

CHANGE TO CHEFS INC LICENCE TO OCCUPY

Objective Reference:	A2450479 Reports and Attachments (Archives)
Attachment:	<u>Licence to Operate Food Market</u>
Authorising Officer:	Kim Kerwin Acting General Manager Community and Customer Service
Responsible Officer:	Frank Pearce Acting Group Manager Economic Sustainability and Major Projects
Report Author:	Frank Pearce Acting Group Manager Economic Sustainability and Major Projects

PURPOSE

The report seeks Council approval to change the License to Operate the Eat Street style food market at the Council Library car park at 21-31 Bloomfield St Cleveland.

The proposed changes are to clauses 9.2 and 10.4 of the licence to ensure the 6 month relocation or demolition notices are not issued prior to 4 years from the start of the agreement.

BACKGROUND

At the 10th of August 2016 General Meeting, Council issued a Development Permit approval subject to conditions for an "Eat Street" style Refreshment Establishment on the Cleveland Library car park.

The site was selected after a series of workshops with Councillors in early 2015. The proposal consists of an open air food market ("Eat Street" style markets) within the Cleveland CBD. The proposed area to be used for the food market is approximately 2,400m² and will consist of: 10 food containers, space for 5 food trucks or pop-up stands (to be moved off site after trade each weekend) plus a range of eating and entertainment areas. A License to Operate between the Council and 4 Simplicity Pty Ltd (the operator) for a 5 year term plus a possible further 5 year term has been signed by both parties, starting 1 September 2017.

ISSUES

- There are relocation and demolition clauses in the current license that allows Council to relocate the operator or terminate the license with 6 months' notice. Under the relocation clause Council has to provide an alternative site but neither party has right to any compensation in either event.
- The investment by 4 Simplicity Pty Ltd in the site requires a reasonable tenure term to support the success of the project, particularly where Council has expressed an interest to revitalise the civic centre.

STRATEGIC IMPLICATIONS

Legislative Requirements

The development operations must comply with its Development Permit and associated provisions of the Sustainable Planning Act 2009; Local Government Act 2009 and Local Laws.

Risk Management

The basic assumption is that Council does not bear any additional expenditure risk from Chefs Inc. other than costs associated with development approvals, ensuring the site is safe for occupation, and facilitation, and stands to realise a net gain financially from increased income derived from the license fee of the Cleveland library car park site outside of normal business hours during this four year period.

If Council guarantees 4 Simplicity Pty Ltd at least 4 years certainty of tenure this may diminish its opportunity to progress the revitalised civic centre project (community and office space). This will limit its options to pursue these projects currently under investigation including:

1. The Innovation and Education Hub;
2. Library;
3. Arts and Culture;
4. Health Precinct;
5. Tourist Information Centre; and
6. Improved connectivity to Raby Bay and to Cleveland Town Centre.

Financial

Council will derive income in the form of a license fee for the occupancy of the site outside of normal business hours during this four year period.

People

Relationships with 4 Simplicity Pty Ltd have been managed through the Economic Sustainability and Major Projects Group.

Environmental

Environmental issues will be addressed in accordance with the conditions of the Development Approval.

Social

Development of the Cleveland CBD, as envisaged in the Cleveland Centre Master Plan 2010, will result in Cleveland being an enhanced destination for residents and visitors, with a mix of development uses that add increased choice and vibrancy to the centre.

Alignment with Council's Policy and Plans

Aligned with Council's Cleveland Centre Master Plan.

CONSULTATION

The following work groups were consulted during the preparation of this report:

1. City Spaces Group
2. General Counsel Group
3. Economic Sustainability and Major Projects Group
4. Redlands Investment Corporation
5. Financial Services Group

OPTIONS

1. That Council resolves to change clauses 9.2 and 10.4 of the licence to ensure the 6 month relocation or demolition notices are not issued prior to 4 years from the start of the agreement and that the report and attachment remain confidential until expiry of the Licence to Occupy Agreement or;
2. That Council resolves to note the report but make no change to the existing License to Operate and the report and that the report and attachment remain confidential until expiry of the Licence to Occupy Agreement;
3. That Council resolves to endorse a variation of the Licence for Council to compensate 4 Simplicity Pty Ltd for relocation costs if notice is given to relocate or the license is terminated under the demolition clause and that the report and attachment remain confidential until expiry of the Licence to Occupy Agreement or;
4. That Council resolves to endorse another relocation period and or subject to different or amended conditions and that the report and attachment remain confidential until expiry of the Licence to Occupy Agreement.

OFFICER'S RECOMMENDATION

That Council resolves to change clauses 9.2 and 10.4 of the licence to ensure the 6 month relocation or demolition notices are not issued prior to 4 years from the start of the agreement and that the report and attachment remain confidential until expiry of the Licence to Occupy Agreement.

LICENCE TO OPERATE FOOD MARKET

Dated this Twelfth day of April 2017
(12th)

Details:

Parties	Licensor and Licensee	
Recitals	A	The Licensor is the owner of the Land which incorporates the Licensed Area.
	B	The Licensor has agreed to grant the Licensee a licence to use the Licensed Area for the Permitted Use subject to this agreement.
Licensor	Name	Redland City Council
	ABN	86 058 929 428
	Address	Attention Merv Elliott – PO Box 21, Cleveland Qld 4163
	Fax	Attention Merv Elliott - (07) 3829 8765
Licensee	Name	4 Simplicity Pty Ltd
	ACN	123 533 120
	Address	2 Risborough Terrace, Cleveland 4163
	Fax	NA

Land	21-31 Bloomfield Street, and 143 Shore Street West, Cleveland Cleveland, more particularly described as Part of Lot 32 on RP904128 and Part of Lot 143 on RP212514
Licensed Area	Part of the Land as hatched on the sketch attached to this Licence at Annexure A.
Term	Five (5) Years ("Term") with an option to extend for a further Five (5) Years.
Commencement Date	1 September 2017
Expiry Date	The earlier of: (a) 5 years from the Commencement Date; and (b) termination of this agreement in accordance with its terms.
Permitted Use	Conduct of an Eat Street style outdoor food market in accordance with Decision Notice MCU013700, during the hours of 5.00pm – 10.00pm on Friday, 10.00am – 10.00pm on Saturday and 10.00am to 9.00pm on Sunday of each week throughout the Term. In carrying out the Permitted Use the Licensee may place a number of vibrantly painted shipping containers on the Licenced Area, subject to the terms of this Agreement.
Public Liability Insurance amount	\$20,000,000.00
Licence Fee	██████████ (excluding GST) per annum at the Commencement Date (Adjusted annually in accordance with CPI)
Governing law	Queensland
Bond	\$19,760.00
Date of agreement	See Heading of agreement

General terms

1. Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

Assign where the Licensee is a body corporate, includes any assignment or disposal of a Substantial Interest in the Licensee.

Authorised Officer means:

- (a) in the case of the Licensor, the Chief Executive Officer or a person delegated authority to perform the functions of that officer for the purposes of this agreement; and
- (b) in the case of any other party, a director or secretary or any other person appointed by that other party to act as an Authorised Officer for the purposes of this agreement.

Business Day means a day on which banks are open for general banking business in Brisbane (not being a Saturday, Sunday or public holiday).

Controller has the meaning it has in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cwlth).

Costs includes costs, charges and expenses, including those incurred in connection with advisors.

CPI means the Consumer Price Index (All Groups – All Capital Cities).

Details means the section of this agreement headed "Details".

Decision Notice MCU013700 means the development approval for a material change of use, as attached to the Licence at Annexure B.

