

9.4	LICENCE TO EXIPNOS PTY LTD (TRADING AS BRIKA BAR) ON PORTION OF PARRY STREET ROAD RESERVE ADJACENT TO UNITS 3 AND 4, NO. 177 STIRLING STREET, PERTH
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- Attachments:**
1. Licence Area
 2. Market Valuation - Confidential
 3. FYE 2019 Audited Financials - Confidential
 4. FYE 2020 Audited Financials - Confidential
 5. Development Approval for Structure 3 December 2013

RECOMMENDATION:**That Council:**

1. **APPROVES** the City granting a licence to Exipnos Pty Ltd (trading as Brika Bar) (ACN 162 355 339) of a portion of Parry Street road reserve adjacent to Lots 3 and 4 on Strata Plan 59820, Certificate of Title Volume 2807, Folio 731 and 732 (known as Units 3 & 4 of 177 Stirling Street, Perth), as shown in Attachment 1, on the following key terms:
 - 1.1 **Term:** 5 years
 - 1.2 **Licence Area:** 95 m² of Parry Street road reserve (verge area);
 - 1.3 **Licence fee:** \$1,000 per annum plus GST, indexed by CPI annually on 1 July;
 - 1.4 **Permitted use:** non-exclusive right to use the Licence Area as an outdoor dining area and liquor consumption in connection with the operation of Brika Bar;
 - 1.5 **Removal of furniture:** All furniture used (unless affixed to the ground) within the Licence Area must be removed by the Applicant at the close of each business;
 - 1.6 **Cleaning:** Applicant must, keep the Licence Area clean and tidy at all times, at its cost;
 - 1.7 **Insurance:** Applicant must effect and maintain public liability insurance to a minimum value of \$20,000,000 (per claim);
 - 1.8 **Indemnity:** Applicant will indemnify the City and the Minister for Lands against loss or damage to property or persons occurring as a result of the structure and use of the Licence Area;
 - 1.9 **Assignment** Applicant may not assign or transfer its right under this Licence;
 - 1.10 **Maintenance:** Applicant must, at its cost, keep the Licence Area in good repair including repairing damage to structures, fittings or fixtures and the road reserve on the Licence Area;
 - 1.11 **Outdoor Eating Area Permit:** Applicant must (for the duration of the Licence) maintain a valid Outdoor Eating Permit for the Licence;
 - 1.12 **Liquor Licence** Applicant must (for the duration of the Licence) maintain a current liquor licence for the Licence Area in order to serve alcohol in this area;

- 1.13 **Access** the City, State and public utilities may access the Licence Area at any time in connection with its respective services, and no compensation is payable to the Applicant for any resultant loss; and
- 1.14 **Make Good:** Upon expiry or termination of licence to remove any Structure and make good the Licence Area, at Applicant's cost, to the satisfaction of the City; and
2. **Subject to final satisfactory negotiations being carried out by the Chief Executive Officer, AUTHORISES the Mayor and Chief Executive Officer to affix the common seal and execute the licence in recommendation 1. above.**

PURPOSE OF REPORT:

To consider granting a licence to Exipnos Pty Ltd (trading as Brika Bar) (Applicant) (ACN 162 355 339) to use a portion of Parry Street road reserve adjacent Units 3 & 4 of No.177 Stirling Street, Perth for outdoor dining and liquor consumption in the location shown in the plan at **Attachment 1** (Licence Area).

DELEGATION:

The structure constructed on the Parry Street road reserve does not meet all of the design requirements of an 'Eatlet' under the Vibrant Public Spaces Policy (VPS Policy) which was approved by Council on 21 June 2022. The structure is therefore required to be considered as an 'Other proposal' under the VPS Policy for which requires referral to Council for determination.

BACKGROUND:

The Applicant is the operator of Brika Bar and is the tenant of units 3 and 4 of No.177 Stirling Street, Perth.

On 3 December 2013, Council granted conditional approval for the structure over the Licence Area (Alfresco Structure) to be constructed subject to the Applicant entering into a licence to govern the use of the Licence Area. Approval was granted by the City for the construction of the Alfresco Structure (**Attachment 5**).

On 9 January 2014, the Minister for Lands being the Licensor, entered into a licence agreement with the Applicant for use of the Licence Area for a period of 5 years. The licence fee payable during the 2014 licence period was \$2,000.

By consensus with the Department of Planning Lands and Heritage, the City as the management authority of the Licence Area, entered into a new licence agreement with the Applicant on 9 January 2019 when the 2014 licence with the Minister for Lands expired. The licence fee payable for the 2019 licence period was \$2,166.

The 2019 licence expired on 23 January 2024 and Administration and the Applicant have been negotiating a new licence agreement.

Council at its meeting 21 June 2022 approved the Vibrant Public Spaces Policy (VPS Policy). This provides guidance on the permissibility, requirements and management responsibilities of third party proposals to deliver vibrant public spaces on City owned land and managed land. The Brika Bar alfresco structure does meet the definition of an eatlet.

"Eatlet" means an outdoor eating area during business operating hours and small public park out of business operating hours. Eatlets are reserved for customers of particular businesses during business operating hours and are available for anyone to use out of business operating hours. An eatlet repurposes part of the street into a dual purpose outdoor eating area and small public park through the provision of seating, shade and greenery.

However, in order to obtain approval under the VPS Policy as an Eatlet the proposal must meet the specified design requirements. The structure does not meet all of the design requirements as it includes alfresco blinds and is therefore required to be considered as an 'Other proposal'.

DETAILS:Alfresco structure

The Alfresco Structure is located within the Parry Street road reserve adjacent to the Brika Bar. The Applicant does not seek any changes to the existing structure. The structure provides a total area of 95 square metres which includes the alfresco dining area, planter boxes and external design features. The structure also includes clear alfresco roller blinds within the alfresco dining area.

Licence

The key licence terms below are consistent with the Applicant's responsibilities outlined within the 'Other Proposals' of the VPS Policy and ensure that the Department of Planning, Lands and Heritage's requirements have been included. The Applicant has agreed to the proposed licence terms.

