



Application For Planning Approval

Elba Cottesloe seeks council approval to make two changes to the venues operations

1)Trading Hours an extra 2 hours per week

2)Alfresco dining condition variation

1) TRADING HOURS ETP

Champagne Alley Pty Ltd has made an application to The Liquor Licensing Authority for an extended trading permit to enable Elba Cottesloe to trade an extra 2 hours per week during the following additional times:

- (a) Friday nights from 12 midnight to 1am the following day; and
- (b) Saturday nights from 12 midnight to 1am the following day

The ETP application was placed on August 17th 2013 and has progressed through to the final stage of the approval process in July 2014

At this final stage of the process it was noted by ORGL that an email was received from Town of Cottesloe on December 10 2013 objecting to the application on grounds that the application would contravene the venues original Development Approval trading hours

"Trading Hours 12pm-12am Monday to Saturday and 12pm -10pm Sundays"

The ETP application is currently on hold pending the review of the original Development Approval

Venue Overview

Elba Cottesloe commenced trading as a Small Bar License on July 4th 2010 .

The venue is located on Napoleon St in the heart of the Town Of Cottesloe's retail precinct known as "Cottesloe Village".

In the 4 years since opening the venue has traded successfully to establish itself as a safe and relaxed food and beverage option to a mature demographic in Perth's western suburbs.

The venue offers an extensive range of local, international wines and champagnes by the glass complemented by a contemporary tapas style food menu.

With the design, style and offering of Elba Cottesloe being geared toward a "high end champagne bar" the venue has clearly established a mature patron demographic in the 35-65 year range.

The venue is also a popular meeting point for local diners who use the venue as a pre and post meeting point when attending the numerous eating houses in the locality

The venue trades 7 days a week and is well patronised over the weekends with Friday nights attracting a local after work crowd and Saturday nights attracting regular function trade.

In 2010 the venue was awarded the Australian Hotel Associations "Small Bar of The Year" award, the venue continues to be recognised as one of Perth's best small bars

With the venue being located in the commercial precinct the venue is isolated from residential housing and has traded without residential or council complaint in the 4 years since opening.

About the ETP

In the four years since opening the venue has successfully applied for and utilised many 'one off' ETPs for both corporate and private clients to extend the venue closing time.

John Coleman, 56 - CEO of Acton Corporate Cottesloe: "We regularly hold corporate functions at Elba for staff and clients...the venue always does a wonderful job ...it would be a real advantage to have our guys be able to stay in Cottesloe rather than trying to get a taxi off to find a drink after midnight"

Jon Lawrence, 44 - Director of Flannel Clothing: "We have held our last three Christmas functions at the bar plus a few birthday functions as well...it would be great to have the extra hour for those events"

Ruth Ireland 40 - Police Officer Mt Claremont "I recently hosted my husband's 40th birthday at Elba and asked the venue to obtain an ETP for the night....It worked really well for everyone and probably stopped a lot of the guys going off in search of a night cap at a club somewhere"

Jane Riley 41 - Pharmacist Mosman Park " The extra hour really made the night for my birthday party at Elba...we all have young kids and it allowed us to have an after midnight drink and cabs were waiting outside for us at the end of the night ...bravo"

It is on this feedback and the success of the venues history utilising ETPs that we wish to extend the trading hours of the venue on a permanent basis and we ask the Town of Cottesloe to review the original Development Approval and allow the application to proceed

2) ALFRESCO DINING VARIATION

Elba Cottesloe is licensed for 95 persons made up of 75 internally and 20 externally in the street side alfresco area.

The alfresco area is covered by a separate ETP license that only allows patrons to consume alcohol if they are consuming a main meal

As the small bar licenses have evolved in the past 5 years so to have the dining and drinking habits of Western Australian customers who are now more inclined to share food and graze on small plate dishes contrary to these license conditions

The style of operation allowed by the small bar license is also confusing to many tourists who cannot understand why they are not allowed to enjoy the street and the sunshine on offer in the alfresco area without a substantial food order

This condition continues to be an issue and resulted in a meeting with The Director of Liquor Licensing at Elba where he suggested we apply for an “add/ variation” to the license condition and he advised his support for the license change

These issues have been remedied by other Local Authorities with The City of Perth and The Town of Vincent removing the dining conditions at several venues with the support of Liquor Licensing

It is on this basis that we ask the The Town of Cottesloe to support the variation to the Alfresco ETP and remove the dining condition

Kind Regards,

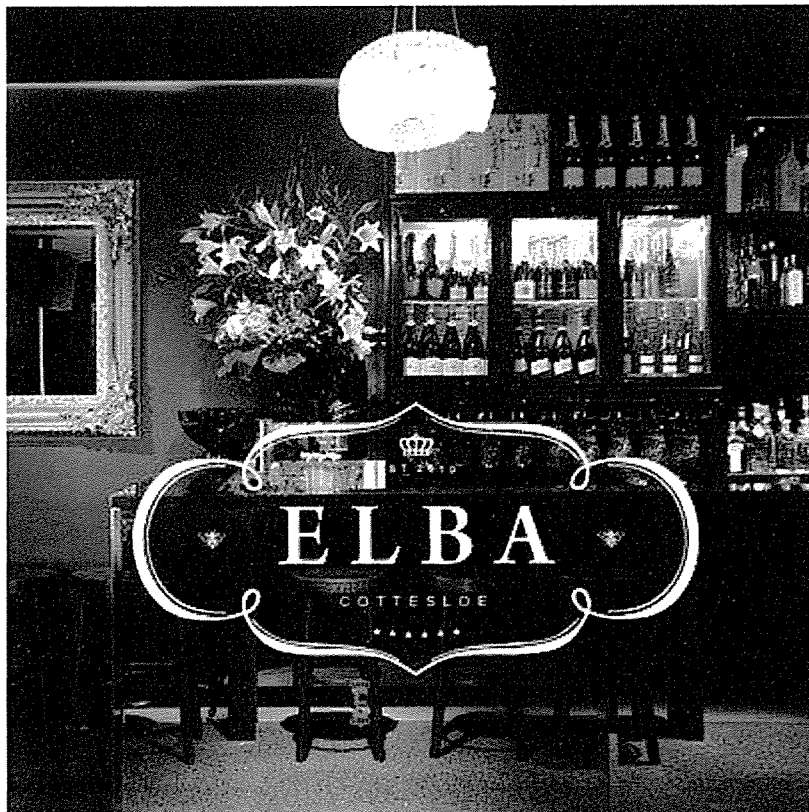


Rhys Lloyd

Director

Elba Cottesloe

0417960809





PUBLIC INTEREST ASSESSMENT

Applicant: Champagne Alley Pty Ltd

Application: Extension of Hours (on-Going)

Premises: Elba Cottesloe, 29 Napoleon St Cottesloe

Contact

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TABLE OF CONTENTS

- 1) Application Introduction
- 2) Venue Overview
- 3) About The Application
- 4) Locality and Location
- 5) Demographics of The Locality
- 6) Harm or Ill Health Section 38 (4) A
- 7) Impact on Amenity Section 38 (4) B
- 8) Offence, Annoyance, Disturbance or Inconvenience Section 38 (4) C
- 9) Conclusion



