to the beach area on 7 occasions between September 2017 to present, directly from the Liquor Licensing commission.

#### Lessee Proposal & Context

- 4.9 The Lessee of West Beach Pavilion is seeking consent from Council as Committee of Management/Land Manager of the Crown Land parcel to apply for an extension to the “red line plan” onto a leased area of the beach, amending the current liquor licence (Licence No. 32298594).



- 4.10 The Lessee is not seeking a change of use for the Premises and will continue to serve alcohol in the same manner (with a proposed extension onto the beach area).
- 4.11 The Lessee does not wish to extend the hours of the licence.
- 4.12 The Lessee lodged an application in late 2017 for the extension of the liquor licence with the City of Port Phillip (CoPP) Planning Department who were unable to proceed the application without Landlord consent.
- 4.13 The CoPP Planning Department have confirmed their position that there will be no further discussion with the Lessee until a time when Landlord consent is provided (if to be provided or refused).
- 4.14 The Lessee has been advised by Officers, under delegation, that Council does not support the application to increase the liquor licence onto an area of the beach. The Lessee has sought a review of this decision.

#### **Policy Context**

- 4.15 There are a number of key planning documents, legislation and policy that need to be considered for this site. These include:
- Planning and Environment Act 1987
  - Crown Land Leasing Policy
  - Council Plan
  - City of Port Phillip Foreshore Management Plan 2012

#### **Assessment of Submission**

- 4.16 Key considerations for assessment of the request to extend the 'red line plan' to include serving of alcohol on the beach area that falls within the lease boundary for West Beach Pavilion include:
- consistency with relevant policy
  - the need for the change
  - benefit to the community
  - risks or possible negative impacts.
- 4.17 Given the considerations above, Officers recommendation is to refuse the request for an extension to the "red line plan" onto a leased area of the beach, amending the current liquor licence (Licence No. 32298594).
- 4.18 Key reasons for this recommendation are that:



- The Lessee has express obligations within the lease for providing and maintaining a community activity space and public amenities (both accessible at no cost with no obligation) and is presently complying to these obligations. Maintaining the current 'red line' is thought to support the maintenance of a balance of users within the space rather than potentially changing the focus further towards alcohol consumption.
- The size of the premises in its current form, coupled with an already expansive number of patrons on the liquor licence is considered more than ample for substantial amenity provision and opportunity to generate revenue.
- There are plenty of opportunities in place for residents and visitors to consume alcohol along the foreshore without this extension being permitted, with the next closest licenced premises 500m away in Fitzroy Street, St Kilda, Nshry and Sandbar being 1.8km and 1.7km away respectively.
- A glass ban and ban for alcohol being consumed along the foreshore at particular times is a stance adopted by City of Port Phillip for providing a safe foreshore environment for all its users.

### **Options**

- 4.19 Council has the option of refusing consent, which will mean that the proponent will be unable to take their application any further, or providing consent. If Council provides consent, the application will be considered by Planning through the normal process.
- 4.20 If Council were to provide consent, there is an opportunity to attach provisions to the consent if required.

## **5. CONSULTATION AND STAKEHOLDERS**

- 5.1 DELWP have been asked for an opinion as the principal land owner and have suggested this decision may require a "Strategic Crown Land Assessment" (which to date has not been provided).
- 5.2 There has been no public engagement at this point.
- 5.3 The statutory process within the Planning & Environment Act 1987 will require the proposed changes to the licence be publicly advertised.
- 5.4 Advice has been sought from a number of Internal Stakeholders.

## **6. LEGAL AND RISK IMPLICATIONS**

- 6.1 It is understood, as advised by the CoPP Planning Department that should CoPP as land manager not provide consent, there is no legal recourse for the proponent to take.



## **7. FINANCIAL IMPACT**

- 7.1 An increase in Lessee revenue may increase the likelihood for Council to collect rental for the facility, as the rental is determined on the level of turnover. This is not clearly known and contemplation of a positive impact would be speculative.
- 7.2 There is no impact on the capital budget of Council to refuse the application.
- 7.3 There is a potential financial impact requiring Planning Compliance officers to police the venue to ensure compliance with any restrictive liquor licensing conditions (if any).

## **8. ENVIRONMENTAL IMPACT**

- 8.1 Service of alcohol in the beach area may result in broken glass onto the sand (it should be considered that this may occur inadvertently if a patron from another area of the facility where glass is permitted goes onto the beach).

## **9. COMMUNITY IMPACT**

- 9.1 The proposal would not be deemed to have an immediate negative impact within the short term.
- 9.2 A decision to consent to an application for an increased liquor licence will have a longer term impact setting precedence for future decisions including other foreshore venues and events and may potentially be scrutinised as contrary to current policy.
- 9.3 In consideration of precedent, other foreshore assets with existing liquor licences include 129B Beaconsfield Parade (Nshry) and 175B Beaconsfield Parade (Sandbar) within 1.8km may seek similar outcomes.
- 9.4 The operation of the Pavilion is supported by the “unusual” benefit of having publicly accessible beach and footpath within the Lease footprint.
- 9.5 It could be argued that Community Benefit of providing public amenity and the community activity space is not sufficient to justify the concessions it receives in turn increasing private gain that can potentially be realised from increased alcohol sales.

## **10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

- 10.1 Direction 4 “We are growing keeping our character”
- 10.2 The desired outcomes should be aligned with both the Council Policy, Foreshore Management Plan and Crown Land leasing principles

## **11. IMPLEMENTATION STRATEGY**

- 11.1 TIMELINE
  - 11.1.1 The Lessee will be notified of the outcome immediately after the meeting.
- 11.2 COMMUNICATION



- 11.2.1 The Lessee has an “unusual” benefit of having publicly accessible beach and footpath within the Lease footprint.
- 11.2.2 Benefit of the Beach area within the Lease footprint should not imply a right for use consistent with the remainder of the building.
- 11.2.3 Port Phillip are seeking outcomes equitable to all parties that align with the Foreshore Management Plan and Council Plan.
- 11.2.4 This decision may be used as precedent for future applications for tenancies on Crown Land where Council is appointed Committee of Management.
- 11.2.5 If Council does consent for an application to proceed, the statutory provisions of the Planning & Environment Act 1987 will need to be successfully concluded prior to the issue of a permit.

## 12. OFFICER DIRECT OR INDIRECT INTEREST

- 12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**TRIM FILE NO:** 20/15/87

**ATTACHMENTS**

1. West Beach Pavillion - Planning Permit
2. West Beach Pavillion - Red Line Plan
3. West Beach Pavilion - Liquor Licence
4. West Beach Pavilion - Images