

Committee of the Whole

MINUTES OF MEETING NO. 3/09

Meeting Date: Tuesday 3 March 2009
Location: Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde
Time: 7.30pm

Councillors Present: The Mayor, Councillor V J Tagg and Councillors M P Butterworth, N B Campbell, A Etmekdjian, J Li, R Maggio, G O'Donnell, I J Petch, T W Perram, W Pickering, J Salvestro-Martin and S Yedelian OAM.

Apology: Apologies were received and accepted from Council Pickering.

Staff Present: General Manager, Group Manager – Community Life, Group Manager - Corporate Services, Group Manager – Environment & Planning, Group Manager - Public Works, Manager Human Resources, Manager Assessments, Media & Community Relations Officer and Senior Administration Co-ordinator.

DISCLOSURES OF INTEREST

Councillor Maggio disclosed a non-pecuniary interest in Item 5 of the Committee's Report No. 03/09, for the reason that he is involved with local sporting groups.

Councillor Petch disclosed a non-pecuniary interest in Items 7, 8, 9, 10 and 11 of the Committee's Report No. 03/09, for the reason that he is an acquaintance of the owner of the property.

MAYORAL MINUTES

There are no Mayoral Minutes

COMMITTEE OF THE WHOLE REPORTS

1 CONFIRMATION OF MINUTES

RESOLUTION: (Moved By Councillors Perram and Butterworth)

That the Minutes of the Committee of the Whole No. 02/09 held on 17 February 2009, be confirmed.

Minutes of the Committee of the Whole No. 3/09, dated 3 March 2009.

Record of Voting

For the Motion: Unanimous

SUSPENSION OF STANDING ORDERS

RESOLUTION: (Moved By Councillors Yedelian OAM and Perram)

That standing orders be suspended for the Committee to now consider Items 6, 5, 7, 8, 9, 10 and 11 on the agenda and to allow members of the public to address the Committee.

Record of Voting

For the Motion: Unanimous

**6 13-19 WARREN STREET, RYDE. LOTS 3, 4, 5 & 6, DP 36579
LDA 311/2008**

Note: Mr Fallon, Mr Hilten, Mr Parulekar and Mr Holden addressed the Committee.

Note: A letter from the Director General of the Department of Housing, dated 20 February 2009, was circulated to Councillors and was considered in conjunction with this item, and is ON FILE.

RESOLUTION: (Moved By Councillors Campbell and Butterworth)

- (a) That the matter be deferred to allow further consultation between residents and the applicant, being the Department of Housing.
- (b) That the General Manager write to the Director General of the Department of Housing requesting further consultation with affected residents and residents who have provided submissions to Council.

Record of Voting

For the Motion: The Mayor, Councillor Tagg and Councillors Butterworth, Campbell, Etmekdjian, Li, Maggio, O'Donnell, Perram, Petch and Salvestro-Martin

Against the Motion: Councillor Yedelian OAM

Minutes of the Committee of the Whole No. 3/09, dated 3 March 2009.

5 NORTH RYDE PARK PROPOSED UPGRADE - Outcomes of Public Exhibition

Note: Councillor Maggio disclosed a non-pecuniary interest in Item 5 of the Committee's Report No. 03/09, for the reason that he is involved with local sporting groups.

Note: Mr Plumb and Mrs Greenrod addressed the Committee.

RESOLUTION: (Moved By Councillors Yedelian OAM and Campbell)

- (a) That the report of the Manager Landscape Assets, dated 26/02/2009 on NORTH RYDE PARK PROPOSED UPGRADE - Outcomes of Public Exhibition, be received and noted.
- (b) That given the substantial changes now proposed to the original plan that the revised landscape concept plan be placed on public exhibition for a further three weeks to obtain comment from the community and stakeholder groups.
- (c) That a report on the outcomes of the public exhibition of the revised landscape concept plan be presented to the Council following the additional consultation period.
- (d) That Council approach the sporting users of the park, to ascertain if they are prepared to offer a financial contribution towards the proposed works.
- (e) That the revised landscape plan identifies clearly that it is Council's intent to progressively remove noxious plants/trees (one or two trees per year) and revegetate with appropriate species.

Record of Voting

For the Motion: Unanimous

7 SHOP 1, No. 142 COX'S ROAD, NORTH RYDE. Application pursuant to Section 96(1A) of the Environmental Planning and Assessment Act, 1979 to amend the approved Outdoor Dining Area. LDA No.1151.2/2002.

Note: Councillor Petch disclosed a non-pecuniary interest in Items 7, 8, 9, 10 and 11 of the Committee's Report No. 03/09, for the reason that he is an acquaintance of the owner of the property.

Note: Mr Hall addressed the Committee.

Minutes of the Committee of the Whole No. 3/09, dated 3 March 2009.

RESOLUTION:**PART A**

- (a) That the application to modify the consent to LDA1151/2002 for Outdoor Seating Area on the footpath outside Shop 1, No. 142 Cox's Road, North Ryde, be approved as follows.
1. Conditions 1 - 11 be deleted and replaced with the following conditions including new conditions.

GENERAL

1. Development is to be carried out in accordance with the plans 0760A/D1 received 11 September 2008.
2. The use of the footpath area shall be limited to 3 years from the date of modification of this consent and shall lapse at the end of this period or upon cessation of the restaurant use, whichever is the sooner.
3. The area of the outdoor dining is strictly limited to:
 - (a) An area of 27m² (10m x 2.7m).
 - (b) The area being set back 800mm from the footpath.
 - (c) The area being set back 2.0m from the front of the building.
 - (d) The area being set back 800mm from the carpark entrance.
4. The configuration of the area for outdoor dining being strictly limited to that shown on the plans, or such other configuration approved in writing by Council.
5. The outdoor seating area being maintained at all times in accordance with Council's Footpath Activity Policy and Outdoor Dining Policy.

PRIOR TO COMMENCEMENT OF USE

6. Separate written agreement/approval shall be obtained from Council prior to the use of any part of the footpath for outdoor dining purposes.
7. The area being physically delineated by Council approved discs installed by Council in the footpath at the applicant's expense.
8. Should any fixed items such as tables, chairs, planter boxes, etc. be required they are to be supplied and installed by Council at the applicant's cost, following the Council's determination that their installation is appropriate.
9. If any existing "street furniture" requires relocation, from the approved area,

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that Council take the necessary work with the actual costs being borne by the applicant.

OPERATIONAL

10. Table, chairs, movable barriers used within the licensed area and other means of delineating the approved area are to be removed and stored within the premises when the business is closed or when the weather conditions warrant (especially times of high wind).
11. The applicant display a permit issued by Council, authorising their use of the area for outdoor dining in accordance with the permits conditions.
12. No noise (amplified, live or otherwise) shall be played outside the restaurant at any time.
13. A copy of the Council approval under the Roads Act shall be kept on the premises, together with a copy of the approved seating layout, and shall be produced on request of a person duly authorised by Council.
14. No umbrellas or advertising shall be erected, displayed or used in conjunction with the outdoor seating without the written approval of Council.
15. No heating appliances shall be used in conjunction with the outdoor seating unless the written approval of Council is obtained.
16. Smoking shall be prohibited in the outdoor dining area. 'No Smoking' signs shall be conspicuously displayed at the entrance to or within smoke-free dining areas, preferably by a sign on each table. The outdoor dining area shall be kept clean at all times.
17. Rubbish and other refuse/waste associated with the bins shall not be placed in any Council street litterbin.
 - (b) That those persons who made submissions be advised of Council's decision.

PART B

That pursuant to section 125 of the Roads Act 1993 Approval be granted in principle to use 27m² in front of shop 1, No. 142 Cox's Road, North Ryde for outdoor dining for a period of 3 years subject to the following conditions of approval and that the General Manager be delegated the authority to enter into an agreement consistent with the terms and conditions below, subject to the lodgement of plans showing the layout of the table and chairs.

TERM

Minutes of the Committee of the Whole No. 3/09, dated 3 March 2009.

- 1.1 The approval is granted to Mr. George Achadjian trading as Allegría Italian Restaurant "the Approval Holder" for a term of three (3) years commencing on 03 March 2009 and ceasing on 02 March 2012, subject to the payment of all outstanding fees.

PAYMENTS

- 2.1 During the term of the Approval the Approval Holder shall make payments in the nature of rent ("the Rental") to the Council.
- 2.2 The Rental payable for the first 12 months shall be \$5940 per annum payable by monthly instalments of \$495 in advance to the Council.
- 2.3 The Rental payable for the second and subsequent years of the approval shall be an amount (rounded up to a full dollar amount) calculated by increasing the Rental for the year immediately preceding by a percentage equal to the total percentage increase, if any, in the Consumer Price Index figure for Sydney All groups for the then most current year in respect of which such Consumer Price Index Figure has been released. If there is no increase in such Consumer Price Index Figure, the Rental will remain the same.

GOODS AND SERVICES TAX

- 3.1 The Rental and all other moneys payable by the Approval Holder pursuant to the approval are exclusive of Goods and Services Tax or like impost (GST).
- 3.2 Liability for GST (payable in respect of any taxable supply) is additional. It is payable by the Approval Holder to the Council at the same time as Rental and other moneys are payable.

SECURITY DEPOSIT

- 4.1 The Approval Holder shall provide on the commencing date to the Council either a cash deposit ("Security Deposit") or an unconditional bank guarantee ("Bank Guarantee") for an amount equivalent to six (6) months' Rental.
- 4.2 The Bank Guarantee or the Security Deposit, (which shall be held in an account bearing interest), shall be held by the Council on behalf of the Approval Holder during the term of the approval as security for the performance of the conditions herein provided and the Council may from time to time apply the Security Deposit or call in any amount from the Bank Guarantee in or towards satisfaction of any amount of Rental, damages or other monies payable by the Approval Holder to Council

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pursuant to the Approval or which may become due and payable as a result of any breach by the Approval Holder of any of these conditions. The interest earned on the money will be used by Council in the management and administration of those funds.

- 4.3 In the event that the Security Deposit is applied by the Council or the Council requires the Approval Holder's bank to make payment pursuant to the Bank Guarantee then the Approval Holder shall within fourteen (14) days after written notification from the Council provide the Council with an additional cash deposit or an additional bank guarantee equivalent to the amount of the Security Deposit so applied or the Bank Guarantee called upon.
- 4.4 At the cessation of the Approval and upon full compliance with these conditions the Council will account to the Approval Holder for any remaining balance of the Security Deposit or will return the Bank Guarantee.

ADDITIONAL CONDITIONS OF THE APPROVAL:

- 5.1 The Land or any part thereof shall not be used for any other purpose than as a footpath restaurant / café in accordance with the conditions of any development consent issued by the Council to the Approval Holder and these conditions.
- 5.2 No more than 5 tables and 20 chairs are permitted on the land.
- 5.3 Installation of any further or replacement outdoor furniture must be approved by Council and is to be of a design and construction approved by Council.
- 5.4 The Approval Holder shall remove all non-fixtures from the Land at the end of each day and store them within the restaurant / café.
- 5.5 The Approval Holder shall ensure that at no time do the tables or chairs encroach upon any part of the footpath that does not form part of the Land. A pedestrian access way of at least 2.0 metres shall be maintained at all times.
- 5.6 The Council through its agents or officers may enter and view the state of repair of the Land and such fixtures as may be installed thereon at any reasonable time.
- 5.7 The Approval Holder shall indemnify the Council against all or any claims in respect of the occupation or use of the Land pursuant to the grant of approval.

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- 5.8 The Approval Holder shall effect and keep effected a public risk policy of insurance with an insurance company approved by the Council against any demand claim or action in respect of injury, loss or damage to any person or property howsoever sustained arising out of the occupation or use of the Land (by the Approval Holder and / or persons claiming under it) at any time during the term of the approval in such amount as the Council may from time to time require which amount shall not be less than twenty million dollars (\$20,000,000.00). The Approval Holder shall produce such policy to the Council upon demand.
- 5.9 The Approval Holder shall maintain and renew from time to time all licences, permits and registrations required for the carrying on of the business of a footpath restaurant / café on the Land and shall observe perform and fulfil all the requirements of any statutes regulations or by - laws in so far as they may apply to the Land or to the business conducted thereon.
- 5.10 The Approval Holder will comply with provisions of the Food Regulations 2004, the Companion Animals Act 1998, The Occupational Health and Safety Act 2000, or any regulations made thereunder and the Approval Holder shall indemnify and keep indemnified the Council against the failure on the part of the Approval Holder and / or persons under its control to comply with this condition.
- 5.11 The Approval Holder will comply with any notices or orders, which may be given by any competent authority in respect of the Approval Holders use of the Land.
- 5.12 This approval does not confer on the Approval Holder an exclusive right to possession of the Land and the Land may be used as a pedestrian access way by members of the public.
- 5.13 The Approval Holder will at all times display in a clear and visible position inside the shop front window an Outdoor Dining Permit issued by Council and have the permit available for inspection by Council at any time.
- 5.14 The Approval Holder will comply at all times with the current Outdoor Dining Policy, which was effective as of 7 November 2006.
- 5.15 The Approval holder must:
- Prohibit smoking in all outdoor dining areas on Council owned land;
 - Display No Smoking signs at the entrance to or within outdoor dining areas, with such signs to be of minimum dimensions of 300mm x 200mm and contain the words 'No Smoking' along with the 'No Smoking' international symbol;
 - Prohibit the supply and use of ashtrays within outdoor dining areas; and

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- Take all practicable measures to ensure that customers do not smoke within outdoor dining areas.

CESSATION OF APPROVAL

- 6.1 This approval shall cease upon Council giving notice thereof to the Approval Holder in the event that Rental is in arrears for a period of 7 days or more or in the event that the Approval Holder does not comply with any conditions of the Approval.
- 6.2 The Approval shall automatically cease in the event that the Approval Holder is no longer the owner, lessee or occupant of the adjoining restaurant / café or if the adjoining premises cease to be used as a restaurant / café.
- 6.3 Notwithstanding any other condition of the Approval, the Approval shall cease upon Council giving seven (7) days notice thereof to the Approval Holder and in that event the Approval Holder shall not be entitled to compensation other than reimbursement of any Rental paid in advance.
- 6.4 Upon the cessation of the Approval the Approval Holder will, at its own expense and if so requested by Council, demolish and / or remove from the Land any improvements erected or placed thereon by the Approval Holder to the satisfaction of the Council within one (1) month after receiving notice from the Council to do so. If the Approval Holder fails to demolish and / or remove the improvements, the Council may without prejudice to any of the powers vested in it by its agents or employees or contractors enter upon the Land and demolish and/or remove such improvements and do all things necessary and incidental thereto. All costs and expenses incurred by the Council in connection with the same shall be payable to the Council by the Approval Holder on demand and shall be recoverable by the Council as a liquidated debt owing to it. The Council may, if it thinks fit, sell materials resulting from the demolition and / or removal upon such terms as it thinks fit and may apply the proceeds of any sale thereof towards payment of the costs and expenses incurred by it in connection with any such demolition and / or removal and the certificate of the General Manager of the Council as to such amount shall be conclusive and binding on the Approval Holder.
- 6.5 This Approval is personal to the Approval Holder. Should the Approval Holder sell or assign its interest in the adjoining restaurant / café any prospective purchaser / assignee shall have no claim nor guarantee that the part of the footway the subject of the Approval may be used for the purpose of the restaurant / café. Any prospective purchaser/assignee will be required to make separate application to Council for approval to use the part of the footway the subject of the Approval.

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- 6.6 Upon cessation of this approval, the Approval Holder agrees that Council may remove any furniture, such removal to be at the Approval Holder's own expense.

Record of Voting

For the Motion: Unanimous

8 SHOP 3, No. 144-148 COX'S ROAD, NORTH RYDE

Note: Councillor Petch disclosed a non-pecuniary interest in Items 7, 8, 9, 10 and 11 of the Committee's Report No. 03/09, for the reason that the he is an acquaintance of the owner of the property.

Note: Mr Hall addressed the Committee.

RESOLUTION: (Moved By Councillors Butterworth and Maggio)

PART A

- (a) That the application to modify the consent to LDA620/2001 for Outdoor Seating Area on the footpath outside Shop 3 No. 142 Cox's Road, North Ryde be approved as follows.
1. Conditions 1 - 10 be deleted and replaced with the following conditions, including new conditions.

GENERAL

1. Development is to be carried out in accordance with the plans 0760A/D1 received 11 September 2008.
2. The use of the footpath area shall be limited to 3 years from the date of modification of this consent and shall lapse at the end of this period or upon cessation of the café use, whichever is the sooner.
3. The area of the outdoor dining is strictly limited to:
 - (a) An area of 21.6m² (8m x 2.7m) for outdoor dining purposes in accordance with the following
 - (b) The area being setback 800mm from the footpath.
 - (c) The area being setback 2.0m from the front of the building.
4. The configuration of the area for outdoor dining being strictly limited to that shown on the plans, or such other configuration approved in writing by Council.

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5. The outdoor seating area being maintained at all times in accordance with Council's Footpath Activity Policy and Outdoor Dining Policy.

PRIOR TO COMMENCEMENT OF USE

6. Separate written agreement/approval shall be obtained from Council prior to the use of any part of the footpath for outdoor dining purposes.
7. The area being physically delineated by Council approved discs installed by Council in the footpath at the applicant's expense.
8. Should any fixed items such as tables, chairs, planter boxes, etc. be required they are to be supplied and installed by Council at the applicant's cost, following the Council's determination that their installation is appropriate.
9. If any existing "street furniture" requires relocation, from the approved area, that Council take the necessary work with the actual costs being borne by the applicant.

OPERATIONAL

10. Table, chairs, movable barriers used within the licensed area and other means of delineating the approved area are to be removed and stored within the premises when the business is closed or when the weather conditions warrant (especially times of high wind).
11. The applicant display a permit issued by Council, authorising their use of the area for outdoor dining in accordance with the permits conditions.
12. No noise (amplified, live or otherwise) shall be played outside the restaurant at any time.
13. A copy of the Council approval under the Roads Act shall be kept on the premises, together with a copy of the approved seating layout, and shall be produced on request of a person duly authorised by Council.
14. No umbrellas or advertising shall be erected, displayed or used in conjunction with the outdoor seating without the written approval of Council.
15. No heating appliances shall be used in conjunction with the outdoor seating unless the written approval of Council is obtained.
16. Smoking shall be prohibited in the outdoor dining area. 'No Smoking' signs shall be conspicuously displayed at the entrance to or within smoke-free dining areas, preferably by a sign on each table. The outdoor dining area shall be kept clean at all times.

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17. Rubbish and other refuse/waste associated with the bins shall not be placed in any Council street litterbin.

(b) That those persons who made submissions be advised of Council's decision.

PART B

That pursuant to section 125 of the Roads Act 1993 Approval be granted in principle approval to use 21.6m² in front of shop 3, No. 144 – 148 Cox's Road, North Ryde for outdoor dining for a period of 3 years subject to the following conditions of approval and that the General Manager be delegated the authority to enter into an agreement consistent with the terms and conditions below, subject to the lodgement of plans showing the layout of the tables and chairs.

TERM

1.1 The approval is granted to Mr. Assad Warrak trading as Aces Deep Seafood "the Approval Holder" for a term of three (3) years commencing on 03 March 2009 and ceasing on 02 March 2012 subject to the payment of all outstanding fees.

PAYMENTS

- 2.1 During the term of the Approval the Approval Holder shall make payments in the nature of rent ("the Rental") to the Council.
- 2.2 The Rental payable for the first 12 months shall be \$7040 per annum payable by monthly instalments of \$586.70 in advance to the Council.
- 2.3 The Rental payable for the second and subsequent years of the approval shall be an amount (rounded up to a full dollar amount) calculated by increasing the Rental for the year immediately preceding by a percentage equal to the total percentage increase, if any, in the Consumer Price Index figure for Sydney All groups for the then most current year in respect of which such Consumer Price Index Figure has been released. If there is no increase in such Consumer Price Index Figure, the Rental will remain the same.

GOODS AND SERVICES TAX

- 3.1 The Rental and all other moneys payable by the Approval Holder pursuant to the approval are exclusive of Goods and Services Tax or like impost (GST).
- 3.2 Liability for GST (payable in respect of any taxable supply) is additional. It is payable by the Approval Holder to the Council at the same time as Rental and other moneys are payable.

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SECURITY DEPOSIT

- 4.1 The Approval Holder shall provide on the commencing date to the Council either a cash deposit ("Security Deposit") or an unconditional bank guarantee ("Bank Guarantee") for an amount equivalent to six (6) months' Rental.
- 4.2 The Bank Guarantee or the Security Deposit, (which shall be held in an account bearing interest), shall be held by the Council on behalf of the Approval Holder during the term of the approval as security for the performance of the conditions herein provided and the Council may from time to time apply the Security Deposit or call in any amount from the Bank Guarantee in or towards satisfaction of any amount of Rental, damages or other monies payable by the Approval Holder to Council pursuant to the Approval or which may become due and payable as a result of any breach by the Approval Holder of any of these conditions. The interest earned on the money will be used by Council in the management and administration of those funds.
- 4.3 In the event that the Security Deposit is applied by the Council or the Council requires the Approval Holder's bank to make payment pursuant to the Bank Guarantee then the Approval Holder shall within fourteen (14) days after written notification from the Council provide the Council with an additional cash deposit or an additional bank guarantee equivalent to the amount of the Security Deposit so applied or the Bank Guarantee called upon.
- 4.4 At the cessation of the Approval and upon full compliance with these conditions the Council will account to the Approval Holder for any remaining balance of the Security Deposit or will return the Bank Guarantee.

ADDITIONAL CONDITIONS OF THE APPROVAL:

- 5.1 The Land or any part thereof shall not be used for any other purpose than as a footpath restaurant / café in accordance with the conditions of any development consent issued by the Council to the Approval Holder and these conditions.
- 5.2 No more than 8 tables and 20 chairs are permitted on the land.
- 5.3 Installation of any further or replacement outdoor furniture must be approved by Council and is to be of a design and construction approved by Council.
- 5.4 The Approval Holder shall remove all non-fixtures from the Land at the

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- end of each day and store them within the restaurant / café.
- 5.5 The Approval Holder shall ensure that at no time do the tables or chairs encroach upon any part of the footpath that does not form part of the Land. A pedestrian access way of at least 2.0 metres shall be maintained at all times.
- 5.6 The Council through its agents or officers may enter and view the state of repair of the Land and such fixtures as may be installed thereon at any reasonable time.
- 5.7 The Approval Holder shall indemnify the Council against all or any claims in respect of the occupation or use of the Land pursuant to the grant of approval.
- 5.8 The Approval Holder shall effect and keep effected a public risk policy of insurance with an insurance company approved by the Council against any demand claim or action in respect of injury, loss or damage to any person or property howsoever sustained arising out of the occupation or use of the Land (by the Approval Holder and / or persons claiming under it) at any time during the term of the approval in such amount as the Council may from time to time require which amount shall not be less than twenty million dollars (\$20,000,000.00). The Approval Holder shall produce such policy to the Council upon demand.
- 5.9 The Approval Holder shall maintain and renew from time to time all licences, permits and registrations required for the carrying on of the business of a footpath restaurant / café on the Land and shall observe perform and fulfil all the requirements of any statutes regulations or by - laws in so far as they may apply to the Land or to the business conducted thereon.
- 5.10 The Approval Holder will comply with provisions of the Food Regulations 2004, the Companion Animals Act 1998, The Occupational Health and Safety Act 2000, or any regulations made thereunder and the Approval Holder shall indemnify and keep indemnified the Council against the failure on the part of the Approval Holder and / or persons under its control to comply with this condition.
- 5.11 The Approval Holder will comply with any notices or orders, which may be given by any competent authority in respect of the Approval Holders use of the Land.
- 5.12 This approval does not confer on the Approval Holder an exclusive right to possession of the Land and the Land may be used as a pedestrian access way by members of the public.

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- 5.13 The Approval Holder will at all times display in a clear and visible position inside the shop front window an Outdoor Dining Permit issued by Council and have the permit available for inspection by Council at any time.
- 5.14 The Approval Holder will comply at all times with the current Outdoor Dining Policy, which was effective as of 7 November 2006.
- 5.15 The Approval holder must:
- Prohibit smoking in all outdoor dining areas on Council owned land;
 - Display No Smoking signs at the entrance to or within outdoor dining areas, with such signs to be of minimum dimensions of 300mm x 200mm and contain the words 'No Smoking' along with the 'No Smoking' international symbol;
 - Prohibit the supply and use of ashtrays within outdoor dining areas; and
 - Take all practicable measures to ensure that customers do not smoke within outdoor dining areas.