1	Term	5 years.
2	Licence Area	95m ² of Parry Street road reserve (verge area).
3	Licence Fee	\$1,000 per annum plus GST, indexed by CPI annually on 1 July.
4	Permitted Use	Non-exclusive right to use the Licence Area as an outdoor dining area and liquor consumption in connection with the operation of Brika Bar.
5	Removal of furniture	All furniture used (unless affixed to the ground) within the Licence Area must be removed by the Applicant at the close of each business day.
6	Cleaning	Applicant must, keep the Licence Area clean and tidy at all times, at its cost.
7	Insurance	Applicant must effect and maintain public liability insurance to a minimum value of \$20,000,000 (per claim).
8	Indemnity	Applicant will indemnify the City and the Minister for Lands against loss or damage to property or persons occurring as a result of the structure and use of the Licence Area.
9	Assignment	Applicant may not assign or transfer its right under this Licence.
10	Maintenance	Applicant must, at its cost, keep the Licence Area in good repair including repairing damage to structures, fittings or fixtures and road reserve on the Licence Area.
11	Outdoor eating permit	Applicant must (for the duration of the Licence) maintain a valid Outdoor Eating Permit for the Licence.
12	Liquor Licence	Applicant must (for the duration of the Licence) maintain a current liquor licence for the Licence Area in order to serve alcohol in this area.
13	Access	The City, State and public utilities may access the Licence Area at any time in connection with its respective services, and no compensation is payable to the Applicant for any resultant loss.
14	Make good	Upon expiry or termination of licence to remove any structure and make good the Licence Area, at Applicant's cost, to the satisfaction of the City.

The Licence Fee of \$2,850 has been determined in accordance with the market valuation dated 15 November 2023 and attached as **Confidential Attachment 2**. The Applicant is seeking a reduction in the Licence Fee to \$1,000 per annum plus GST and indexed to CPI.

The Applicant has cited the following reasons:

- The Alfresco Structure would be an Eatlet as defined under the VPS policy but for the presence of the alfresco blinds. An Eatlet attracts an annual renewal fee of \$500. The Applicant confirms that the alfresco blinds are used approximately five per cent of the time and usually during the winter season and does not justify the \$2,350 difference between the market valuation licence fee and the Eatlet renewal fee.

- The Applicant previously paid \$2,166 for the entire 5 year term of licence. The market valuation licence fee of \$2,850 per annum totalling \$14,250 for five years is more than a 600% increase in the licence fee that the City previously charged the Applicant.
- The audited financial statements for years ending 30 June 2019 and 30 June 2020 attached as **Confidential Attachment 3 and 4** show the dividend/profit. Since 2019, the business has reduced its dividend payments due to:
 - Increased operating expenditure for the business relating to wages, City of Vincent rates, strata levies, inflationary costs. This has also resulted in the operators of Brika Bar taking over the running of the business themselves; and
 - Reduced operating hours and days which has in turn resulted in a reduction of the business income.

Administration supports the proposed reduction in licence fee to \$1,000 per annum plus GST and indexed to CPI which totals \$5,000 for the five year term as it is a reasonable increase from the previous licence term and the cost savings would enable the Applicant to manage the inflationary costs.

CONSULTATION/ADVERTISING:

In accordance with section 3.58 of the *Local Government Act 1995* (LGA) and regulation 30 of the *Local Government (Functions and General) Regulations 1996* (Regulations), the licence meets the requirements of an exempt disposition (Regulation 30(2)(a)). As a result, local public notice of the proposed licence is not necessary.

LEGAL/POLICY:

Section 55(2) of the *Land Administration Act 1997* (LAA) places responsibility for the care, control and management of road reserves (within the district of the City) with the City.

Section 3.58 of the LGA sets out the process for disposing of City owned and managed property and section 3.58(5) provides for exceptions as set out in the Regulations, as follows:

Regulation 30. Dispositions of property excluded from Act s.3.58

- (2) *a disposition of land is an exempt disposition if –*
- (a) *the land is disposed of to an owner of adjoining land (in this paragraph called the transferee) and –*
- (i) *its market value is less than \$5,000; and*
- (ii) *the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee.*

Regulation 17 of the *Local Government (Uniform Local Provisions) Regulations 1996* provides:

- (a) *that the City may grant permission to a person to construct a specified thing on, over, or under a public thoroughfare or public place that is local government property; and*
- (b) *specifies the requirements for the permission to be granted.*

Local Government (Uniform Local Provisions) Regulations 1996

Regulation 17 Private works on, over, or under public places — Sch. 9.1 cl. 8

- (3) *A person may apply to the local government for permission to construct a specified thing on, over, or under a specified public thoroughfare or public place that is local government property.*

- (4) *Permission granted by the local government under this regulation –*
- (a) *must be in writing; and*
 - (b) *must specify the period for which it is granted; and*
 - (c) *must specify each condition imposed under sub-regulation (5); and*
 - (d) *may be renewed from time to time; and*
 - (e) *may be cancelled by giving written notice to the person to whom the permission was granted.*

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to enter into a licence for part of the road reserve which addresses the risk to the City in respect to Alfresco Structure including indemnity, liability, maintenance and removal.

STRATEGIC IMPLICATIONS:

This is in keeping with the City's *Strategic Community Plan 2022-2032*:

Thriving Places

Our town centres and gathering spaces are safe, easy to use and attractive places where pedestrians have priority.

Sensitive Design

Our built form is attractive and diverse, in line with our growing and changing community.

Innovative and Accountable

Our decision-making process is consistent and transparent, and decisions are aligned to our strategic direction.

FINANCIAL/BUDGET IMPLICATIONS:

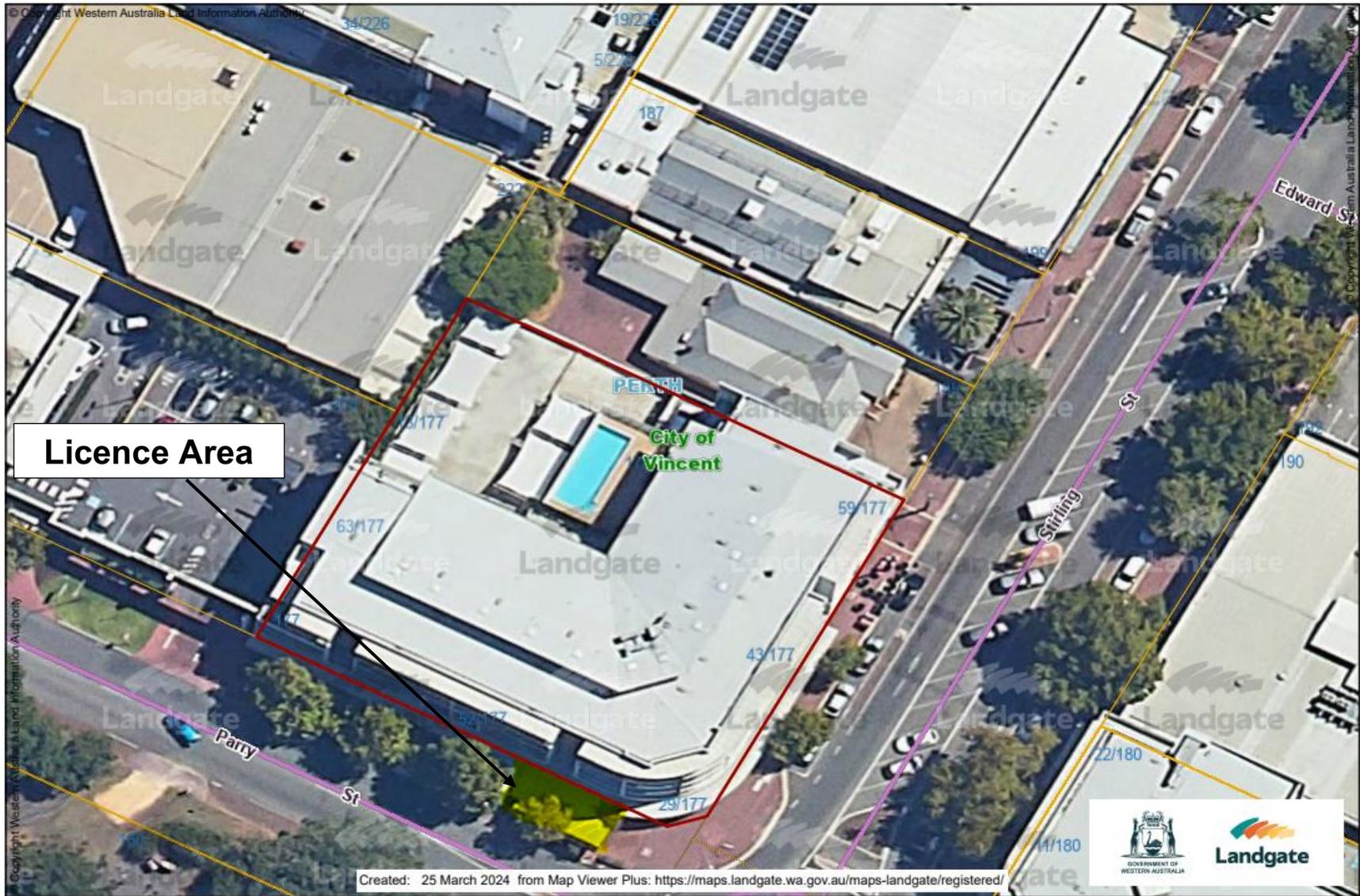
The Licence Fee of \$1,000 per annum plus GST, indexed annually by CPI, is recommended.

COMMENTS:

The Applicant has used the Licence Area portion of the Parry Street road reserve as an extension to its alfresco area for its business for the last ten years with no issues. The structure that has been constructed is an open canopy which would otherwise meet the definition of an Eatlet were it not for the inclusion of alfresco blinds. The previous approvals have required a one-off fee for a five year period, if introducing an annual fee it is considered that this should align with Council's adopted fees and charges for similar structures and reflect the use of the space. Administration is recommending that the valuation not be applied as stated and the negotiated annual fee be implemented.

Administration believes the outdoor dining area activates the streetscape and provides increased amenity for the community.

The licence agreement will be prepared to ensure that the City and Department are not liable for any loss or damage that may arise as a result of the Alfresco Structure, and so that the structure will be removed at any time, at the Applicant's cost, if the road reserve is required by the State, City or a public authority.



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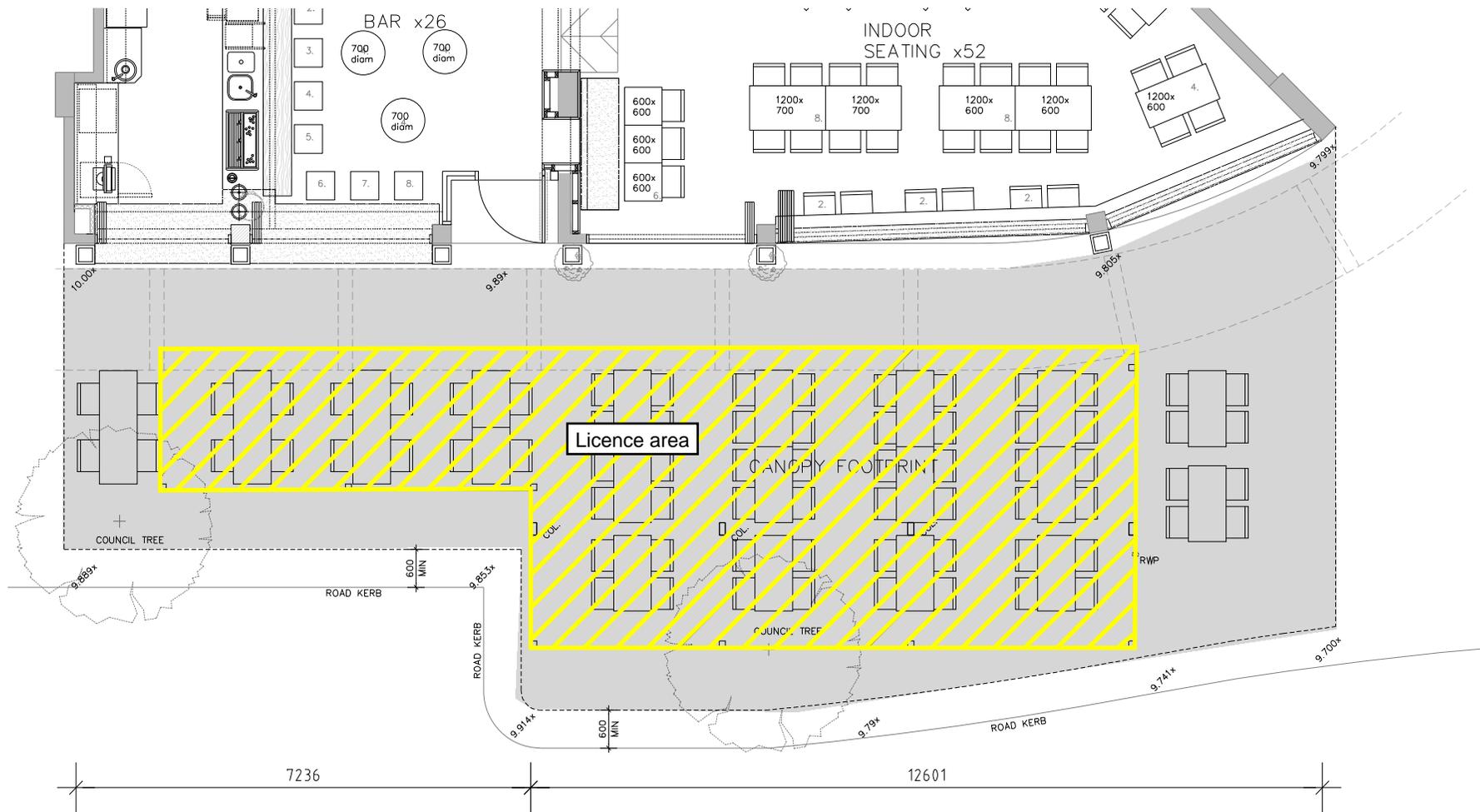