GST has the meaning it has in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

GST exclusive market value has the meaning it has in the GST Act.

Input Tax Credit has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Licensor); or
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Licensor reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction. **Insolvency** has a corresponding meaning.

Licensee's Employees and Agents means each of the Licensee's employees, officers, agents, contractors and invitees and for the avoidance of any doubt "agents" include any person or body corporate the Licensee authorises to sell food and beverages or otherwise sell any goods or perform any services on the Licensed Area.

Licensee's Property means all property in or on the Licensed Area which is not Licensor's Property or Services.

Licensor's Property means all plant, equipment, fixtures, fittings, furniture, furnishings and other property in the Licensed Area which is not the Licensee's Property.

Permits mean all Federal, State and Local Government Authority permits required by the Licensee and the Licensee's Agents to lawfully (a) operate the Permitted Use from the Licensed Area and (b) to carry out any works upon the Licensed Area.

Principal Contractor means the position of "principal contractor" referred to in the WHS Legislation.

Reasonable Costs and Expenses means costs and expenses that a reasonable person, having regard to the circumstances, would consider to be necessary for the carrying out of the relevant services or provision of the relevant goods.

Related Body Corporate has the meaning it has in the Corporations Act.

Services means the services (such as water, sewerage, drainage, gas, electricity, communications, fire-fighting, air conditioning, security, cleaning and ground maintenance) to or of the Licensed Area or the Land, provided by authorities, the Licensor or any person authorised by the Licensor, and includes all plant and equipment in connection with those services.

Substantial Interest in the Licensee means a shareholding of 40% or more of the issued share capital of the Licensee or a holding of shares in the Licensee which entitle the holder to 40% or more of the voting power of all shares represented at any meeting of members of the Licensee.

Tax Invoice has the meaning it has in the GST Act.

Term means the period so described in the Details starting on the Commencement Date and ending on the Expiry Date.

WHS Legislation means the Work Health and Safety Act 2011 (Qld).

1.2 References to certain general terms

Unless the contrary intention appears, in this agreement:

- (a) a reference to a document (including this agreement) includes any variation or replacement of it;
- (b) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) the singular includes the plural and vice versa;
- (f) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (g) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (m) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;

- (p) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (q) if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day;
- (r) a reference to time is a reference to time in Brisbane;
- (s) a reference to any thing (including any amount) is a reference to the whole and each part of it; and
- (t) a reference to "this agreement" is a reference to this agreement and to any renewal or extension of it or holding over under it.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

2 Licence

2.1 Grant

The Licensor grants the Licensee a licence to use the Licensed Area for the Permitted Use.

The licence starts on the Commencement Date and ends, subject to this agreement, on the Expiry Date.

2.2 Holding over

If the Licensee continues to use the Licensed Area after the last day of the Term with the Licensor's approval, then the Licensee does so under a licence from month to month:

- (a) which either party may terminate on one month's notice ending on any day; and
- (b) at a licence fee determined by the Licensor; and
- (c) otherwise on the same terms as this agreement except for those changes which:
 - (i) are necessary to make this agreement appropriate to a licence from month to month; or
 - (ii) the Licensor requires as a condition of giving its approval to the holding over.

2.3 Contractual rights

The rights given to the Licensee by this agreement are contractual only and do not give the Licensee exclusive possession or any interest in the Land or the right to lodge a caveat.

3 Licence Fee

3.1 The Licensee agrees to pay the Licence Fee to the Licensor.

3.2 The Licence Fee must be paid to the Licensor's nominated bank account in clear funds without any demand by equal monthly instalments in advance on the first day of each month.

- 3.3** The Licence Fee will be apportioned for any broken period.
- 3.4** The Licensee's obligation to pay the Licence Fee is not subject to any abatement, reduction, set-off, defence, counterclaim or recoupment.
- 3.5** Despite the preceding provisions of this clause 3, provided the Licensee otherwise complies with its obligations and liabilities arising under this agreement, the obligation to pay any instalments of the Licence Fee shall not apply during the initial six (6) months following the Commencement Date ("the Licence Fee free period").
- 3.6** The Licence Fee shall be adjusted by way of annual review, upon each anniversary of the Commencement Date. The adjusted Licence Fee shall be calculated in accordance with the following formula:
- $$R = A \times (\text{Current CPI} \div \text{Base CPI})$$
- Where R = the Licence Fee for the licence year under review;
Where A = the Licence Fee determined as payable for the previous year of the licence;
Where Current CPI = the CPI as published by the Australian Bureau of Statistics for the financial year immediately preceding the relevant financial year; and
Where Base CPI = the CPI as published by the Australian Bureau of Statistics for the financial year immediately preceding the Commencement Date.
- 3.7** For the avoidance of doubt, the Licence Fee free period shall be disregarded for the purpose of calculating the adjusted Licence Fee for the second year of the licence.

4 Licensee's works

4.1 Licensor's approval

The Licensee must not carry out works on or to the Licensed Area without first:-

- (a) obtaining the Licensor's written approval; and
- (b) obtaining the relevant Permits.

4.2 Conditions

If the Licensor grants an approval as envisaged by clause 4.1(a), it may impose conditions including without limitation the following conditions:

- (a) The Licensee must submit to the Licensor full detailed drawings and specifications of the proposed works which meet with the approval of the Licensor's architect;
- (b) The materials to be used in carrying out the works are of a standard as to type, quality, colour and size as the Licensor determines;
- (c) The works are to be carried out by a builder approved by the Licensor;
- (d) The works are to be carried out under the supervision of the Licensor's architect; and
- (e) The Licensee must pay to the Licensor immediately upon demand all Reasonable Costs and Expenses incurred by the Licensor, including architects' and other consultants' fees payable by the Licensor whether any approval is granted or not.

4.3 Indemnity and ownership of works

- (a) The Licensee indemnifies the Licensor against all damage to the Licensed Area and to the Land or injury to any persons arising from the works.
- (b) Unless otherwise advised by the Licensor, any works constructed by the Licensee remain the property of the Licensee who is responsible for their maintenance and insurance.

4.4 Work health and safety

If the Licensee (including if acting as agent for the Licensor) carries out works on the Licensed Area, or commissions to be carried out on the Licensed Area, works to which WHS Legislation applies:

- (a) the Licensee acknowledges and agrees that for the purposes of the WHS Legislation, it is authorised by the Licensor to have management and control of the Land or Licensed Area where the works are being carried out;
- (b) the Licensee acknowledges and agrees that it will discharge the duties of Principal Contractor unless the Licensee engages another person as Principal Contractor for the works and authorises the person to have management and control of the Land or Licensed Area necessary to discharge the duties of Principal Contractor;
- (c) the Licensee must comply with, and must ensure, that the WHS Legislation is complied with in relation to the works, including the discharge of obligations imposed on a Principal Contractor; and
- (d) the Licensee is responsible for the works at all times until they are completed

5 Services

5.1 Services

The Licensee agrees to pay all charges for Services on or before their due date for payment.

5.2 Supply by Licensor

If the Licensor supplies a Service to the Licensed Area:

- (a) the Licensee agrees to pay the charges relating to the Service within seven days after being billed; and
- (b) the charge will be the greater of:
 - (i) the amount, calculated by the Licensor, that the supplier of the Service to the Licensor would have charged the Licensee; and
 - (ii) the amount the supplier of the Service charges the Licensor; and
- (c) if the Licensee does not pay the charges on time, the Licensor (in addition to its other rights) may stop the Service until all outstanding amounts have been paid.