CESSATION OF APPROVAL

- 6.1 This approval shall cease upon Council giving notice thereof to the Approval Holder in the event that Rental is in arrears for a period of 7 days or more or in the event that the Approval Holder does not comply with any conditions of the Approval.
- 6.2 The Approval shall automatically cease in the event that the Approval Holder is no longer the owner, lessee or occupant of the adjoining restaurant / café or if the adjoining premises cease to be used as a restaurant / café.
- 6.3 Notwithstanding any other condition of the Approval, the Approval shall cease upon Council giving seven (7) days notice thereof to the Approval Holder and in that event the Approval Holder shall not be entitled to compensation other than reimbursement of any Rental paid in advance.
- 6.4 Upon the cessation of the Approval the Approval Holder will, at its own expense and if so requested by Council, demolish and / or remove from the Land any improvements erected or placed thereon by the Approval Holder to the satisfaction of the Council within one (1) month after receiving notice from the Council to do so. If the Approval Holder fails to demolish and / or remove the improvements, the Council may without prejudice to any of the powers vested in it by its agents or employees or contractors enter upon the Land and demolish and/or remove such improvements and do all things necessary and incidental thereto. All costs and expenses incurred by the Council in connection with the same shall be payable to the Council by the Approval Holder on demand and

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shall be recoverable by the Council as a liquidated debt owing to it. The Council may, if it thinks fit, sell materials resulting from the demolition and / or removal upon such terms as it thinks fit and may apply the proceeds of any sale thereof towards payment of the costs and expenses incurred by it in connection with any such demolition and / or removal and the certificate of the General Manager of the Council as to such amount shall be conclusive and binding on the Approval Holder.

6.5 This Approval is personal to the Approval Holder. Should the Approval Holder sell or assign its interest in the adjoining restaurant / café any prospective purchaser / assignee shall have no claim nor guarantee that the part of the footway the subject of the Approval may be used for the purpose of the restaurant / café. Any prospective purchaser/assignee will be required to make separate application to Council for approval to use the part of the footway the subject of the Approval.

6.6 Upon cessation of this approval, the Approval Holder agrees that Council may remove any furniture, such removal to be at the Approval Holder's own expense.

Record of Voting

For the Motion: Unanimous

9 SHOP 6, No. 144-148 COX'S ROAD, NORTH RYDE.

Note: Councillor Petch disclosed a non-pecuniary interest in Items 7, 8, 9, 10 and 11 of the Committee's Report No. 03/09, for the reason that he is an acquaintance of the owner of the property.

Note: Mr Hall addressed the Committee.

Note: Councillor Butterworth was absent from the Chamber during voting on this item.

RESOLUTION: (Moved By Councillors Perram and Maggio)

PART A

(a) That the application to modify the consent to LDA660/2003 for Outdoor Seating Area on the footpath outside Shop 6 No. 142 Cox's Road, North Ryde be approved as follows.

1. Conditions 3 - 13 be deleted and replaced with the following condition, including new conditions under "Outdoor Dining" heading:

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GENERAL

2. The outdoor dining area is to be carried out in accordance with the plans 0760A/D1 received 11 September 2008.
3. The use of the footpath area shall be limited to 3 years from the date of modification of this consent and shall lapse at the end of this period or upon cessation of the café use approved by LDA, whichever is the sooner.
4. The area of the outdoor dining is strictly limited to:
 - (a) An area of 21.6m² (8m x 2.7m) for outdoor dining purposes in accordance with the following
 - (b) The area being setback 800mm from the footpath.
 - (c) The area being setback 2.0m from the front of the building.
5. The configuration of the area for outdoor dining being strictly limited to that shown on the plans, or such other configuration approved in writing by Council.
6. The outdoor seating area being maintained at all times in accordance with Council's Footpath Activity Policy and Outdoor Dining Policy.

PRIOR TO COMMENCEMENT OF USE

7. Separate written agreement/approval shall be obtained from Council prior to the use of any part of the footpath for outdoor dining purposes.
8. The area being physically delineated by Council approved discs installed by Council in the footpath at the applicant's expense.
9. Should any fixed items such as tables, chairs, planter boxes, etc. be required they are to be supplied and installed by Council at the applicant's cost, following the Council's determination that their installation is appropriate.
10. If any existing "street furniture" requires relocation, from the approved area, that Council take the necessary work with the actual costs being borne by the applicant.

OPERATIONAL

11. Table, chairs, movable barriers used within the licensed area and other means of delineating the approved area are to be removed and stored within the premises when the business is closed or when the weather conditions warrant (especially times of high wind).
12. The applicant display a permit issued by Council, authorising their use of the

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area for outdoor dining in accordance with the permits conditions.

- 13A. No noise (amplified, live or otherwise) shall be played outside the restaurant at any time.
- 13B. A copy of the Council approval under the Roads Act shall be kept on the premises, together with a copy of the approved seating layout, and shall be produced on request of a person duly authorised by Council.
- 13C. No umbrellas or advertising shall be erected, displayed or used in conjunction with the outdoor seating without the written approval of Council.
- 13D. No heating appliances shall be used in conjunction with the outdoor seating unless the written approval of Council is obtained.
- 13E. Smoking shall be prohibited in the outdoor dining area. 'No Smoking' signs shall be conspicuously displayed at the entrance to or within smoke-free dining areas, preferably by a sign on each table. The outdoor dining area shall be kept clean at all times.
- 13F. Rubbish and other refuse/waste associated with the bins shall not be placed in any Council street litterbin.

(a) That those persons who made submissions be advised of Council's decision.

PART B

That pursuant to section 125 of the Roads Act 1993 Approval be granted in principle to use 21.6m² in front of shop 6, 144 – 148 Cox's Road, North Ryde for outdoor dining for a period of 3 years subject to the following conditions of approval and that the General Manager be delegated the authority to enter into an agreement consistent with the terms and conditions below, subject to the lodgement of plans showing the layout of the tables and chairs.

TERM

- 1.1 The approval is granted to C S Open Pty Ltd trading as Hanasa Char Grill Chicken "the Approval Holder" for a term of three (3) years commencing on 03 March 2009 and ceasing on 02 March 2012 subject to the payment of all outstanding fees.

PAYMENTS

- 2.1 During the term of the Approval the Approval Holder shall make payments in the nature of rent ("the Rental") to the Council.
- 2.2 The Rental payable for the first 12 months shall be \$7040 per annum

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payable by monthly instalments of \$586.70 in advance to the Council.

- 2.3 The Rental payable for the second and subsequent years of the approval shall be an amount (rounded up to a full dollar amount) calculated by increasing the Rental for the year immediately preceding by a percentage equal to the total percentage increase, if any, in the Consumer Price Index figure for Sydney All groups for the then most current year in respect of which such Consumer Price Index Figure has been released. If there is no increase in such Consumer Price Index Figure, the Rental will remain the same.

GOODS AND SERVICES TAX

- 3.1 The Rental and all other moneys payable by the Approval Holder pursuant to the approval are exclusive of Goods and Services Tax or like impost (GST).
- 3.2 Liability for GST (payable in respect of any taxable supply) is additional. It is payable by the Approval Holder to the Council at the same time as Rental and other moneys are payable.

SECURITY DEPOSIT

- 4.1 The Approval Holder shall provide on the commencing date to the Council either a cash deposit ("Security Deposit") or an unconditional bank guarantee ("Bank Guarantee") for an amount equivalent to six (6) months' Rental.
- 4.2 The Bank Guarantee or the Security Deposit, (which shall be held in an account bearing interest), shall be held by the Council on behalf of the Approval Holder during the term of the approval as security for the performance of the conditions herein provided and the Council may from time to time apply the Security Deposit or call in any amount from the Bank Guarantee in or towards satisfaction of any amount of Rental, damages or other monies payable by the Approval Holder to Council pursuant to the Approval or which may become due and payable as a result of any breach by the Approval Holder of any of these conditions. The interest earned on the money will be used by Council in the management and administration of those funds.
- 4.3 In the event that the Security Deposit is applied by the Council or the Council requires the Approval Holder's bank to make payment pursuant to the Bank Guarantee then the Approval Holder shall within fourteen (14) days after written notification from the Council provide the Council with an additional cash deposit or an additional bank guarantee equivalent to the amount of the Security Deposit so applied or the Bank Guarantee called upon.

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- 4.4 At the cessation of the Approval and upon full compliance with these conditions the Council will account to the Approval Holder for any remaining balance of the Security Deposit or will return the Bank Guarantee.