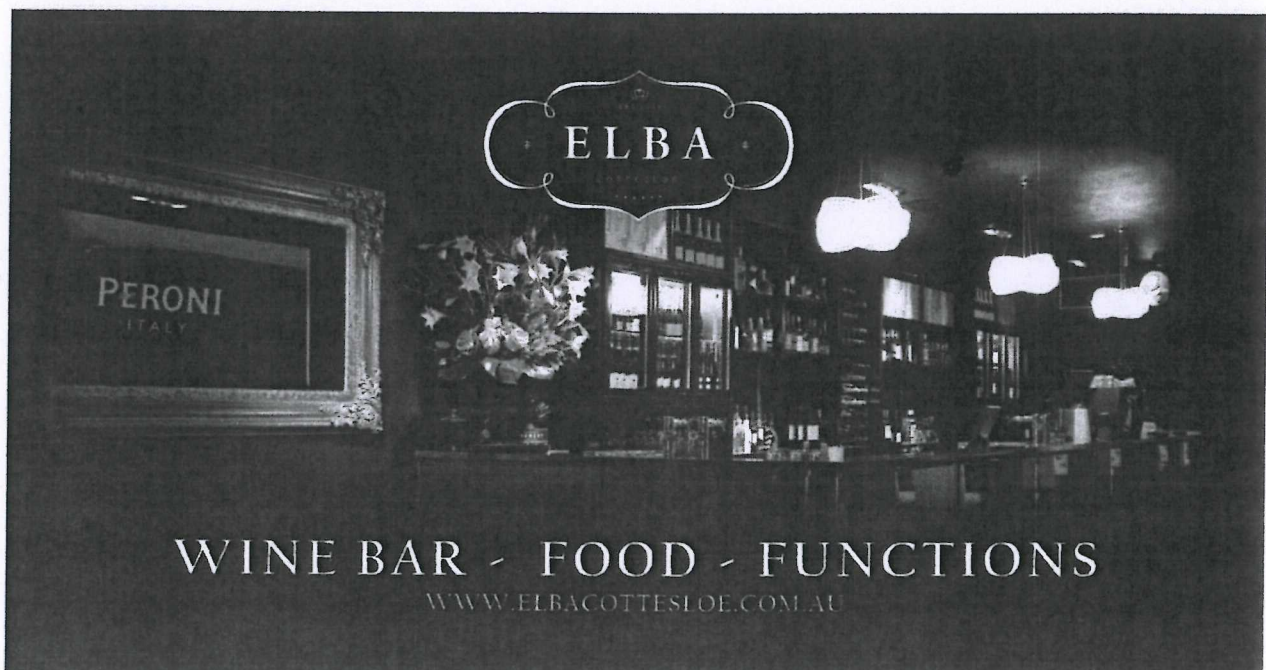
APPLICATION INTRODUCTION

Champagne Alley Pty Ltd is making an application to The Liquor Licensing Authority for an extended trading permit to enable Elba Cottesloe to trade during the following additional times:

- (a) Friday nights from 12 midnight to 1am the following day; and
- (b) Saturday nights from 12 midnight to 1am the following day

This application for on going extended hours has been prepared by Rhys Lloyd
(Manager/Owner)

Under Section 38(2) of the Act the Applicant is required to satisfy the Licensing Authority that granting the Application is in the public interest. This document addresses that requirement.





VENUE OVERVIEW

Elba Cottesloe commenced trading as a Small Bar License on July 4th 2010 .

The venue is located on Napoleon St in the heart of the Town Of Cottesloe's retail precinct known as "Cottesloe Village".

In the 3 years since opening the venue has traded successfully to establish itself as a safe and relaxed food and beverage option to a mature demographic in Perth's western suburbs.

The venue offers an extensive range of local, international wines and champagnes by the glass complemented by a contemporary food menu.

The venue trades 7 days a week and is well patronised over the weekends with Friday nights attracting a local after work crowd and Saturday nights attracting regular function trade.

In 2010 the venue was awarded the Australian Hotel Associations "Small Bar of The Year" award, the venue continues to be recognised as one of Perth's best small bars

With the venue being located in the commercial precinct the venue is isolated from any residential housing and has traded without residential or council complaint in the 3 years since opening.

It is one of three liquor licenses in the precinct area with several restaurant licenses located nearby.

With the design, style and offering of Elba Cottesloe being geared toward a "high end champagne bar" the venue has clearly established a mature patron demographic in the 35-65 year range.

The venue is also a popular meeting point for local diners who use the venue as a pre and post meeting point when attending the numerous eating houses in the locality.



ABOUT THE APPLICATION

The venue continues to hear feedback from customers that they want to sometimes stay out beyond midnight but do not want to travel to do so and do not wish to go to a night club.

Veronica Morgan, 37 - Teacher of Mosman Park: "The options for a relaxed drink are so limited after midnight in Cottesloe...it's either head into Fremantle or Subiaco to a night club full of kidsit is not how we want to end a good night"

Most weeks the venue hosts functions for both corporate and private clients and is regularly asked of the possibility of extending the function finish time.

John Coleman, 56 - CEO of Acton Corporate Cottesloe: "We regularly hold corporate functions at Elba for staff and clients...the venue always does a wonderful job ...it would be a real advantage to have our guys be able to stay in Cottesloe rather than trying to get a taxi off to find a drink after midnight"

Jon Lawrence, 44 - Director of Flannel Clothing: "We have held our last three Christmas functions at the bar plus a few birthday functions as well...it would be great to have the extra hour for those events"

All of the licensed venues in Cottesloe close at midnight on weekends resulting in a huge demand on taxi services with no dedicated taxi rank.

Nicki Farley, 41 - Lawyer at Freehills: "I have waited outside Elba until well after lam for a taxi ...the taxis all seem to pick people up from Stirling Highway....I won't catch trains late at night"

Elba has successfully utilised 'one off' ETPs for several function events.

