

REPORTS THROUGH THE ACTING GENERAL MANAGER

REPORTS FROM THE ACTING GENERAL MANAGER

20 [GM-CM] Review of Documents with Findings - LEDA Developments

SUBMITTED BY: Acting General Manager

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.2	Improve decision making by engaging stakeholders and taking into account community input
1.2.1	Council will be underpinned by good governance and transparency in its decision making process

In June 2013 following a quotation process, SINC Solutions Pty Ltd were engaged to conduct a review of documents with findings in relation to issues raised by LEDA Developments (LEDA) in their August 2011 (Kings Forest) document which was provided to Council in October 2011, their October 2011 (Cobaki) document which was provided to Council in November 2011 and a January 2013 document titled "Reply by LEDA to Tweed Shire Council's Management Response Report, a Report to NSW Department of the Premier and Cabinet, Division of Local Government" and to also review Council's investigation and management response to the 2011 LEDA documents.

This Council report tables (as confidential attachments) the SINC Solutions' report document which includes 115 findings and 19 recommendations to facilitate a better working relationship between Council and LEDA moving forward.

Following legal advice, it is recommended that in addition to Recommendation 2 of the SINC Solutions Report, that a confidential extract copy of the SINC Solutions report (Attachment 3) be provided to LEDA which comprises the following:

- Executive Summary;
- Background;
- 115 Findings with the exception of 11 complete and 3 partial which have had redactions applied;
- 19 Recommendations with the exception of a small redaction which is immaterial to the recommendation; and
- Attachment B of the SINC Solutions report comprising the complaint summary.

All recommendations from the SINC Solutions' report with the exception of a small redaction which is immaterial to the recommendation are also included in the body of this Council report.

Importantly, the report noted no corrupt conduct issues and no code of conduct breaches were identified during the review requiring further investigation or referral to another agency.

RECOMMENDATION:

That:

- 1. In accordance with the Code of Meeting Practice and section 373 of the Local Government Act, Council suspends Standing Orders and convenes a closed 'committee of the whole' in accordance with Section 10A(1)(b) to enable the author of the SINC Solutions report to address Council on the document.**
- 2. (a) Council receives and notes, the contents of the review report (Review of Documents with Findings) prepared by SINC Solutions, into the issues raised by LEDA in their 2011 and 2013 reports.**
(b) Council notes management's intention to implement the SINC Solutions report recommendations and to provide advice to Council on the progress of the implementation on a regular basis.
(c) Council notes legal advice may be required with regards to the matters that the Independent Chair (Recommendations 12-14) will be permitted to determine given Council's Statutory, Planning and Delegation obligations.
- 3. Council further notes that a copy of the complete SINC Solutions report has been forwarded to the Division of Local Government.**
- 4. ATTACHMENTS 1, 2 and 3 are confidential in accordance with The Local Government Act 1993 Clause 10A(2):**
(a) personnel matters concerning particular individuals (other than councillors); and
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

(Notwithstanding these provisions in relation to confidentiality it is deemed in the Public Interest to make the Recommendations contained within the SINC Solutions report (contained within Attachment 1) publicly available and to provide a confidential extract of the report being Attachment 3 to LEDA).

5. **A confidential extract copy of the SINC Solutions report (Attachment 3) be provided to LEDA which comprises the following:**
- **Executive Summary;**
 - **Background;**
 - **115 Findings with the exception of 11 complete and 3 partial which have had redactions applied;**
 - **19 Recommendations with the exception of a small redaction which is immaterial to the recommendation; and**
 - **Attachment B of the SINC Solutions report comprising the complaint summary.**

REPORT:

In June 2013 following a quotation process, SINC Solutions Pty Ltd were engaged to conduct a review of documents with findings in relation to issues raised by LEDA Developments (LEDA) in their August 2011 (Kings Forest) document which was provided to Council in October 2011, their October 2011 (Cobaki) document which was provided to Council in November 2011 and a January 2013 Council document titled "Reply to LEDA to Tweed Shire Council's Management Response Report, a Report to NSW Department of the Premier and Cabinet, Division of Local Government" and to also review Council's investigation and management response to the 2011 LEDA documents.

The terms of reference for the Review were as per the Division of Local Government's letter dated 12 April 2013 to Council:

1. The review should seek to identify the circumstances that have caused or contributed to the breakdown in the relationship between LEDA Developments and the Council;
2. The review is to have particular regard to the accuracy and balance of assessments, reports and submissions prepared by Council in relation to both the Cobaki and Kings Forest developments based on the material submitted by LEDA with regard to its Part 3A applications;
3. The review should have particular regard to adequacy and integrity of the investigation into the LEDA complaints by the former General Manager, Mr M Rayner, and
4. The findings of the review should inform recommendations for policy or procedural reform or the developments of protocols to address any issues identified by the review.