CITY OF VINCENT

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Nos. 3-4/177 Stirling Street, Perth





ALFRESCO FLOOR PLAN/CANOPY FOOTPRINT

PARRY STREET

Licence area

9.1.9 Nos. 3 & 4/177 Stirling Street, Perth (Proposed Canopy and Retrospective Approval for Servery) – Proposed Lease in Road Reserve and Outdoor Area

Ward:	South	Date:	29 November 2013
Precinct:	Beaufort; P13	File Ref:	PRO6028; 5.2013.451.1; 5.2013.489.1
Attachments:	001 – Property Information Report and Development Application Plans 002 – Applicant Submissions 003 – Copy of Approval for Outdoor Eating Area		
Tabled Items:	Nil		
Reporting Officers:	E Clucas, A/Manager Health and Compliance Services A Dyson, A/Senior Planning Officer (Statutory) A Munyard, Senior Technical Officer-Lands and Development N Wellington, Senior Compliance Officer		
Responsible Officers:	R Boardman, Director Community Services – Outdoor Eating Area P Mrdja, A/Director Planning Services – Development Application R Lotznicker, Director Technical Services – Road Reserve		

OFFICER RECOMMENDATION:

That the Council;

in accordance with the provisions of the City of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by TPG Town Planning, Urban Design and Heritage on behalf of the owner Sunswept Corporation Pty Ltd for Proposed Canopy, Timber Projections and Retrospective Approval for Servery Associated with Approved Small Bar in Tenancies 3 and 4 – Including Proposed Lease in Road Reserve and Review of Approved Outdoor Eating Area Permit, at No. 177 (Lot 501; D/P: 68593) Stirling Street, Perth, and as shown on plans stamp-dated 28 October 2013, subject to the following conditions:

1. Use

- 1.1 Consent of the Minister for Lands shall be obtained for the erection of the structure on the Road Reserve under the Land Administration Act 1997;
- 1.2 The applicant shall provide written confirmation from the Department of Lands relating to its determination whether tenure or exclusive use of the areas of the Road Reserve is required, and in what form; and
- 1.3 Should the use of the Tenancies Units 3 and 4 as a Small Bar cease, the applicant/owner shall remove the servery structure encroachment within twenty eight (28) days of the use ceasing to operate;

2. Building Permit

An application for a Building Permit under the Building Act 2011, signed by each owner of the land on which the building or incidental structure is proposed to be located, shall be submitted to the City of Vincent;

3. Servery

The applicant shall submit an application for an Occupancy Permit (Unauthorised) within twenty eight (28) days of the issue of this Approval to Commence Development;

4. **PRIOR TO THE SUBMISSION FOR A BUILDING PERMIT, the following shall be submitted to and approved by the City relating to the Free Standing Canopy and Timber Projections (Structure):**
- 4.1 **Submission of an acceptable Venue Management Plan, including an Alcohol and Noise Management Plan;**
 - 4.2 **Submission of an acceptable Storm Water Management Plan;**
 - 4.3 **Details of proposed lighting of the free standing canopy to ensure the public path is adequately illuminated when the drop down weather protection blinds are in use;**
 - 4.4 **The applicant shall provide a coloured schedule and perspective of external finishes to the City for approval;**
 - 4.5 **A lease, licence or easement for the structure shall be entered into between the applicant/owner, Department of Lands and the City of Vincent. The lease, licence or easement shall include, but not be limited to, the following:**
 - 4.5.1 **provision for the City of Vincent to ensure access to its services and infrastructure within the Road Reserve is available on demand;**
 - 4.5.2 **provision of letters of consent from relevant service providers whose infrastructure is located within the proposed leased area;**
 - 4.5.3 **no compensation shall be payable for loss of trading time should access be required by the City;**
 - 4.5.4 **the City shall retain the right to require removal of the structures within the leased or licenced area if deemed necessary for infrastructure maintenance or upgrade, at the full cost of the lessee or licensee;**
 - 4.5.5 **access to all other utility services within the leased or licenced area shall be available to the utility provider/s, without cost or compensation; and**
 - 4.5.6 **the lease, licence or easement agreement shall only be valid whilst a valid Outdoor Eating Area Permit is in place;**
 - 4.6 **The City's solicitors, or other solicitors agreed upon by the City, shall prepare the lease, licence or easement for the Outdoor Eating Area or alternatively, the lease, licence or easement can be prepared by the applicant and approved by the City's Solicitors. All costs associated with this condition shall be borne by the applicant/owner(s);**
 - 4.7 **Noise Management**
 - 4.7.1 **The Proprietor/Approved Manager of the Small Bar shall take all practicable measures to:**
 - (a) **reduce the likelihood of noise intrusion on residents and businesses in the locality; and**
 - (b) **consult directly with any affected persons, residents and/or businesses to resolve any noise or other issues that may arise.**

Should the City be required to investigate noise or other matters and, as a result, find that either adequate preventative measures have not been taken to the satisfaction of the City, and/or the noise or other complaints are found to be justified, the City will take action to cancel the Outdoor Eating Area Permit in accordance with the procedures outlined in Clause 13 of the City of Vincent Policy No. 3.8.1 relating to *Outdoor Eating Areas*; and

