

PROPOSED MOU FOR CLEVELAND CBD

Objective Reference:	A159296 Reports and Attachments (Archives)
Attachment:	<u>Proposed MOU for Cleveland CBD</u>
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Responsible Officer:	Peter Kelley Group Manager PDA Project
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PURPOSE

The report seeks a Memorandum of Understanding (MoU) with Chefs Inc who is a small local catering company. The MoU will facilitate discussions with Chefs Inc on the creation of a new form of restaurant concept in the Cleveland library car park on a temporary basis. The site is 21-31 Bloomfield St Cleveland, being Lot 32 on RP904128. The site is owned by Council freehold.

BACKGROUND

Chefs Inc is a small catering business run by two local chefs. The Chefs are residents who are keen to see the centre of Cleveland revitalised and developed. The two chefs currently operate "4 Simplicity Pty Ltd" a catering business in one of Brisbane's premium universities with 20 staff and 150,000 customers annually.

The Chefs Inc restaurant concept envisages the introduction of shipping container based units. The units will be positioned along the edges of the Cleveland library car park to create a series of "pop up" food outlets. The very successful Eat Street Night Markets at the Hamilton Wharves provide an example of this type of development. The development would be temporary and would last for approximately 5 years. This is due to the highly evolving nature of the food industry and customer expectations.

Chefs Inc's preliminary design indicates a layout with "pop up" food outlets around the perimeter of the Cleveland library car park and a central seating area. The preliminary design provides 16 "pop up" shipping containers, 1 bar, and 1 stage for entertainment. It is proposed to operate Friday, Saturday and Sunday evenings from 5:00pm.

The "pop up" shipping containers will be temporary structures. They will be designed in order to provide an exciting and attractive environment for the traders. They will be designed to ensure the amenity and safety of the users. It is proposed that the area around the containers be landscaped and have colourful shading structures, adding character, amenity and colour.

Key elements documented by the Chefs Inc preliminary proposal are the benefits through “spin off” business that Chefs Inc will bring to surrounding food outlets. Chefs Inc also outlines the benefits for the local community. The documentation from Chefs Inc states:

- The vision is for a restaurant precinct of the best entrepreneurial chefs at the top of their trade experimenting with cutting edge food ideas.
- Chefs Inc will be a small operation, expect a large spin off into Raby Bay and central Cleveland - these will be new customers to the area.
- There will be a huge spin off for operators into the area who see this as an opportunity to improve and tailor their offer for a new audience.
- Chefs Inc will be a community based model using trades, staff and skills from the Redlands to build, run and operate an innovative food precinct:
 - Local entrepreneurial chefs as leaseholders
 - Staff recruited locally using local agencies and networks
 - Customers drawn from local Redlands community and further afield
 - Local goods and suppliers used to build and service the facility

ISSUES

The following issues require further consideration. This report recommends an MoU between Chefs Inc and Council to facilitate discussions on the Chefs Inc proposal. The MoU will demonstrate Council’s willingness to investigate the concept, which Chefs Inc needs for marketing, in order to recruit operators for the 16 containers. When Chefs Inc has a greater indication of market interest, Chefs Inc can develop a draft project proposal. The draft project proposal will allow Council to identify and assess the issues. Since there is no project proposal, at this time, Council can only identify potential issues. When details on design issues are available, the issues can be assessed.

Tenure

Preliminary investigations have occurred on the type of tenure Council may be able to offer. Options include a lease or licence arrangement. A licence to occupy is potentially the most efficient arrangement. A discussion of issues pertaining to a lease, and then a licence arrangement are provided below.

Under s224(7)(a) of the *Local Government Regulation 2012* (LGR) Lot 32 on RP904128 is likely to be defined as a valuable non-current asset. The LGR contains provisions for a valuable non-current asset contract. For example, the LGR contains provisions for a contract for the disposal of a valuable non-current asset (s224(5) LGR).

Section 227 of the LGR provides that a local government cannot enter into a valuable non-current asset contract unless it first-

- (a) Invites written tenders for the contract under section 228; or
- (b) Offers the non-current asset for sale by auction.

As a lease is a disposal of an interest in land, if Council were to lease the car park portion of Lot 32 on RP904128 it would have to do so via tender or auction.

