

## ANOTHER WIN IN THE LAND AND ENVIRONMENT COURT FOR LYONSWOODS CLIENTS

### Beach Palace top floor barred

- [Council](#)

*2 Jul 10 @ 08:02am by Nick Moncrieff-Hill*



Beach Palace Hotel, Coogee. The Beach Palace Hotel in Coogee has attracted the attention of the local community for its part in the increasing alcohol fuelled violence in the area on the weekends, April 7th, 2008. Picture: Chillingworth Simon

“Nothing will change” says the owner of Coogee’s Beach Palace Hotel after a court found the iconic venue’s third floor was “now more hotel than restaurant”.

Land and Environment Court Justice Terry Sheahan delivered his verdict last week, which found the venue’s third floor, known as the Aquarium, was operating illegally as a hotel.

In his summation, the judge said the Aquarium, which was authorised as a restaurant, had shifted in its primary function from serving food to serving drinks.

In reaching his conclusion the judge drew on the accounts of two private investigators who in October of 2008 had witnessed patrons arriving at the Aquarium dressed in evening wear as opposed to afternoon attire, indicating “no intention of eating a meal”.

The investigators also found that patron numbers at the Aquarium swelled in the late evening after the venue's kitchen had closed at 9pm, and that "some neighbourhood noise complaints were directed at the operation of the top floor".

The Aquarium regularly remained open until midnight.

"I have concluded that the Aquarium is now more hotel than restaurant. The primary service provided to its patrons is the sale of drinks, including alcohol, supported by the provision of food services and entertainment."

Beach Palace Hotel owner David Kingston however said the judge's orders, that Aquarium cease operating as a hotel by December 30 this year, "unless and until development consent is obtained for that use", did not constitute a win for Randwick Council.

"The Judge indicated that the interpreted usage was a grey area and we are relaxed with his interpretation."

Mr Kingston also claimed the council's decision to begin proceedings in November 2009 was a political one.

"I'm happy to say the same issue was reviewed in great detail in 2001 and with different political dynamics at council they decided not to pursue the matter.

"But we will sit down with Randwick Council and apply for a modified approval for the Aquarium, or we will go through the courts."

Meanwhile, long time Palace critic Randwick Greens Councillor Margaret Woodsmith has hailed the decision as "a win for Coogee residents and a tribute to the dedicated work of council officers".

"Council commenced proceedings in the Land and Environment Court... to stop the use of the Palace's top level as a pub because we only gave them permission in 2001 to use it as a restaurant. It has been a battle that we had to win on behalf of our residents," Cr Woodsmith said.

### **In summing up, Judge Sheahan Commented:**

84 The observations of (**Lyonswood's investigators- Names of investigators deleted**) were thorough, and they made detailed counts of meal collections and patron numbers. A change in dress from afternoon to evening was observed on Saturday 24 October 2008, such that the Council wants the court to infer that patrons arrive in the late evening with no intention of eating a meal at the Aquarium. Such an inference is also available from the fact that the number of patrons swells significantly towards the late evening, despite the kitchen being closed, and that some neighbourhood noise complaints are directed at the operation of the top floor. Main meals are clearly not the primary focus of Aquarium's operation. A '*restaurant*' that caters for more patrons at a point after its kitchen is closed is vastly different from what is commonly understood to be a "*restaurant*".