

## Ryde Civic Precinct Redevelopment

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From: John Mahony <[john@mtlawyers.com.au](mailto:john@mtlawyers.com.au)>  
To: [ivanp@ryde.nsw.gov.au](mailto:ivanp@ryde.nsw.gov.au)  
Date: Thu, 21 Jun 2012 14:21:19 +1000  
Attachments: SCAN3177\_000.pdf (170.02 kB)

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Hi Ivan,

Further to your several emails of yesterday and also today suggesting amendments to the letter to Ryde City Council, please find **attached** final draft letter for your approval.

The amendments made to the previous letter appear at clause 2 of the "Concerns" and clause 14 of the "Concerns", as well as in clause (b) of "Action Required".

Further, the letter will also be emailed to all Councillors, as well as to the Mayor.

The letter will also be emailed to Ross Woodward, the Director of the Department of Local Government.

Finally, once the letter has been forwarded to Council, it will then be copied to Alan Jones of 2GB in accordance with your instructions.

Would you please confirm that all of the above can now take place.

Kind regards,  
**John Mahony**  
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**MAHONY TAREN LAWYERS: BEGIN WITH THE END IN MIND**

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A TAREN LEGAL GROUP FIRM

**NSW ICAC  
EXHIBIT**

Our Ref: JFM:kjh:63367

21 June 2012

The Mayor  
City of Ryde  
Civic Centre  
1 Devlin Street  
RYDE NSW 2113

**By email: [mayor@ryde.nsw.gov.au](mailto:mayor@ryde.nsw.gov.au)**

Dear Mr Mayor

**RYDE CIVIC PRECINCT REDEVELOPMENT**

We act on behalf of an Association of concerned ratepayers in the city of Ryde (**Association**).

We have reviewed in detail, documentation relating to the Ryde Civic Precinct Redevelopment (**Redevelopment**).

**Facts**

We are instructed as follows:

1. On 12 June 2012 Council resolved as follows:
  - (a) That no tender be accepted from the tenders received by Council with respect to the City of Ryde Precinct Redevelopment Tender; and
  - (b) That despite (a) above, Council enter into negotiations with Lend Lease Development Pty Limited (**Lend Lease**) with a view to entering into a Project Delivery Agreement for the Redevelopment, preferably by August 2012; and
  - (c) That Council enter into a Project Delivery Agreement on terms approved by the General Manager and which he is reasonably satisfied are substantially consistent with or more favourable to Council than the Commercial and Risk Principles (copy **enclosed** herewith); and
  - (d) That Council delegates to the General Manager the authority to finalise and execute the Project Delivery Agreement with Lend Lease, once he has approved the final form of the documentation and is reasonably satisfied the documentation is substantially consistent with or more favourable to Council than the aforementioned Commercial and Risk Principles; and

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(e) That Council authorises the General Manager to undertake a tender process, for a \$35 million loan to be taken out by Council, over a six year period, where the principal and interest is guaranteed by Lend Lease and the funding is provided at no cost to Council.

2. Following the passing of the abovementioned Resolutions, a Rescission Motion was lodged with Council for determination on 26 June 2012.

3. The Resolutions of 12 June 2012 were carried on a 6-5 majority. However, based on previous voting patterns on this matter, it is reasonable to assume that had a particular Councillor not been absent from the Council meeting for that vote, then the vote would have been deadlocked at 6 votes for and 6 votes against. Again, based on previous voting patterns, it is also reasonable to assume that in that circumstance, the Resolution would have been passed on the Mayor's casting vote.

4. The effect of the aforesaid Resolutions is not less than the following:

(a) Council will borrow the sum of \$35 million, to be secured against Council owned property. Borrowed monies will be paid to Lend Lease, which will guarantee repayment of same together with interest; and

(b) Council will pay approximately \$21.9 million with respect to a project viability payment and utilities for the Redevelopment;

(c) Council will be responsible for cost overruns by Lend Lease.;

(d) Council will bear the cost and inconvenience of relocating its offices and facilities;

(e) Council will gift to Lend Lease for its commercial development and profit, approximately 70% of the current Council owned precinct site;

(f) Council will retain only 30% of the current land owned by it on the precinct site;

(g) Lend Lease will construct at its cost, new Council offices, community spaces and facilities (Civic Developments), although Council will bear or share the risk in relation to cost escalation, native title claims, latent conditions and other landowner risks;

(h) Guarantees for and on behalf of Lend Lease will be provided by its parent company with only 7.5% of the estimated construction cost of the Civic Developments (inclusive of defect obligations), being provided through a Bank Guarantee; and

(i) The alternatives examined by Council for the Redevelopment were:

(i) do nothing;

(ii) refurbishment option;

(iii) Lend Lease redevelopment

Council however did not consider a possible redevelopment option carried out by Council itself, in circumstances where Council retains all of its current operational and community land.

5. Whilst the Redevelopment has been under discussion in one form or another from time to time since October 2011, there has been no proper or adequate Community Consultation in relation to the Redevelopment.
6. Once it became apparent to the Ryde Community that the Redevelopment was about to occur, almost 3000 signatures from residents voting against the Redevelopment, were received in a very short period of time.
7. It is reasonable to assume that following the September 2012 election of Councillors for Ryde City Council, the majority view on Council will be **not** to proceed with the Redevelopment, in the same terms as are set out in the Resolutions of 12 June 2012.
8. There has been no proper or adequate traffic study relating to the Redevelopment, including in particular the proposal by Lend Lease to construct over 630 residential apartments on what was previously Council owned land.

### Concerns

The Association has a number of concerns including legal, economic and community concerns.

Without limitation, those concerns include the following:

1. The Resolution to delegate to the General Manager the authority to enter into the Project Development Agreement for the Redevelopment, is prohibited by Subsection 377(1) of the Local Government Act. That section provides that a Council may **not** by resolution delegate to its General Manager, certain functions including:
  - (a) The borrowing of money;
  - (b) The purchase, sale, exchange or surrender of any land or other property;
  - (c) The voting of money for expenditure on its works, services or operations;
  - (d) The acceptance of tenders which are required for works under the Local Government Act.
2. In accordance with the provisions of the Local Government Act 1993 and the Regulations made thereunder, a Council is prohibited from entering into significant contracts or undertakings in the four weeks preceding an ordinary election of Council. The Resolution calls for the General Manager to enter into the clearly significant contract or undertaking with Lend Lease, quite possibly within the one month period prior to 8 September 2012 election. Therefore, any entry into that contract by the General Manager would place the Council in breach of the Local Government Act and its Regulations.
3. A large number of consultants, advisers or staff to be employed in or on the Redevelopment, have pre-existing relationships with the General Manager of Ryde City Council. That situation represents a contravention of Independent Commission Against Corruption (ICAC) guidelines.

4. In contravention of Department of Local Government Guidelines, the Redevelopment meets all the criteria of a Private Public Partnership, yet the proposal has been deemed a Joint Venture by the General Manager of Council, thereby avoiding the additional scrutiny which would be afforded by a Director General (third party) Review. ICAC's guidelines recognise that joint ventures are in any case private public partnerships, deserving the additional scrutiny of a Director General Review.
5. The commercial risk to the Council, of the Redevelopment, when compared to the expected gain to Council is unacceptable and unrealistic.
6. The magnitude of the Redevelopment and the long term and enduring effects on the Council's financial position, as well as the Community's asset position, are so significant as to warrant substantial further debate and consultation. There has been no or no proper Community consultation and much more extensive and detailed Community consultation is required.
7. In any case, such important and far reaching matters, should not be decided on the casting vote of a Mayor after a 6/6 deadlock of Councillors.
8. The Development guidelines indicate a conflict for Council, as Consent Authority and Commercial Partner in that, amongst other things, it provides beneficial and more favourable FSR's to Lend Lease, than would otherwise be appropriate or accessible to other developments within the City of Ryde.
9. The whole tender proposal for such a significant construction project as the Redevelopment, must necessarily now be reviewed, due to the unusually low number of tenderers.
10. No or no proper traffic study of the effects of the Redevelopment has been carried out, for what is already an overly congested part of Ryde City.
11. The rush by Council to bring about the execution of contract documents, (specifically prior to the next Council elections in September 2012), leaves open an assumption of political bias in the decision to proceed at this time with the Redevelopment. As such, serious questions of probity and transparency of the whole process must arise.
12. The decision to gift to a commercial entity a large part of Community owned land, for no proper return and for no necessary or compelling reason, must be determined by a Referendum of the residents of City of Ryde, rather than upon a Mayor's casting vote.
13. The Community land is being put at unnecessary risk due to the right of Lend Lease to require Council to mortgage the precinct land, to support borrowings made by Lend Lease to fund its construction of the Redevelopment. In particular, in the event that Lend Lease defaults on its construction loan, then its lender can seize possession the Community's land pursuant to the mortgage and sell it to a third party, without any

benefit to Council, which will also then also have lost ownership of the Community's land.

14. Prior to entry into the Redevelopment, Council must obtain a clearance from its insurers with respect to the continuation of cover for Council as a whole and individually for Councillors, due to the significant commercial risk involved to Council and the potential for surcharges to be levied against Councillors personally.

#### Action Required

The Association now calls on Council to:

- (a) Vote in favour of the Rescission Motion on 26 June 2012 and whether or not such Rescission Motion is successful,  
(b) Postpone all further action, discussion or negotiation on the Redevelopment, until after the September 2012 Council elections.

Would you please confirm by **5.00pm this coming Friday, 22 June 2012**, that the Mayor will recommend and vote in favour of the above action being taken by Council at its meeting on 26 June 2012, failing which we will take further instructions from our client, as to amongst other things, seeking Injunctive Relief from the Supreme Court of NSW.

Yours faithfully  
**Mahony Taren Lawyers**

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