- 4.7.2 Noise management procedures shall be documented in the Venue Management Plan and shall include, but not be limited to, operational activities prior to, during and post trading hours. These procedures shall be highlighted as part of all staff induction and training programs;
- 4.8 An unimpeded pedestrian access way of at least 2.0 metres in width shall be maintained at all times. The proposed canopy at a height of not less than 2.75 metres (air space), as shown on Plan No. 1944 – SK.2.05, can protrude over this pedestrian access way and form part of the leased or licenced area, or easement;
- 4.9 In accordance with Clause 5.12(a) of the City of Vincent Local Government Property Local Law 2008, the structure shall have a minimum clearance of 2.75 metres above the thoroughfare;
- 4.10 Blinds shall be only brought down during inclement weather conditions, and shall not restrict any pedestrian traffic/walkways during normal business hours. The materials used for the blinds shall be transparent and fully maintained at all times to the satisfaction of the Chief Executive Officer;
- 4.11 **Construction Management Plan**
A Construction Management Plan, detailing how the construction of the development will be managed to minimise the impact on the surrounding area, shall be submitted to and approved by the City, in accordance with the requirements of the City's Policy No. 3.5.23 relating to Construction Management Plans, and Construction Management Plan Guidelines and Construction Management Plan Application for Approval Proforma; and
- 4.12 **Landscaping Plan**
A detailed Landscape and Reticulation Plan for the road verge shall be submitted to the City for assessment and approval by the City's Parks and Property Services Section.
For the purpose of this condition, a detailed landscape and irrigation plan shall be drawn to a scale of 1:100 and show the following:
- 4.12.1 The location and type of existing and proposed trees and plants;
- 4.12.2 All vegetation including lawns;
- 4.12.3 Areas to be irrigated or reticulated;
- 4.12.4 Proposed watering system to ensure the establishment of species and their survival during the hot and dry months; and
- 4.12.5 Separate soft and hard landscaping plans (indicating details of plant species and materials to be used).

The Council encourages landscaping methods and species selection which do not rely on reticulation.

All such works shall be undertaken prior to the first occupation of the development, and maintained thereafter by the owner(s)/occupier(s); and

5. **The development shall comply with all Building, Health, Engineering and Parks Services Conditions and requirements to the satisfaction of the City of Vincent.**

COUNCIL DECISION ITEM 9.1.9

Moved Cr Harley, Seconded Cr Buckels

That the recommendation be adopted.

Debate ensued.

MOTION PUT AND CARRIED (7-1)

For: Presiding Member Mayor John Carey, Cr Buckels, Cr Cole, Cr McDonald, Cr Pintabona, Cr Topelberg and Cr Wilcox

Against: Cr Harley

PURPOSE OF REPORT:

The report is referred to a meeting of Council as the proposed intrusions into the Road Reserve area are of a permanent nature and extend beyond the current approval procedures for Outdoor Eating Areas. It is considered likely to be of significant interest to the community and set a precedent for other similar developments.

BACKGROUND:

History

Date	Comment
9 February 2010	The Western Australian Planning Commission conditionally approved the subdivision of Nos. 208-212 Beaufort Street and Nos. 173-179 Stirling Street, Perth.
14 September 2010	The Council at its Ordinary Meeting deferred their decision with respect to an application for demolition of the existing car park and construction of a six storey building comprising forty (40) single bedroom multiple dwellings and twenty-five (25) multiple dwellings including car parking.
26 October 2010	The Council at its Ordinary Meeting conditionally approved the demolition of the existing car park and construction of a five storey mixed use development comprising thirty-seven single bedroom multiple dwellings, twenty multiple dwellings and six offices and associated car park.
14 June 2011	The Council at its Ordinary Meeting conditionally approved the application for a Change of Use of Unit 3 from Office to Eating House.
22 February 2012	The City approved an application for a change of use from Office to Consulting Rooms (Unit 7)
7 September 2012	The City approved an application for a change of use from Office to Eating House (Unit 6)
23 October 2012	The City approved an application for a shade sail under delegated authority.

Date	Comment
25 June 2013	The Council at its Ordinary Meeting conditionally approved the application for a Change of Use from Eating House and Office to Small Bar & Ancillary Coffee Shop (Unlisted Use)
11 September 2013	The City approved an application for an Outdoor Eating Area under delegated authority subject to conditions.
7 October 2013	A letter was provided to the Department of Racing Gaming and Liquor from Health & Compliance Services clarifying noise conditions on the Outdoor Eating Area approval.

DETAILS:

Landowner:	Department of Lands
Applicant:	TPG, Urban Design and Heritage
Zoning:	Commercial and Unzoned Land
Existing Land Use:	Not Applicable
Use Class:	Not Applicable
Use Classification:	Not Applicable
Lot Area:	Not Applicable
Right of Way:	Not Applicable

The subject tenancies (3 & 4) received approval as a Small Bar (Unlisted Use) on 25 June 2013. The subject application seeks:

- retrospective approval for the servery and seating section which extends out from the window over the property boundary and over the footpath, on the western most portion of the tenancy, The servery currently extends into the footpath area by 0.27 meters at a height of 0.822 metres from ground level;
- a free standing canopy over part of the approved Outdoor Eating Area (“OEA”) with cafe blinds on the southern, western and eastern sides to provide weather protection; and
- timber projections over the existing footpath over the servery area as a decorative feature only. The projections are at a height of 2.75 metres from ground level.

Health and Compliance Services

The property currently has an approved Outdoor Eating Area. The application was assessed by the City’s Health and Compliance Services, Technical Services, Ranger and Community Safety Services and Planning and Building Services. All service areas supported approval of the application subject to numerous conditions, particularly:

- “4.0 *The movement of all path users, with or without disabilities, within the road reserve shall not be impeded. The area shall be maintained at a safe and trafficable condition and a continuous path of travel (minimum width of 2.0 metres) shall be maintained for all users at all times in accordance with Technical Services requirements.*
- 7.0 *The consumption of alcohol is permitted within the approved delineated outdoor eating area providing that the permit holder has obtained an appropriate approval from the Department of Racing Gaming and Liquor (DRGL). The permit holder must ensure ongoing compliance with permit conditions, DRGL requirements and effectively control noise and antisocial behaviour. No fixtures or furniture is to be placed in the extended footpath/pedestrian access way, patrons cannot stand in the area and alcohol must not be consumed in that area. Management of the area must be included in the venue Alcohol Management Plan.*
- 16.0 *As the outdoor eating area is directly adjacent to residential premises, the City reserves the right to amend the operating hours by giving written notice, should complaints relating to noise and anti-social behaviour be substantiated during the approved hours of operation particular after 10pm.”*

The Liquor Control Act 1988 allows a maximum capacity is 120 people for a small bar. Final numbers for the internal area of the building will be determined under the Health Act 1911 and will be finalised upon completion of the fit out; they are expected to be 75. The approved OEA Permit has been calculated to allow an additional 56 persons. Regardless of the set capacity of patrons in either area, the combined total of patrons cannot exceed 120.