If a lease is Council's preference (over a licence arrangement), Council may invite tenders from the market or alternatively it may resolve to invite expressions of interest (EOI) to lease the area pursuant to s228 of the *LGR*. In accordance with s228(6) (*LGR*) a closed tender could be issued to shortlisted EOI respondents. The EOI would have to be offered to the public generally and all respondents would have to be given due consideration. This approach may not be appropriate in the circumstances as a preferred tenant has already been identified and this may conflict with the probity of the procurement.

However, rather than a lease, a licence to occupy is potentially the most efficient arrangement. An advantage is it would avoid having to conduct a tender process. The licence arrangement involves providing Chefs Inc with a non-exclusive licence to occupy the car park portion of Lot 32 on RP904128. This approach may result in a higher risk than leasing the area as Council would not be able to apportion all risk and liability onto Chefs Inc. The apportionment of liability will have to be carefully drafted when developing any licence document.

Car parking

"Pop-up" outlets made of shipping containers will use some of the car parks on Lot 32 on RP904128. Issues will be resolved at time of lodgement of the development application with Council. Consideration will be given to hours of operation, sharing of spaces, opportunities in the design to keep as many car parks as possible, review of the landscape areas, line marking, turning movements, regard to the usage of car parks having regard to the proximity to public transport, and a potential 5 year cessation period/sunset clause of the proposal, and Council's recently adopted TOD rates for car parks.

Other

- Redland Planning Scheme: Zone Major Centre SubArea 3
- Uses include Shops (Code assessable application), or refreshment establishments (Code assessable application).
- Cleveland Centre Master Plan: The concept of installing a number of pop up retail spaces is consistent with Cleveland CBD initiatives.
- Required services: Power, drainage, waste collection.
- Health approval: A licence under the *Food Act* would be required. Some food vendors may require trade waste approval.
- Plumbing approval: For water, drainage, grease trap.
- Building approval: Toilets, disabled access.
- Safety and security: Fencing and lighting. First aid facilities.
- Accessibility: Public transport accessibility is an advantage for the site.
- Local traders: Consultation will be required. Advantages are: a cutting edge food concept to reignite the business district, opportunity for local established and emerging musicians and street performers to gain exposure, opportunity

to use the development to promote other Council initiatives, potential to hold community events, improved tourism infrastructure.

- Existing amenities: Some toilets exist. Other toilets are likely to be provided.
- Landscaping: Landscaping would be required around edges.
- Traffic management: Particularly for safety.
- Noise, lighting, odours: Particularly in the vicinity of residential premises.

STRATEGIC IMPLICATIONS

Legislative Requirements

In considering the development types and designs that could be considered, Council must be aware of the legislative processes under the *Sustainable Planning Act, 2009*. The Local Government Regulations 2012 provide direction on the tenure Council may be able to offer.

Risk Management

The basic assumption is that Council does not bear any financial risk from Chefs Inc other than costs associated with development approvals and facilitation, and stands to gain financially from increased rental income derived from the rental of the Cleveland library car park site.

Financial

There is potential for a fee reduction through the Cleveland CBD development incentives program.

People

Negotiation with Chefs Inc will primarily involve officers from the Development Assessment team and Priority Development Area team.

Environmental

Environmental issues will be addressed when details on design issues are available (see above in "Issues").

Social

Development of the Cleveland CBD, as envisaged in the Master Plan, would 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. Creative Arts Unit
2. City Spaces Group

3. Strengthening Communities Unit
4. Planning Assessment Unit
5. Health and Environment Unit
6. Building Services Unit
7. General Counsel Group
8. Communication, Engagement and Tourism Group

OPTIONS

1. That Council resolves to:
 1. Endorse the attached Memorandum of Understanding. The MoU will facilitate discussions regarding the potential to create a new form of restaurant concept in the Cleveland CBD;
 2. Endorse the contents of this report, noting that there is no formal project proposal at this time. If a proposal and development application are lodged, these will be assessed in accordance with the *Sustainable Planning Act 2009*; and
 3. That this report and attachments remain confidential.
2. That Council resolves not to endorse the attached Memorandum of Understanding. Instead, Council seeks expressions of interest from a wide variety of operators, requesting they prepare proposals for the creation of a new form of restaurant concept in the Cleveland library car park on a temporary basis.
3. That Council resolves not to adopt the attached Memorandum of Understanding and resolves that Council does not support the creation of a new form of restaurant concept in the Cleveland library car park on a temporary basis.