ADDITIONAL CONDITIONS OF THE APPROVAL:

- 5.1 The Land or any part thereof shall not be used for any other purpose than as a footpath restaurant / café in accordance with the conditions of any development consent issued by the Council to the Approval Holder and these conditions.
- 5.2 No more than 8 tables and 20 chairs are permitted on the land.
- 5.3 Installation of any further or replacement outdoor furniture must be approved by Council and is to be of a design and construction approved by Council.
- 5.4 The Approval Holder shall remove all non-fixtures from the Land at the end of each day and store them within the restaurant / café.
- 5.5 The Approval Holder shall ensure that at no time do the tables or chairs encroach upon any part of the footpath that does not form part of the Land. A pedestrian access way of at least 2.0 metres shall be maintained at all times.
- 5.6 The Council through its agents or officers may enter and view the state of repair of the Land and such fixtures as may be installed thereon at any reasonable time.
- 5.7 The Approval Holder shall indemnify the Council against all or any claims in respect of the occupation or use of the Land pursuant to the grant of approval.
- 5.8 The Approval Holder shall effect and keep effected a public risk policy of insurance with an insurance company approved by the Council against any demand claim or action in respect of injury, loss or damage to any person or property howsoever sustained arising out of the occupation or use of the Land (by the Approval Holder and / or persons claiming under it) at any time during the term of the approval in such amount as the Council may from time to time require which amount shall not be less than twenty million dollars (\$20,000,000.00). The Approval Holder shall produce such policy to the Council upon demand.
- 5.9 The Approval Holder shall maintain and renew from time to time all

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licences, permits and registrations required for the carrying on of the business of a footpath restaurant / café on the Land and shall observe perform and fulfil all the requirements of any statutes regulations or by - laws in so far as they may apply to the Land or to the business conducted thereon.

- 5.10 The Approval Holder will comply with provisions of the Food Regulations 2004, the Companion Animals Act 1998, The Occupational Health and Safety Act 2000, or any regulations made thereunder and the Approval Holder shall indemnify and keep indemnified the Council against the failure on the part of the Approval Holder and / or persons under its control to comply with this condition.
- 5.11 The Approval Holder will comply with any notices or orders, which may be given by any competent authority in respect of the Approval Holders use of the Land.
- 5.12 This approval does not confer on the Approval Holder an exclusive right to possession of the Land and the Land may be used as a pedestrian accessway by members of the public.
- 5.13 The Approval Holder will at all times display in a clear and visible position inside the shop front window an Outdoor Dining Permit issued by Council and have the permit available for inspection by Council at any time.
- 5.14 The Approval Holder will comply at all times with the current Outdoor Dining Policy, which was effective as of 7 November 2006.
- 5.15 The Approval holder must:
- Prohibit smoking in all outdoor dining areas on Council owned land;
 - Display No Smoking signs at the entrance to or within outdoor dining areas, with such signs to be of minimum dimensions of 300mm x 200mm and contain the words 'No Smoking' along with the 'No Smoking' international symbol;
 - Prohibit the supply and use of ashtrays within outdoor dining areas; and
 - Take all practicable measures to ensure that customers do not smoke within outdoor dining areas..

CESSATION OF APPROVAL

- 6.1 This approval shall cease upon Council giving notice thereof to the Approval Holder in the event that Rental is in arrears for a period of 7 days or more or in the event that the Approval Holder does not comply with any conditions of the Approval.
- 6.2 The Approval shall automatically cease in the event that the Approval

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Holder is no longer the owner, lessee or occupant of the adjoining restaurant / café or if the adjoining premises cease to be used as a restaurant / café.

- 6.3 Notwithstanding any other condition of the Approval, the Approval shall cease upon Council giving seven (7) days notice thereof to the Approval Holder and in that event the Approval Holder shall not be entitled to compensation other than reimbursement of any Rental paid in advance.
- 6.4 Upon the cessation of the Approval the Approval Holder will, at its own expense and if so requested by Council, demolish and / or remove from the Land any improvements erected or placed thereon by the Approval Holder to the satisfaction of the Council within one (1) month after receiving notice from the Council to do so. If the Approval Holder fails to demolish and / or remove the improvements, the Council may without prejudice to any of the powers vested in it by its agents or employees or contractors enter upon the Land and demolish and/or remove such improvements and do all things necessary and incidental thereto. All costs and expenses incurred by the Council in connection with the same shall be payable to the Council by the Approval Holder on demand and shall be recoverable by the Council as a liquidated debt owing to it. The Council may, if it thinks fit, sell materials resulting from the demolition and / or removal upon such terms as it thinks fit and may apply the proceeds of any sale thereof towards payment of the costs and expenses incurred by it in connection with any such demolition and / or removal and the certificate of the General Manager of the Council as to such amount shall be conclusive and binding on the Approval Holder.
- 6.5 This Approval is personal to the Approval Holder. Should the Approval Holder sell or assign its interest in the adjoining restaurant / café any prospective purchaser / assignee shall have no claim nor guarantee that the part of the footway the subject of the Approval may be used for the purpose of the restaurant / café. Any prospective purchaser/assignee will be required to make separate application to Council for approval to use the part of the footway the subject of the Approval.
- 6.6 Upon cessation of this approval, the Approval Holder agrees that Council may remove any furniture, such removal to be at the Approval Holder's own expense.

Record of Voting

For the Motion: Unanimous

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10 SHOP 7, No. 144-148 COX'S ROAD, NORTH RYDE. Local Development Application for use of the footpath for outdoor dining purposes. LDA 582/2008.

Note: Councillor Petch disclosed a non-pecuniary interest in Items 7, 8, 9, 10 and 11 of the Committee's Report No. 03/09, for the reason that he is an acquaintance of the owner of the property.

Note: Mr Hall addressed the Committee.

Note: Councillor Butterworth returned to the meeting and took part in debate and voting on this item.

RESOLUTION: (Moved By Councillors Maggio and Perram)

PART A

- (a) That Local Development Application No. 582/2008 for an Outdoor Seating Area on the footpath outside Shop 7 No. 144-148 Cox's Road, North Ryde be approved as follows.

GENERAL

1. Development is to be carried out in accordance with the plans 0760A/D1 received 11 September 2008.
2. The use of the footpath area shall be limited to 3 years from the date of this consent and shall lapse at the end of this period or upon cessation of the cafe, whichever is the sooner.
3. The area of the outdoor dining is strictly limited to:
 - (a) An area of 16.2m² (6 x 2.7m).
 - (b) The area being setback 800mm from the footpath.
 - (c) The area being setback 2.0m from the front of the building.
4. The configuration of the area for outdoor dining being strictly limited to that shown on the plans, or such other configuration approved in writing by Council.
5. The outdoor seating area being maintained at all times in accordance with Council's Footpath Activity Policy and Outdoor Dining Policy.

PRIOR TO COMMENCEMENT OF USE

6. Separate written agreement/approval shall be obtained from Council prior to the use of any part of the footpath for outdoor dining purposes.

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7. The area being physically delineated by Council approved discs installed by Council in the footpath at the applicant's expense.
8. Should any fixed items such as tables, chairs, planter boxes, etc. be required they are to be supplied and installed by Council at the applicants cost, following the Councils determination that their installation is appropriate.
9. If any existing "street furniture" requires relocation, from the approved area, that Council take the necessary work with the actual costs being borne by the applicant.

OPERATIONAL

10. Table, chairs, movable barriers used within the licensed area and other means of delineating the approved area are to be removed and stored within the premises when the business is closed or when the weather conditions warrant (especially times of high wind).
11. The applicant display a permit issued by Council, authorising their use of the area for outdoor dining in accordance with the permits conditions.
12. No noise (amplified, live or otherwise) shall be played outside the premises at any time.
13. A copy of the Council approval under the Roads Act shall be kept on the premises, together with a copy of the approved seating layout, and shall be produced on request of a person duly authorised by Council.
14. No umbrellas or advertising shall be erected, displayed or used in conjunction with the outdoor seating without the written approval of Council.
15. No heating appliances shall be used in conjunction with the outdoor seating unless the written approval of Council is obtained.
16. Smoking shall be prohibited in the outdoor dining area. 'No Smoking' signs shall be conspicuously displayed at the entrance to or within smoke-free dining areas, preferably by a sign on each table. The outdoor dining area shall be kept clean at all times.
17. Rubbish and other refuse/waste associated with the bins shall not be placed in any Council street litterbin.
18. The type of tables and chairs should be complementary to tables and chairs used in the adjoining outdoor dining areas.

(b) That those persons who made submissions be advised of Council's decision.

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PART B

That pursuant to section 125 of the Roads Act 1993 Approval be granted in principle to use 16.2m² in front of shop 7, No. 144 – 148 Cox's Road, North Ryde for outdoor dining for a period of 3 years subject to the following conditions of approval and that the General Manager be delegated the authority to enter into an agreement consistent with the terms and conditions below, subject to the lodgement of plans showing the layout of the tables and chairs.

TERM

- 1.1 The approval is granted to Mr. Norm Cerreto trading as Delitalia "the Approval Holder" for a term of three (3) years commencing on 03 March 2009 and ceasing on 02 March 2012 subject to the payment of all outstanding fees.