5.3 Cleaning of services

If the Licensor, in its sole discretion, determines that the amenities located on the Land require cleaning above what is routinely carried out as a result of the Permitted Use, the Licensee agrees to pay the charges relating to the additional cleaning services in accordance with clause 5.2.

5.4 Licensee may not terminate

The Licensee may not terminate this agreement or stop or reduce payments under it because a Service is not available, or is interrupted or fails, or the Licensor's plant or equipment breaks down.

6 Insurances, indemnities and releases

6.1 Public liability and other risks

The Licensee agrees to maintain all insurances required by the Licensor including:

- (a) public liability insurance for at least the amount set out in the Details (as varied by notice from the Licensor to the Licensee); and
- (b) contractor's all risk insurance in connection with any Licensee's works in the Licensed Area; and
- (c) worker's compensation insurance; and
- (d) other insurances which are required by law or which, in the Licensor's reasonable opinion, a prudent licensee would take out.

6.2 The policy

Each policy under clause 6.1 ("Public liability and other risks") must be:

- (a) on terms and for an amount reasonably satisfactory to the Licensor; and
- (b) with an insurer approved by the Licensor acting reasonably.

6.3 Evidence

The Licensee agrees to produce evidence satisfactory to the Licensor of current insurance cover (including a certified copy of each policy) whenever the Licensor asks.

6.4 Licensee to notify insurer

The Licensee:

- (a) agrees to inform, or if a policy is effected before the Commencement Date warrants that it informed, the insurer of the extent of its entitlement to an Input Tax Credit for any premium paid in connection with any of the policies referred to in clause 6.1 ("Public liability and other risks") on or before the date those insurances are or were effected; and
- (b) agrees to produce evidence satisfactory to the Licensor of the Licensee's compliance with clause 6.4(a) whenever the Licensor asks; and
- (c) agrees to promptly notify the insurer and the Licensor if the Licensee's entitlement to an Input Tax Credit referred to in clause 6.4(a) changes.

6.5 Licensee's indemnity

The Licensee indemnifies the Licensor against any liability or loss arising from, and Costs incurred (whether before, during or after termination of this agreement) in connection with:

- (a) damage, loss, injury or death arising from the Licensee's or the Licensee's Employees and Agents use and occupation of the Licensed Area except to the extent it is caused by the Licensor's act, negligence or default; and

- (b) the Licensor doing anything which the Licensee must do under this agreement but has not done or which the Licensor considers the Licensee has not done properly; and
- (c) any person exercising, or attempting to exercise, a right or remedy in connection with this agreement after the Licensee defaults under this agreement; and
- (d) the Licensee's breach of this agreement.

The Licensee agrees to pay amounts due under this indemnity on demand from the Licensor.

6.6 Release

The Licensee releases the Licensor from, and agrees that the Licensor is not liable for, liability or loss arising from, and Costs incurred in connection with:

- (a) damage, loss, injury or death except to the extent it is caused by the Licensor's act, negligence or default; and
- (b) anything the Licensor is permitted or required to do under this agreement; and
- (c) a Service being interrupted, not being available or not working properly; and
- (d) the Licensor's plant and equipment (if any, in the Licensed Area) not working properly; and
- (e) the Licensed Area or the Permitted Use not complying with any law or the requirements of any authority.

6.7 Breach of agreement

The Licensor is not liable to the Licensee for indirect or consequential loss or damages (including, but not limited to, loss of business opportunity or loss of profit) arising from any breach of this agreement or otherwise. This exclusion applies whether the Licensor's liability is in contract, tort (including negligence), under any law or statute or otherwise.

7 Licensee's additional obligations

7.1 General obligations

The Licensee agrees to:

- (a) obtain and comply with all relevant Permits, including the Conditions imposed by Decision Notice MCU013700; and
- (b) install a boom gate or other traffic control measure at the entrance to the Licensed Area to prevent public parking of cars upon the Licensed Area during the times the Licensee conducts the Permitted Use; and
- (c) install security screens and lighting in such locations as advised by the Licensor prior to the Permitted Use commencing; and
- (d) when directed by Council, plant screening vegetation to minimise the visual impact of any fencing installed by the Licensee; and
- (e) operate the Permitted Use in a first class, professional manner to the reasonable satisfaction of the Licensor; and

- (f) comply with all laws and the requirements of authorities and all Australian standards in connection with the Licensed Area and its use including laws and requirements in connection with food safety, contamination and occupational health and safety; and
- (g) ensure the Licensee's Agents engaged to sell any food or beverages or otherwise sell any goods or perform any services on the Licensed Area comply with all laws and the requirements of authorities and all Australian standards including laws and requirements in connection with food safety, contamination and occupational health and safety and are suitably qualified and trained; and
- (h) use the Licensed Area only for the Permitted Use; and
- (i) keep the Licensed Area clean, tidy and free of vermin and broken glass; and
- (j) inform the Licensor of damage to the Licensed Area or of a faulty Service immediately the Licensee becomes aware of it; and
- (k) observe relevant maximum load weights relating to the Licensed Area; and
- (l) use its best endeavours to ensure people do not consume tobacco products or use illicit drugs on the Licensed Area; and
- (m) when asked by the Licensor, promptly do everything necessary for the Licensee to do to enable the Licensor to exercise its rights under this agreement.

7.2 Prohibited acts

The Licensee may not:

- (a) dispose of or otherwise deal with the licence; or
- (b) Assign the licence without first obtaining the Licensor's written consent (which the Licensor must not unreasonably refuse if the Licensee complies with any reasonable conditions imposed by the Licensor); or
- (c) remain in the Licensed Area for a period longer than is necessary to exercise its rights or to comply with its obligations under this agreement; or
- (d) store or use inflammable, volatile or explosive substances or contaminants on the Licensed Area; or
- (e) do anything in or around the Licensed Area which in the Licensor's reasonable opinion may be annoying, dangerous or offensive; or
- (f) do anything to cause potential harm to members of the community, contaminate, pollute or increase toxicity in the Licensed Area.

7.3 Indirect acts

If the Licensee may not do something in connection with this agreement, then it may not do anything which may result in it happening.

7.4 Licensee's Employee's and Agents to comply

The Licensee agrees to ensure that the Licensee's Employees and Agents do not do anything, or omit to do anything, which if done or omitted to be done by the Licensee would be a breach of the Licensee's obligations under this agreement.

8 Licensor's additional rights and obligations

8.1 Rights

Despite any other provisions of this agreement, the Licensor may do anything to comply with any law or the requirements of authorities whether on the Licensed Area, the Land or elsewhere.

8.2 Access to Licensed Area

If the Licensor decides there is an emergency, the Licensor may stop the Licensee from entering the Licensed Area at any time or from conducting or continuing to conduct the Permitted Use.

8.3 Rules

- (a) The Licensor may formulate rules from time to time ("the rules") in relation to the Licensee's use of the Licensed Area and the safety of members of the community.
- (b) The Licensee must obey the rules.
- (c) The Licensor may alter the rules and make further rules.
- (d) The rules must not substantially diminish the rights of the Licensee and if there is any inconsistency between the provisions of this licence and the rules, the provisions of this agreement prevail.

8.4 Licensor may rectify

After giving the Licensee reasonable notice, the Licensor may:

- (a) do anything which the Licensee should have done under this agreement but which it has not done or which the Licensor considers it has not done properly; and
- (b) recover the Costs incurred by the Licensor as a debt payable on demand.

The Licensor may exercise its rights under this clause 8.3 even though this agreement has expired or has been terminated.

