

JOHN TOWNSEND

◆◆◆ LAWYER ◆◆◆

My Ref: JRT:2010/047

10 August 2010

Councillor Chris Harris
C/- City of Sydney Council
Town Hall
George Street
SYDNEY NSW 2000

BY EMAIL: charris@cityofsydney.nsw.gov.au

Dear Councillor Harris

Possible Conflict of Interests of Lord Mayor

I refer to your proposed Motion to the effect that the City of Sydney Council ("Council") resolve to contribute to a court action that may be undertaken by the Barangaroo Action Group ("BAG") against Lend Lease (Millers Point) Pty Ltd ("Lend Lease") and the Barangaroo Delivery Authority ("BDA"), in the event that the Minister for Planning determines to approve Lend Lease's application to proceed with excavation works on the Barangaroo site ("Site") which is owned by the BDA.

You have sought advice as to whether the Lord Mayor, a councillor of the City of Sydney Council, should refrain from being involved in any debate or vote on your Motion, by reason of her position as a member of the BDA Board.

As you know, on or about 16 March 2009, the Council resolved to adopt the Model Code of Conduct for Local Councils ("Code") that was formulated for the purposes of Section 440 of the *Local Government Act 1993*.

While it does not form part of the enforceable standards of conduct, Clause 4.1 of the Code sets out the basis for the enforceable parts of the Code: viz

"Integrity"

You [ie a council official] must not place yourself under any financial or other obligation to any individual or organization that might reasonably be thought to influence you in the performance of your duties."

The definition of "council official" includes councillors.

Clause 7.13 of the Code requires a council official who has a "non-pecuniary interest that conflicts" with that official's "public duty" to disclose that interest as soon as practicable "fully and in writing, even if the conflict is not significant."

Clause 7.14 provides, in effect, that if a disclosure is made at a council or committee meeting, it must be recorded in the minutes, and that will constitute a disclosure in writing for the purposes of clause 7.13.

Clause 7.15 provides, in effect, that the management of a non-pecuniary conflict of interests will depend on whether or not the conflict is "significant".

Suite 608, Level 6, 109 Pitt Street, Sydney NSW 2000
Tel: (02) 9221 6500 ◆ Fax (02) 9221 6599 ◆ Mobile: 0408 960 000
johntownsend344@bigpond.com

Liability limited by a scheme approved under Professional Standards Legislation

Clause 7.16 provides:

"As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but involves:

...

- (c) *an affiliation between a council official and an organisation, sporting body, club, corporation or association that is particularly strong.* [Emphasis added]

Clause 7.17 of the Code provides:

"If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict interest exists, you must manage it in one of two ways:

- (a) *remove the source of conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official*
- (b) *have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply."*

"Conflict of interests" is defined in clause 2 of the Code as follows:

"a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty."

Pursuant to section 6 of the *Barangaroo Delivery Act 2009*, the BDA is a corporation.

The Lord Mayor is a member of the BDA Board. She has not taken this position at the request of or as a delegate of Council. On the contrary; there are some on the Council who believe that the Lord Mayor should not be on the BDA Board, because this position may well give rise to conflicts of her interests as a councillor and Lord Mayor.

Accordingly, there is little doubt that the Lord Mayor's position on the BDA Board is a private interest, in that she does not perform her duties as a BDA Board member as part of her public duties as a councillor or as Lord Mayor. There is no doubt that, as a member of the BDA Board, she has a "*particularly strong*" association with a corporation, within the meaning of clause 7.16 of the Code, whereby she has a "*significant*" non-pecuniary conflict of interests.


This is reinforced by the fact that, as a member of the BDA Board, the Lord Mayor has a duty to act in the interests of the BDA, which is the owner of the land that comprises a substantial portion of the Site. It is likely that, on occasions, the Lord Mayor's duty to act in the interests of the BDA, which is the owner of the Site, will conflict with her duties as a councillor representing the interests of the City of Sydney and the interests of residents within the Council's boundaries.

The Lord Mayor would place herself in an untenable position if she were to be involved in the debate and to vote on your Motion. How can she, as a member of the BDA Board, possibly vote in favour of a motion to financially assist the conduct of legal proceedings against the BDA? If she cannot possibly vote in favour of such a motion, then how can she not be said to be conflicted?

A reasonable and informed person would perceive that the Lord Mayor could be influenced by her private interest as a member of the BDA Board when being involved in the debate at Council and the vote on your Motion.

Therefore, it is clear that, in compliance with the Code, the Lord Mayor must disclose her interest and refrain from being involved in the Motion, and that she must absent herself from any debate or voting on the Motion.

Yours faithfully


John R Townsend