This Council report tables (as confidential attachments) the SINC Solutions' report document which includes 115 findings and 19 recommendations to facilitate a better working relationship between Council and LEDA moving forward.

Importantly, the report noted no corrupt conduct issues and no code of conduct breaches were identified during the review requiring further investigation or referral to another agency. A copy of the report has been provided to the Division of Local Government.

In accordance with the Code of Meeting Practice and section 373 of the Local Government Act, it is proposed Council suspends Standing Orders and convenes a closed 'committee of the whole' in accordance with Section 10A(1)(b) to enable the author of the SINC Solutions report to address Council on the document. It is noted that the Press and members of the public will be excluded from the meeting during the closed committee of the whole session.

It is also recommended that the contents of the review report (Review of Documents with Findings) into the issues raised by LEDA in their 2011 and 2013 reports, be received and noted by Council and that in addition to the Recommendation 2 of the SINC Solutions Report that a confidential extract copy of the SINC Solutions report (Attachment 3) be provided to LEDA which comprises the following:

- Executive Summary;
- Background;
- 115 Findings with the exception of 11 complete and 3 partial which have had redactions applied;
- 19 Recommendations with the exception of a small redaction which is immaterial to the recommendation; and
- Attachment B of the SINC Solutions report comprising the complaint summary.

The recommendations of the report were as follows:

Recommendation 1

The contents of the review report (Review of Documents with Findings) into the issues raised by LEDA in their August 2011, October 2011 and January 2013 reports, be received and noted by Council.

Recommendation 2

The General Manager formally advise LEDA Developments Pty Ltd in due course as to the outcomes of the review by SINC Solutions in relation to matters LEDA have raised with Council in their reports dated August 2011, October 2011 and January 2013.

Recommendation 3

That any future complaints received by Council about Councillors relating to alleged inappropriate conduct that has occurred since the date of this report should be submitted in accordance with the Tweed Shire Council Procedures for the Administration of the Model Code of Conduct and completed in accordance with those Procedural requirements.

Recommendation 4

That any future complaints received by Council about Council staff relating to alleged inappropriate conduct that has occurred since the date of this report should be submitted in accordance with the Tweed Shire Council Procedures for the Administration of the Model Code of Conduct and completed in accordance with the relevant Local Government Award provisions and best practice requirements for the conduct of staff investigations.

Recommendation 5

That where appropriate, any future significant complaints concerning the conduct of senior staff would be better investigated by an external party rather than investigated internally, to ensure procedural fairness to all parties and independence in the investigation.

Recommendation 6

That Council develop a Communications Strategy which clearly details communications between LEDA and Council Officers; and LEDA and Councillors. The Strategy should include contact points for each party; contact method (verbal or written); and type of issues to be addressed. This strategy should be supported by an 'Interaction between Councillors and Staff Policy' which should be developed by Council.

Recommendation 7

That Council's Communication Devices Policy be amended to ensure that the use of Council's corporate systems (including email system), for any personal submissions made by Staff or Councillors relating to Council activities including development applications, be prohibited. This includes the use of the staff members Council email address to lodge any such submission. The Policy is to be amended to preclude personal storage of the submission on Council's electronic storage systems, noting that the only storage permissible is as an official record along with all other submissions retained by the Council in the corporate record management system (where the submission is made to Council)

Recommendation 8

That Council develop a Media Strategy to respond, when required, to issues raised in the media by LEDA, and which have, or may have, a negative impact on Council.

Recommendation 9

That Council provide regular briefings/training sessions with key development staff on dealing with Councillors; dealing with conflict of interests (including activities as a member of the public including activist groups or making submissions on developments); GIPA applications; and dealing with difficult persons.

Recommendation 10

That Council should consider reviewing its current practice of providing considerably voluminous Council business papers to Councillors on a regular basis through adopting any or all of the following:

1. Scheduling more regular Council Meetings;
2. Scheduling complex matters more effectively;
3. Undertaking a Delegations Review; and/or
4. Adoption of a Planning Committee (PC) or an Independent Hearing and Assessment Panel (IHAP).

Recommendation 11

That an in depth planning review not be undertaken of Council's assessment of any of LEDA's submissions.