9 Extension and Expiry

9.1 Extension of Term

The parties may by mutual agreement, extend the operation of this licence beyond the Term for a period that is not more than Five (5) Years, from the expiration of the initial Term. Each party must give Notice of its intention to extend the operation of this Contract to the other party at least Three (3) Months prior to the expiration of the initial Term.

9.2 Relocation

If the Licensor proposes to carry out any refurbishment, rebuilding, redevelopment or extension on the Land and requires the Licensed Area to be relocated, to a different location within the Land or to other land belonging to the Licensor:

- (a) The Licensor must give the Licensee at least six months' notice of relocation and in the notice give details of an alternative licensed area to be made available to the Licensee (the **Relocation Notice**).

- (b) The Licensee is entitled to be offered a new licence of the alternative licensed area on the same terms as this licence, except the term of the new licence will be the remainder of the term of this licence.
- (c) The Licensee may terminate the licence by giving the Licensor a notice within one month of receiving the Licensor's notice. If the Licensee does this, the licence terminates three months after the Licensor gives the Relocation Notice.
- (d) If the Licensee does not give a notice referred to in clause 9.2(c), the Licensee is taken to have accepted the offer of the new licence.
- (e) Neither party will have any right to compensation from the other party as a result of a termination of the licence by the Licensee under clause 9.2(c) or a relocation of the licensed area, if the offer a new licence is accepted by the Licensee.

9.3 Licensee to vacate

The Licensee agrees to:

- (a) vacate the Licensed Area on the earlier of:
 - (i) the date on which the licence ends in accordance with clause 1.1 ("Term"); and
 - (ii) the date this agreement is terminated; and
- (b) leave the Licensed Area in the condition consistent with this agreement and otherwise as directed by the Licensor.

9.4 Removal of Licensee's Property

Subject to clause 9.5 ("If agreement is terminated") unless otherwise agreed between the Licensor and the Licensee (acting reasonably), the Licensee agrees to remove the Licensee's Property from the Licensed Area during the seven days immediately before the day the Licensed Area must be vacated.

9.5 If agreement is terminated

If the Licensor terminates this agreement under clause 9.2(c) or clause 10 ("Default and Demolition") unless otherwise agreed between the Licensor and the Licensee (acting reasonably), the Licensee agrees to remove the Licensee's Property within seven days after termination.

9.6 Licensor may treat Licensee's Property as abandoned

The Licensor may treat the Licensee's Property as abandoned, and deal with it in any way it sees fit at the Licensee's expense, if the Licensee does not remove the Licensee's Property in accordance with this clause 9.

9.7 Licensee's Property at Licensee's risk

The Licensee's Property is at the Licensee's risk at all times.

9.8 Licensee to make good damage

Unless otherwise agreed between the Licensor and the Licensee (acting reasonably), the Licensee agrees to make good any damage caused by the Licensee (or by the Licensee's Employees and Agents) to the Licensed Area or the Land during the Term or by the Licensee's Property being removed from the Licensed Area within a reasonable period after the damage occurs. The Licensee agrees to consult with the Licensor in relation to any make good and comply with the Licensor's reasonable requests and directions.

9.9 Licensee to give Licensor keys

On the day the Licensee must vacate the Licensed Area, the Licensee agrees to give the Licensor the keys, access cards and similar devices for the Licensed Area held by the Licensee, the Licensee's Employees and Agents, and any other person they have given them to.

9.10 Liquidated damages

Without affecting any other rights the Licensor may have under this agreement, if the Licensee does not comply with its obligations under this clause 9, the Licensee agrees to pay the Licensor liquidated damages payable from the day the Licensee must vacate the Licensed Area to and including the day the Licensee complies with its obligations under this clause 9.

10 Default and Demolition

10.1 Licensor's right to terminate

The Licensor may terminate this agreement if the Licensee:

- (a) does not comply with an essential term of this agreement; or
- (b) does not comply with this agreement and does not remedy the non-compliance within 14 days after the Licensor gives a notice to the Licensee to remedy it; or
- (c) becomes Insolvent.

10.2 Essential terms

Each obligation of the Licensee to pay money and its obligations under clauses 4 ("Licensee's works"), 6.1 ("Public liability and other risks"), 6.2 ("The policy"), 6.3 ("Evidence"), 7.1(h), 7.1(c), 7.2(a) and 7.2(b) are essential terms of this agreement. Other obligations under this agreement may also be essential terms.

10.3 Licensor to mitigate its loss

If this agreement is terminated under this clause 10, the Licensor agrees to take reasonable steps to mitigate its loss.

10.4 Demolition

If the Licensor requires any improvements on the Land, or any part of it, to be demolished (for example for the redevelopment of the Land or any improvements on the Land):

- (a) The Licensor must give the Licensee details of the proposed redevelopment sufficient to indicate a genuine proposal that is to be carried out within a reasonable time and that cannot be carried out practically without the licence being terminated;
- (b) The Licensor must give the Licensee at least 6 months' notice of the demolition or partial demolition of the Land or improvements on the Land (Demolition Notice);
- (c) This Licence will terminate on the earlier date of:
 - (i) the date specified by the Licensee in a written notice to be the Licensor terminating the Licence (Licensee's Termination Notice), such date to be at least seven day after the provision of the Licensee's Termination Notice; and

(i) the date 6 months after the date that the Demolition Notice is given to the Licensee.

(d) Neither party will have any right to compensation from the other party as a result of termination under this clause **10.4**.

11 Costs

The Licensor and Licensee agree to pay their own Costs in connection with the negotiation, preparation and execution of this agreement.

12 GST

12.1 Consideration does not include GST

The consideration specified in this agreement does not include any amount for GST.

12.2 Recovery of GST

If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

12.3 Time of payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

12.4 Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

12.5 Reimbursement

If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

13 Notices and other communications

13.1 Form

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by the sender (if an individual) or an authorised officer (if a body corporate or Local Government Authority), or the solicitor, of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

13.2 Delivery

Communications must be:

(a) left at the address set out or referred to in the Details; or

- (b) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Details; or
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

13.3 When effective

Communications take effect from the time they are received or taken to be received under clause 13.4 ("When taken to be received") (whichever happens first) unless a later time is specified.

13.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

13.5 Receipt outside business hours

Despite clauses 13.3 ("When effective") and 13.4 ("When taken to be received"), if communications are received or taken to be received under clause 13.4 after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

14 General

14.1 Variation and waiver

A provision of this agreement, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

14.2 Indemnities

The indemnities in this agreement are continuing obligations, independent of the Licensee's other obligations under this agreement and continue after this agreement ends. It is not necessary for the Licensor to incur expense or make payment before enforcing a right of indemnity under this agreement.

14.3 Expiry does not affect payment obligations

Expiry or termination of this agreement does not affect the Licensee's obligations to make payments under this agreement for periods before then.

14.4 Warranties and undertakings

The Licensee warrants that it:

- (a) has relied only on its own enquiries in connection with this agreement and not on any representation or warranty by the Licensor or any person acting or seeming to act on the Licensor's behalf; and

- (b) is aware of all laws affecting the Licensed Area and its use and is satisfied that the Licensed Area is suitable for the Permitted Use.

The Licensee agrees to comply on time with undertakings given by or on behalf of the Licensee in connection with this agreement.

14.5 Counterparts

This agreement may consist of a number of copies, each signed by one or more parties to this agreement. If so, the signed copies are treated as making up the one document.

14.6 Applicable law

This agreement is governed by the law in force in the place specified in the Details and the parties submit to the non-exclusive jurisdiction of the courts of that place.

14.7 Serving documents

Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices under clause 13 ("Notices and other communications").

