

ADI Residents Action Group
PO Box 4134
WERRINGTON NSW 2747
cwmalis@aapt.net.au
0431 222602

Clr John Thain
Mayor
Penrith City Council
601 High Street
PENRITH NSW 2751

**RE: ADI Site Development Agreements
Would breach of Agreement expose rate payers to compensation claim?**

Dear Mayor,

Penrith City Council has plans to enter into a legally binding Development Agreement with Delfin Lend Lease in relation to the Dunheved Employment Precinct and other Precincts.

By entering into a Development Agreement with a developer Council will be essentially forming a Public Private Partnership (PPP). Many Penrith residents would now be aware, through the revelations of the Cross City Tunnel fiasco, that the contractual arrangement of such PPP's often result in outcomes that are not in the public's best interest. Governments that enter such Agreements are often faced with massive compensation pay outs to the private partner should they renege on or withdraw from the Agreement.

This precedent has already been set in relation to the ADI Site. The NSW Government in 2004 claimed that it could not stop the development of the ADI Site by repealing Sydney Regional Environmental Plan 30 St Marys (SREP 30) because it had entered into the St Marys Development Agreement, a legally binding contract, with Lend Lease. Apparently repealing SREP 30 would have breached the agreement and opened the NSW Government up to litigation and a massive compensation pay out to Lend Lease for loss of potential profit.

The St Marys Development Agreement appeared an innocuous document but buried within the detail were clauses that fettered the Government from using its own legislation to protect the public interest.

The rate payers of Penrith would be alarmed that Penrith Council is soon to sign a legally binding development agreement and enter into another PPP.

What guarantee can you give to the rate payers of Penrith that the signing of any future Development Agreement with Delfin Lend Lease does not bind/fetter Council so that it cannot uphold the public interest; that Council would not be so fettered by its contractual obligation that it cannot repeal any Precinct Plan, Subdivision Plan or Development Application it has determined unless it compensates the developer for loss of income for that development.

The Rate payers of Penrith expects its civic leaders to negotiate with the private sector the fair funding of the provision of infrastructure and services. It does not expect that such negotiations result in binding contracts and the trading off of the right to, at all times, act to uphold the public interest. It does not expect its leaders to accept a path of negotiations that clearly favour the developer. Development Agreements clearly favour the private sector.

Please review your legal position in regards to Development Agreements with Delfin Lend Lease and provide a response at your earliest convenience.

Yours truly,

Geoff Brown
Convenor
ADI Residents Action Group
--