Ruth Ireland 40 - Police Officer Mt Claremont "I recently hosted my husbands 40th birthday at Elba and asked the venue to obtain an ETP for the night....It worked really well for everyone and probably stopped a lot of the guys going off in search of a night cap at a club somewhere"

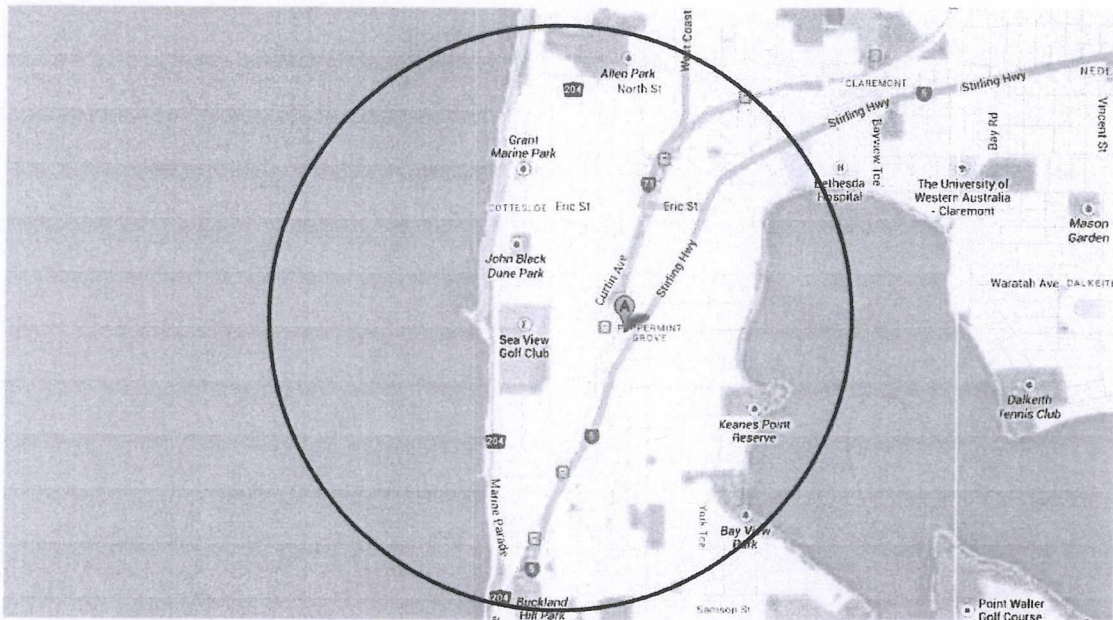
Jane Riley 41 - Pharmacist Mosman Park " The extra hour really made the night for my birthday party at Elba...we all have young kids and it allowed us to have an after midnight drink and cabs were waiting outside for us at the end of the night ...bravo"

It is on this feedback and the success of the one off ETPs being utilised that Elba Cottesloe sees there is a public interest to extend the trading hours of the venue on a permanent basis.

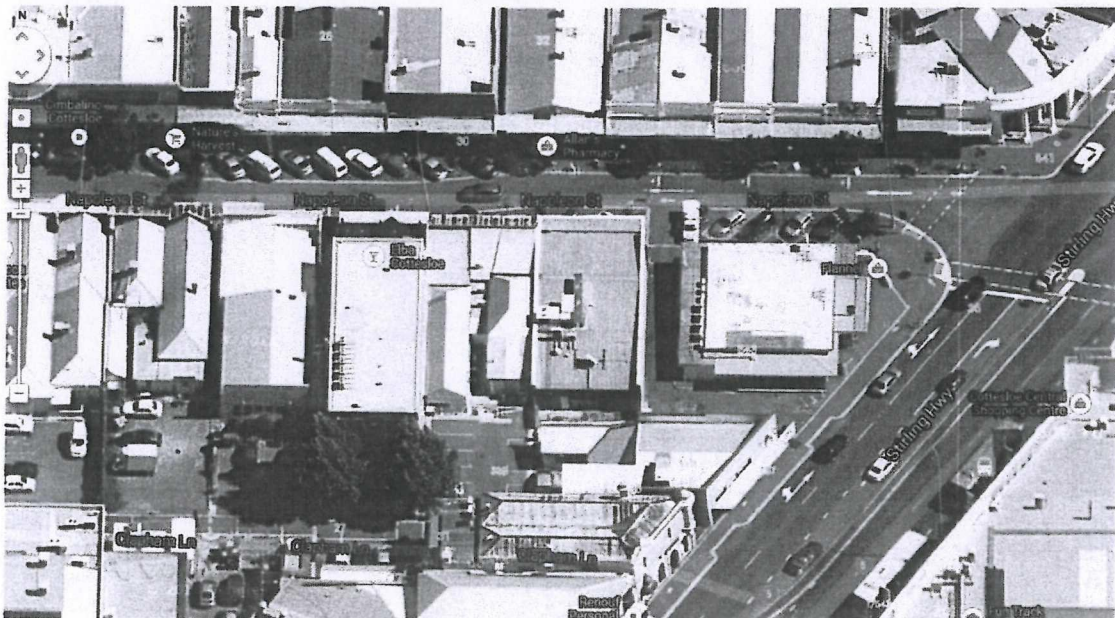


LOCALITY AND LOCATION

In defining the 'locality' affected by the application for Cottesloe it is shown below as a 2km radius of the subject premises.



The above map is taken from Google maps website and shows the location and the area taken in by the 2km radius.



The above aerial images shows the premises and the immediate locality.



DEMOGRAPHICS OF THE LOCALITY

For the purposes of the public interest assessment we will consider the demographic information relating to the following suburbs in the 2km radius; Cottesloe, Mosman Park, Peppermint Grove and Swanbourne.

These figures have been extracted from the website of the Australian bureau of statistics.

In 2006 the locality has a total population of 16,897. Of these people, only 0.5% were registered indigenous, well below the 1.5% for Perth. 17.1% of the locality's population were aged between 15 and 24 years in 2006, just slightly higher than the Perth figure of 14.8%.

Census Category	Locality Average	Perth (MSR)
Total Persons	16,897	1,445,078
Indigenous Persons	0.5%	1.5%
15-24 years	17.1%	14.8%
55+ Years	26.5%	22.7%
Persons Born Overseas	23.7%	31.3%
English only spoken at home	83.8%	79.9%
Employed: Professional and managers	58.6%	31.8%
Median family income	\$2,373	\$1,294
Median Housing loan repayment	\$2,422	\$1,300
One parent families	11.7%	15.2%
Fully owned	37.8%	19.6%
State or territory housing	5.3%	13.6%

Interesting 26.5% of the locality population was aged 55 years and above in 2006, higher than the 22.7% for Perth.

The percentage of persons born overseas in the locality was 23.7% which was much lower than the 31.3% for Perth MSR.

The percentage of "English only spoken at home" in the locality was 83.8% compared to the much lower figure of 79.9% in the Perth MSR.

58.6% of employed people in the locality in 2006 were listed as "professionals" or "managers", whereas the figure for Perth was only 31.8%.

The median family income in the locality in 2006 was \$2,373 per week, against Perth's figure of only \$1,294 per week.

Perth's median housing loan repayment in 2006 was \$1,300 per month, but the locality figures were much higher at \$2,422.

Additionally, the percentage of fully owned dwellings in the locality was 37.8% in the locality compares to the 19.6% for the Perth MSR.

The percentage of state and territory housing in the locality was 5.3% which was much lower than the 13.6% for the Perth MSR.

Conclusion - This is an affluent, stable and flourishing locality with few of the priority groups present.



HARM OR ILL HEALTH SECTION 38 (4) A

Elba Cottesloe was designed and geared to cater to a mature local clientele. The venue has successfully catered to this market with regular clientele who utilise the venue in a responsible manner.

As part of the venues existing license conditions we do not serve shots, laybacks or multiple spirits and do not sell any form of energy drinks.

The venue has strong emphasis on food and has gained a valuable reputation for quality and style.

Responsible Drink Serving Practices have been in place at Elba Cottesloe since the venue's inception.