15 Security

15.1 Bond

- (1) The Licensee must prior to the Commencement Date pay to the Licensor the sum set out in the Details as a cash bond for performance by the Licensee of this licence.
- (3) The Licensee may instead of paying the amount under clause 15.1(1), provide to the Licensor an Australian Trading Bank guarantee, on terms acceptable to the Licensor, for the observance and performance by the Licensee of all the obligations and provisions contained in this agreement. The maximum liability of the bank must at least equal the total of the cash bond required by clause 15.1(1).
- (4) If at any time the Licensee fails to observe and perform any of the Licensee's obligations in this licence, the Licensor may take all or any part of the cash bond or call up any guarantee as compensation for any loss or damage suffered or which may be suffered by the Licensor because of that failure. Any such action by the Licensor will not be treated as a waiver of the Licensee's failure and will not limit any other right or remedy of the Licensor in respect of it.
- (5) If any part of the cash bond is taken or any guarantee called up by the Licensor and this licence remains on foot, the Licensee must immediately upon demand by the Licensor pay to the Licensor the amount taken or called up. This amount is to be held as a cash bond under this clause.

EXECUTED as an agreement

**SIGNED BY REDLAND CITY
COUNCIL** by the Chief Executive
Officer or Council Officer with
delegated authority to sign:

)
)
)
)


.....
Signature of authorised person

Chief Executive Officer
.....
Office held

WILLIAM HAROLD LYON
.....
Name of authorised person (block
letters)

**SIGNED BY 4 SIMPLICITY PTY
LTD A.C.N. 123 533 120**
in accordance with section 127 of the
Corporations Act 2001:

)
)
)


.....
Signature of authorised person

DIRECTOR
.....
Office held

COLIN PETER MASON
.....
Name of authorised person (block
letters)


.....
Signature of authorised person

DIRECTOR
.....
Office held

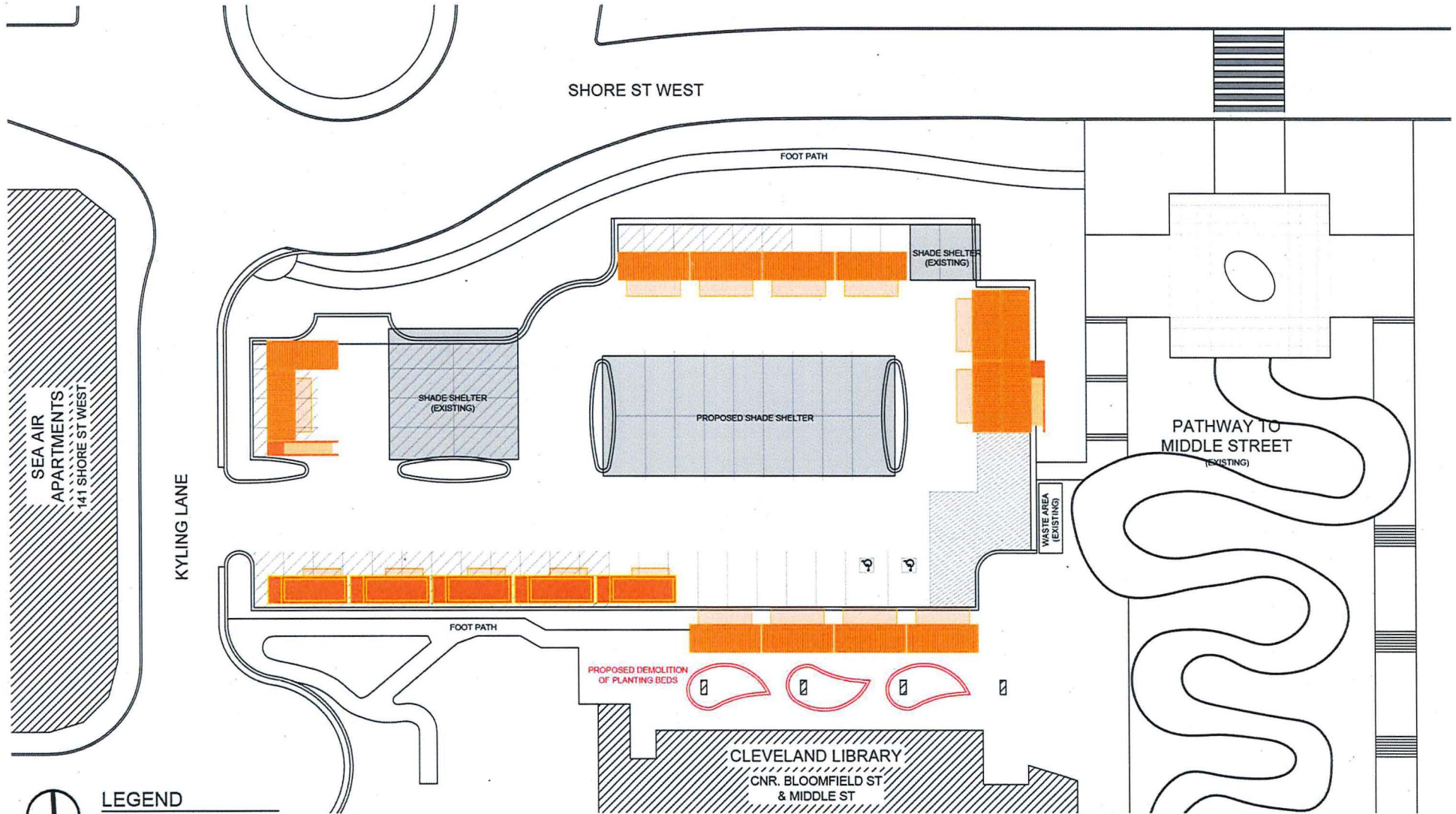
SHARON MASON
.....
Name of authorised person (block
letters)

ANNEXURE "A"

LICENSED AREA

[INSERT]

Site Plan



LEGEND

- SHIPPING CONTAINER 
- FOOD TRUCK 

Commercial in confidence

ANNEXURE "B"

Decision Notice MCU013700

[INSERT]



Redland City Council
ABN 86 058 929 428
Cnr Bloomfield & Middle Sts.
Cleveland Qld 4163
PO Box 21,
Cleveland Qld 4163
Telephone 07 3829 8999
Facsimile 07 3829 8765
Email rcc@redland.qld.gov.au
www.redland.qld.gov.au

16 August 2016

Your Ref: N/A
Our Ref: FE:ss
File No: MCU013700
Contact: City Planning & Assessment

4 Simplicity Pty Ltd C/ - Michell Town Planning & Development
PO Box 1777
CLEVELAND QLD 4163

Dear Sir/Madam

Decision Notice

Sustainable Planning Act 2009

APPLICATION DETAILS

Proposed Development:	Material Change of Use – Refreshment Establishment
Application Reference No:	MCU013700
Legal Description:	Part of Lot 17 on RP 212514, Part of Lot 32 on RP 904128
Site Location:	21-31 Bloomfield Street and 143 Shore Street West, Cleveland

The development application for a Material Change of Use for the purpose of a Refreshment Establishment at the above location has been assessed and after considering all relevant matters, a **Development Permit** has been granted subject to conditions. The decision was made on 10 August 2016 by Council.

The following schedule provides all the relevant details.

APPROVAL TYPE

	Development Permit	Preliminary Approval
Building Works assessable against the Planning Scheme	<input type="checkbox"/>	<input type="checkbox"/>
Plumbing or Drainage Works	<input type="checkbox"/>	<input type="checkbox"/>
Operational Works	<input type="checkbox"/>	<input type="checkbox"/>
Reconfiguring a Lot	<input type="checkbox"/>	<input type="checkbox"/>
Material Change of Use	<input checked="" type="checkbox"/>	<input type="checkbox"/>

REFERRAL AGENCIES

There were no Referral Agencies applicable to the application.