Recommendation 12

That no formal facilitation process be undertaken between Council staff and LEDA representatives. Instead, it is recommended that an experienced and highly skilled Independent Chair be engaged to facilitate regular scheduled meetings between LEDA representatives and Council staff and determine matters as required. Both parties should agree on the Independent Chair selected; costs should be divided equally and explicit agreement completed committing each party to the process.

Recommendation 13

That in instances where there can be no agreement or decision on matters of dispute in the development after being through the meeting held by the Independent Chair, and particularly in cases where Council and LEDA have opposing legal advice, it is recommended that consideration be given to seeking independent legal advice from a third party in an endeavour to resolve the issue.

Recommendation 14

That in order to ensure future success of the regular scheduled meetings between LEDA and Council, and the operations of the Independent Chair, it is recommended that the first meeting between the parties be attended by Ms Kath Roach (author of this report) in order to confirm agreement from both parties as to the proposed system as detailed within this report. Council's Acting General Manager and the Executive Chairman of LEDA should be in attendance at this initial meeting.

Recommendation 15

That Council should make more efficient use of its Policy and Procedures in any future dealings with LEDA including: the Compliments and Complaints Handling Policy and Procedure; Business Ethics Policy; Community Engagement Strategy and associated Integrated Planning and Reporting Policy documents; Correspondence – Response to Policy; Customer Service Charter; Dealing with Difficult People Policy; Vision Statement, Mission Statement, and Corporate Values.

Recommendation 16

That a more structured approach be undertaken to the allocation of staff on all major projects such as the Kings Forest and Cobaki developments. That a set minimum core staff be allocated to work on the project with staff allocating a proportion of their weekly time to the project. The staff should not be required to be relocated within Council to work on the project. These core staff should be made known to the respective developer, and be used as a primary contact for the project (as part of the Communications Strategy), and be the focus of any required Department of Planning responses.

Recommendation 17

That Council streamline its internal referral process and develop Service Level Agreements (SLA) between Assessment Services and other relevant sections of Council. The Service Level Agreements should detail expected service standards in terms of quality, timeframes and priorities amongst other things.

Recommendation 18

That Council review internally the greater involvement of strategic planners and an economic strategist, throughout the pre-lodgement and assessment phases of any future development proposal for major developments.

Recommendation 19

That given:

- a) the length of time that has passed;
- b) the format in which the allegations were made; and
- c) the public knowledge of the allegations which denied procedural fairness to parties;

that Council take no action against any Council staff member or Councillor mentioned in this review report for any alleged Code of Conduct breaches that may have been alleged up to the date of this report. This includes code of conduct matters raised by LEDA in the August 2011, October 2011 and January 2013 reports. Council should formally write to LEDA and advise them of this recommendation.

It should be noted that any matters currently under review by the Division of Local Government are subject to the Division's determination.

OPTIONS:

Not applicable.

CONCLUSION:

The independent review and report provides an opportunity for Council and the organisation to reflect upon its past procedures and operations and to take proactive, positive measures to improve its customer service, particularly with respect to the provision of Council reports and in response to complaints and in dealing with large developments, of a significant nature.

It is management's intention to implement the recommendations contained within the report, some of which may require a subsequent report to Council. Progress on the implementation of these recommendations will also be reported to Council on a regular basis.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Conduct Version 1.9.
Compliments and Complaints Handling 1.4.
Business Ethics 1.2.
Correspondence (response to) 1.3.
Customer Service Charter 1.2.
Dealing with Difficult People 1.1.
Community Engagement Strategy 1.1.
Associated Integrated Planning and Reporting Framework documents.

b. Budget/Long Term Financial Plan:

It is estimated that an additional \$30,000 will be required in the 2013/2014 Financial Year to implement the recommendations from the review. This will be voted in the September Quarterly Budget Review.

c. Legal:

Yes, legal advice has been received.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- (Confidential) Attachment 1. SINC Solutions Pty Ltd Final Report - Tweed Shire Council Review - 9 October 2013. (Document distributed electronically to Councillors, Executive, Public Officer, Communications Officer - Media and Communication and Customer Services Coordinator only).
- (Confidential) Attachment 2. SINC Solutions Pty Ltd Summary of Complaints Tweed Shire Council Review - 9 October 2013 Attachment B. (Document distributed electronically to Councillors, Executive, Public Officer, Communications Officer - Media and Communication and Customer Services Coordinator only).
- (Confidential) Attachment 3. Confidential SINC Solutions Pty Ltd - Tweed Shire Council Review - 9 October 2013 - extract for LEDA following legal advice. (Document distributed electronically to Councillors, Executive, Public Officer, Communications Officer - Media and Communication and Customer Services Coordinator only).
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