

To the Chair
Tasmanian Local Government Review Panel

ATTENTION - The Hon Minister for Local Government and the Director of Local Government: the Hon Minister for Police: The Chief Integrity Commissioner and other interested parties.

SUBJECT - Submission and information to the Future of Local Government

(**Acronyms & Abbreviations** * DCC- Devonport city Council * P+I - Projects and Infrastructure –* PPD -Providore Place Devonport * LGA - Local Government ACT * LGA - Local Government Regulations)

I Robert Bruce Vellacott (Aggrieved rate and tax payer) of [REDACTED] wish to draw your attention to the following recommendation 5 by the **Tasmanian Auditor General** contained in his “**No 1 of 2019 -2020 Report – Procurement in local Government**” and also other matters pertaining to the conduct of Devonport City Council.

I.e. Recommendation 5 > *“The Government consider reviewing the LGA and LGR to strengthen requirements relating to the lease of property. Specifically, significant lease opportunities should be open to all interested market participants. ”*

Please inform as to whether or not at this date if the Government or the Review Panel has considered the above recommendation for inclusion in the review.

I contend ,that due to **the maladministration and or blatant misleading information given to ratepayers by Devonport City Council ,before during and after construction of the Living City food pavilion ,also known as Providore Place ,and now known as Market Square Pavilion** if the recommendation has not already been considered then I request that it should be included in the current revue.

I also contend the government should consider including in the review- **That all agreements /contracts for the lease of council property or sale thereof are open and transparent and not classified as Strictly Private and Confidential or Commercial in Confidence. (Only on very rare occasions where there is the possibility of litigation should they be permitted)**

In support of the recommendation I submit the following which is an extract from the Auditor General’s Report 2019-20 .Also annexed is a brief outline of events , general information and comment in regard to the Devonport Council’s Living City food pavilion project.

FROM PAGE 16 AN EXTRACT OF THE AUDITOR GENERAL’S REPORT PERTAINING TO PROVIDORE PLACE (My bold high lights)

“Given the long-term nature of some leasing agreements, further guidance in the LGA or LGR would assist councils considering undertaking these activities. Evidence obtained by us indicated the head lease was primarily drafted by [REDACTED] and it appeared to be missing a number of standard lease clauses. /2

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 **DCC did not obtain independent legal advice** on the lease agreement prior it being signed. DCC entered into the head lease with PPD knowing:

- the existing relationship with P+i exposed the Council to potential public criticism for not engaging in an open market process for the food pavilion operations
- potential conflicts in future decision making could arise given P+i’s development management role. Despite these risks, the manner in which the lease agreement was entered into indicated Council did not exercise appropriate governance over the arrangement, and did not adequately manage the close relationship risk with P+i and PPD. In examining the governance activities around the establishment of the head lease, the application of DCC’s Model Code of Conduct Policy and principles of good governance, we found:
 - the head lease, primarily drafted by P+i, appeared to be missing a number of standard lease clauses
 - DCC did not obtain independent legal advice on the lease agreement prior to it being signed
 - the relationship risk between DCC and P+i in entering into the head lease arrangement, although acknowledged, was not adequately managed
 - DCC had not met good governance principles relating to transparency, equity, participation and inclusion and effective and efficient decision making. We have further noted that on 24 September 2018, Council approved a variation to the lease to defer the payment of rent by PPD from 1 July 2018 to 1 February 2019, due to delays in finalising fit outs for tenancies. As at 30 August 2019, PPD was in dispute with DCC over the Providore Place head lease agreement and its rental liability. DCC sought legal advice and was assessing its position. As at 30 August 2019, DCC had only received minimal rent for Providore Place, with the matter currently subject to arbitration.

Recommendation -5. The Government consider reviewing the LGA and LGR to strengthen requirements relating to the lease of property. Specifically, significant lease opportunities should be open to all interested market participants.

6. DCC update its policies to provide guidance relating to property lease transactions.

7. DCC amend its policies to clarify when independent legal advice should be obtained in connection with property leases.

8. DCC review its measures to mitigate risks arising from contracts entered into where potential conflicts of interest may arise.”