CONDITIONS & ADVICE

ASSESSMENT MANAGER CONDITIONS	TIMING
1. Comply with all conditions of this approval, at no cost to Council, at the timing periods specified in the right-hand column. Where the column indicates that the condition is an ongoing condition, that condition must be complied with for the life of the development.	

Approved Plans and Documents	
2. Undertake the development in accordance with the approved plans and documents referred to in Table 1, subject to the conditions of this approval and any notations by Council on the plans.	Prior to the use commencing and ongoing.

Plan/Document Title	Reference Number	Prepared By	Plan/Doc. Date
Site Plan	MCU013700/1	Applicant	Received in Council 01/03/2016
Ground Level Plan	MCU013700/2	Applicant	Received in Council 01/03/2016
First Level Plan	MCU013700/3	Applicant	Received in Council 01/03/2016
Container Specifications	MCU013700/4	Applicant	Received in Council 01/03/2016
Traffic Impact Assessment	16118 - 1	RTG	23/05/2016
Odour Management Plan – Chefs Inc Food Market, Cleveland - Final	4474-OMP-02	Air Noise Environment Pty Ltd	18 /02/2016
Cleveland Eat Street Application – Noise Assessment Response to Information Request - Letter	4474_Letter_Response.odt	Air Noise Environment Pty Ltd	20 July 2016
Noise Assessment – Cleveland Eat Street – Revised Final – 4 Simplicity Pty Ltd	4474-Noise-04	Air Noise Environment	20/07/2016

Table 1: Approved Plans and Documents

Limit of Approval	
3. The following restrictions on the development apply: a. The use must cease after 10 years from the commencement of use.	Ongoing.
Access	
4. Prepare a traffic control/management plan for the site operation in accordance with the approved Traffic Impact Assessment, and maintain on site at all times.	Prior to the use commencing and ongoing.
Design	
5. Locate, design and install outdoor lighting so that they do not emit glare or light above the levels stated in <i>Australian Standard 4282 – 1997 Control of the Obtrusive Effects of Outdoor Lighting</i> (or the current applicable standard).	Prior to the use commencing and ongoing.
6. Maintain all structures to be of a continually clean, tidy and structurally sound condition.	Prior to the use commencing and ongoing.
7. Design and construct the fence along the northern boundary and part of the western and eastern boundaries in a colour to blend with the boundary vegetation (eg, black or green)	Prior to the use commencing and ongoing.
Note: Fencing is to be located internal to the site between the structures and existing vegetation where possible.	
Hours of Operation	
8. Operate the approved use as follows: <ul style="list-style-type: none"> • Friday – 5:00pm to 10:00pm (set up time to commence from 5:00pm and trading to cease at 9:00pm to allow for cleaning and vacating the site); • Saturday – 10:00am to 10:00pm (set up time to commence at 10:00am and trading to cease at 9:00pm to allow for cleaning and vacating the site); and • Sunday – 10:00am to 9:00pm (set up time to commence from 10:00am and trading to cease at 8.00pm to allow for cleaning and vacating the site). 	Ongoing.
Acoustic Requirements	
9. Incorporate acoustic recommendations and attenuation into the development as specified in the acoustic report titled <i>Noise Assessment – Cleveland Eat Street – Revised final – 4 Simplicity Pty Ltd, prepared by Air Noise Environment dated July 2016, project reference 4474.</i>	Prior to the use commencing and ongoing.
10. Implement the noise management plan listed in Table 1: Approved Plans and Documents of this approval. Review the plan annually. Submit to Council, and receive approval for, Compliance Assessment for any amendments to the plan.	Prior to the use commencing and ongoing.
11. Cease amplified entertainment by Friday and Saturday at 9pm and Sunday by 6pm as specified in <i>Noise Assessment – Cleveland Eat Street – Revised final – 4 Simplicity Pty Ltd, prepared by Air Noise Environment dated July 2016, project reference 4474.</i>	Ongoing.
12. Conduct garbage collection between the hours of 7am to 6pm Monday to Saturday and 8am to 6pm Sunday as specified in <i>Noise Assessment – Cleveland Eat Street – Revised final – 4 Simplicity Pty Ltd, prepared by Air Noise Environment dated July 2016, project reference 4474.</i>	Prior to the use commencing and ongoing.

13. Enclose all refrigeration plant and locate within container areas where there is no line of sight to neighbouring sensitive receivers.	Prior to the use commencing and ongoing.
Air Quality Requirements	
14. Implement the odour management plan listed in Table 1: Approved Plans and Documents of this approval. Review the plan annually. Submit to Council, and receive approval for, Compliance Assessment for any amendments to the plan.	Prior to the use commencing and ongoing.
Stormwater Management	
15. Convey roof water and surface water in accordance with the Redlands Planning Scheme Policy 9 Chapter 6 – Stormwater Management to: <ul style="list-style-type: none"> • A lawful point of discharge using existing drainage system of the area. <p>The existing stormwater system within the development area is to be maintained as functional, without causing any blockage or localised ponding of surface runoff.</p>	Prior to the use commencing and ongoing.
16. Manage stormwater discharge from the site in accordance with the Redlands Planning Scheme Policy 9 Chapter 6 – Stormwater Management, so as to not cause an actionable nuisance to adjoining properties.	Prior to the use commencing and ongoing.
Infrastructure and Utility Services	
17. Pay the cost of any alterations to existing public utility mains, services or installations due to building and works in relation to the proposed development, or any works required by conditions of this approval. Any cost incurred by Council must be paid at the time the works occur in accordance with the terms of any cost estimate provided to perform the works, or prior to plumbing final or the use commencing, whichever is the sooner.	At the time of works occurring.
Waste Management	
18. Submit to Council a copy of a written agreement with a waste services provider to provide and maintain a bulk bin collection service to the development.	Prior to the use commencing and ongoing.
19. Install a screened refuse storage area, co-located with the existing onsite waste storage area as indicated on the approved plan, for the storage of: <ol style="list-style-type: none"> a. A minimum of 1 x 4m³ waste bin and a minimum 3m³ recycle bin. The storage area must be impervious, well drained, provided with a hose cock, enclosed and illuminated for night time use; and b. A waste oil container for the disposal of used cooking oils. <p>Note: As the general waste and recycle bins are to be emptied at the end of each night, it is recommended a bin lifter be used to decant the wheelie bins to the bulk bins.</p>	Prior to the use commencing and ongoing.
Landscape Works	
20. Plant vegetation along the eastern boundary in accordance with the approved Site Plan (as amended).	Prior to the use commencing.
21. Undertake any pruning to existing trees in accordance with <i>Australian Standard AS4373:2007: Pruning of Amenity Trees</i> .	During site works.

22. Ensure no structures, stalls, seating or other constraints are placed along the eastern side of the car park area that prevent or inhibit access and movement to and from the adjoining path and ramps for pedestrians and mobility impaired persons.	Prior to the use commencing and ongoing.
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ADDITIONAL APPROVALS

The following further Development Permits and/or Compliance Permits are necessary to allow the development to be carried out:

- Building Works approval.

