



Agenda

Land Use Management Committee

Notice is hereby given that a Land Use Management Committee of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Monday 2 July 2007

Commencing at 7:30pm for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped for the purpose of ensuring the accuracy of the Minutes. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

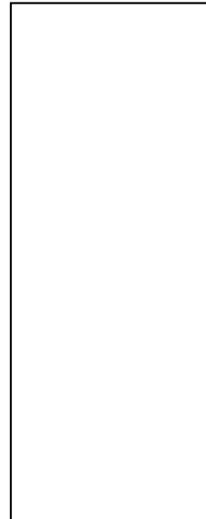
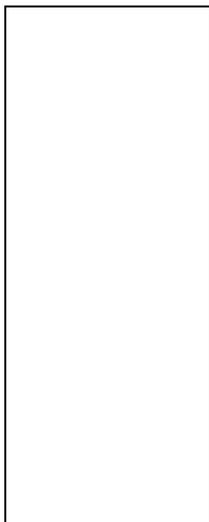
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www.manly.nsw.gov.au*

Seating Arrangements for Meetings

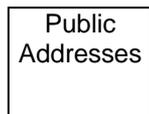
Staff Staff General Manager Chairperson Staff Minute Taker



Mayor Dr Peter Macdonald
Clr Mark Norek
Clr Joanna Evans
Clr Barbara Aird
Deputy Mayor
Clr Brad Pedersen
Clr Richard Morrison



Clr Jean Hay AM
Clr Adele Heasman
Clr Dr Judy Lambert AM
Clr Simon Cant
Clr David Murphy
Clr Pat Daley



Public Gallery

Chairperson: Cr Judy Lambert AM
Deputy Chairperson: Cr Jo Evans

TABLE OF CONTENTS

Item	Page No.
Late Report	
GENERAL MANAGERS DIVISION	
General Managers Division Report No. 25 Corso Outdoor Eating Areas 3	

TO: Land Use Management Committee – 2 July 2007
REPORT: General Manager Report No. 25
SUBJECT: Corso Outdoor Eating Areas
FILE NO:

SUMMARY

This item has been listed on the Agenda pending submissions and is presented as a report (late) to Open Committee of Council of the Whole.

This report makes certain recommendations regarding the use of The Corso outdoor eating area by WaterVue and Cristals.

BACKGROUND

On 28th September 2006 after a tender process, a License was issued to “The Beach Pit” (name changed to “WaterVue”) located at 94 The Corso, Manly, to occupy Council land for outdoor eating purposes, pursuant to section 125 of the *Roads Act 1993 (NSW)*.

On 21st December 2006, Council in pursuant of the terms of the Mediated Agreement reached between WaterVue and Cristals, issued a separate License to “Cristals Restaurant” located at 90 The Corso, Manly for occupation of an outdoor eating area pursuant to section 125 of the *Roads Act 1993 (NSW)*.

Since the commencement of the respective Licences, Council has had to continually act to enforce the terms of the Licence, but to no avail. Regrettably, and as a last resort, early termination of licences has been recommended by officers.

This report makes certain recommendations regarding the use of The Corso outdoor eating area by WaterVue and Cristals.

REPORT

For some period of time, Council officers have had to repeatedly issue rectification directions to WaterVue and Cristals for breaches of their respective Licences. Matters documented by officers include some or all of the following:

- Operating outside of the approved areas
- Operating in manner that obstructed pedestrians
- Operating in a manner that disadvantaged people with a disability
- Over use of signage in contravention of the licence
- Spruiking and causing nuisances
- Not displaying the mandatory No Smoking Signs
- Permitting smoking in the licensed area
- Failure to pay fees and charges

- Failure to comply with the lawful directions of authorised Council officers

Revocation on Breach

In the circumstance where a licensee fails to rectify a breach of their Licence after they have been directed to do so, Council may lawfully revoke their Licence, and in the circumstances, the licensee will have no right to compensation or damages from the Council.

Revocation upon a breach of Licence is rarely if ever exercised by Council. To my mind, it should be reserved for only the most severe of cases. And when council is forced to contemplate revocation, it should only do so as a last resort.

In the present cases, Council in pursuant of the terms of its grant of Licence advised WaterVue and Cristals that a report on the early revocation of the licences will be presented to Council on 2nd July 2007. Further, each was advised of the opportunity to make a submission to the General Manager for Council's consideration.

Submissions

Written submissions have been received from Adamson Solicitors for Cristals Restaurant and from Watervue Restaurant. These are separately circulated. Also separately circulated is officer's response to the submissions.

Consideration

Having reviewed the materials provided to me by staff, I am satisfied that both WaterVue and Cristals have repeatedly and therefore deliberately failed to comply with the lawful directions of Council regarding breaches of licensing conditions. I am also satisfied that Council officers have acted with abundant caution in their dealings with the licensees over non compliances and in so doing, have afforded each with ample and repeated opportunity to make appropriate arrangement to ensure their use of the areas complied with the terms of the Licence.

At law, any failure to comply with the lawful directions of the Council is a serious matter. And when such a failure is deliberate and the consequence is known and understood, then the rights of the Council to apply the terms of the Licence should not come as a surprise to anyone.

From the submission made by Adamson Solicitors on behalf of Cristals', I have noted Cristals' acknowledgement of and explanation for past breaches. I have further noted the actions they have proposed to take to ensure future compliance. As such, I am reasonably satisfied that the undertakings provided by this Licensee are sufficient to avoid a recommendation for revocation.

I have read and considered WaterVue's submission. My considered view after reading their submission is that they have failed to appreciate both the seriousness of the situation as well as the severity of the consequence for continual non compliances. And despite searching for mitigating reasons, and notwithstanding the threat of litigation I am unable to detect any willingness in their submission that might justify a recommendation to avoid revocation. However, given the potentially adverse financial impacts revocation will have on the Licensee, I am of the view that WaterVue

should be afforded a final opportunity, directed by a Council resolution, to make immediate arrangements to conduct their activities wholly within the terms of the Licence. I am putting this view forward even though I am mindful of their past deliberate disregard for the lawful directions of council officers, and despite the fact that they have failed to address the substantive issue of non compliance in their submission.

RECOMMENDATION

That Council:

1. advise WaterVue and Cristals that any deliberate failure to comply with the lawful directions of the Council is unacceptable;
2. having considered Cristal's submission and in light of the giving of undertakings to comply with the terms of the Licence, take no further action in respect of early revocation, and
3. provide WaterVue with a final opportunity to immediately conduct their activities in full compliance with the terms of the Licence. And further, WaterVue be advised that any future failures to comply with the lawful directions of Council officers in relation to the terms of the Licence will be treated with extreme seriousness and breaches could lead to early revocation of their Licence should the General Manager make such a recommendation to a meeting of Council.

Attachments: