

ADI Residents Action Group  
PO Box 4134  
WERRINGTON NSW 2747  
[cwmalis@aapt.net.au](mailto:cwmalis@aapt.net.au)  
0431 222602

Friday, 26 May 2006

The Mayor and Councillors  
Penrith City Council

**RE: ADI Site - Draft Dunheved Precinct Plan & Draft Planning Agreement  
Policy Review Committee Meeting – 22<sup>nd</sup> May 2006**

Dear Mayor and Councillors,

At your latest Policy Review Committee Meeting held on Monday the 22<sup>nd</sup> of May, you had the opportunity to discuss a report by Tony Crichton about the Dunheved Precinct Plan.

There were certain aspects of that report that we seek further clarification of.

Under the section titled 'Deed of Indemnity' there is a comment attributed to Councils solicitors that: **"Council's solicitor has advised that it would appear that the Commonwealth Government accepts that the land is contaminated..."** This is in reference to the Commonwealth refusing to give Penrith Council the same 50-year indemnity that it gave to Blacktown Council. The report goes on to say that despite the lack of this Commonwealth indemnity that Council would be protected under section 145B of the NSW EP & A Act This Section provides that if the Council acts in good faith with respect to issues of contamination in planning for future development of the area, that the Council will not be liable to any party at law.

I phoned Tony Crichton about the advice from your solicitors that they are of the opinion the Commonwealth believes the ADI Site is contaminated and he said that there was a typo in the report and it should have said 'was contaminated' not 'is contaminated'. Now this appears very odd that such a crucial word could be wrong. And when you read the report with the word 'was' in place the paragraph it is contained in appears very confused.

We all knew the ADI Site was contaminated that is why the Commonwealth spent years supposedly cleaning it up. It is common knowledge and advice you should not be paying a solicitor for.

We ask you and other councilors to clarify this matter as it would appear that advice that the ADI Site may still be contaminated would throw into doubt the argument that Council and Councillors acted in good faith when determining development at the ADI Site.

Also, in regards to Planning Agreements, Council argues it would not be fettered by entering into a contract with Delfin Lend Lease for the provision of infrastructure and services. Why would Council not be fettered in the same way as the NSW Government when it was asked to exercise its planning powers under the EP&A Act? The NSW Government argued that if it stopped the development by a repeal of SREP 30 that it would have breached its Planning Agreement with Lend Lease – The St Marys Development Agreement - and faced a massive taxpayer funded compensation payout. The elements of contract law come in upon the signing of the Planning Agreement. (See attached copy of Barristers opinion on Repeal of SREP 30)

I would urge Councillors to fully consider the possible ramifications for ratepayers as a result of any contractual arrangement with Delfin Lend Lease. The question is would Council be in breach of its contract if it decided at any stage after entering into such an agreement to change its mind. And would, as in the case with the NSW Government, that Council (ratepayers) would need to compensate the developer.

We hope that these matters are given due regard and we look forward to a timely response.

Yours truly,

A handwritten signature in black ink, appearing to read 'G. D. Brown', written in a cursive style.

Geoff Brown  
Convenor  
ADI Residents Action Group

PS. This is a link to the Agreement between the State and Lend Lease  
[http://www.adisite.org/Documents%20pdf/stmda\\_bod.pdf](http://www.adisite.org/Documents%20pdf/stmda_bod.pdf)