



Late 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:

Tuesday 2 October 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.

*Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website:
www.manly.nsw.gov.au*

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******* END OF AGENDA *******

TO: Land Use Management Committee - 2 October 2007
REPORT: Corporate Services Division Report No. 34
SUBJECT: The Corso Outdoor Dining Areas
FILE NO:

SUMMARY

Council at the Ordinary Meeting held on 20 August 2007 resolved, amongst other things, to “*Notify the restaurants of council’s intention to Early Revocation under clause 4.7 of the Licence. Council should note clause 4.7.3 in regard to no rights to compensation or damages in the event of Early Revocation.*”

Clause 4.7.1(b) (2) permits the Proprietor to submit any written materials to the Council for its consideration prior to determining a motion to revoke the Approval. Correspondence in the form of submissions has now been received on behalf of both Cristals Restaurant and Watervue.

This report includes these submissions for Council's consideration and seeks resolution of Council.

BACKGROUND

Council at its Ordinary Meeting held on 20 August 2007, considered a report on the Mediation Outcomes – The Corso Outdoor Dining.

Council resolved:

That Council proceed with Option 3 of the Agenda Report, as follows:

3. *i) Notify the restaurants of council’s intention to Early Revocation under clause 4.7 of the Licence. Council should note clause 4.7.3 in regard to no rights to compensation or damages in the event of Early Revocation.*
- ii) That the licensed area be proximate to and are in line with the existing restaurant boundaries.*
- iii) That Council acknowledges that the existing licensees may have legal rights and obligations.*
- iv) That Council agree, in principle, to provide some form of improved weather protection to the outdoor dining areas, and this be referred to the Land Management & Urban Design (LMUD) Committee.*

In accordance with 3(i) of the above resolution .the initial Notices were issued under clause 4.7.1(b) (i) of the Approval and served on the Proprietors of both *Cristals* Restaurant (Karras Enterprises) and *Watervue* (Quantim Pty Ltd) on Monday 27 August 2007.However due to a legal technicality these Notices had to be re served on Monday, 17 September,2007 advising that a Report on the Early Revocation of the Approval is to be presented to the Council at a Meeting to be held Tuesday, 2 October 2007. The Proprietors were further advised that pursuant to clause 4.7.1 (b) (ii), they may make a submission to the General Manager for Council's consideration.

Corporate Services Division Report No. 34 (Cont'd)**REPORT**

Council at the Ordinary Meeting held on 20 August 2007 resolved, amongst other things, to "Notify the restaurants of council's intention to Early Revocation under clause 4.7 of the Licence. Council should note clause 4.7.3 in regard to no rights to compensation or damages in the event of Early Revocation."

Clause 4.7 Early Revocation provides:

- 4.7.1 *Notwithstanding anything herein contained, the Council may by resolution at any time prior to the expiry of the Term revoke the Approval in either of the following circumstances, namely:*
- (a) *at any time, and without notice, during the first six (6) months of the Term; or*
 - (b) *at any other time during the Term, PROVIDED THAT:*
 - (i) *not later than seven (7) days prior to the meeting at which the Council first considers any motion to revoke the Approval, the Proprietor is given written notice of the Council's intention to consider such a motion; and*
 - (ii) *the Proprietor shall be entitled to submit any written material to the Council for its consideration in determining such motion provided that such material is received by the General Manager of the Council not later than forty-eight (48) hours prior to such meeting.*

Clause 4.7.3 (Compensation) provides that there is no compensation or damages payable where the Approval is revoked in accordance with the clause.

- 4.7.3 *If the Approval is revoked pursuant to this clause the Proprietor shall have no right to compensation or damages from the Council.*

History

There has been a long history of breaches of the Outdoor Eating Area Approval by both Cristals and Watervue, which have been brought to the attention of the Restaurants on 23/01/2007, 24/01/2007, 25/01/2007, 30/01/2007, 12/04/2007, 14/05/2007, 18/06/2007, 21/06/2007, and 17/09/2007. These breaches include: umbrellas displaying advertising material; more than one menu board displayed; non-payment of fees; not displaying "no smoking" signage; operating outside designated area; spruiking to persons passing by the area; umbrellas stored overnight on The Corso.

SUBMISSIONS

In view of the Public Holiday on Monday 1 October, the proprietors were requested to have any submissions or material delivered to Council by 5pm on Friday, 28 September 2007.

As at the time of preparation of this report, Council had received submissions from Adamson Solicitors on behalf of Cristals, and was waiting a submission from Cara Marasca & Company on behalf of Watervue. These will be separately distributed as confidential items, as it is considered that the correspondence should remain confidential under clause 10 (A) (2) (d) of the Local Government Act in that it contains commercial information of a confidential nature. Any items received after distribution of the Agenda will be separately circulated to Councillors prior to the LUM meeting.