The Western Australian Drug and Alcohol Strategy 2005-2009 states that "at risk" groups or sub-communities may include;

- Children and young people
- Aboriginal people and communities
- People from regional, rural and remote communities;
- Families;
- Migrant groups from non English speaking countries;
- People in low socio-economic areas;
- Mining communities or communities with a high number of itinerant workers;
- and/or Communities that experience high tourist numbers

Suburb	Number of reported alcohol related offences per 1,000 population in 2006
Northbridge	124.8
Midland	15.5
Leederville	13.8
Fremantle	10.7
West Perth	8.6
Daglish	6.4
Joondalup	5.5
Armadale	5.3
Victoria Park	5.1
Subiaco	4.9
Locality (Cottesloe, Mosman Park, Peppermint Grove)	3.5
Perth Metro	3.8
WA	9.6

The locality of Elba Cottesloe is typified by the following;

- Few indigenous Australians
- More mature and affluent population
- Fewer at risk family types; and
- Fewer recent migrants

Using figures provided by the WA police, the table to the right highlights the number of reported alcohol related offences per 1,000 of population in 2006 in selected suburbs.

As can be seen from the figures in the table, the locality has a low incidence of alcohol related offences.



IMPACT ON AMENITY SECTION 38 (4) B

Elba Cottesloe is located on Napoleon St in the heart of The Town of Cottesloe's retail precinct known as Cottesloe Village

The venue is ideally located between the rail and bus routes and has ample street parking available

With the venue being located in the commercial precinct the venue is isolated from any residential housing and has successfully traded without residential or council complaint since 2010

The style and location of Elba has ensured the venues regular clientele conduct themselves in a mature and responsible manner at all times and the venue has no history of anti-social behaviour

Since opening the venue and its management have forged strong relations with business neighbours and become a valued member of the local Cottesloe community

The granting of an ETP allowing the staggering of closing times with other local venues would encourage more orderly dispersal of patrons and less impact on the area





OFFENCE, ANNOYANCE, DISTURBANCE OR INCONVENIENCE 38 (4)C

As stated previously the venue has traded without residential or council complaint since opening in 2010

A thorough staff induction program ensures all new staff adhere to the Director's Guidelines in regard to the responsible service of alcohol.

In order to be employed as an approved manager, a bar person or waiter at Elba Cottesloe there is a requirement to pass an accredited Responsible Service of Alcohol certificate course.

This is to ensure that all staff are aware of the dangers of intoxication and will practice a high level of responsibility in the service of alcohol to our patrons.

A register has been maintained at the venue which states the names of the employees involved in the service of alcohol and where and when their respective certificates were completed.

The venue has a House Management Policy, Code of Conduct and Management Plan in place to ensure harm minimisation and duty of care. Copies of these documents are attached.

In addition to the above procedures and policies the venue has a 8 CCTV cameras in place

With these measures in place and no previous history of complaint we believe there is very little potential for offence, annoyance, disturbance or inconvenience to the local community if an ETP was granted to the venue





CONCLUSION

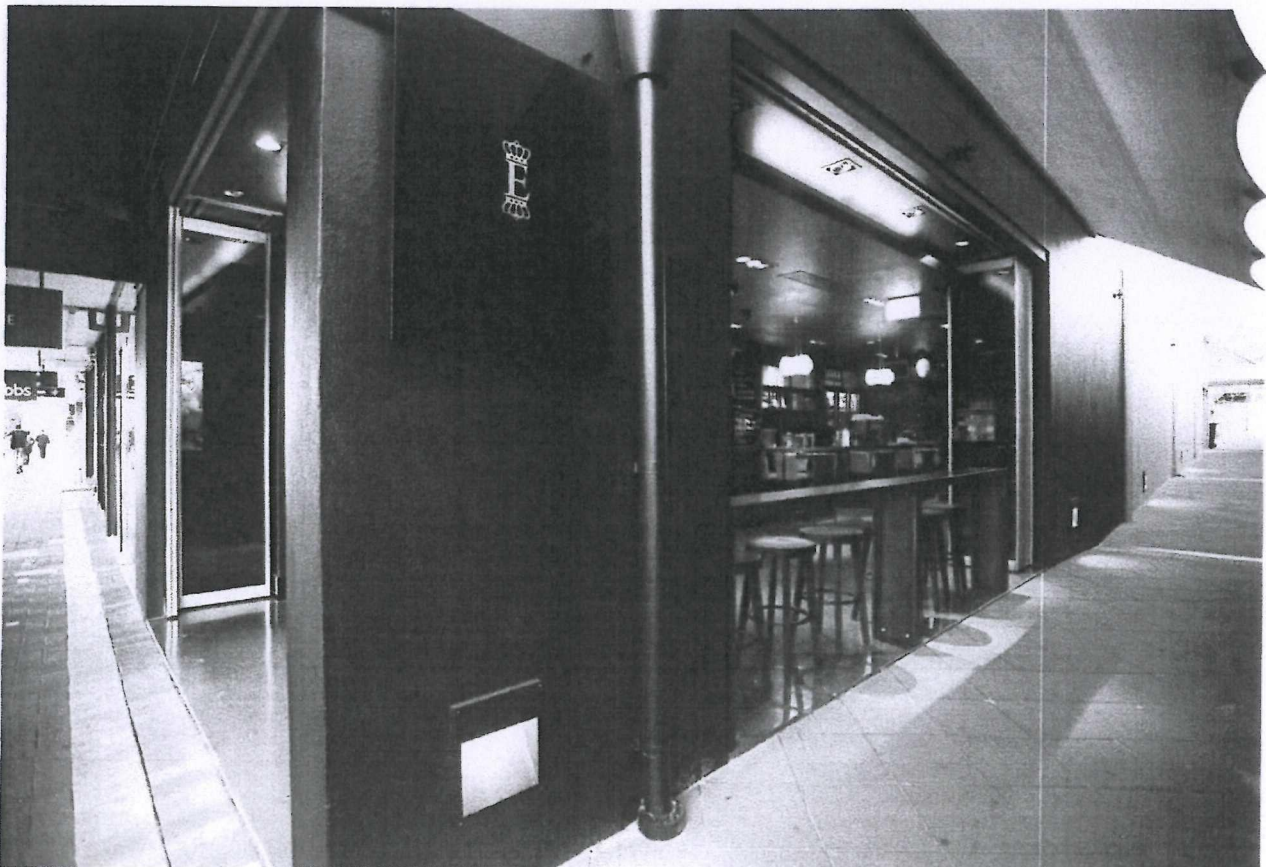
Elba Cottesloe is a well-managed small venue located in an affluent non-residential area with a regular mature clientele

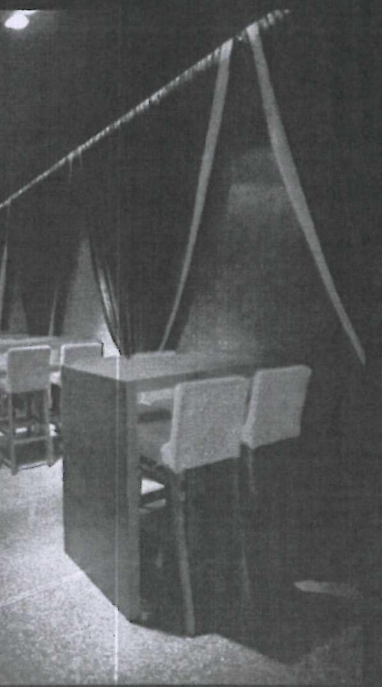
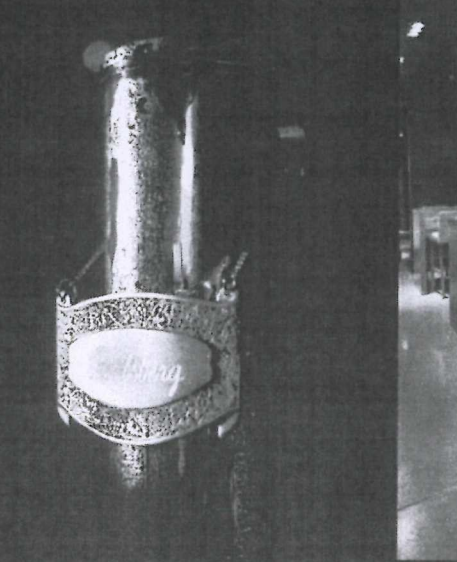
The venue has successfully traded for 3 years without residential or council complaint and has no record of anti-social behaviour

The venue is well patronised and become a valued member of the business and local Cottesloe community

The Owners are committed to ensuring the high standards already achieved with service, food and beverage continue to be upheld and the venue to continue to trade successfully

The granting of an ETP for the venue will not only address consumer desires but will also allow the venue to continue to achieve these standards in a safe and responsible manner





**11.1.2 NO. 29 NAPOLEON STREET – CHANGE OF USE FROM SHOP TO
'SMALL BAR' (INCLUDING TWO OUTDOOR ALFRESCO AREAS)**

File No: 1852
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Ed Drewett
Senior Planning Officer
Applicant: Planning Solutions (Aust) Pty Ltd
MRS Reservation: Primary Regional Road (Part)
Zoning: Town Centre & R100 (Part)
Use: Use not listed

Proposed Meeting Date: 15 February 2010
Author Disclosure of Interest Nil

SUMMARY OF PROPOSAL

This proposal is for a change of use from a Shop (previously trading as the Leaf Tea Merchant) to a 'Small Bar'.

No external alterations are proposed other than new signage and a retractable awning over a proposed alfresco area (in road reserve).

The following new areas are to be provided:

- Bar area – 19.41m²
- Seated area for patrons – 17.61m²
- Standing area for patrons – 50.08m²
- Seated alfresco areas – 13.71m² (within road reserve)
- Seated alfresco area - 12.39m² (within side accessway)

It is proposed to accommodate up to 75 patrons seated or standing internally and up to 20 patrons seated externally in two licensed alfresco areas (one occupying an existing public carbay at the front of the premises proposed to be converted to pavement, and the other in the existing walkway alongside the premises).

Two existing parking bays are proposed to be used for staff parking at the rear of the premises with access from Clapham Lane.

Operating hours will be 12.00pm to 12.00am, 7 days a week, with expected peak periods in the evenings after normal business hours.

Target age will be 25 to 65 year old.

The intent is that the premises offer a small, intimate experience, focussed on premium wines and champagnes with tapas-style food. It would operate in accordance with all the necessary controls under the liquor licensing regulations and Council's Planning, Building and Health requirements.

BACKGROUND

These premises have a lengthy planning history. This is summarised as follows:

- Pre 2003 – Use of premises as a bank;
- 24 February 2003 – Council approval granted for change of use from ‘Office’ to ‘Shop’ and ‘Residential’, alterations to the existing retail building (to provide two separate outlets), 2nd storey residential extensions and widening of the existing pedestrian accessway;
- 31 July 2003 – Approval granted for internal fitout of shop for Leaf Tea Merchant (no change of use involved. Included internal seating shown for 42 customers);
- 25 August 2003 – Council approval granted for an increase to the upper floor residential unit;
- 17 February 2004 – Planning approval granted for side awning over walkway;
- 23 February 2004 – Council approval granted for change of use of the 2nd storey from ‘Residential’ to ‘Offices’;
- 2 July 2004 – Planning approval granted for a rear entry canopy over walkway; and
- 28 November 2008 – Council approval granted for an Outdoor Eating Area Licence for Lexi for Flowers (in previous adjoining tenancy) to allow 2 tables and 4 chairs on the footpath in Napoleon Street.

STATUTORY ENVIRONMENT

- Metropolitan Region Scheme
- Town Planning Scheme No. 2
- Proposed Local Planning Scheme No. 3
- Liquor Licence Policy
- WAPC Planning Bulletin 85 – Small Bar Licensed Premises

CONSULTATION

The application was advertised by the Town in accordance with TPS 2. The advertising consisted of a letter to 10 adjoining property owners and Procott.

40 submissions were received, predominantly pro-forma letters, all in support of the proposal. 6 of these submissions were signed by the same authors.

The main points raised are summarised as follows:

- Complements existing businesses in Napoleon Street;
- Offers an alternative dining and entertainment option for mature persons;
- Within walking distance from homes;
- Beneficial to community, adds vibrancy to area;

- Contributes to the range of activities and atmosphere in Napoleon Street;
- Avoids necessity to drive to Claremont, Subiaco or Fremantle to find this type of establishment; and
- Will provide more activity on the street at night creating a safer environment.

APPLICANT'S JUSTIFICATION

The applicant has submitted a detailed submission with the application in support of the proposal (see attached).

The main points in the report are summarised below:

- The proponent, Mr Rhys Lloyd, is a resident of Cottesloe and has had extensive experience in hospitality. He is now seeking to provide an alternative entertainment option not currently available in Cottesloe;
- The proposed small bar is intended to be a small-scale venue that is in-keeping with the amenity and character of the area, targeted to a sophisticated and mature clientele;
- The existing premises already incorporates toilets, kitchen, serving and dining areas;
- A licence, including a Public Interest Assessment, has been applied for as required under the Liquor Control Act 1988;
- Food will be prepared off-site in an existing commercial kitchen upstairs at Cimbalinos. It will be plated and heated as required on-site;
- The proposed use is consistent with state and local planning policies, including Council's Liquor Licence Policy;
- The proposal will support a positive sense of place and community through increased diversity of land use and encouraging activation of the area outside of normal business hours, while protecting the existing character of the 'main street';
- The development will positively contribute to safety and crime prevention within the area by providing a greater level of casual surveillance of the area during times that are currently quiet;
- Entertainment will be pre-recorded music only. The intended ambience will incorporate only non-intrusive music at a 'conversational' volume;
- The service of food that complements alcoholic beverages encourages responsible drinking behaviour. It is not expected that the proposed development will require additional crowd control measures, such as security personnel or security patrols, due to the small scale and intimate nature of the business;

