

LATE ADDENDUM REPORT

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR CORPORATE SERVICES

2 [CS-CM] Special Rate - Cobaki LEDA Manorstead

SUBMITTED BY: Director

Valid



Civic Leadership



Caring for the Environment

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
4	Caring for the Environment
4.1	Protect the environment and natural beauty of the Tweed
4.2	Conserve native flora and fauna and their habitats

SUMMARY OF REPORT:

At its meeting of 10 December 2015, Council resolved at Minute No 677 the following:

"that, in respect of the proposal to apply for a Special Rate Variation application to the Independent Pricing and Regulatory Tribunal (IPART) to fund the long term maintenance and management of environmental protection lands within LEDA's Cobaki development:

- 1. Council endorses the Special Rate of \$100 average per 450m² lot as proposed by LEDA in a letter submitted to Council dated 16 November, 2015, and that an application be submitted to IPART to advance this proposal;*
 - 2. Council adopts the ad valorem rating method for the raising of the special rate on the Cobaki development; and*
 - 3. Council and LEDA hold further discussions to address the future funding arrangements for the proposal, and how best to advance a legal agreement to enable the relevant conditions of development approval to be satisfied, and thereby allow the commencement of civil construction works for the initial precincts of the Cobaki development. The outcomes of these discussions shall be reported back to Council in early 2016*
-

LATE ADDENDUM REPORT

4. *In conjunction with 3 above a report for Council's consideration be prepared in early 2016 identifying the nexus between the ongoing works funded by Council's general rates and the public benefit to the broader community*
5. *ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-*
 - (g) *advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege."*

At its meeting of 17 December 2015, Council resolved at Minute No 720 the following:

"that:

1. *Council adopts the amended Resourcing Strategy (including the Long Term Financial Plan) Supporting the 2013/2023 Community Strategic Plan;*
2. *Council adopts the amended Delivery Program 2013/2017 - Operational Plan 2015/2016; and*
3. *Council places these amended documents on public display until the close of business on 29 January 2016."*

Further to part 3 of the resolution of 10 December, 2015, Council staff has subsequently held discussions with legal representatives and LEDA with the intention of preparing a legal agreement to enable the relevant conditions of the development approval to be satisfied.

As the draft legal agreement is contingent upon a Special Rate Variation (SRV) application being approved by the Independent Pricing and Regulatory Tribunal (IPART), this process can continue after the lodgement of a SRV application and is planned to be concluded in May 2016.

Further to the resolution of 17 December, 2015, the amended documentation and notification of the proposed SRV application was advertised for public comment until the close of business on 29 January, 2016.

Two submissions supporting and nil submissions opposing the proposed SRV application were received.

RECOMMENDATION:

That Council:

1. **Adopts the revised Long Term Financial Plan Supporting the 2013/2023 Community Strategic Plan;**
2. **Adopts the revised Delivery Program 2013/2017 - Operational Plan 2015/2016; and**

LATE ADDENDUM REPORT

3. Lodges, in accordance with the publicly exhibited proposal, a Special Rate Variation application with the Independent Pricing and Regulatory Tribunal (IPART) for the funding of the management and maintenance of the environmental protection lands associated with the Cobaki development to:
 - a) raise \$550,000 in the 2016/17 financial year, with indexation applied each year by the rate pegging amount;
 - b) be levied by way of an ad valorem rating method; and
 - c) be payable by the rateable properties within Cobaki development.

LATE ADDENDUM REPORT

REPORT:

At its meeting of 10 December 2015, Council resolved the following:

“that, in respect of the proposal to apply for a Special Rate Variation application to the Independent Pricing and Regulatory Tribunal (IPART) to fund the long term maintenance and management of environmental protection lands within LEDA’s Cobaki development:

1. *Council endorses the Special Rate of \$100 average per 450m² lot as proposed by LEDA in a letter submitted to Council dated 16 November, 2015, and that an application be submitted to IPART to advance this proposal;*
2. *Council adopts the ad valorem rating method for the raising of the special rate on the Cobaki development; and*
3. *Council and LEDA hold further discussions to address the future funding arrangements for the proposal, and how best to advance a legal agreement to enable the relevant conditions of development approval to be satisfied, and thereby allow the commencement of civil construction works for the initial precincts of the Cobaki development. The outcomes of these discussions shall be reported back to Council in early 2016*
4. *In conjunction with 3 above a report for Council’s consideration be prepared in early 2016 identifying the nexus between the ongoing works funded by Council’s general rates and the public benefit to the broader community*
5. *ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.”*

LEDA had previously written to Council (by letter dated 8 October 2015) seeking consideration of a draft proposal and Deed of Agreement (prepared on behalf of LEDA by Gadens Lawyers) as the basis for a request to IPART to establish a special rate levy to fund the long term maintenance and management of environmental protection lands within LEDA’s Cobaki development.

The letter proposed two main elements:-

- 1) A proposed amount of the Special Rate at \$50 per 450m² lot to be applied to the Cobaki development.
- 2) A deed of agreement setting out the type of Special Rate that LEDA will support.

LEDA presented their views to a Councillors Workshop on 29 October 2015.

In further correspondence dated 16 November 2015, LEDA agreed to a proposed annual Special Rate estimate of \$100 per 450m² lot.

LATE ADDENDUM REPORT

An independent consultant engaged by Council in October 2014 (Ecosure) had estimated the ongoing costs of maintaining the environmental lands to be approximately \$750,000 per annum excluding the initial funds required to restore and revegetate the site. LEDA's proposal of \$100 per lot would generate approximately \$550,000 in income towards ongoing costs of maintaining the environmental lands.

