

14th August 2020

Devonport City Council
137 Rooke Street
DEVONPORT TAS 7310

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ATTENTION: MR. MATTHEW ATKINS – GENERAL MANAGER (MAYOR & COUNCILLORS)

RE: LIVING CITY – GOVERNANCE QUESTIONS ON NOTICE

Dear Sir,

The following are submitted as questions on notice for the Ordinary Meeting of Council scheduled for Monday 24th August 2020.

Q1. In the Report of the Auditor-General No.1 of 2019-20, dated September 2019, the Auditor General stated on Page 15 that *“Council also acknowledged the benefit of engaging an independent agent to undertake negotiations with P+I to determine if a suitable head lease could be agreed.”* in reference to Providore Place; accordingly, **I ask the following as separate questions requiring separate answers:**

- a) Did Council engage *“....an independent agent to undertake negotiations with P+I to determine if a suitable head lease could be agreed.”*?
- b) Who precisely was charged on behalf of Council to negotiate the initial head lease agreement with Providore Place Devonport Pty Ltd?

Q2. In the Report of the Auditor-General No.1 of 2019-20, dated September 2019, the Auditor General stated on Page 16 that *“Council advised the lease was prepared based on an agreed “term sheet” approved by Council in the knowledge that it would not be a traditional lease arrangement but more akin to a cooperative shared arrangement.”*; accordingly, **I ask the following question in that:**

In granting approval to enter the initial head lease agreement, with Providore Place Devonport Pty Ltd, and with full knowledge of the limitations and potential consequences within the lease document, will Council please advise why the reported public representation by the then Deputy General Manager of the 7th December 2016, on behalf of council, that *“the revenue the council received.....was guaranteed through the head lease arrangement and removed the council’s exposure to financial risk.”* was not a breach of Section 345 “False and misleading statements” **by the Deputy General Manager** under the Local Government Act?

Q3. On the 14th May 2020, some 8 months after surrendering the initial Providore Place head lease agreement, Mayor Rockliff was reported as saying in relation to the around \$200,000 owing to council by the head lessee that *“Council had taken all actions it can to recover the debt, but to no avail”* and on legal advice *“...we have reluctantly chosen not to pursue this matter any further and risk additional expenses.”* and it was also reported *“The council said it had not budgeted to receive the rent, therefore the write off had no impact on the council’s bottom line.”* indicating that as early as around April-May 2019 that council may have had no confidence in recouping, or intention to recoup, the debt; **I ask the following as separate questions requiring separate answers:**

- a) Was Council's final decision to not pursue the outstanding debt as a result of the head lease agreement being unenforceable?
- b) Was the Council's decision not to pursue the outstanding debt as a result of the head lessee not having the capacity to pay?
- c) If the reason was that the head lessee did not have the capacity to pay then why did Council immediately enter a second head lease agreement with the same entity still owing around \$200,000?

Q4. Council has previously confirmed that the Deputy General Manager at the time (Matthew Atkins) authored the report to council recommending that council enter the head lease agreement with a recently registered Providore Place Devonport Pty Ltd; accordingly, **I ask the following as separate questions requiring separate answers:**

- a) What relevant **"qualifications"** did the Deputy General Manager have at the time to provide advice to council on a head lease of the complexity of the Providore Place head lease?
- b) What relevant **"experience"** did the Deputy General Manager have at the time to provide advice to council on a head lease of the complexity of the Providore Place head lease?

Q5. Between 2011 and 2016 (immediately prior to the acceptance by council of the Providore Place head lease) did the council enter:

- a) Any head lease as landlord?
- b) Any head lease similar to the Providore Place head lease?
- c) Any lease similar to the Providore Place head lease variously described as a co-operative shared arrangement, operating partnership and non-traditional co-operative shared arrangement?

Q6. In response to my question 8 relating to separate residual loan values for properties purchased for Living City on Page 7 of the July Agenda Council responded; *"CBD Properties* \$9,637,353 - * note this includes the three properties listed in question 8, along with an additional property purchased in King Street, now being used as a carpark. The loan is not allocated against the individual properties, as the associated finance costs all sit within the Property Management cost centre. "*; accordingly, **I ask the following as separate questions requiring separate answers:**

- a) Will Council please provide a full list of the properties comprising the CBD Properties component of the "Property Management cost centre"?
- b) Will Council please advise the date the loans for the CBD Properties component of the Property Management cost centre were consolidated?
- c) Will Council please provide the residual loan values for each of the CBD Properties component of the Property Management cost centre at the time of consolidating the loans?

Please acknowledge receipt and ensure inclusion in full in the August meeting Agenda.

Yours sincerely,

Malcolm Gardam

CC: Mayor & Councillors