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AN ANALYSIS OF THE AUDITOR GENERAL'S REPORT INTO THE EFFECTIVENESS OF THE GOVERNANCE AND PROCUREMENT PROCESS FOR THE DCC'S LIVING CITY PROJECT.

The information hereunder will take some time to read but will be well worth the effort especially for those who want to understand the significance of the Auditor General's Report.

The release of the Auditor General's report into the effectiveness surrounding the governance of the Devonport City Councils Living City Process was damning. Yet the community is left without a solid understanding of the ramifications of the breaches that the council made. For once again, the Devonport City Councils spin machine has downplayed the severity of the report. Through the local media the electorate may share the nonchalant attitude of the Mayor that such breaches were minor administrative oversights inevitable in a project the scale complexity of Living City. However, the lapses in proper governance had major ramifications for the probability of the success of the project.

What does the report mean? What does it say?

What investigation did the Auditor General Perform – What is involved with the Assurance report?

Most within the community have little understanding as to what is meant by an assurance report (well at least those that get invited to dinner parties) and have many misconceptions as to what it means in the context of the Living City investigation. The two largest of these misconceptions are that the report provides a check of the Council in its entirety. This report I opine doesn't for it is very specific in its objectives. The investigation had a narrow scope primarily aimed at determining the appropriateness of the relationship between the Devonport City Council and the Project Development Manager, [REDACTED] and its many related parties.

The second misconception is that the audit is only involved with the financial aspects of the council. The investigation is not a financial audit but one that assesses the compliance of Councils processes with the applicable acts and the policies of the Devonport Council.

Why is proper governance so important?

It's easy for the community to dismiss such transgressions as mere bureaucratic oversights and regard the Local Government Act and council policies as rigid barriers that stifle council's progress in achieving objectives. However, both the Local Government Act and Council policies provide a framework that ensures that decisions made by council **are equitable, transparent, accountable and prudent**. By following the Act and Council Policies the aim for council is to optimise the decisions made by council in a consistent and standardised format that minimises risk to ratepayers.

The risk to a community of a council's improper governance in the ordinary course of business is significant. The risk to a community of a council's improper governance in the construction of Tasmania's largest urban renewal project is substantial with potentially catastrophic consequences.

ASSURANCE REPORT FINDINGS OF NON COMPLIANCE:

There are two overarching themes that run through the Auditor General's Assurance Report.

1) Insufficient Clarity of the Local Government Act :

The first of which is the inadequacies of the Local Government Act to provide proper prescriptive guidance in regard to a project the size of Living City. This allowed the Devonport Council interpretation of the Local Government Act to be manipulated in such a way to suit its objectives.

2) Consistent deviance from proper governance in Councils dealings with Project Developer:

Secondly, the council disproportionately breached the Act or the Councils own policy guidelines in its dealings with the project developer, [REDACTED], and its associated entities / related parties. Almost without exception, improper governance concentrated on the councils appointment, management, and reporting of its dealings with [REDACTED]

INSUFFICIENT CLARITY OF THE LOCAL GOVERNMENT ACT

The Auditor General found that many of the definitions were ill defined and as a result it can be argued that the council exploited these vague provisions beyond the spirit if not the letter of the Act.

In Dennis Denuto terms the Act gave a "Vibe" rather than being overly prescriptive.

This can be best demonstrated by the Councils failure to use the public tender process for both the initial and subsequent engagement contract of the Living City project managers, [REDACTED]. The provisions of the Local Government Act allow councils to circumvent the public tender process in "extenuating circumstances". When writing the act you can imagine that such circumstances in the minds of the writers might include the loss of critical infrastructure, a bridge for example, where the immediacy of its repair takes precedence over the increased risk associated with a poor procurement process.

It is difficult to justify how the appointment of [REDACTED], as project developers can classify as extenuating circumstance beyond the mere scale of the project. It is a tough job to argue that the council's decision to circumvent the entire public tender process in order to expedite proceedings outweighed the exponentially higher risk of engaging an unproven supplier without proper due diligence. For the risk went way beyond the \$5.26 m paid to [REDACTED] for their part of the contract.