The applicant has now sought to modify the approved Outdoor Eating Area to include fixtures which were not part of the previous application, as follows:

- The proposed (already installed) server benches which encroach into the walkway area pose a safety risk in their current form. The operational plans for this area, have non-permanent pot plants alongside (at both ends); these pot plants will protrude further into the area than the benches and, therefore, offer a highly visible safety barrier to the benches. As long as the pot plants are located in these positions, from a safety perspective, the benches could remain in their current format;
- The timber projections applied for will have no impact on health and safety within the currently approved area; and
- The proposed canopy is in a form that has not been applied for in the City before. The application also seeks cafe blinds on the three sides of the canopy to be used when weather conditions are inclement.

It will be necessary to apply a condition to the Outdoor Eating Area Permit to address potential noise conflict associated with any businesses and residents who may be directly affected by the use of the Outdoor Eating Area.

Building Services

The canopy will require a Building Permit (BA01) under the *Building Act 2011*. The application for the Building Permit must be signed by each owner of the land on which the structure is proposed to be located, in this case the Minister for Lands. The structure will need to be privately certified and accompanied with a BA20 relating to all the new proposed structures.

Building Services will require an application for Occupancy Permit Unauthorised (BA09) for the server sills to be privately certified and to be accompanied with a BA20 specifically related to the server sills. The BA20 and BA09 will have to be signed by the Department of Lands as the land owner.

A Building Permit (BA01) will be required for additions and alterations to a class 6 structure.

Technical Services

The Department of Lands has provided the following advice on development within Crown Land, in this case, the road reservation:

"I can advise that the Department of Lands policy allows for encroachments that may be of a more substantial nature than a minor encroachment, provided that they are not being used for commercial purposes and provide a public benefit (e.g. weather protection, streetscape), accordingly tenure under the LAA will not be required, the examples being shop awnings, verandahs and streetscapes. Where there is a commercial benefit, or an increase in floorspace, tenure under the Land Administration Act 1997 will be required."

Consequently, the Department requires that a lease agreement be in place between the developer and the Department, for the area of the proposed awning structures adjacent to the bar. The lease agreement will award the lessee exclusive use of that land subject to the lease agreement and, therefore, the City has identified a number of matters that it wishes to see addressed in the lease.

The City must ensure access to its services and infrastructure within the Road Reserve on demand. No compensation will be payable for loss of trading time should access be required by the City. The City must retain the right to require removal of the structures within the lease area if deemed necessary for infrastructure maintenance or upgrade, at the full cost of the lessee. Access to all other utility services within the lease area must be available to the utility provider/s, without cost or compensation.

The City requires this lease addressing requirements to its satisfaction to be in place prior to issue of a Building Permit. At this time, the applicant has not provided information on the exact area proposed to be subject to the lease. Technical Services advises that the lease area must be limited to the area of the shade structure so that public access remains available within the remainder of the alfresco area.

Should the shade structure be approved, Technical Services require submission of an acceptable stormwater management proposal prior to a Building Permit Application. As the shade structure is proposed to be fitted with drop down weather protection blinds, details of proposed lighting to ensure the public path is adequately illuminated are also required.

Compliance Services

A site inspection by the City's Compliance Officer on 3 October 2013 revealed two bar fixtures had been constructed outside the southern lot boundary, and encroached on the Road Reserve area.

A letter dated 11 October 2013 was sent to the builder and owner requesting them to remove the two bar fixtures within twenty eight (28) days of notification; however, is now included in this application for retrospective approval.

Planning Services

The City has received advice from the WAPC regarding the proposal and notes the following:

"It would only need to be determined by the City. The reasons for this are as follows:

- *Parry Street is a local road, and is not a PRR or ORR; and*
- *The Parry Street reserve is zoned Urban under the MRS. In accordance with the Notice of Delegation, development on zoned land is delegated to the Local Government unless the site is within a Clause 32 area, covered by a Planning Control Area (PCA), within the Swan River development control area, of state significance or constitutes public works by a public authority. None of these instances apply."*

Legal Advice

The City's has sought and received legal advice from the City's Solicitors, Castledine and Gregory, who have provided a response regarding a legal opinion of the development, who have advised:

"The City remains the determining authority for Planning and Building applications for proposed awnings and supporting poles. The consent of the "owner" is required before the City determines the development application or issues a Building Permit. Separately under the Land Administration Act (WA) (LA Act), consent of the Minister for Lands ("Minister") must be obtained for the erection of the structure on the Road Reserve."

CONSULTATION/ADVERTISING:

Required by legislation:	Yes	Required by City of Vincent Policy:	Yes
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Comments Period:	11 November 2013 – 25 November 2013.
Comments Received:	Thirteen (13) comments received with four (4) of these being objections and one (1) neither support nor object.

Summary of Comments Received:	Officers Technical Comment:
<p>Issue: Noise</p> <p>The 'coffee servery' is right underneath my bedroom/living room and I feel I will get no peace. Request that the City does not allow street seating/serving.</p>	<p>Noted. Conditions have been placed on the existing and any new Outdoor Eating Area Permit that should justifiable noise complaints be received for activities post 10pm, the Permit can be reviewed. Note: noise from people's voices is not controllable under the Environmental Protection (Noise) Regulations 1997; these issues need to be dealt with under the premises Venue Management Plan.</p>
<p>Issue: Pedestrian obstruction of walkway</p> <p>Concern that use of the footpath as an outdoor eating area will deter pedestrians from walking through. There is no footpath on the other side of the road.</p>	<p>Support. Conditions have been placed on the existing and any new Outdoor Eating Area Permit to ensure adequate access for the general public to walk through the area.</p>
<p>Issue: Tripping hazards</p> <p>The planter boxes are dark in colour and the location of some will be tripping hazards at night.</p>	<p>Not Supported. There is street lighting in the area that ensures there is always adequate light to enable pedestrians to see these planter boxes. Technical Services require the public path to be illuminated.</p>
<p>Issue: Access to other businesses</p> <p>People should be able to cross the road and exit their cars without tripping over or damage to their car.</p>	<p>Noted There is adequate access through the area to other businesses in the building.</p>
<p>Issue: Number of tables</p> <p>Concern that 14 tables is too many and that as a result people are restricted from being able to use the footpath.</p>	<p>Noted. The current approved space for the Outdoor Eating Area is in line with the Outdoor Eating Area Policy.</p>
<p>Issue: Noise and Disruption</p> <p>Canopy will encourage later dining times.</p>	<p>Noted. Conditions have been placed on the existing and any new Outdoor Eating Area Permit to ensure potential noise and antisocial behaviour is prevented. The business has a Venue Management Plan to deal with these matters.</p>
<p>Issue: Initial plans showed Cafe, not a Small Bar.</p>	<p>Noted. Planning approval was given for the Small Bar use at the Ordinary Meeting of Council held on 25 June 2013.</p>
<p>Issue: Licensed premises density</p> <p>Concern regarding the serving of alcohol in an area where there are plenty of establishments doing so in an area where there is so much antisocial behaviour.</p>	<p>Noted. The applicant is able to apply for the relevant Licence from the DRGL who assess the application on its merits.</p>

Summary of Comments Received:	Officers Technical Comment:
Issue: The operation of the business The business should offer a discount to residents of the business.	Noted. This is a matter for the proprietor to consider.