PAYMENTS

- 2.1 During the term of the Approval the Approval Holder shall make payments in the nature of rent ("the Rental") to the Council.
- 2.2 The Rental payable for the first 12 months shall be \$5280 per annum payable by monthly instalments of \$440 in advance to the Council.
- 2.3 The Rental payable for the second and subsequent years of the approval shall be an amount (rounded up to a full dollar amount) calculated by increasing the Rental for the year immediately preceding by a percentage equal to the total percentage increase, if any, in the Consumer Price Index figure for Sydney All groups for the then most current year in respect of which such Consumer Price Index Figure has been released. If there is no increase in such Consumer Price Index Figure, the Rental will remain the same.

GOODS AND SERVICES TAX

- 3.1 The Rental and all other moneys payable by the Approval Holder pursuant to the approval are exclusive of Goods and Services Tax or like impost (GST).
- 3.2 Liability for GST (payable in respect of any taxable supply) is additional. It is payable by the Approval Holder to the Council at the same time as Rental and other moneys are payable.

SECURITY DEPOSIT

- 4.1 The Approval Holder shall provide on the commencing date to the

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Council either a cash deposit ("Security Deposit") or an unconditional bank guarantee ("Bank Guarantee") for an amount equivalent to six (6) months' Rental.

- 4.2 The Bank Guarantee or the Security Deposit, (which shall be held in an account bearing interest), shall be held by the Council on behalf of the Approval Holder during the term of the approval as security for the performance of the conditions herein provided and the Council may from time to time apply the Security Deposit or call in any amount from the Bank Guarantee in or towards satisfaction of any amount of Rental, damages or other monies payable by the Approval Holder to Council pursuant to the Approval or which may become due and payable as a result of any breach by the Approval Holder of any of these conditions. The interest earned on the money will be used by Council in the management and administration of those funds.
- 4.3 In the event that the Security Deposit is applied by the Council or the Council requires the Approval Holder's bank to make payment pursuant to the Bank Guarantee then the Approval Holder shall within fourteen (14) days after written notification from the Council provide the Council with an additional cash deposit or an additional bank guarantee equivalent to the amount of the Security Deposit so applied or the Bank Guarantee called upon.
- 4.4 At the cessation of the Approval and upon full compliance with these conditions the Council will account to the Approval Holder for any remaining balance of the Security Deposit or will return the Bank Guarantee.

ADDITIONAL CONDITIONS OF THE APPROVAL:

- 5.1 The Land or any part thereof shall not be used for any other purpose than as a footpath restaurant / café in accordance with the conditions of any development consent issued by the Council to the Approval Holder and these conditions.
- 5.2 No more than 6 tables and 15 chairs are permitted on the land.
- 5.3 Installation of any further or replacement outdoor furniture must be approved by Council and is to be of a design and construction approved by Council.
- 5.4 The Approval Holder shall remove all non-fixtures from the Land at the end of each day and store them within the restaurant / café.
- 5.5 The Approval Holder shall ensure that at no time do the tables or chairs encroach upon any part of the footpath that does not form part of the

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- Land. A pedestrian access way of at least 2.0 metres shall be maintained at all times.
- 5.6 The Council through its agents or officers may enter and view the state of repair of the Land and such fixtures as may be installed thereon at any reasonable time.
- 5.7 The Approval Holder shall indemnify the Council against all or any claims in respect of the occupation or use of the Land pursuant to the grant of approval.
- 5.8 The Approval Holder shall effect and keep effected a public risk policy of insurance with an insurance company approved by the Council against any demand claim or action in respect of injury, loss or damage to any person or property howsoever sustained arising out of the occupation or use of the Land (by the Approval Holder and / or persons claiming under it) at any time during the term of the approval in such amount as the Council may from time to time require which amount shall not be less than twenty million dollars (\$20,000,000.00). The Approval Holder shall produce such policy to the Council upon demand.
- 5.9 The Approval Holder shall maintain and renew from time to time all licences, permits and registrations required for the carrying on of the business of a footpath restaurant / café on the Land and shall observe perform and fulfil all the requirements of any statutes regulations or by - laws in so far as they may apply to the Land or to the business conducted thereon.
- 5.10 The Approval Holder will comply with provisions of the Food Regulations 2004, the Companion Animals Act 1998, The Occupational Health and Safety Act 2000, or any regulations made thereunder and the Approval Holder shall indemnify and keep indemnified the Council against the failure on the part of the Approval Holder and / or persons under its control to comply with this condition.
- 5.11 The Approval Holder will comply with any notices or orders, which may be given by any competent authority in respect of the Approval Holders use of the Land.
- 5.12 This approval does not confer on the Approval Holder an exclusive right to possession of the Land and the Land may be used as a pedestrian accessway by members of the public.
- 5.13 The Approval Holder will at all times display in a clear and visible position inside the shop front window an Outdoor Dining Permit issued by Council and have the permit available for inspection by Council at

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any time.

- 5.14 The Approval Holder will comply at all times with the current Outdoor Dining Policy, which was effective as of 7 November 2006.
- 5.15 The Approval holder must:
- Prohibit smoking in all outdoor dining areas on Council owned land;
 - Display No Smoking signs at the entrance to or within outdoor dining areas, with such signs to be of minimum dimensions of 300mm x 200mm and contain the words 'No Smoking' along with the 'No Smoking' international symbol;
 - Prohibit the supply and use of ashtrays within outdoor dining areas; and
 - Take all practicable measures to ensure that customers do not smoke within outdoor dining areas.

CESSATION OF APPROVAL

- 6.1 This approval shall cease upon Council giving notice thereof to the Approval Holder in the event that Rental is in arrears for a period of 7 days or more or in the event that the Approval Holder does not comply with any conditions of the Approval.
- 6.2 The Approval shall automatically cease in the event that the Approval Holder is no longer the owner, lessee or occupant of the adjoining restaurant / café or if the adjoining premises cease to be used as a restaurant / café.
- 6.3 Notwithstanding any other condition of the Approval, the Approval shall cease upon Council giving seven (7) days notice thereof to the Approval Holder and in that event the Approval Holder shall not be entitled to compensation other than reimbursement of any Rental paid in advance.
- 6.4 Upon the cessation of the Approval the Approval Holder will, at its own expense and if so requested by Council, demolish and / or remove from the Land any improvements erected or placed thereon by the Approval Holder to the satisfaction of the Council within one (1) month after receiving notice from the Council to do so. If the Approval Holder fails to demolish and / or remove the improvements, the Council may without prejudice to any of the powers vested in it by its agents or employees or contractors enter upon the Land and demolish and/or remove such improvements and do all things necessary and incidental thereto. All costs and expenses incurred by the Council in connection with the same shall be payable to the Council by the Approval Holder on demand and shall be recoverable by the Council as a liquidated debt owing to it. The Council may, if it thinks fit, sell materials resulting from the demolition and / or removal upon such terms as it thinks fit and may apply the proceeds of any sale thereof towards payment of the costs and

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expenses incurred by it in connection with any such demolition and / or removal and the certificate of the General Manager of the Council as to such amount shall be conclusive and binding on the Approval Holder.

6.5 This Approval is personal to the Approval Holder. Should the Approval Holder sell or assign its interest in the adjoining restaurant / café any prospective purchaser / assignee shall have no claim nor guarantee that the part of the footway the subject of the Approval may be used for the purpose of the restaurant / café. Any prospective purchaser/assignee will be required to make separate application to Council for approval to use the part of the footway the subject of the Approval.

6.6 Upon cessation of this approval, the Approval Holder agrees that Council may remove any furniture, such removal to be at the Approval Holder's own expense.

(b) That the persons who made submissions be advised of the decision.

Record of Voting

For the Motion: Unanimous

11 SHOP 8, No. 144-148 COX'S ROAD, NORTH RYDE. Application pursuant to Section 96(1A) of the Environmental Planning and Assessment Act, 1979 to amend the approved Outdoor Dining Area. LDA No. 653.2/2004.

Note: Councillor Petch disclosed a non-pecuniary interest in Items 7, 8, 9, 10 and 11 of the Committee's Report No. 03/09, for the reason that he is an acquaintance of the owner of the property.

Note: Mr Hall addressed the Committee.

RESOLUTION: (Moved By Councillors Butterworth and Salvestro-Martin)

PART A

(a) That the application to modify the consent to LDA653/2004 for Outdoor Seating Area on the footpath outside Shop 8 No. 142 Cox's Road, North Ryde, be approved as follows.

1. Conditions 54 - 62 be deleted and replaced with the following conditions, including new conditions under an Outdoor Dining Area heading.