A far greater risk of avoiding a proper due diligence for the project developers engagement was the unknown quality of the professional advice that underpinned and justified \$250m of infrastructure investment. This is simply not a contract for which short cuts (even if legally available) should be taken. If anything, the contract that was to underpin the largest urban renewal project in Tasmania's history **should have had a tender and due diligence process so rigorous that it matched the scale of the project. It didn't.**

The council's claim that the proper public tender process was not required due to the extenuating circumstances that only P+i possessed the skills and commercial expertise to deliver the project was as naive as it was reckless. **It was a statement that was also incongruent with [REDACTED] website (at that time) that spoke of their learning outcomes from managing the project.** It would be laughable if it did not have such serious financial consequences for the community.

A simple review of the business model that formed the foundation for EVERY subsequent decision, prepared by both council and the project developer, [REDACTED]

For example, millions in consultancy fees did not have to be paid to determine that \$400,000 rent as a worst case scenario for year one of the Food Pavilion was delusional. Simple maths using ATO benchmarks will show that to support such a rent the Food Pavilion's restaurants had to be serving 600 meals a day 6 days a week. In a city with the demographics and size of Devonport it is baffling how this could be even considered plausible let alone prudent as a worse case. Incidentally the food pavilion [REDACTED] consisting of, among other things, a gin distillery and bar: a beer brewery and bar : and a cocktail and pizza bar; indeed strange that a council should be permitted to provide premises for these type of businesses. The assumptions contained within the model were [REDACTED] both at the planning and operational stage with the reduction in rent to a mere third of that forecast as a WORSE case. All this following a sustained period of rent free dithering that had already cost ratepayers in excess of \$500,000.

Had Councillors exercised their duty of care to ratepayers by challenging the assumptions in the model (no one expects them to be experts but they are expected to challenge the reasonableness using normal critical analysis) then ratepayers of Devonport would be millions \$s better off.

All of this does beg the question as to how a related party of the project development manager , responsible for the financial model and rental forecasts, can benefit from a lease at a rate barely a third of what they had forecast a mere three years before.

[REDACTED]

In the Advocate on 6 December 2016 the Deputy General Manager was quoted as saying that the "revenue the council received on the food pavilion ** was guaranteed through the head lease arrangement and removed the council's exposure to financial risk*". And "As far as the council is concerned *we've got a 10-year lease with Providore Place to run it and we're getting * a good return above the independently assessed market value,*" (* There was no bankers or directors guarantee) for \$400K pa for 10 years)

[REDACTED]

The Auditors Report confirms that the **Council entered into a lease contract primarily drafted not by the Council but rather by the Head Leasee**. Not surprisingly the Auditor General found that **this lease omitted a number of the standard lease clauses designed to protect the landlord i.e. DCC**. These omissions would have been picked up by a competent external legal counsel.

However, in breach of the local government act, the council sought no external legal advice prior to lease being signed.

The only probable explanation for the omission of obtaining legal advice was the fact that the contract was merely one of convenience. It suited both parties to enter into a contract neither at arm's length nor on standard commercial terms simply to provide a "perception" of commercial legitimacy to the rental forecasts **in order to justify the food pavilions construction and receive Commonwealth funding**. There can't have been an obligation for the Head Leasee to pay any rent for the council was under such political pressure that if it could have enforced payment it would have. This is supported by the Mayor [REDACTED] finally admitting almost three years after the event, that the original lease was not commercial in nature but rather a "non traditional co-operative shared arrangement". I'm not even sure the Auditor General can decipher that Kum Ba Yah description of a contract used to justify approx. \$11m of public spending.

This breach of the Local Government Act removed any leverage the council had over the Head Leasee in negotiating a new lease. **They, DCC, had signed a lemon of a lease that in no way protected the interests of ratepayers**. When collective political survival and reputation trumps the best interest of ratepayers the only option available was for council to sign another lease on terms a fraction of the reported original.

If a private landlord has a rental property and allows the tenant to draft terms how likely it is that rent would be paid.