Council's contracted Project Manager for LEDA's Cobaki and Kings Forest, Clare Brown of Urbis reviewed the documents of LEDA's special rate levy proposal and by letter dated 27 November 2015 provided advice to Council. In summary, she concluded that:

- In principle, the imposition of a special rate levy to fund the ongoing management of the environmental lands would satisfy the requirements of the Cobaki Concept Plan, Project Application, and development consents issued by Council; and
- A funding model which allocates a proportionate funding responsibility through both a site specific Special Rate Levy for LEDA's Cobaki site, as well as Council's general funding for all Tweed residents, based on estimated degrees of nexus and benefits is reasonable; however, if Council's general rates are to be used to subsidise the ongoing management it would be necessary to demonstrate the nexus between the works and the public benefit to the broader community.

Council staff has subsequently held meetings with legal representatives and LEDA with the intention of going over the draft legal agreement provided by Gadens Lawyers to arrive at an agreement that would enable the relevant conditions of development approval to be satisfied. Councillors have been updated via email as to the outcomes of these meetings.

As a result, a revised draft legal agreement is yet to be agreed upon by the parties, however is expected to be concluded by May 2016.

Execution of the draft legal agreement is dependent on the SRV application being approved by IPART and will include a provision that approval and implementation of the Special Rate will be considered as the agreed mechanism to fund the in perpetuity maintenance of the environmental land.

It seems that a SRV application from Council should not be affected by the current Fit for the Future process.

IPART were advised on 11 December 2015 of Council's intention to apply for a SRV.

The Office of Local Government have issued "Guidelines for the Preparation of an Application for a Special Variation to General Income" to apply from 2016/17 financial year.

Section 4.1 of these guidelines provide as follows:

"4.1 Criteria for special variation applications

Undertaking the IP&R processes, and in particular developing the Long Term Financial Plan as outlined in the IP&R Manual, should provide sufficient information to meet the criteria against which IPART assesses applications provided that the special variation is

LATE ADDENDUM REPORT

clearly identified in this process. The criteria against which IPART is to assess each application are based on what councils are required to do under IP&R. These criteria are:

1. *The need for and purpose of a different revenue path for the council's General Fund (as requested through the special variation) is clearly articulated and identified in the council's IP&R documents, including its Delivery Program, Long Term Financial Plan and Asset Management Plan where appropriate. In establishing need for the special variation, the relevant IP&R documents should canvas alternatives to the rate rise. In demonstrating this need councils must indicate the financial impact in their Long Term Financial Plan applying the following two scenarios:*
 - *Baseline scenario – General Fund revenue and expenditure forecasts which reflect the business as usual model, and exclude the special variation, and*
 - *Special variation scenario – the result of approving the special variation in full is shown and reflected in the General Fund revenue forecast with the additional expenditure levels intended to be funded by the special variation.*

Evidence to establish this criterion could include evidence of community need/desire for service levels/project and limited council resourcing alternatives. Evidence could also include the assessment of the council's financial sustainability conducted by the NSW Treasury Corporation.

2. *Evidence that the community is aware of the need for and extent of a rate rise. The IP&R documentation should clearly set out the extent of the General Fund rate rise under the special variation. The council's community engagement strategy for the special variation must demonstrate an appropriate variety of engagement methods to ensure an opportunity for community awareness and input to occur.*
3. *The impact on affected ratepayers must be reasonable, having regard to both the current rate levels, existing ratepayer base and the proposed purpose of the variation. The IP&R processes should:*
 - *clearly show the impact of any rises upon the community*
 - *include the council's consideration of the community's capacity and willingness to pay rates and*
 - *establish that the proposed rate increases are affordable having regard to the local community's capacity to pay.*
4. *The relevant IP&R documents must be exhibited (where required), approved and adopted by the council before the council applies to IPART for a special variation to its general revenue.*

Accordingly, amendments were made to the following documents incorporating information relating to the proposed Special Rate:

- Long Term Financial Plan (LTFP) supporting the 2013/2023 Community Strategic Plan; and
- Delivery Program 2013/2017 - Operational Plan 2015/2016

The amended documentation and notification of the proposed SRV application was advertised for public comment via the following media:

LATE ADDENDUM REPORT

- Tweed Daily News (Wednesday 23 December, 2015)
- Tweed Link (Tuesday 12 January, 2016)

Information on the proposed SRV and copies of the amended documents were also placed on the Council web site from Wednesday 23 December, 2015.

The closing date for receipt of submissions was 29 January, 2016.

Two submissions were received. Both of these submissions were in favour of the proposed Special Rate. Copies of the submissions are attached to this report.

OPTIONS:

That Council:

1. Adopts the publicly exhibited documents and proceeds with the Special Rate Variation application.
2. Continues negotiations with LEDA for an alternate funding mechanism. This option would eliminate the ability to make an application for a Special Rate Variation for 2016/17 as all applications are required to be submitted by 15 February 2016.

Option 1 is recommended.

CONCLUSION:

Council and LEDA have been working closely together to advance the Cobaki development. Both parties prefer a funding proposal which involves a Special Rate Levy specifically for future Cobaki land owners to fund the requirements of the associated Environmental Protection lands. In order to advance such a proposal, Council needs to obtain approval from IPART to proceed with the levy of the Special Rate for the 2016/17 financial year.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

LEDA's Special Rate Levy proposal will have a minimal impact on Council's long term financial planning and budget.

c. Legal:

Legal advice will need to be obtained by Council for LEDA's Draft Deed of Agreement.

d. Communication/Engagement:

Public consultation on the Special Rate Levy proposal resulted in two submissions being received.

LATE ADDENDUM REPORT

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Submission from Wildlife Relocation and Management Services dated 15 January 2016. (ECM3923197).

Attachment 2. Submission from LEDA Manorstead Pty Ltd dated 29 January 2016. (ECM3939358).