GENERAL

54. Development is to be carried out in accordance with the plans 0760A/D1

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received 11 September 2008.

55. The use of the footpath area shall be limited to 3 years from the date of modification of this consent and shall lapse at the end of this period or upon cessation of the café use approved by LDA, whichever is the sooner.
56. The area of the outdoor dining is strictly limited to:
 - (a) An area of 16.2m² (6m x 2.7m).
 - (b) The area being setback 800mm from the footpath.
 - (c) The area being setback 2.0m from the front of the building.
57. The configuration of the area for outdoor dining being strictly limited to that shown on the plans, or such other configuration approved in writing by Council.
58. The outdoor seating area being maintained at all times in accordance with Council's Footpath Activity Policy and Outdoor Dining Policy.

PRIOR TO COMMENCEMENT OF USE

59. Separate written agreement/approval shall be obtained from Council prior to the use of any part of the footpath for outdoor dining purposes.
60. The area being physically delineated by planter tubs, chain & bollards or other approved means, so that the tables & chairs do not extend beyond the approved area, such as a Council approved disc installed in the footpath at the applicant's expense.
61. Should any fixed items such as tables, chairs, planter boxes, etc. be required they are to be supplied and installed by Council at the applicant's cost, following the Council's determination that their installation is appropriate.
62. If any existing "street furniture" requires relocation, from the approved area, that Council take the necessary work with the actual costs being borne by the applicant.

OPERATIONAL

63. Table, chairs, movable barriers used within the licensed area and other means of delineating the approved area are to be removed and stored within the premises when the business is closed or when the weather conditions warrant (especially times of high wind).
64. The applicant display a permit issued by Council, authorising their use of the area for outdoor dining in accordance with the permits conditions.

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65. No noise (amplified, live or otherwise) shall be played outside the restaurant at any time.
66. A copy of the Council approval under the Roads Act shall be kept on the premises, together with a copy of the approved seating layout, and shall be produced on request of a person duly authorised by Council.
67. No umbrellas or advertising shall be erected, displayed or used in conjunction with the outdoor seating without the written approval of Council.
68. No heating appliances shall be used in conjunction with the outdoor seating unless the written approval of Council is obtained.
69. Smoking shall be prohibited in the outdoor dining area. 'No Smoking' signs shall be conspicuously displayed at the entrance to or within smoke-free dining areas, preferably by a sign on each table. The outdoor dining area shall be kept clean at all times.
70. Rubbish and other refuse/waste associated with the bins shall not be placed in any Council street litterbin.
 - (b) That those persons who made submissions be advised of Council's decision.

PART B

That pursuant to section 125 of the Roads Act 1993 Approval be granted in principle to use 16.2m² in front of shop 8, No. 144 – 148 Cox's Road, North Ryde for outdoor dining for a period of 3 years subject to the following conditions of approval and that the General Manager be delegated the authority to enter into an agreement consistent with the terms and conditions below, subject to the lodgement of plans showing the layout of the tables and chairs.

TERM

- 1.1 The approval is granted to Mr. Norm Cerreto trading as Delitalia "the Approval Holder" for a term of three (3) years commencing on 03 March 2009 and ceasing on 02 March 2012 subject to the payment of all outstanding fees.

PAYMENTS

- 2.1 During the term of the Approval the Approval Holder shall make payments in the nature of rent ("the Rental") to the Council.
- 2.2 The Rental payable for the first 12 months shall be \$5280 per annum payable by monthly instalments of \$440 in advance to the Council.

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- 2.3 The Rental payable for the second and subsequent years of the approval shall be an amount (rounded up to a full dollar amount) calculated by increasing the Rental for the year immediately preceding by a percentage equal to the total percentage increase, if any, in the Consumer Price Index figure for Sydney All groups for the then most current year in respect of which such Consumer Price Index Figure has been released. If there is no increase in such Consumer Price Index Figure, the Rental will remain the same.

GOODS AND SERVICES TAX

- 3.1 The Rental and all other moneys payable by the Approval Holder pursuant to the approval are exclusive of Goods and Services Tax or like impost (GST).
- 3.2 Liability for GST (payable in respect of any taxable supply) is additional. It is payable by the Approval Holder to the Council at the same time as Rental and other moneys are payable.

SECURITY DEPOSIT

- 4.1 The Approval Holder shall provide on the commencing date to the Council either a cash deposit ("Security Deposit") or an unconditional bank guarantee ("Bank Guarantee") for an amount equivalent to six (6) months' Rental.
- 4.2 The Bank Guarantee or the Security Deposit, (which shall be held in an account bearing interest), shall be held by the Council on behalf of the Approval Holder during the term of the approval as security for the performance of the conditions herein provided and the Council may from time to time apply the Security Deposit or call in any amount from the Bank Guarantee in or towards satisfaction of any amount of Rental, damages or other monies payable by the Approval Holder to Council pursuant to the Approval or which may become due and payable as a result of any breach by the Approval Holder of any of these conditions. The interest earned on the money will be used by Council in the management and administration of those funds.
- 4.3 In the event that the Security Deposit is applied by the Council or the Council requires the Approval Holder's bank to make payment pursuant to the Bank Guarantee then the Approval Holder shall within fourteen (14) days after written notification from the Council provide the Council with an additional cash deposit or an additional bank guarantee equivalent to the amount of the Security Deposit so applied or the Bank Guarantee called upon.
- 4.4 At the cessation of the Approval and upon full compliance with these

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conditions the Council will account to the Approval Holder for any remaining balance of the Security Deposit or will return the Bank Guarantee.

ADDITIONAL CONDITIONS OF THE APPROVAL:

- 5.1 The Land or any part thereof shall not be used for any other purpose than as a footpath restaurant / café in accordance with the conditions of any development consent issued by the Council to the Approval Holder and these conditions.
- 5.2 No more than 6 tables and 15 chairs are permitted on the land.
- 5.3 Installation of any further or replacement outdoor furniture must be approved by Council and is to be of a design and construction approved by Council.
- 5.4 The Approval Holder shall remove all non-fixtures from the Land at the end of each day and store them within the restaurant / café.
- 5.5 The Approval Holder shall ensure that at no time do the tables or chairs encroach upon any part of the footpath that does not form part of the Land. A pedestrian access way of at least 2.0 metres shall be maintained at all times.
- 5.6 The Council through its agents or officers may enter and view the state of repair of the Land and such fixtures as may be installed thereon at any reasonable time.
- 5.7 The Approval Holder shall indemnify the Council against all or any claims in respect of the occupation or use of the Land pursuant to the grant of approval.
- 5.8 The Approval Holder shall effect and keep effected a public risk policy of insurance with an insurance company approved by the Council against any demand claim or action in respect of injury, loss or damage to any person or property howsoever sustained arising out of the occupation or use of the Land (by the Approval Holder and / or persons claiming under it) at any time during the term of the approval in such amount as the Council may from time to time require which amount shall not be less than twenty million dollars (\$20,000,000.00). The Approval Holder shall produce such policy to the Council upon demand.
- 5.9 The Approval Holder shall maintain and renew from time to time all licences, permits and registrations required for the carrying on of the

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business of a footpath restaurant / café on the Land and shall observe perform and fulfil all the requirements of any statutes regulations or by - laws in so far as they may apply to the Land or to the business conducted thereon.

- 5.10 The Approval Holder will comply with provisions of the Food Regulations 2004, the Companion Animals Act 1998, The Occupational Health and Safety Act 2000, or any regulations made thereunder and the Approval Holder shall indemnify and keep indemnified the Council against the failure on the part of the Approval Holder and / or persons under its control to comply with this condition.
- 5.11 The Approval Holder will comply with any notices or orders, which may be given by any competent authority in respect of the Approval Holders use of the Land.
- 5.12 This approval does not confer on the Approval Holder an exclusive right to possession of the Land and the Land may be used as a pedestrian accessway by members of the public.
- 5.13 The Approval Holder will at all times display in a clear and visible position inside the shop front window an Outdoor Dining Permit issued by Council and have the permit available for inspection by Council at any time.
- 5.14 The Approval Holder will comply at all times with the current Outdoor Dining Policy, which was effective as of 7 November 2006.
- 5.15 The Approval holder must:
- Prohibit smoking in all outdoor dining areas on Council owned land;
 - Display No Smoking signs at the entrance to or within outdoor dining areas, with such signs to be of minimum dimensions of 300mm x 200mm and contain the words 'No Smoking' along with the 'No Smoking' international symbol;
 - Prohibit the supply and use of ashtrays within outdoor dining areas; and
 - Take all practicable measures to ensure that customers do not smoke within outdoor dining areas.