When the conditions of the second lease were so fundamentally different to the first and with a Head Leasee that had failed to deliver 1) the economic stimulus of a tenanted food pavilion 2) any material rental payments to council or 3) any return on its portion of the \$650,000 of ratepayers funds provided in incentives/ fit outs then **WHY was it not put back out to public tender in accordance with proper governance?** [REDACTED]

It's important to note that neither of these Head Lease agreements was put out for public tender that goes against the council's proper governance and its claimed values of equity and transparency.

- Transparency and therefore accountability was not and is still not in abundance at the Devonport City Council Unfortunately DCC consistently displays the attitude of it being a private company particularly in regard to any of their commercial undertakings or property dealings)
- Consequently [REDACTED] so as to give council the opportunity to prove that most of what they were spruiking in regard to the Living City project, in particular the food pavilion, was factual a **Right to Information (RTI) was lodged with Council 5th October 2018**, to include among other things, release a signed and un-redacted copy of the Head Lease Agreement. **Due to council's intransigence not to release the lease/agreement negotiations then took place between DCC and the State Ombudsman.**
- Council strongly resisted releasing the Strictly Private and Confidential document as required, by the Ombudsman, and expended much time and ratepayer's money on legal advice so as to not accede to the request for them to do so. **However after some 3 years and 6 months** council finally, but reluctantly, abided by the Ombudsman's direction to provide a copy of the said agreement which was received by post on the 9th May 2022. It is evident, I consider, that the content proved without doubt that DCC had blatantly abused the privileges afforded by the Local Government Act and had concealed the truth from ratepayers.

There is no quarrel with the Ombudsman for the time taken to finalise this matter. The delay I believe was due to the tactics by DCC to avoid releasing the agreement and the lack of government support for staffing and sheer amount of requests to the Ombudsman's office from concerned ratepayers from other councils about local government/ council's reluctance to provide information.

The Response to a question asked to DCC 28 Nov 2016 >"Does the head lease agreement protect the Devonport ratepayers' interests as a legally binding contract for the full term without termination for convenience clauses, or similar clauses that afford Providore Place Pty Ltd a contractual exit right under a specific circumstance(s), other than normal default by the other party provision? Was

DCC's Answer . "As stated the terms of Council's lease with Providore Place Pty Ltd remain commercial in confidence. Council is however confident it has an appropriate legally binding agreement with Providore Place Pty Ltd based on sound commercial terms and consistent with Council's other commercial property leases." (

(Comment - Not so ! - Compare this with Aud. Gen. Finding and head lease agreement!)

Another instance [REDACTED] was given by DCC in the response /answer to the question –

Has Council protected the Devonport ratepayers' interests by securing personal guarantees under the terms of the agreement, again noting that **Providore Place Pty Ltd was only registered about 3 weeks prior to the announcement?**

DCC's Answer . "Council is confident it has an appropriate legally binding agreement with Providore Place Pty Ltd based on sound commercial terms and consistent with Council's other commercial property leases."

Comment - It was proved not to be so. There were no Bankers or Directors Guarantees!

Also, to be noted ,during the time that efforts were being made by ratepayers to receive factual information Three successive Ministers for local government; the Premiers including his Deputy, Two successive Directors of the Local Government Division; the Integrity Commissioner and the Auditor General (AG) were all repeatedly made aware of what was going on at Devonport none wanted to "know about it " and only the AG did his job **albeit most importantly within the constraints of what he could audit and then say what he found.** The investigation had a narrow scope primarily aimed at determining the appropriateness of the relationship between the Devonport City Council and the Project Development Manager - [REDACTED] and its many related parties.

Both the State and Australian Government encouraged/supported the concept and provided funds **HOWEVER THEY WERE UNABLE TO PROVIDE ANY REAL EVIDENCE OF APPROPRIATE DUE DILIGENCE OR RISK MITIGATION OVERSIGHT.** (Comment – The Commonwealth enquiry into "pork barrelling "is welcome and should reveal some interesting facts)

In addition to the issues raised above the Auditor General also displayed concerns in regard to how the Council reported the payments to [REDACTED] in the financial accounts. Serious concerns were also raised as to how it managed the conflict of interest of a company that was both project development manager and Head Leasee. For the council simply didn't.