Further approvals, other than a Development Permit or Compliance Permit, are also required for your development. This includes, but is not limited to, the following:

- Food Business Licence – for any development proposing to conduct a food business under the *Food Act 2006*.
- Liquor Licence
- Trade Waste permit

ASSESSMENT MANAGER ADVICE

- **Release of Water Contaminants**
Please be aware that prescribed water contaminants must not be released to waters, a roadside gutter, stormwater drainage or into another place so that contaminants could reasonably be expected to move into these areas. Refer to the *Environmental Protection Act 1994* for further information on the release of prescribed water contaminants.
- **Live Connections**
Redland Water is responsible for all live water and wastewater connections. Contact *must* be made with Redland Water to arrange live works associated with the development.
Further information can be obtained from Redland Water on 07 3829 8999.
- **Removal of Landscaping and Pruning of Trees**
Contact Council's Senior Trees and Landscapes Services Officer on 07 3829 8999 to confirm timing and extent of works prior to removal of any landscape planter beds or trees from the site, or any pruning of trees.
- **Coastal Processes and Sea Level Rise**
Please be aware that development approvals issued by Redland City Council are based upon current lawful planning provisions which do not necessarily respond immediately to new and developing information on coastal processes and sea level rise. Independent advice about this issue should be sought.
- **Hours of Construction**
Please be aware that you are required to comply with the *Environmental Protection Act* in regards to noise standards and hours of construction.
- **Survey and As-constructed Information**
Upon request, the following information can be supplied by Council to assist survey and engineering consultants to meet the survey requirements:
 - a) A map detailing coordinated and/or levelled PSMs adjacent to the site.
 - b) A listing of Council (RCC) coordinates for some adjacent coordinated PSMs.
 - c) An extract from Department of Natural Resources and Mines SCDM database for each PSM.
 - d) Permanent Survey Mark sketch plan copies.

This information can be supplied without charge once Council received a signed declaration from the consultant agreeing to Council's terms and conditions in relation to the use of the supplied information.

Where specific areas within a lot are being set aside for a special purpose, such as building sites or environmental areas, these areas should be defined by covenants. Covenants are registered against the title as per Division 4A of the *Land Title Act 1994*.

- **Road and Rail Noise Overlay**
Council's *Redland Planning Scheme Road and Rail Noise Overlay Map* identifies that the development application site is within the road and rail noise overlay and triggers Part 5 – Overlays, Division 10 – Road and Rail Noise Impacts Overlay Code of the Redlands Planning Scheme. It is recommended that any future development be designed and constructed to minimise noise impacts from the nearby roadway.
- **Services Installation**
It is recommended that where the installation of services and infrastructure will impact on the location of existing vegetation identified for retention, an experienced and qualified arborist that is a member of the Australian Arborist Association or equivalent association, be commissioned to provide impact reports and on site supervision for these works.
- **Fire Ants**
Areas within Redland City have been identified as having an infestation of the Red Imported Fire Ant (RIFA). Biosecurity Queensland should be notified on 13 25 23 of proposed development(s) occurring in the Fire Ant Restricted Area before earthworks commence. It should be noted that works involving movements of soil associated with earthworks may be subject to movement controls and failure to obtain necessary approvals from Biosecurity Queensland is an offence. It is a legal obligation to report any sighting or suspicion of fire ants within 24 hours to Biosecurity Queensland on 13 25 23. The Fire Ant Restricted Area as well as general information can be viewed on the Department of Agriculture and Fisheries (DAF) website www.daf.qld.gov.au/fireants
- **Cultural Heritage**
Should any aboriginal, archaeological or historic sites, items or places be identified, located or exposed during the course or construction or operation of the development, the *Aboriginal and Cultural Heritage Act 2003* requires all activities to cease. For indigenous cultural heritage, contact the Department of Environment and Heritage Protection.
- **Fauna Protection**
It is recommended an accurate inspection of all potential wildlife habitats be undertaken prior to removal of any vegetation on site. Wildlife habitat includes trees (canopies and lower trunk) whether living or dead, other living vegetation, piles of discarded vegetation, boulders, disturbed ground surfaces, etc. It is recommended that you seek advice from the Queensland Parks and Wildlife Service if evidence of wildlife is found.
- **Environment Protection and Biodiversity Conservation Act**
Under the Commonwealth Government's *Environment Protection and Biodiversity Conservation Act* (the EPBC Act), a person must not take an action that is likely to have a significant impact on a matter of national environmental significance without Commonwealth approval. Please be aware that the listing of the Koala as vulnerable under this Act may affect your proposal. Penalties for taking such an action without approval are significant. If you think your proposal may have a significant impact on a matter of national environmental significance, or if you are unsure, please contact Environment Australia on 1800 803 772. Further information is available from Environment Australia's website at www.ea.gov.au/epbc

Please note that Commonwealth approval under the EPBC Act is independent of, and will not affect, your application to Council.

NEGOTIATION OF A DECISION

You are entitled to make representations to Council about this decision in accordance with Section 361 of the *Sustainable Planning Act 2009*.

DEEMED APPROVAL (APPROVAL UNDER s331)

The approval of this application has not been issued under Section 331 of the *Sustainable Planning Act 2009*.

RIGHTS OF APPEAL

A copy of the rights of appeal under Section 461 and Section 462 of the *Sustainable Planning Act 2009* for Applicants is appended, together with Division 11 Part 1 (Chapter 7) of the Act which deals with the making of an Appeal to the Planning and Environment Court.

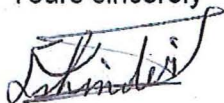
A Submitter for a development application may also appeal to the Planning and Environment Court. Information about Submitter appeal rights for the Planning and Environment Court is set out in Sections 462, 463 and 464 of the *Sustainable Planning Act 2009*.

Applicants and Submitters may also have a right to appeal to the Building and Development Dispute Resolution Committee. For further details, please refer to the *Sustainable Planning Act 2009* Chapter 7, Part 2.

OTHER DETAILS

Should you wish to obtain more information about Council's decision please contact Council's Planning Assessment team on (07) 3829 8999 or DAmailbox@redland.qld.gov.au. Electronic copies of this Decision Notice are also available online at www.redland.qld.gov.au or at Council offices.

Yours sincerely



A/ Eskinder Ukubamichael
Senior Planner
Planning Assessment

City Planning & Assessment Customer Feedback

We would like your feedback about your dealings with City Planning & Assessment, and suggestions for continuous improvement.

To take a quick survey please visit the website below, or scan the QR Code with your smart phone device.

<http://www.redland.qld.gov.au/Haveyoursay/Pages/Customer-feedback.aspx>



Sustainable Planning Act

Division 8 Appeals to court relating to development applications and approvals

461 Appeals by applicants

- (1) An applicant for a development application may appeal to the court against any of the following—
 - (a) the refusal, or the refusal in part, of the development application;
 - (b) any condition of a development approval, another matter stated in a development approval and the identification or inclusion of a code under section 242;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 341;
 - (e) a deemed refusal of the development application.
- (2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (*the applicant's appeal period*) after—
 - (a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or
 - (b) otherwise—the day a decision notice was required to be given to the applicant.
- (3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

462 Appeals by submitters—general

- (1) A submitter for a development application may appeal to the court only against—
 - (a) the part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or
 - (b) the part of the approval relating to the assessment manager's decision under section 327.
- (2) To the extent an appeal may be made under subsection (1), the appeal may be against 1 or more of the following—
 - (a) the giving of a development approval;
 - (b) any provision of the approval including—
 - (i) a condition of, or lack of condition for, the approval; or
 - (ii) the length of a period mentioned in section 341 for the approval.
- (3) However, a submitter may not appeal if the submitter—
 - (a) withdraws the submission before the application is decided; or
 - (b) has given the assessment manager a notice under section 339(1)(b)(ii).
- (4) The appeal must be started within 20 business days (*the submitter's appeal period*) after the decision notice or negotiated decision notice is given to the submitter.