OFFICER'S RECOMMENDATION

That Council resolves to:

1. **Endorse the attached Memorandum of Understanding. The MoU will facilitate discussions regarding the potential to create a new form of restaurant concept in the Cleveland CBD;**
2. **Endorse the contents of this report, noting that there is no formal project proposal at this time. If a proposal and development application are lodged, these will be assessed in accordance with the *Sustainable Planning Act 2009*; and**
3. **That this report and attachments remain confidential.**

Memorandum of Understanding

Parties

Redland City Council
(Redland)

Chefs Inc

Memorandum of Understanding

Parties

Redland City Council

Address	Corner of Middle and Bloomfield Streets, Cleveland
Contact	Andrew Ross 0407730129
Short name	Redland

Chefs Inc

Address	Chefs inc
Contact	Colin Mason 0406059660
Short name	Chefs Inc

Background

- 1 Chefs Inc has proposed to establish an open air food market event within the Cleveland central business district.
- 2 Redland is the local government authority for Redland city and wishes to work collaboratively with Chefs Inc to facilitate the establishment of such a food markets within the Redland city area.

Agreement

1 Purpose

1.1 Purpose of the MOU

The purpose of this MOU is to provide a framework that will underpin the cooperative interaction between the parties when working towards the project outlined in Schedule A. This collaborative arrangement recognises both parties' interest in the creation of an open air food market event within the Cleveland central business district.

2 Agreement in principle

2.1 Agreement to negotiate

The parties agree in principle to negotiate in good faith to establish the project in Schedule A.

Chefs Inc acknowledges that any agreement between Redland and Chefs Inc will be subject to the respective approval requirements under relevant legislation.

2.2 Not binding

This agreement does not bind the parties to it and a party may refuse to agree a matter or to enter into a further agreement proposed by this agreement in the party's absolute discretion.

2.3 No Fetter

Nothing within this MOU is intended to:

- (a) create any binding rights, powers, duties, liabilities or obligations;
- (b) waive, fetter, limit or affect the rights, powers, duties, liabilities or obligations of the parties;
- (c) affect the due and proper performance of the parties' statutory functions or their ability to comply with all applicable statutory requirements; or
- (d) operate as a licence to occupy Redland land, development approval, food licence, or any other approval that may be required for the carrying out of the Project.

2.4 Media

The parties agree that no press release or public statement about this MOU will be made by any party without the prior written consent of the other party.

2.5 Confidentiality

The parties agree to keep the Confidential Information of the parties confidential and to use such information only for the purposes of the performance of their obligations under this MOU.

Confidential Information means any information which is disclosed by the parties directly or indirectly, or otherwise comes to the knowledge of that party in relation to or in connection with this MOU.

Each party must:

- (a) not disclose any Confidential Information to anyone else except as permitted by the other party; and
- (a) limit the disclosure of the Confidential Information within their own organisation only to those of its officers and employees to whom such disclosure is strictly necessary for the purposes of Group and who have been made aware of its confidential nature and have agreed to keep the information confidential in accordance with the terms of this clause.

This obligation of confidentiality will not apply to information which:

- (b) is generally available in the public domain except where such availability is as a result of a breach of these terms of reference; or
- (c) is required to be disclosed by an applicable law or court order.

2.6 Reputation

Each party agrees not to do any act or omission which is intended, or would reasonably be expected to harm the reputation of the other party, or the reputation of any party affiliated with, or connected to the other party. This obligation will survive the termination of this MOU.

Schedule A

1 Project

1.1 Project outline

- a) Chefs Inc has proposed the establishment of a market featuring approximately 16 shipping containers, 1 bar, and 1 stage for entertainment. The modified shipping containers, to be provided by Chefs Inc.
- b) The proposed location of the Market is the Council owned car park located at 21-31 Bloomfield Street, Cleveland, being Lot 32 on RP904128
- c) The markets will commence approximately November 2015. The development would be temporary and would last for approximately 5 years.
- d) Chefs Inc will be responsible for all operational management of the Market including the selection of vendors, however Redland will have discretion to exclude any vendors it deems to be inappropriate for the venue.

2 Key Contacts

2.1 Redland

Name: Andrew Ross

Position: General Counsel

Contact: 0407 730 129

2.2 Chefs Inc

Name: Colin Mason

Position: Chefs Inc

Contact: 0406 059 660

Execution

Executed as an agreement