

Dear Committee

I am *Jody Bosman*, Director City Planning, Design and Amenity at the City of Greater Dandenong. The local government function of public health falls within my Directorate. In respect of my involvement in and knowledge of the matter pertaining to *I Cook Foods Pty Ltd* I wish to address the Committee on some matters pertaining to I Cook Foods.

It is clear that there are two distinct matters;

1. The Closure of I Cook Foods by Order of the Department of Health and Human Services related to investigations of a listeria link between the food manufactured by I Cook Foods and an elderly patient being diagnosed with listeria poisoning, which elderly patient subsequently passed away.
2. The second matter is that relating to the involvement by Council Environmental Health officers in a series of inspections of the I Cook Foods premises, resulting in the discovery of 48 breaches of the Food Act and the issuing of Magistrates' Court charges by Council for those breaches. It is in relation to the charges brought against I Cook Foods, as well as against Ian Cook as a Director of the Company, and my subsequent decision to not proceed with those charges that I now address before this Committee.

### **What were the charges brought against *I Cook Foods*?**

In collaboration with DHHS health officers, Council's environmental health officers inspected the premises and found numerous breaches of and non-compliances with the Food Act. It is Council's responsibility to ensure that all food related premises in the City of Greater Dandenong comply with the provisions of the Food Act. It is also Council's primary objective to ensure public safety and confidence by all members of the community who consume food stuffs manufactured in the City of Greater Dandenong. The Food Act 1984 is the legislation which regulates manufacturing, handling and disposal of food for human consumption. The administration and enforcement of that Act is of vital importance in meeting community expectations of food safety and hygiene standards being met.

Council brought 48 charges in the Magistrates' Court against *I Cook Foods*. It alleged that *I Cook Foods* had failed to meet the requirements of the Food Act, putting public health at risk. Amongst the charges were the following:

- Sampling of food sold to Whitehorse City Council returned a positive test for the presence of *Listeria monocytogenes*.

- Necessary steps to prevent the likelihood of food being contaminated were not taken.
- There was a build-up of dirt, debris, residue and other matter observed on a number of fittings, fixture and equipment throughout the premises. Trolleys in an unclean condition were also observed.
- Unsafe food handling practices were observed
- The hand basin in the hospital food preparation area was observed to be not functional. The Food Order that this hand basin be made functional was not complied with at the time of a subsequent inspection.
- An audit undertaken by a DHHS Accredited Auditor identified that the Food Safety Program was not compliant.

Two (but only 2) of the charges brought relate to the slug found at the premises

The sum and the seriousness of the breaches of the Food Act clearly demonstrated a food manufacturing business which had put public health at risk over a period of time. Breaches of the Food Act carry with them significant penalties for that reason and on the basis of the evidence presented to me I gave my approval to proceed with prosecution.

It is standard operating procedure for Council to issue charges against both a body corporate (company) and director. This is also standard prosecution practice by local government authorities in enforcing Food Act offences. Further, the Food Act provides for liability of officers of companies for specific offences under the Food Act, even in circumstances where the body corporate (company) has not been prosecuted or found guilty of an offence

### **Why did Council withdraw the charges against *I Cook Foods*?**

During the lawyers' conference at the Contest Mention at the Magistrates' Court on 3 October 2019 I received a telephone call from Council's barrister (Sebastian Reid) explaining the consequences of pursuing charges, and the probability of successive appeals by *I Cook Foods* should it be found guilty in the Magistrates' Court. The lawyers acting for *I Cook Foods* had put a proposition that both parties walk away from the charges on a non-disparaging basis, and each bear their own costs to date. The lawyers for *I Cook Foods* had been instructed to contest every single charge and advised Council's barrister that in the event of the matter going against *I Cook Foods* in the Magistrates' Court they would exhaust every avenue of appeal, irrespective of the costs involved.

It is important to stress that the charges for 48 breaches of the Food Act brought against *I Cook Foods* on 14 June 2019 were not withdrawn because Council considered the charges to be without foundation or because it was doubtful of its prospects of success in prosecuting the case, but rather that pursuing charges of those breaches through the various court levels, including courts of appeal, could have resulted in legal costs to Council in the order of up to \$1.2m.

To pursue breaches of the Food Act prosecution, of a business which was by then in compliance of the Food Act, was not considered to be a prudent use of the public purse. The potential cost to ratepayers was the sole reason for the charges being withdrawn. In reality, I was presented with a situation where within a 5-minute telephone call I had to assess the merits of pursuing or withdrawing the charges. Thus was the decision to withdraw the charges taken at the Contest Mention hearing on 3 October 2019.

In no way should the withdrawal of the charges be seen as I Cook Foods being "cleared" of Food Act non-compliance or a more general vindication of I Cook Food's position.

Jody Bosman  
Director City Planning, Design and Amenity  
24 June 2020