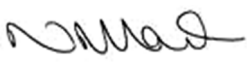


PROPOSED MOU FOR CLEVELAND CBD

Objective Reference: A184229
Reports and Attachments (Archives)

Attachment: [Plan of Proposed CBD Locations](#)
[Draft Proposed MOU](#)

Authorising Officer: 
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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. The preferred site is the Cleveland library car park. A potential site, but not recommended, is the RPAC lawn.

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 site to create a series of 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. This is due to the highly evolving nature of the food industry and customer expectations.

Chefs Inc's preliminary design indicates a layout with food outlets around the site. The preliminary design provides 11 food outlets in shipping containers, 4 mobile food trucks, 1 bar, and 1 stage for entertainment. It is proposed to operate Friday, Saturday and Sunday evenings from 5:00pm.

The food outlets in the 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:
 - o Local entrepreneurial chefs as leaseholders.
 - o Staff recruited locally using local agencies and networks.
 - o Customers drawn from local Redlands community and further afield.
 - o Local goods and suppliers used to build and service the facility.

ISSUES

On 5 May 2015 and 20 May 2015 workshops were held with Council. Councillors were provided, by Council officers an options assessment of potential CBD sites. Six sites (Attachment 1) were assessed:

- Option 1: RPAC lawn
- Option 2: Cleveland library car park (Workshop and analysis outcome was: this is the preferred site).
- Option 3: The Sands Hotel private car park
- Option 4: Waterloo street car park
- Option 5: Wynyard street car park
- Option 6: Queen Street Woolworths car park

Criteria for assessment of the six sites included: parking, transport, availability, site amenity, tourism activity, number of food containers, availability of amenities, accessibility, and relationship to CBD businesses.

Option 1: RPAC lawn (Potential site: but workshops and analysis demonstrated this is not the preferred site).

Advantages of RPAC lawn

- Well supplied with RPAC car parks, additional on street parking available nearby.
- Close proximity to public transport.
- Well established as a cultural precinct. The proposed outdoor dining would support these uses.
- Sufficient land to support the proposal.
- Both the RPAC and Cleveland library site would require similar infrastructure eg portable toilets, power.
- Walking distance to RPAC car parking areas.
- Fewer constraints eg amenity impacts to residents than Cleveland Library car park.

- Potential for landscaping to make the site aesthetically pleasing (current lack of bitumen).
- Excellent access from the road network.
- Road signage leading to the venue exists.
- Relatively flat site promotes disability access.
- Site is a large, useable vacant space.

Disadvantages of RPAC lawn:

- Distance from CBD retailers: market attendees may visit Chefs Inc only, and not the retailers.
- Environmental issues (eg trees on boundary).
- Potential lack of parking if Chefs Inc coincides with RPAC activities.
- Site drainage to be considered.
- Site works required to make hard stand area of approximately \$100,000.
- Fencing required on site boundary.
- Pedestrian crossings in vicinity require improvement.

Option 2: Cleveland library car park (Workshops and analysis demonstrated this is the preferred site)***Advantages:***

- Close proximity to public transport.
- Parking within close proximity to the site.
- Both the RPAC and Cleveland library site would require similar infrastructure eg portable toilets, power.
- Shade provided by existing trees on perimeter of site. Library building creates a sense of enclosure (a positive experience in urban design terms).
- Brings more people (foot traffic) through the main, established business area which allows for increased opportunity to spend in these businesses.
- Good opportunity to activate the site. Currently, little after hours activities.
- High visibility from the road network.
- Relatively flat site promotes disability access.
- Existing hard stand area.

Disadvantages:

- Existing car parking on the site to be reduced to accommodate Chefs Inc.
- Staff car parking taken by Chefs Inc to be relocated, potentially to RPAC.
- Car parking regulation required to ensure parking by the public does not impede operation of the site.
- Installation of a gate would be required to close the car park when Chefs Inc operates, at the cost of approximately \$50,000.
- A compromise by Chefs Inc is required involving a reduction in size of the proposal to accommodate Chefs Inc within the car parking constraints of the site.
- Impacts to residents (noise, odour, light) require consideration.
- Potential for a perceived "disconnect" to the CBD retailers.

Others - Options 3 to 6 (Not recommended)**Advantages:****In general, advantages of these sites are:**

- Close proximity to public transport.
- Close proximity to car parking.
- Relatively close to CBD retailers.
- Would require similar infrastructure eg portable toilets, power.
- Well serviced by the road network.

Disadvantages:

The sites have other development commitments and constraints as follows:

- Option 3: The Sands Hotel private car park: privately owned, no interest from landowner.
- Option 4: Waterloo street car park: CBD catalyst site.
- Option 5: Wynyard street car park: sloping site.
- Option 6: Queen Street Woolworths car park: easement for car parking.

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 foode 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 land 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. 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

Issues will be resolved at time of lodgement of the development application with Council. Consideration will be given to Council's recently adopted TOD rates for car parks.

Other

- 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.

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*.

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 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.

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. Council resolves to endorse the attached Memorandum of Understanding. 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.
2. Council resolves not to endorse the attached Memorandum of Understanding. Instead, Council seek 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. Council resolves not to adopt the attached Memorandum of Understanding and resolve 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 with the proponent on the creation of a new business concept in the Cleveland CBD on a temporary basis;
2. Note the contents of this report, including that there is no formal project proposal at this time. When a proposal and details on design issues are available, they will be presented to Council; and
3. Note that this report and attachments remain confidential until such time as the project proceeds or is discontinued, with the proponent's 'commercial-in-confidence' information remaining confidential permanently.

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 [REDACTED]
Short name	Redland

Chefs Inc

Address	Chefs inc
Contact	[REDACTED]
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 or 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 11 shipping containers, 4 mobile food trucks, 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 Cleveland Library car park, or some other mutually agreed Cleveland CBD location
- c) The markets will commence approximately November 2015. The development would be temporary and would last for approximately 5 years, an extension of time could be negotiated with Council.
- 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: [REDACTED]

2.2 Chefs Inc

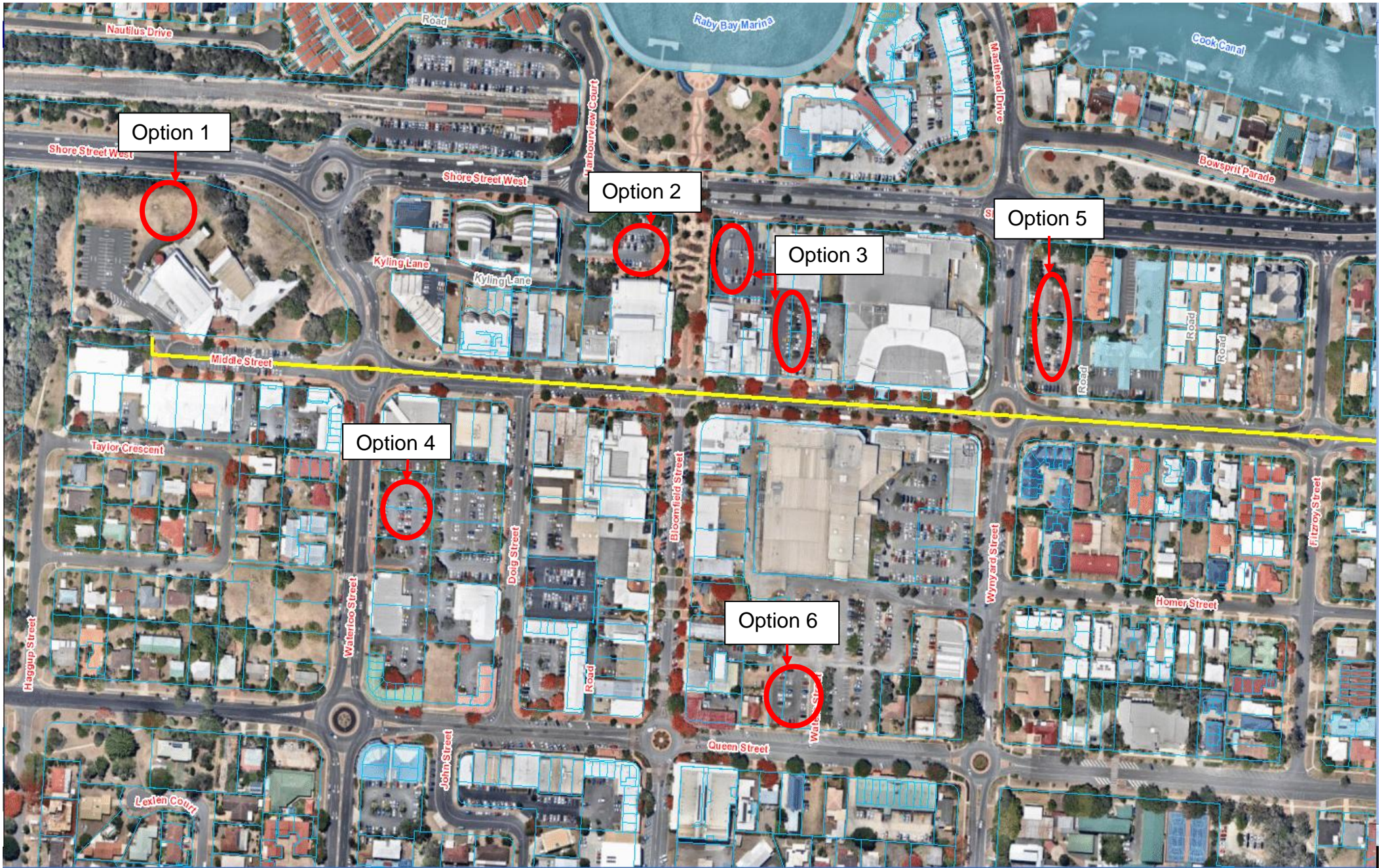
Name: [REDACTED]

Position: Chefs Inc

Contact: [REDACTED]

Execution

Executed as an agreement



Option 1

Option 2

Option 3

Option 5

Option 4

Option 6