Note: Submissions are considered and assessed by issue rather than by individual submitter for clarity.

Design Advisory Committee

Referred to Design Advisory Committee: No

LEGAL/POLICY:

- City of Vincent Local Government Property Local Law 2007;
- Policy No. 3.8.1 relating to Outdoor Eating Areas;
- Planning and Development Act 2005;
- Town Planning Scheme No. 1;
- Policy No. 4.1.5 – Community Consultation;
- Development Guidelines for Commercial and Mixed Use Developments;
- Building Act 2011; and
- Building Regulations 2012.

RISK MANAGEMENT IMPLICATIONS:

Nil.

STRATEGIC IMPLICATIONS:

The City's Strategic Plan 2013-2017 states:

"Natural and Built Environment

1.1 *Improve and maintain the natural and built environment and infrastructure.*

1.1.2 *Enhance and maintain the character and heritage of the City.*

Economic Development

2.1 *Progress economic development with adequate financial resources*

2.1.1 *Promote business development and the City of Vincent as a place for investment appropriate to the vision for the City."*

SUSTAINABILITY IMPLICATIONS:

The City's Strategic Plan 2013-2017 states:

"Encourage the incorporation of sustainable design principles and features in existing and new development within the City as standard practice."

The following tables outline the applicable sustainability issues for this proposal:

ENVIRONMENTAL	
Issue	Comment
Commercial Development on public land.	
SOCIAL	
Issue	Comment
The proposed small bar/café will provide a place for persons to meet and socialise in an inner city area which promotes surveillance, activation of the street and ambience to an area.	

ECONOMIC	
Issue	Comment
The renovation of the premises will provide opportunities for employment whilst the operation of the premises will provide on-going employment opportunities.	

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS & CONCLUSION:

The City's Outdoor Eating Policy encourages the development of Outdoor Eating Areas as a way of activating the street area.

When the initial application was assessed, strong emphasis was placed on ensuring health and amenity issues were considered. The area is inner city and as such has higher ambient noise levels than others with higher density of residential premises. As a result, enforcement of the *Environmental Protection (Noise) Regulations 1997* becomes problematic therefore, it is most important to 'manage out' noise issues before they arise. New conditions were developed for this site which allow the City to review the Outdoor Eating Area Permit at any time should justifiable noise complaints be received post 10.00pm.

Another area of concern in assessing this application is the continuance of the general public to be able to walk through the area. The condition requiring a 2.0 metres unobstructed pathway at all times will be able to address this concern. There is precedent in many other Local Authorities with roadside open alfresco areas that show this works very successfully. It is important however, that the proposed semi-enclosing of the area does not give perceptions of exclusive use at any time.

There is only one other location in the City which has drop down blinds; these have at times, impacted on the public access way by inappropriate use of the blinds restricting access through the area.

With regard to the provision of Liquor in this area, an application has been sent by the proprietors to the DRGL, which includes a Public Interest Assessment and a Management Plan. The City has reviewed and provided feedback on the Venue Management Plan but has not been asked formally for comment on the overall Application or for Section 39 certification. DRGL have advised that in providing a Section 40, they make an assumption that the City is comfortable with the application. This may be the position in most cases, but in some cases will not allow appropriate opportunity to comment on specific trading conditions. Although there is a requirement for Community Consultation in the City's Policy for an application pertaining to Small Bars, consultation with the community has also occurred via the DRGL process and the change of use approved at the Ordinary Meeting of Council held on 25 June 2013.

This is the first application to the City of its kind and due care has been taken in assessing the implications of approving the application both in light of precedents it may set and the rights of the greater public to use the area.

In light of the above, it is recommended that the application can be supported subject to the conditions list.