Sustainable Planning Act

Division 11 Making an appeal to court

481 How appeals to the court are started

- (1) An appeal is started by lodging written notice of appeal with the registrar of the court.
- (2) The notice of appeal must state the grounds of the appeal.
- (3) The person starting the appeal must also comply with the rules of the court applying to the appeal.
- (4) However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

482 Notice of appeal to other parties—development applications and approvals

- (1) An appellant under division 8 must give written notice of the appeal to—
 - (a) if the appellant is an applicant—
 - (i) the chief executive; and
 - (ii) the assessment manager; and
 - (iii) any concurrence agency; and
 - (iv) any principal submitter whose submission has not been withdrawn; and
 - (v) any advice agency treated as a submitter whose submission has not been withdrawn; or
 - (b) if the appellant is a submitter or an advice agency whose response to the development application is treated as a submission for an appeal—
 - (i) the chief executive; and
 - (ii) the assessment manager; and
 - (iii) any referral agency; and
 - (iv) the applicant; or
 - (c) if the appellant is a person to whom a notice mentioned in section 465(1) has been given—
 - (i) the chief executive; and
 - (ii) the assessment manager for the development application to which the notice relates; and
 - (iii) any entity that was a concurrence agency for the development application to which the notice relates; and
 - (iv) the person who made the request under section 383 to which the notice relates, if the person is not the appellant; or
 - (d) if the appellant is a person mentioned in section 466(1)—
 - (i) the chief executive; and
 - (ii) the responsible entity for making the change to which the appeal relates; and
 - (iii) the person who made the request to which the appeal relates under section 369, if the person is not the appellant; and

- (iv) if the responsible entity is the assessment manager—any entity that was a concurrence agency for the development application to which the notice of the decision on the request relates; or
 - (e) if the appellant is a person to whom a notice mentioned in section 467 has been given—the entity that gave the notice.
- (2) The notice must be given within—
- (a) if the appellant is a submitter or advice agency whose response to the development application is treated as a submission for an appeal—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (3) The notice must state—
- (a) the grounds of the appeal; and
 - (b) if the person given the notice is not the respondent or a co-respondent under section 485—that the person may, within 10 business days after the notice is given, elect to become a co-respondent to the appeal by filing in the court a notice of election in the approved form.

483 Notice of appeals to other parties—compliance Assessment

- (1) An appellant under division 9 must, within 10 business days after the day the appeal is started, give written notice of the appeal to—
- (a) if the appellant is a person to whom an action notice, compliance permit or compliance certificate has been given—
 - (i) the compliance assessor who gave the notice, permit or certificate; and
 - (ii) if the compliance assessor was a nominated entity of a local government and a copy of the request for compliance assessment was given to the local government under section 402—the local government; or
 - (b) if the appellant is a person to whom a notice mentioned in section 470(1) has been given—
 - (i) the entity that gave the notice; and
 - (ii) if the entity that gave the notice was a nominated entity of a local government and the written agreement of the local government was required to give the notice—the local government.
- (2) The notice must state the grounds of the appeal.

484 Notice of appeal to other parties—other matters

- (1) An appellant under division 10 must, within 10 business days after the day the appeal is started, give written notice of the appeal to—
- (a) if the appeal is under section 471—the local government and coordinating agency for the application for approval of the master plan; or
 - (b) if the appeal is under section 472 or 475—the local government; or
 - (c) if the appeal is under section 478—the entity that gave the notice the subject of the appeal; or
 - (d) if the appellant is a person to whom an enforcement notice is given—the entity that gave the notice and if the entity is not the local government, the local government; or

- (e) if the appellant is a person dissatisfied with a decision about compensation—the local government that decided the claim; or
 - (f) if the appellant is a person dissatisfied with a decision about acquiring designated land—the designator; or
 - (g) if the appellant is a party to a proceeding decided by a building and development committee—the other party to the proceeding.
- (2) The notice must state the grounds of the appeal.

485 Respondent and co-respondents for appeals under div 8

- (1) Subsections (2) to (8) apply for appeals under sections 461 to 464.
- (2) The assessment manager is the respondent for the appeal.
- (3) If the appeal is started by a submitter, the applicant is a co-respondent for the appeal.
- (4) Any submitter may elect to become a co-respondent for the appeal.
- (5) If the appeal is about a concurrence agency's response, the concurrence agency is a co-respondent for the appeal.
- (6) If the appeal is only about a concurrence agency's response, the assessment manager may apply to the court to withdraw from the appeal.
- (7) The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.
- (8) A person to whom a notice of appeal is required to be given under section 482 and who is not the respondent or a co-respondent for the appeal may elect to be a co-respondent.
- (9) For an appeal under section 465—
 - (a) the assessment manager is the respondent; and
 - (b) if the appeal is started by a concurrence agency that gave the assessment manager a notice under section 385—the person asking for the extension the subject of the appeal is a co-respondent; and
 - (c) any other person given notice of the appeal may elect to become a co-respondent.
- (10) For an appeal under section 466—
 - (a) the responsible entity for making the change to which the appeal relates is the respondent; and
 - (b) if the responsible entity is the assessment manager—
 - (i) if the appeal is started by a person who gave a notice under section 373 or a pre-request response notice—the person who made the request for the change is a co-respondent; and
 - (ii) any other person given notice of the appeal may elect to become a co-respondent.
- (11) For an appeal under section 467, the respondent is the entity given notice of the appeal.

486 Respondent and co-respondents for appeals under div 9

- (1) For an appeal under section 468 or 469—
 - (a) the compliance assessor is the respondent; and

- (b) if the compliance assessor is a nominated entity of a local government and the appeal relates to a matter required by a local government—the local government is a co-respondent.
- (2) However, if the appeal is only about a matter required by the local government, the compliance assessor may apply to the court to withdraw from the appeal.
- (3) For an appeal under section 470—
 - (a) the entity that gave the notice to which the appeal relates is the respondent; and
 - (b) if the entity mentioned in paragraph (a) is a nominated entity of a local government and the local government did not agree to the request mentioned in section 470(1)—the local government is a co-respondent.
- (4) However, if the appeal is only about the local government's refusal of the request, the entity that gave the notice to which the appeal relates may apply to the court to withdraw from the appeal.

487 Respondent and co-respondents for appeals under div 10

- (1) This section applies if an entity is required under section 484 to be given a notice of an appeal.
- (2) The entity given notice is the respondent for the appeal.
- (3) However, if under a provision of the section more than 1 entity is required to be given notice, only the first entity mentioned in the provision is the respondent.
- (4) The second entity mentioned in the provision may elect to be a co-respondent.

488 How an entity may elect to be a co-respondent

An entity that is entitled to elect to be a co-respondent to an appeal may do so, within 10 business days after notice of the appeal is given to the entity, by following the rules of court for the election.

489 Minister entitled to be party to an appeal involving a State interest

If the Minister is satisfied an appeal involves a State interest, the Minister may, at any time before the appeal is decided, elect to be a party to the appeal by filing in the court a notice of election in the approved form.

490 Lodging appeal stops particular actions

- (1) If an appeal, other than an appeal under section 465, 466 or 467, is started under division 8, the development must not be started until the appeal is decided or withdrawn.
- (2) If an appeal is about a condition imposed on a compliance permit, the development must not be started until the appeal is decided or withdrawn.
- (3) Despite subsections (1) and (2), if the court is satisfied the outcome of the appeal would not be affected if the development or part of the development is started before the appeal is decided, the court may allow the development or part of the development to start before the appeal is decided.