

1 October 2014

General Manager
Tweed Shire Council
P0 Box 816
MURWILLUMBAH NSW 2484

Dear Mr Green,

FEE PROPOSAL – INDEPENDENT CHAIR – TWEED SHIRE COUNCIL AND LEDA DEVELOPMENTS

Reference is made to the correspondence Urbis Pty Ltd (Urbis) dated 4 September 2014 regarding the ongoing role of Clare Brown as the Independent Chair of the working party dealing with the Cobaki and Kings Forest projects.

The purpose of this letter is to confirm that Urbis agree to the continuation of the engagement on the same terms as those submitted by APP Corporation Pty Ltd (APP) and accepted by Council in its resolution of 19 June 2014 as follows:

1. In relation to Tender EC2014-068, for Independent Chair to facilitate dealings between Tweed Shire Council and Leda Holdings, Council accepts the submission from APP Corporation Pty Ltd, in particular the nominee Clare Brown.

The submission from APP included requested variations to the terms of the Council contract included in the Tender documents (EC2014-068). Urbis requests the same variations apply to the continuation of the engagement. A copy of the approved variations is annexed for ease of reference.

Yours faithfully,



David Hoy
Director - Planning

SYDNEY

GPO Box 5278 Sydney 2001
Tower 2, Level 23, Darling Park
201 Sussex Street
Sydney NSW 2000 Australia



Set out below is a request for amendments to the terms of Council's Contract Conditions. We would request an opportunity to discuss these with Council.

Clause Number	Suggested amendment	TSC Council comment
3.12(a)(Second bullet point)	Amend the second bullet point of clause 3.12(a) by deleting "not ... less than".	Agreed.
3.12(a) (Third bullet point)	Amend clause 3.12(a) by: 1. deleting "not less than" and replacing with "of"; 2. inserting "and in the aggregate" after "any single occurrence".	Agreed Agreed
3.12(b)	Amend clause 3.12(b) by inserting "(in the form of certificates of currency)" after "evidence". Copies of these certificates are provided in the submission.	Agreed
3.14a)	As the engagement will be undertaken by Council we would request that clause 3.14(a) be amended by inserting "subject to the Council being jointly and severally liable for 1 00% of the Contractor's fees, in the event of non-payment of the Contractor's fees by LEDA Holdings Pty Ltd" after "LEDA Holdings Pty Ltd,". The effect of this amendment would limit the right of APP to terminate for non-payment by LEDA and not Council.	Not Agreed. The Terms and Conditions of the Contract make it very clear that 50% of the fee arrangement is to be paid by Leda Holdings Pty Ltd.
3.15a)	Amend clause 3.15 (a) by inserting "subject to the Council first having provided the Contractor with written notice of the grounds for cancellation and a reasonable opportunity to rectify these grounds" after "provided within the time specified" and "does not comply with the Contract".	Agreed
3.17a)	Amend clause 3.17a) by: 1. deleting "arising from the" and replacing with "to the extent caused by the negligent"; 2. inserting a new sentence: "The Contractor's obligation to indemnify the Council under this Contract shall be reduced proportionately to the extent that the act or omission (including negligence) of the Council, its employees, officers, agents and other contractors or any other third party has caused or contributed to the actions, claims, losses, damages, penalties or demands."	Agreed Agreed
3.17a)	Amend clause 3.17a) by deleting "or alleged".	The amendment should relate to 3.17(c) and on this basis Council agrees.
New clause 3.17 A	We would request that the Council agrees to a cap on liability through the following suggested amendment. Insert a new clause 3.17 A: Notwithstanding any provision to the contrary in any other clause of this Contract, and except to the extent not permitted by any law: (i) the Contractor's total liability arising out of or in connection with this Contract, whether arising in contract (including under any warranty or indemnity), tort (including negligence), in equity, in restitution or pursuant to statute shall be limited to: a. to the extent that the liability is subject to indemnity under a policy of insurance	The amendment should relate to a new clause 3.17(d) not 3.17(a) and on this basis Council agrees.



Clause Number	Suggested amendment	TSC Council comment
	<p>b. in all other cases, the amount payable pursuant to clause 3.14a);</p> <p>(ii) the Contractor shall not be liable to the Council for consequential loss or damage, however and whenever arising and whether arising under this Contract or as a result of the performance of the work under this Contract, and whether based on negligence, breach of warranty, breach of contract, strict liability or otherwise. In this clause "consequential loss or damage" shall include:</p> <p>a. any cost, expense, loss or damage of an indirect or consequential nature;</p> <p>b. any loss of profits, loss of goodwill, loss of revenue or loss of use of property; or</p> <p>c. any loss arising from business interruption;</p> <p>suffered by the Council and any damage suffered by it as a result of a claim in contract, tort or by statute by a third party for cost loss or damage of the kinds referred to in paragraphs (a), (b) and (c) above which might be suffered by the third party.3.14a);</p> <p>(ii) the Contractor shall not be liable to the Council for consequential loss or damage, however and whenever arising and whether arising under this Contract or as a result of the performance of the work under this Contract, and whether based on negligence, breach of warranty, breach of contract, strict liability or otherwise. In this clause "consequential loss or damage" shall include:</p> <p>a. any cost, expense, loss or damage of an indirect or consequential nature;</p> <p>b. any loss of profits, loss of goodwill, loss of revenue or loss of use of property; or</p> <p>c. any loss arising from business interruption;</p> <p>suffered by the Council and any damage suffered by it as a result of a claim in contract, tort or by statute by a third party for cost loss or damage of the kinds referred to in paragraphs (a), (b) and (c) above which might be suffered by the third party.</p>	