CESSATION OF APPROVAL

- 6.1 This approval shall cease upon Council giving notice thereof to the Approval Holder in the event that Rental is in arrears for a period of 7 days or more or in the event that the Approval Holder does not comply with any conditions of the Approval.
- 6.2 The Approval shall automatically cease in the event that the Approval Holder is no longer the owner, lessee or occupant of the adjoining

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- restaurant / café or if the adjoining premises cease to be used as a restaurant / café.
- 6.3 Notwithstanding any other condition of the Approval, the Approval shall cease upon Council giving seven (7) days notice thereof to the Approval Holder and in that event the Approval Holder shall not be entitled to compensation other than reimbursement of any Rental paid in advance.
- 6.4 Upon the cessation of the Approval the Approval Holder will, at its own expense and if so requested by Council, demolish and / or remove from the Land any improvements erected or placed thereon by the Approval Holder to the satisfaction of the Council within one (1) month after receiving notice from the Council to do so. If the Approval Holder fails to demolish and / or remove the improvements, the Council may without prejudice to any of the powers vested in it by its agents or employees or contractors enter upon the Land and demolish and/or remove such improvements and do all things necessary and incidental thereto. All costs and expenses incurred by the Council in connection with the same shall be payable to the Council by the Approval Holder on demand and shall be recoverable by the Council as a liquidated debt owing to it. The Council may, if it thinks fit, sell materials resulting from the demolition and / or removal upon such terms as it thinks fit and may apply the proceeds of any sale thereof towards payment of the costs and expenses incurred by it in connection with any such demolition and / or removal and the certificate of the General Manager of the Council as to such amount shall be conclusive and binding on the Approval Holder.
- 6.5 This Approval is personal to the Approval Holder. Should the Approval Holder sell or assign its interest in the adjoining restaurant / café any prospective purchaser / assignee shall have no claim nor guarantee that the part of the footway the subject of the Approval may be used for the purpose of the restaurant / café. Any prospective purchaser/assignee will be required to make separate application to Council for approval to use the part of the footway the subject of the Approval.
- 6.6 Upon cessation of this approval, the Approval Holder agrees that Council may remove any furniture, such removal to be at the Approval Holder's own expense.

Record of Voting

For the Motion: Unanimous

RESUMPTION OF STANDING ORDERS

RECOMMENDATION: (Moved By Councillors Yedelian OAM and Perram)

That Standing Orders be resumed, the time being 10pm.

Record of Voting

For the Motion: Unanimous

2 RYDE 2030 COMMUNITY STRATEGIC PLAN - Project Process

RESOLUTION: (Moved by The Mayor, Councillor Tagg and Councillor Etmekdjian)

That consideration of this item be dealt with in Closed Session at a later stage of the meeting.

Record of Voting

For the Motion: Unanimous.

3 COUNCIL'S ORGANISATION STRUCTURE

RESOLUTION: (Moved by The Mayor, Councillor Tagg and Councillor Maggio)

That consideration of this item be dealt with in Closed Session at a later stage of the meeting.

Record of Voting

For the Motion: Unanimous.

4 MOSQUITO CONTROL PROGRAM ANNUAL REPORT 2007-2008

RESOLUTION: (Moved By Councillors Butterworth and Perram)

- (a) That the report of the Manager - The Environment, dated 24/02/2009 on MOSQUITO CONTROL PROGRAM ANNUAL REPORT 2007-2008, be received and noted.
- (b) That the City of Ryde continues to participate in the joint Mosquito Monitoring and Arbovirus Surveillance Program, including the trapping, arboviral testing and public education components of the program.

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Record of Voting

For the Motion: Unanimous

5 NORTH RYDE PARK PROPOSED UPGRADE – Outcomes of Public Exhibition

This item was dealt with previously as detailed in these Minutes.

6 13-19 WARREN STREET, RYDE LOTS 3,4,5 & 6, DP 36579 – LDA 311/2008

This item was dealt with previously as detailed in these Minutes.

7 SHOP 1, No. 142 COX'S ROAD, NORTH RYDE.

This item was dealt with previously as detailed in these Minutes.

8 SHOP 3, No. 144-148 COX'S ROAD, NORTH RYDE.

This item was dealt with previously as detailed in these Minutes.

9 SHOP 6, No. 144-148 COX'S ROAD, NORTH RYDE

This item was dealt with previously as detailed in these Minutes.

10 SHOP 7, No. 144-148 COX'S ROAD, NORTH RYDE

This item was dealt with previously as detailed in these Minutes.

11 SHOP 8, NO. 144-148 COX'S ROAD, NORTH RYDE

This item was dealt with previously as detailed in these Minutes.

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CLOSED SESSION**ITEM 2 – RYDE 2030 COMMUNITY STRATEGIC PLAN – Project Process****ITEM 3 – COUNCIL'S ORGANISATIONAL STRUCTURE****Confidential**

These matters are classified CONFIDENTIAL under section 10A(2) (a) of the Local Government Act, which permits the meeting to be closed to the public business relating to the following:

- (a) personnel matters concerning particular individuals

RESOLUTION: (Moved By The Mayor, Councillor Tagg and Councillor Li)

That the Committee of the Whole resolve into Closed Session to consider the above matters.

Record of Voting

For the Motion: Unanimous

Note: The Committee resolved itself into Closed Session, the time being 10.15pm. The public and media left the Committee Room. Prior to debate and voting on Item 3, all staff left the meeting with the exception of the General Manager, Manager Human Resources and the Senior Administration Co-Ordinator.

2 RYDE 2030 COMMUNITY STRATEGIC PLAN – Project Process

RESOLUTION: (Moved by Councillors Etmekdjian and Campbell)

- (a) That the report of Corporate Planning Co-ordinator on City Of Ryde Ryde 2030 Community Strategic Plan dated 20 February 2009 be received and noted.
- (b) That Council endorse the reviewed project process and project outline.
- (c) That Council endorse the Scoping Paper from the Strategic Planning Forum from 30 January 2009.
- (d) That Council endorse Elton Consulting as Strategic Planning Consultants and the Expert Panel for the Ryde 2030 Community Strategic Plan which comprises the following:
 - 1. Ro Coroneos
 - 2. Heather Nesbitt
 - 3. Colin Rockliff
 - 4. Michael Clarke (subject to confirmation that no travel costs will be added to Mr Clarke's confirmed rate).

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- (e) That Council endorse in principle the outcomes, deliverables and methodology for the community strategic planning process as outlined within this report.
- (f) That an Engagement and Communication Strategy be provided to Council by end of March 2009.

Record of Voting

For the Motion: The Mayor, Councillor Tagg and Councillors Butterworth, Campbell, Etmekdjian, Li, Maggio, O'Donnell, Petch, Salvestro-Martin and Yedelian OAM

Against the Motion: Councillor Perram

EXTENSION OF TIME

RESOLUTION: (Moved by Councillors Petch and Perram)

That the meeting time be extended to allow Council to complete the business on the agenda, the time being 11.00pm.

The meeting time was extended.

Record of Voting

For the Motion: Unanimous.

3 COUNCIL'S ORGANISATION STRUCTURE

RESOLUTION: (Moved By Councillors Perram and Maggio)

- (a) That the report of the Manager Human Resources dated 26/02/2009 on COUNCIL'S ORGANISATION STRUCTURE, be received and noted.
- (b) That Council approve the organisation structure as presented within this report, as **ATTACHMENT 2**.
- (c) That Council endorse the 10 designated senior staff positions within the organisation structure and note their terms of appointment as presented within this report as **ATTACHMENT 3 and 4**.

Record of Voting:

For the Motion: The Mayor, Councillor Tagg, Campbell, Etmekdjian, Li, Maggio, O'Donnell, Perram, Petch, Salvestro-Martin and Yedelian OAM.

Against the Motion: Councillor Butterworth

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OPEN SESSION**RESOLUTION:** (Moved By Councillors Perram and Petch)

That the Committee of the Whole resolve itself into open session.

The time at this stage of the meeting was 11.15pm.

Record of Voting:For the Motion: Unanimous.

On resuming business in Open Council, the General manager formally reported the business transacted in Closed Session.

RESOLUTION: (Moved By Councillors Petch and Etmekdjian)

That the General Manager's report of the business transacted in Closed Session be received and adopted as a resolution of Council without any alteration or amendment thereto.

The meeting closed at 11.20pm.

CONFIRMED THIS 17TH DAY OF MARCH 2009.

Chairperson

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