Of most concern is not that the fact that there were systematic breaches but rather every time improper governance occurred it disproportionately involved Living City's Project Developer, [REDACTED] or its related parties. Why?

Living City, despite the former Mayor's assertions, was always inherently risky; however the deviation from proper governance increased these risks exponentially and unnecessarily. The cost of this improper governance for the community is the accumulation of tens of millions in debt (Total debt as @ 30 Sept 2022 = \$46.86 Million) **with negligible incremental income to offset the loan repayments.** The consequences of these decisions will have a disproportionate impact on the vulnerable within our community on low fixed incomes for decades to come. **The council were I opine were reckless and unconscionable in their actions and continue to downplay the seriousness of their transgressions. They need to be held to account.**

(Of interest A former Alderman /councillor who blew the whistle (i.e. revealed what went on in closed session) in regard to a \$250 K rent reprieve for Providore Place Devonport P/L was hounded down, prosecuted and required to pay costs ,then one who was supposedly looking after ratepayers interests and made misleading information was promoted to the position of general manager.

The question must be asked "Why those, who ,at the time, held the positions of Minister for Local Government and Director of Local Government and who were made well aware of the ongoing fiasco, at DCC did not take appropriate action against council yet were very quick off the mark to prosecute the whistle blower? "

End

To the best of my ability, all of the above has been submitted in good faith.

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I have attached for extra information Copy of my Notice of Motion as per the DCC 2020 AGM

Yours truthfully


Robert .B. (Bob) Vellacott - 18 Feb 2023

Annexed below Questions on Notice asked

Separate Attachment Copy of my (R. B Vellacott) Notice of Motion as per the DCC 2020 AGM

QoN RBV Police rent info 28 OCT 2019 sent and Responses added

To - THE MAYOR AND COUNCILLORS
DEVONPORT CITY COUNCIL

From - BOB. VELLACOTT – FINANCIAL RATEPAYER


QUESTION ON NOTICE FOR DEVONPORT CITY COUNCIL MEETING 28th OCTOBER 2019

SUBJECT - Instruction to be given to the appropriate Manager to notify the appropriate authorities and police of a possible breach of the Local Government Act Section 76.- Writing off bad debts.

PREAMBLE AND RATIONALE - FACT - Devonport Council has waived unpaid rent under the head lease with Providore Place Devonport Pty Ltd for the premises known as Providore Place – Ref. The Advocate dated 13th & 14th September 2019.

Council should explain why Section 76 of the Local Government Act has not been breached in relation to the Providore Place Devonport Pty Ltd head lease.

Council has now entered into a new lease with the prior tenant who did not make the appropriate contracted rent payments for Providore Place. **This appears to indicate** that a majority of council **have confidence that council will receive the new rent; accordingly the Council must have reasonable expectations on receiving the new rent.**

My questions are:

1. **Why did council forgo the arrears and why is there no breach of the act?** (See appended Section 76 of the Local Government Act)

(DCC Response –“Decisions relating to the rental payments have been made by Council in accordance with its statutory obligations.”)

2. Will council now instruct the appropriate manager :(General Manager or Acting General Manager) to advise all of the appropriate authorities that there may have been a possible breach of the Local Government Act and if so seek that all who supported the writing off of the

debt be prosecuted by the relevant authorities and request the police to investigate the matter? (DCC Response -"NO "_

Extract from LGA

76. Writing off bad debts

- (1) A council may write off any debts owed to the council –
 - (a) if there are no reasonable prospects of recovering the debt; or
 - (b) if the costs of recovery are likely to equal or exceed the amount to be recovered.
- (2) A council must not write off a debt unless the general manager has certified –
 - (a) that reasonable attempts have been made to recover the debt; or
 - (b) that the costs of recovery are likely to equal or exceed the amount to be recovered.

Please ensure all of the above and responses are included in the DCC Agenda for 28th November 2019

BOB VELLACOTT

21st October 2019