- It will be located within a commercial area and therefore will have limited impact on residential or other sensitive uses;
- All service vehicles will use Clapham Lane for deliveries, with direct access to the kitchen available via the rear of the building. It is anticipated 2 bulk (alcohol and food) deliveries will occur each week, plus occasional incidental deliveries. All deliveries will occur during normal business hours;
- Bin storage is at the rear of the building, and waste will be collected via Clapham Lane; and
- Parking requirements ought to be varied, without payment for cash-in-lieu for the following reasons:
 - Council has previously approved parking shortfalls for compatible uses in the locality;
 - There are a significant number of car parking bays adjacent to or within comfortable walking distance of the site;
 - The site is approx. 110m from the train station and 80m from a bus stop;
 - Patrons are likely to car pool or walk to the 'small bar' as a significant proportion of the clientele is expected to be local residents;
 - A substantial number of trips to the small bar are likely to be multi-purpose trips (eg after work drinks and food, pre/post dinner drinks, shopping trips etc);
 - The peak period will be after normal business hours when there is lower demand for car parking in the locality;
 - The proponent intends to operate an 'incentive rewards scheme' for staff to encourage alternative modes of transport. Under this scheme, staff will earn rewards (eg meals, vouchers etc) for utilising alternative modes of transport to attend the workplace; and
 - The proposed development will enhance the amenity of the area and provide diversity of entertainment opportunities and therefore should be encouraged.

STAFF COMMENT

The following comments are made in respect to this application for the use of the existing premises as a 'small bar':

Land Use:

Changes to the Liquor Control Act 1988 that came into effect in May 2007 introduced a new classification – that of a small bar licence. A small bar license is a form of hotel licence with:

- A condition prohibiting the sale of packaged liquor; and
- A condition limiting the number for persons who may be on the licensed premises to a maximum of 120.

An application to a licensing authority for the grant of a small bar licence must be accompanied by a certificate from Council as provided for in section 40 of the Liquor Control Act.

The proposed use only involves serving drinks and food on the licensed premises and to restrict the number of patrons to a maximum of 95 patrons so it conforms with the classification as a small bar.

A small bar is not listed in the zoning table of TPS 2 or in proposed LPS 3. As such, Council may –

- a) determine that the use is not consistent with the objectives and purpose of the particular zone and is, therefore, not permitted, or
- b) determine by absolute majority that the proposed use may be consistent with the objectives and purpose of the zone and therefore follow the advertising procedures of Clauses 7.1.4 to 7.1.6 in considering an application for approval to commence development.

Notwithstanding this, the rear portion of the lot is reserved under the Metropolitan Region Scheme (MRS) for Stirling Highway and only the front portioned is zoned under TPS 2. However, TPS 2 may be considered a framework for the consideration of local planning issues and the proposal is therefore discussed in this context.

The objectives and purpose of the Town Centre zone (current and proposed) are:

TPS 2:

To promote the centre's function as the commercial and administrative centre serving Cottesloe, Peppermint Grove and Mosman Park. In considering development applications, Council shall have regard to how a proposal would affect the amenity of the zone, including such matters as staging of development, integration of buildings, access, parking, pedestrian movement, services and landscaping; and shall have regard to the Town Centre Zone Development Policy.

Proposed LPS3:

- (a) *Improve the amenity and function of the Cottesloe town centre;*
- (b) *Provide for a wide range of land uses, including shops, offices, entertainment, health, and community facilities and services, consistent with the district-serving role of the centre; and*
- (c) *Provide the opportunity for residential uses and development within the town centre.*

The proposed small bar use is consistent the Scheme objectives and would not be out-of-keeping with the other retail-type café uses in the area. Furthermore, similar alfresco areas currently exist in Napoleon Street following approval by Council and these areas add to the amenity and attraction of the area.

Health Requirements

The proposal has been referred to the Principal Environmental Health Officer and generally complies with Health legislation although full details will be required at the building licence stage. The number of toilets is adequate for 95 patrons and Cimbalinos is an approved food premises which may be used for the preparation of food, as advised by the applicant. Bins are to be kept in the dedicated bin area located in the 'common service area' and not in the rear parking area. The Section 39 liquor licencing process will include relevant health-related requirements. In addition, a separate outdoor eating permit will be necessary (and has been applied for concurrently).

Liquor (Licensed Premises) Policy – attached

This Policy was adopted by Council in 2008 and is to be considered when assessing, amongst other things, planning applications which may involve a liquor licence.

Council is to have regard to the following matters:

Number of premises within a locality and their distribution.

This is the only 'small bar' application that has been received by Council. It is different from other proposals for licensed premises in the town centre as these are usually associated with hotels or restaurants. The relatively small size of the proposed licensed areas and the commitment of the applicant to create a quiet atmosphere for a mature clientele should ensure that the use does not prejudice the amenity of the locality. The support for the proposal during the advertising period further reinforces the general acceptance of the proposal by residents and other businesses.

Hours of operation

Operating hours will be 12.00pm to 12.00am, 7 days a week, with expected peak periods in the evenings after normal business hours. These hours of operation are similar to other establishments with liquor licenses, including Lamonts and the Albion Hotel.

Number of patrons is restricted and it is unlikely that anti-social behaviour will be an issue that may otherwise impact on other businesses or residents in the area.

Number of patrons

It is proposed to accommodate up to 75 patrons seated or standing internally and up to 20 patrons seated externally in two licensed alfresco areas. Based on the merits of this proposal and the character of the town centre it is not anticipated that the amenity of the locality will be affected.

Floor area

The proposed public floor area will be 68m² internally and 26m² externally. Total = 94m². This is not a large venue and number of patrons will be restricted.

Noise and entertainment

The applicant has advised that entertainment will be pre-recorded music only. The intended ambience will incorporate only non-intrusive music at a 'conversational' volume.

Public safety

The premises will not trade past midnight and additional security personnel is not required under the Policy. Furthermore, the proposal is only for a small scale, intimate bar experience.

Location

The premises is located in the town centre and is not neighbouring residential properties so both indoor and outdoor activities may be supported.

Parking

TPS 2 and proposed LPS 3 do not contain specific car parking requirements for a 'small bar' as it is a use not listed. However, assessment of a 'small bar' would equate most closely with the parking provision of a hotel/tavern.

The parking requirement for a hotel/tavern (in this context) is 1 space for every 2m² of floor or ground area open to the public for consumption of liquor, although this can be further reduced to 1 space to every 4m² of floor and ground area in areas used solely for seated customers.

If assessed on this basis a total of 29.4 bays are required (rounded up to 30 bays). This compares with a restaurant use which would require 23.75 bays (24 bays) or a shop use which would require 8.46 bays (9 bays).

If the proposed alfresco areas are included then, based on a hotel/tavern use, up to an additional 6.5 bays (7 bays) would be required bringing the total to 37 bays required. However, it has been the Town's practice to exclude alfresco areas from floorspace calculations as these areas are generally used by patrons already at the premises and do not necessarily result in additional patrons being present. A retractable awning is proposed over the front alfresco area making this area more useable throughout the year (similar to the Dome café).