The submissions received both on behalf of Cristals and Watervue do not address the breaches of the Approvals as notified. However, Council must take into consideration any matters raised by the Proprietors in their submission prior to making any decision on revocation of the Approvals

Corporate Services Division Report No. 34 (Cont'd)

.Generally the submissions seek to make application for trading area different to that proposed by Council at its meeting of 20 August 2007 .Council at this meeting should only give consideration to the matter of early revocation. Any discussion or negotiation on how Council may wish to allocate the area for outdoor dining should be held over to a later meeting.

OPTIONS

Council at its Ordinary Meeting of 20 August 2007 resolved in the following terms:

That Council proceed with Option 3 of the Agenda Report, as follows:

3. i) *Notify the restaurants of council's intention to Early Revocation under clause 4.7 of the Licence. Council should note clause 4.7.3 in regard to no rights to compensation or damages in the event of Early Revocation.*
- ii) *That the licensed area be proximate to and are in line with the existing restaurant boundaries.*
- iii) *That Council acknowledges that the existing licensees may have legal rights and obligations.*
- iv) *That Council agree, in principle, to provide some form of improved weather protection to the outdoor dining areas, and this be referred to the Land Management & Urban Design (LMUD) Committee.*

Each of the above parts of Council's resolution should be dealt with in isolation. The other parts of the resolution should be dealt with separately following the outcome of Council's resolution at this meeting,

Prior to Council making any decision in regard to early revocation of the Outdoor Eating Approval in accordance with clause 4.7.1(a), Council must first take into consideration any matters submitted in writing by the Proprietor to Council for its consideration pursuant to clause 4.7.1(b)(ii).

Should Council now wish to proceed to invoke the early revocation of the Outdoor Eating Approval, Council should resolve in the following terms in respect to each restaurant

1. Council, pursuant to Clause 4.7.1 of the Approval to Use Footway for Outdoor Eating Purposes issued to The Beach Pit (now Watervue)Restaurant (Quantim Pty Ltd) on 28 September,2006 and having taken into consideration any matters submitted by the Proprietor in accordance with this Clause, hereby now resolves to revoke the Approval.

2. Council, pursuant to Clause 4.7.1 of the Approval to Use Footway for Outdoor Eating Purposes issued to Cristals Restaurant (Karras Enterprises) on 21 December,2006 and having taken into consideration any matters submitted by the Proprietor in accordance with this Clause, hereby now resolves to revoke the Approval.

Clause 3.1 of the Approval provides that the Proprietor is to demolish and remove from the Approved Area all Structures erected in the Approved Area, within fourteen (14) days after the date of revocation, and must leave the Approved Area clear to the satisfaction of the Council. Council may wish to extend the notice period to 28 days.

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RECOMMENDATION

Submitted for Council decision.

ATTACHMENTS

AT- 1	Letter to Karras Enterprises T-as Cristals – 17 September 2007 - CONFIDENTIAL ATTACHMENT - for the information of Councillors	1 Page	Circulated Separately
AT- 2	Letter to Quantim Pty Ltd T-as Watervue – 17 September 2007 - CONFIDENTIAL ATTACHMENT - for the information of Councillors	1 Page	Circulated Separately
AT- 3	Extract of Clause 4.7 - Early Revocation of Outdoor Eating Area - CONFIDENTIAL ATTACHMENT - for the information of Councillors	1 Page	Circulated Separately
AT- 4	Report to Ordinary Meeting 20 August 2007 - CONFIDENTIAL ATTACHMENT - for the information of Councillors	2 Pages	Circulated Separately
AT- 5	Report to LUM 2 July 2007 - CONFIDENTIAL ATTACHMENT - for the information of Councillors	3 Pages	Circulated Separately
AT- 6	Adamson Solicitors 20 September 2007 - CONFIDENTIAL ATTACHMENT - for the information of Councillors	3 Pages	Circulated Separately
AT- 7	Cara Marasco & Company 21 September 2007 - CONFIDENTIAL ATTACHMENT - for the information of Councillors	4 Pages	Circulated Separately
AT- 8	Adamson Solicitors 18 September 2007 - CONFIDENTIAL ATTACHMENT - for the information of Councillors	5 Pages	Circulated Separately
AT- 9	Letter from Jan Karras received 27 September 2007 - CONFIDENTIAL ATTACHMENT - for the information of Councillors	1 Page	Circulated Separately
AT- 10	Letter from Cara Marasco and Company 28 September 2007 - CONFIDENTIAL ATTACHMENT - for the information of Councillors	4 Pages	Circulated Separately

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***** End of Corporate Services Division Report No. 34 *****