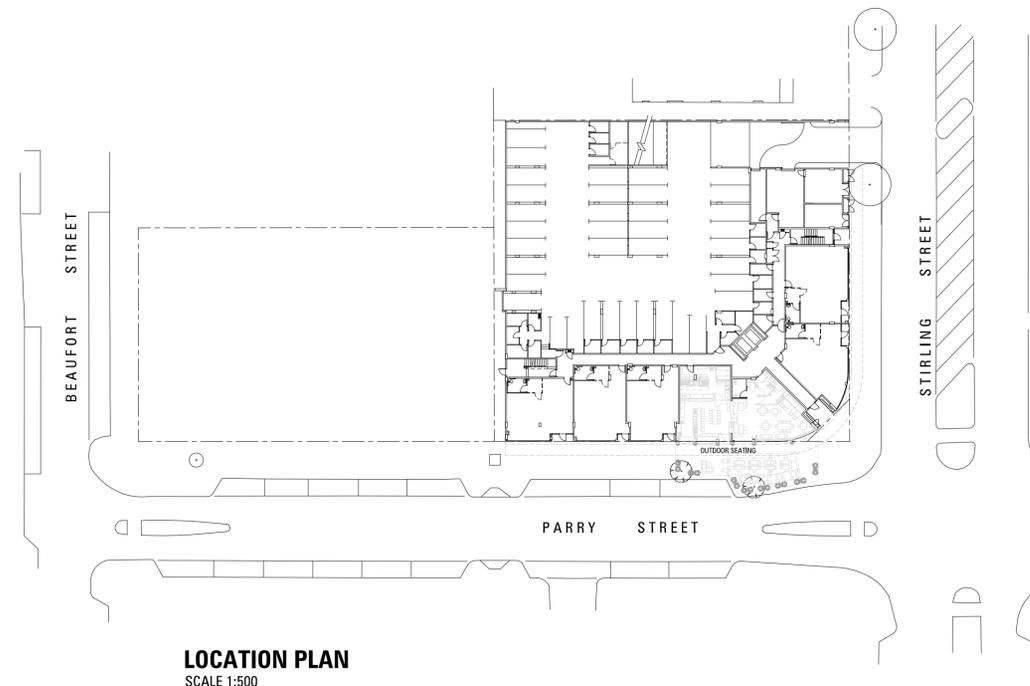
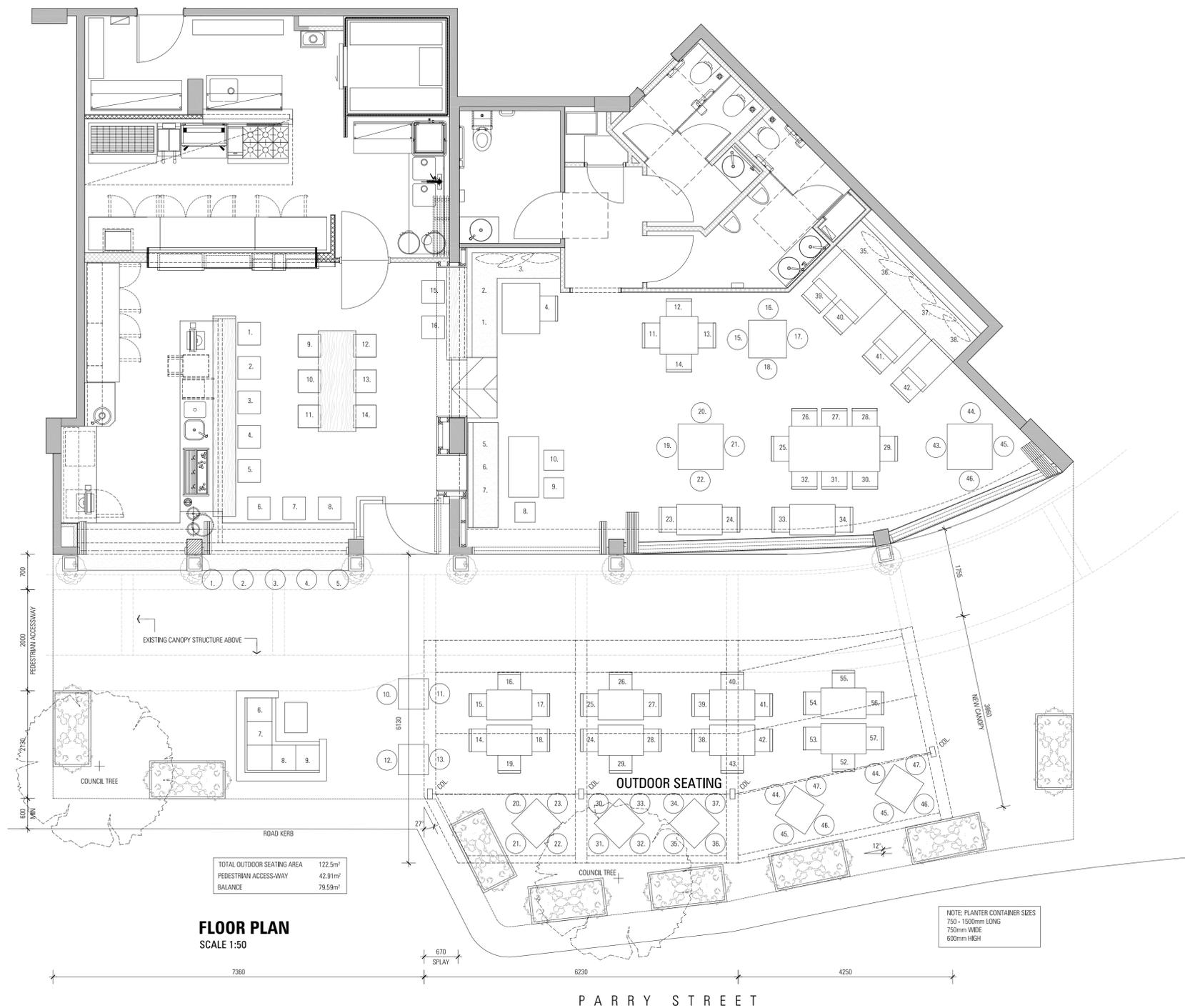
Property Information Report:

Nos. 3 & 4/177 Stirling Street, Perth



✓ Properties Consulted

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BRIKA BAR / CAFE

CNR PARRY & STIRLING STREET, NORTHBRIDGE.

OUTDOOR SEATING FREESTANDING CANOPY

DRAWN	PR	DATE	02.10.13	SCALE	1:50,1:500
CHECKED				CAD FILE	x-plan.dwg
REV	DATE	DESCRIPTION	DWN	APPR	REVISION
B	07.10.13	ISSUED FOR PLANNING APPROVAL			
A	02.10.13	ISSUED FOR COMMENT			
				DRAWING NUMBER	1944 - SK.2.04
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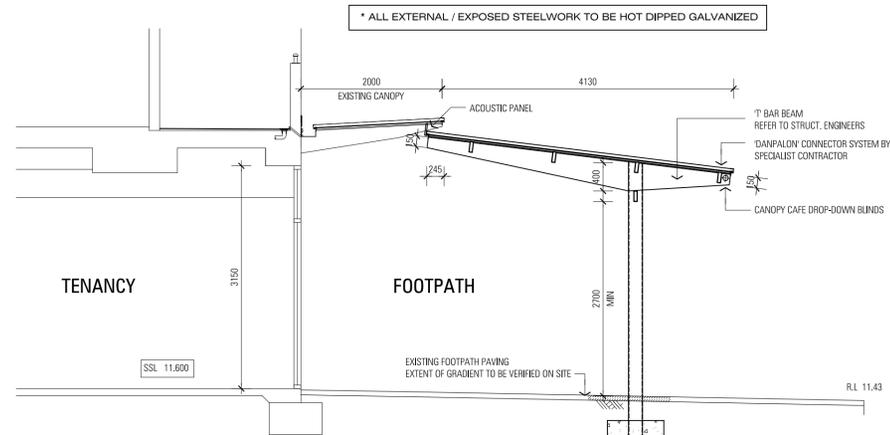
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SOUTH ELEVATION
SCALE 1:50



PART SECTION
SCALE 1:50

- **CANOPY COLUMNS**
EC EXISTING COLUMN - (TO REMAIN)
NC NEW COLUMN - (150 x 50 x 3 RHS)
- **CANOPY BEAM**
RF1 (REFER TO DETAIL)
- **CANOPY PAD FOOTINGS**
F1 600 x 600 x 1200 DP. FOOTING

BRIKA BAR / CAFE

CNR PARRY & STIRLING STREET, NORTHBRIDGE.

OUTDOOR SEATING FREESTANDING CANOPY

		ZUIDEVELD MARCHANT HUR		DRAWN	PR	DATE	02.10.13	SCALE	1:50, 1:500
		ARCHITECTURE PLANNING INTERIOR DESIGN		CHECKED				CAD FILE	1944-r3.01.dwg
				DRAWING NUMBER				REVISION	
				1944 - SK.2.05				B	
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