The previous use of the building as a shop with a residential unit above required a total of 19 bays (2 being allocated to the residential unit). However, in 2003 Council was of the opinion that the use of the premises and the retention of a pedestrian link to the side of the building warranted a 13 bay parking concession to be granted for the shop thereby reducing the parking requirement to 6 bays (2 being allocated to the residential unit and 4 allocated to the shop). This was then further reduced by Council in 2004 when an application to change the residential unit to an office was approved with a dispensation of another 3 bays for the existing shop use on the ground floor under Clause 3.4.2 (c) (i) of TPS 2.

In brief, this results in 5 bays approved for the office use on the upper floor and 1 bay approved for the shop use (two tenancies) on the ground floor.

The increased parking shortfall for the proposed 'small bar' is 13 bays (30 bays for 'small bar' minus 17 bays required for original shop use, excluding the residential component). Only 1 on-site car bay is available at the rear for the proposed use and the proposed alfresco area will result in the loss of 1 public car bay in Napoleon Street.

Council's decision to grant a parking concession of 16 bays (13 bays + 3 bays) for the previous approved shop use is not inconsequential and was done without the necessity of cash-in-lieu.

If Council agrees that the proposed 'small bar' use can be considered as 'retail' (similar to a café), even though its parking requirements are akin to a tavern, then it has discretion to approve the parking shortfall as per Clause 3.4.2(c) (i) of TPS 2 or to request cash-in-lieu.

Clause 3.4.2(c) states:

- (i) *Where the use of an existing building is to change to a use consistent with that nominated on the Town Centre Zone Development Policy Plan (ie: retail), the Council may permit such change of use notwithstanding the fact that there is insufficient parking on or near the site subject to Council having regard to the nature of the use to be made of the site, the known or likely volume of goods or materials, or the numbers of people moving to or from the site and the likelihood or otherwise of congestion of traffic on any road or in other public places in the vicinity.*
- (ii) *In assessing the number of parking bays required for a development containing multiple uses the Council may have regard to the likely use pattern of the various components of the development, in particular the likely maximum use of the development at any one time and reduce the number of parking bays required accordingly.*

Reciprocal parking

Similar to other approved uses in the area, such as Lamonts, day time trade is likely to include multi-purpose visitors to the Town Centre and may include public transport users, locals walking to their local centre and also local workers at lunch and after work. The focus of the 'small bar' is proposed to be in the evenings when the availability of parking is generally more plentiful. It is also anticipated that as a licensed premises, some persons visiting the 'small bar' with the intention of drinking alcohol may either car pool, take a taxi or walk. Furthermore, the applicant intends to operate a 'incentive rewards scheme' for staff to encourage alternative modes of transport and reduce demand for staff parking.

Cash in lieu

Under Clause 5.5.4 of TPS 2 Council may use discretion to allow for a parking shortfall and require a cash-in-lieu payment. Council has used this clause for a

number of proposals in the past, more particularly for a change of use that may be considered an intense, day-time, single destination use, such as the boatshed on Jarrad Street.

Alternatively, Council also has used its discretion to approve a shortfall in parking under Clause 3.4.2 of TPS 2 for a number of change of use proposals in the Town Centre, including these premises. The Scheme only allows this form of discretion for the Town Centre and the intent of this is to acknowledge the provision of public car parking and to encourage the retention of existing buildings by allowing appropriate changes of use and mix of uses to create a vibrant centre.

Were Council to invoke the cash-in-lieu clause, based on a calculated shortfall of parking, then a dollar amount would need to be determined taking account the number of bays required and their value, as well as the pre-requisite that Council has provided or is in the process of providing a public parking station nearby. However, in this case the increased parking shortfall is 13 bays which if provided as cash-in-lieu would make the proposition commercially unviable. The applicant has requested that no cash-in-lieu be paid.

In comparison, the change of use application for Lamonts at 12 Station Street had a 12 bay parking shortfall and in 2008 Council approved the use subject to the applicant paying a cash-in-lieu contribution for parking spaces to the value of \$30,000, which was based on the use being more akin to a restaurant than a tavern. This equated to only approximately 3 bays rather than 6 bays in view of the likely costs to be incurred by the applicant, the appropriateness of the use, and the viability of the project.

The applicant has suggested that it may be possible to redesign some of the existing carbays in Napoleon Street to provide 1 new public car bay, at the applicant's cost, to replace the bay proposed to be lost to the alfresco area. However, the initial proposal was not supported by the Manager Engineer Services (MES) as it would not be compatible with the existing parking layout. In addition, the MES advises that cash-in-lieu should be payable for the lost bay in Napoleon Street, and in any event, the footpath is already becoming too obstructed with alfresco-type activities and therefore the proposed alfresco area is in-advisable.

Any redesign of the existing parking bays to accommodate an additional bay in Napoleon Street is difficult due to the restricted width of the street and the existing pattern of parking. The loss of street furniture to accommodate an extra bay is also not supported, particularly as any redesign should be considered by the Public Domain Infrastructure Study to ensure a holistic approach. Notwithstanding this, other businesses have successfully provided alfresco areas in Napoleon Street (without the loss of car bays) such as the Dome café and Cimbalinos and these have enhanced the visual appeal of the area.

MRS Reservation

The application was referred to the Department of Planning as a significant proportion of the lot is reserved under the Metropolitan Region Scheme (MRS) for Primary Regional Road. The Department of Planning has advised that it has no objection to the proposal.

CONCLUSION

It is considered that the proposal will make a positive contribution to the Town Centre, despite the parking shortfall in terms of on-site provision (rather than overall supply and time of demand). It will contribute to the character of the Town Centre and add vibrancy by providing an alternative experience to the other licensed premises in the locality. The proposed use also appears to be widely supported by residents and businesses in the area.

With regards to parking, it is considered that as the focus of the use is after-hours, and day-time users would tend to be on multi-purpose visits to the town centre or work in the centre, there is potentially adequate public parking available to meet the shortfall in parking provision, especially in view of the previous parking concession given by Council for the shop and office use on the site.

Council may therefore either:

(i) Under Clause 3.4.2 (c) of TPS 2 waive the normal parking requirements so as to allow the proposed use with an additional shortfall of 13 car bays plus the loss of 1 car bay in Napoleon Street, without the necessity of cash-in-lieu; OR

(ii) Under Clause 3.4.2 (c) of TPS 2 waive the normal parking requirements so as to allow the proposed use with an additional shortfall of 13 car bays but require the submission of a suitable detailed design for one additional car bay to be provided in Napoleon Street, to the satisfaction of the Manager Engineering Services, prior to commencement of development (this may necessitate redesigning some existing bays or removing/relocating street furniture); OR

(iii) Under Clauses 3.4.2 (c) and 5.5.4 of TPS 2 waive the normal parking requirements so as to allow the proposed use with an additional shortfall of 12 car bays and require cash-in-lieu for one of the on-site bays, that being equivalent to the loss of one public car bay in Napoleon Street (Note: cash-in-lieu may only be applied to on-site bays rather than to bays in the public domain); OR

(iv) Under Clause 5.5.4 of TPS 2 require cash-in-lieu payment for 13 car bays as being the increased shortfall of parking on-site. This last option would almost definitely make this and any other change of use application commercially unviable.

On balance, either options (i) or (iii) are considered most appropriate from a planning viewpoint having due regard to Council's previous decisions on this lot and avoiding the necessity of redesigning the existing public parking bays in Napoleon street. Cash-in-lieu may be appropriate in recognition of the loss of 1 public car bay, although the applicant has request this be waived.

VOTING

Absolute Majority

COMMITTEE COMMENT

Committee was satisfied with the parking situation and cash-in-lieu for one bay in recognition of the loss of the street bay. Committee concurred that no more of the street parking should be reconfigured due to the proposal. In this connection Mr

Jackson confirmed that the current Town Centre Public Domain Infrastructure Improvement Plan study was considering the urban design of the streets in the locality. He also confirmed that under TPS2 the use could be approved by absolute majority of Council. There was some discussion about the cash-in-lieu amount which Council could determine and Mr Jackson undertook to provide more advice. It was queried whether the walkway would remain effective as a thoroughfare given its alfresco furniture and use. Mr Jackson commented that although narrow the intent was to provide for passage plus alfresco as found in many walkways, lanes and arcades in downtown areas around the world.

OFFICER & COMMITTEE RECOMMENDATION

Moved Cr Walsh, seconded Cr Rowell

1. That Council GRANT its Approval to Commence Development for the proposed change of use from a shop to a 'small bar', including two alfresco areas, at 29 Napoleon Street, Cottesloe (ground floor tenancy 1), in accordance with the plans submitted on 14 & 22 December 2009, subject to the following conditions:
 - (a) The proposed development complying with the definition of a 'small bar' in accordance with the Liquor Control Act;
 - (b) The hours of operation being between 12.00pm to 12.00am, seven days a week only;
 - (c) No live or other amplified music is to be played from the premises;
 - (d) The external profile of the development as shown on the approved plans not being changed whether by addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council;
 - (e) The accessway located along the western boundary of the site remaining open for unrestricted pedestrian access (minimum width 1.5m) during all hours and being lit at night;
 - (f) Food is to be available to patrons during trading hours;
 - (g) No external signage shall be permitted without the approval of a separate signage application;
 - (h) The owner/occupier is to encourage and facilitate staff and patrons to use alternative transport to limit car parking demand, including walking, cycling, bus, train, taxis and car-pooling. Additional methods such as annotated menus/drinks list, leaflets, timetables, free taxi calls, travel vouchers and loyalty/staff incentive reward discounts or other incentives should also be used where possible;
 - (i) No goods or materials shall be stored, either temporarily or permanently in the parking area at the rear of the premises. All goods are to be stored elsewhere within the building;
 - (j) All construction work shall be carried out in accordance with the Environmental Protection (noise) regulations 1997, Regulation 13 – Construction sites;
 - (k) Prior to occupation of the new small bar premises, the applicant shall pay a cash-in-lieu contribution for 1 on-site car bay, being not less than the estimated cost to the owner of providing and constructing the

parking space plus the value as estimated by Council of that area of land which would have been occupied by the parking space, to the satisfaction of the Manager Development Services.

- (l) The building licence plans and supporting documentation shall be formulated in consultation with the Town of Cottesloe and to the satisfaction of the Manager Development Services, and shall include:
- (i) Details of the proposed bin store within the common service area at the rear of the premises;
 - (ii) Details of the proposed retractable awning, including materials and colour;
 - (iii) Details of all intended changes within the road reserve and footpath (including location of chairs, tables etc), which being at the applicant's cost; and
 - (iv) Compliance with all relevant Health legislation.

AMENDMENT

Cr Boland referred to his previous circulated proposed amendments as well as the supplementary supporting information from the Manager Development Services indicating that the applicant had accepted deletion of the proposed alfresco area from the side walkway.

Moved Cr Boland, seconded Cr Birnbrauer

That the words "two alfresco areas" within recommendation item 1 be deleted and replaced with "an alfresco area within the road reserve" and that in item 1 (e) that the words "minimum width 1.5m" be deleted and the inclusion of the following at the end of the item "and not being used for seating, or the consumption of food, drink or tobacco".

Carried 10/1

AMENDMENT

Cr Walsh referred to the advice circulated by the Manager Development Services in relation to "cash in lieu" and in line with that advice proposed the following amendment.

Moved Cr Walsh, seconded Cr Strzina

That item 1 (k) of the recommendation be amended to include the words "of \$15,000" immediately after the words "cash in lieu contribution".

Carried 8/3

COUNCIL RESOLUTION

1. That Council **GRANT its Approval to Commence Development for the proposed change of use from a shop to a 'small bar', including an alfresco area within the road reserve, at 29 Napoleon Street, Cottesloe**

(ground floor tenancy 1), in accordance with the plans submitted on 14 & 22 December 2009, subject to the following conditions:

- (a) The proposed development complying with the definition of a 'small bar' in accordance with the Liquor Control Act;
- (b) The hours of operation being between 12.00pm to 12.00am, seven days a week only;
- (c) No live or other amplified music is to be played from the premises;
- (d) The external profile of the development as shown on the approved plans not being changed whether by addition of any service plant, fitting, fixture or otherwise, except with the written consent of Council;
- (e) The accessway located along the western boundary of the site remaining open for unrestricted pedestrian access during all hours and being lit at night and not being used for seating, or the consumption of food, drink or tobacco;
- (f) Food is to be available to patrons during trading hours;
- (g) No external signage shall be permitted without the approval of a separate signage application;
- (h) The owner/occupier is to encourage and facilitate staff and patrons to use alternative transport to limit car parking demand, including walking, cycling, bus, train, taxis and car-pooling. Additional methods such as annotated menus/drinks list, leaflets, timetables, free taxi calls, travel vouchers and loyalty/staff incentive reward discounts or other incentives should also be used where possible;
- (i) No goods or materials shall be stored, either temporarily or permanently in the parking area at the rear of the premises. All goods are to be stored elsewhere within the building;
- (j) All construction work shall be carried out in accordance with the Environmental Protection (noise) regulations 1997, Regulation 13 – Construction sites;
- (k) Prior to occupation of the new small bar premises, the applicant shall pay a cash-in-lieu contribution of \$15,000 on-site car bay, being not less than the estimated cost to the owner of providing and constructing the parking space plus the value as estimated by Council of that area of land which would have been occupied by the parking space, to the satisfaction of the Manager Development Services.
- (l) The building licence plans and supporting documentation shall be formulated in consultation with the Town of Cottesloe and to the satisfaction of the Manager Development Services, and shall include:
 - (i) Details of the proposed bin store within the common service area at the rear of the premises;

- (ii) **Details of the proposed retractable awning, including materials and colour;**
- (iii) **Details of all intended changes within the road reserve and footpath (including location of chairs, tables etc), which being at the applicant's cost; and**
- (iv) **Compliance with all relevant Health legislation.**

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 11/0