CONFIDENTIAL

Final Report

(Extract of the Final Report prepared by Council for LEDA following legal advice)

Tweed Shire Council

EQ2013-099 – Review of Documents with Findings

9 October 2013

This report contains some information subject to legal privilege.

For ease of identification, it has been highlighted within this report as shaded grey.
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Executive Summary

A Review of Documents with Findings was conducted by SINC Solutions Pty Ltd, in relation to concerns raised by LEDA Developments in two (2) reports to Tweed Shire Council in 2011 and a further report to Council in January 2013. The concerns related to Council’s involvement in the two (2) LEDA developments (Kings Forest and Cobaki) that had obtained various development approvals through the Department of Planning via the Part 3A approval process.

An internal review had been conducted by Council in 2011/2012 with the production of a report known as the ‘Management Response Report’. The Division of Local Government, the Department of Planning and the Independent Commission Against Corruption all received the same reports from LEDA and all declined to investigate LEDA’s concerns. In 2012 Tweed Shire Council attempted to undertake an external facilitation process between Council and LEDA to address the poor working relationships, but this failed to eventuate.

Following receipt of the January 2013 LEDA report, and the subsequent but unrelated termination of the then General Manager Mr David Keenan in March 2013, the Division of Local Government recommended to Council that an independent person be appointed to review the concerns raised by LEDA.

This report examines the process Council has taken in attempting to address the concerns raised by LEDA. The review found that Council did not undertake a satisfactory review, and has also made a number of findings of a negative nature against both LEDA and Tweed Shire Council. Of note to the review was the large number of issues raised by LEDA – a total of 82 issues of complaint were identified within all the LEDA reports and submissions. Of these 82 issues, 80 main issues were identified, with an additional 102 issues contained within the 80 main issues of complaint. Further, the nature of the matters raised by LEDA were often complicated. Additionally, there was a lack of involvement and engagement by Council with LEDA during the internal council review process. It was also noted that by LEDA not following Council’s said Complaints Management Process that LEDA denied Council staff and Councillors procedural fairness as the issues were put into the public domain prior to any review of the complaints themselves.

This review tabulated the concerns raised by LEDA in their reports to Council, to provide Council with a future reference point on issues already independently reviewed.

It was very clear to the review that previous relationships between Council and LEDA was poor, at least since 2008, and neither party have critically reviewed their working relationship or made satisfactory attempts to date to build a better relationship. The review found that both Council and LEDA were at fault in contributing to the current poor working relationship. With the predicted future growth of the local government area, not only with the two (2) LEDA developments but other anticipated developments, it was noted that Council must strategically review its processes with major developments and also engage processes that will improve working relationships with LEDA.

Contrary to previous advice and views by Council, this review recommends that no facilitation process take place between Council and LEDA, due to the current poor state of relationships and the inability of parties to work together. Key members of both parties held an expectation that the other party should apologise for their various actions.
Instead this review recommends that an Independent Chair be appointed to run and facilitate future regular scheduled meetings between LEDA representatives and Council. This Independent Chair will have detailed planning knowledge and in-depth experience as well as skills in chairing meetings and facilitation. The Independent Chair will have authority to make decisions (with the exception of where the delegation is not permitted) based on the information provided by each party and each party will be required to abide by that determination in the progression of the matter. The Independent Chair will, amongst other things, have responsibility for chairing the meeting; ensuring minutes are kept and circulated to relevant persons; ensuring actions are confirmed at the meeting; ensuring order is kept at the meeting and respect is shown by all parties to other parties; and facilitating actions or resolutions on disputed matters. A communications strategy is also recommended to be developed in staff and Councillor relations with Developers. Further, an interaction between Councillors’ and staff policy should be developed and align with the communication strategy.

It was also recommended that a more structured approach be applied to Council staffing to major projects or developments; and that Council review the current large bulk of Council meeting agenda’s and business papers. A variety of options are provided to assist this process including a review of delegations and consideration of a Planning Committee or an Independent Hearing and Assessment Panel (IHAP).

Council already has a suite of appropriate policies in place to be able to deal with concerns raised by LEDA, so staff training has been recommended in areas such as dealing with difficult persons; GIPA applications; and the like. This will ensure staff are better equipped to deal with issues commonly arising with major developments.

A key point noted in this review was that Council was not the determining authority in these developments and there was a lack of policy or guidance for Councils to operate under the Part 3A legislation. Part 3A legislation has now changed and therefore relationships between LEDA and Council are required to be improved given the significant interaction that will occur in the future. Council and LEDA need to change their approach to each other.

During the review it was apparent that a full planning review of the Kings Forest and Cobaki developments was not warranted or cost effective for Council due to:

  a) The changing legislation (Part 3A);
  b) The Department of Planning were the consent authority and not Tweed Shire Council;
  c) the undetermined role NSW Council’s faced when involved in the Part 3A legislation development proposals; and
  d) The discretion involved in Council’s involvement in the development proposals.

It is important to note no corrupt conduct issues and no Code of Conduct breaches were identified during this review requiring further investigation or referral to another agency.
Background

By letter dated 14 June 2013, Tweed Shire Council engaged SINC Solutions to conduct a review of documents with findings. This review relates to the concerns raised by LENA in its complaint documents to Tweed Shire Council dated August 2011 (Kings Forest), and October 2011 (Cobaki) and January 2013.

It is important to note that this report details a “review” of matters, and was not an “investigation”.

As detailed on Council’s website, background on the two (2) developments include:

“The Kings Forest site is located on the far north coast of NSW, approximately 20km south of the Queensland and NSW border. Bogangar and Cabarita Beach lie to the south of the site beyond Cudgen Lake which abuts the site to the south east. Cudgen and Kingscliff lie to the north. Casuarina lies to the east of the site across the Tweed Coast Road. Cudgen Nature Reserve adjoins the site on the eastern perimeter... Tweed Coast Road, a Council responsibility, runs north to south along the east of the site and is the primary arterial road connecting to the development. The RTA controlled Pacific Highway runs to the west of the site, no access to this road is proposed.

The site at Cobaki Lakes covers 17 individual allotments and is located within the local government area of Tweed Shire Council. The entire site is owned by LEDA Manorstead Pty Ltd, who is also the proponent.

The site is located on the New South Wales and Queensland border approximately 1.5 kilometres west of the Gold Coast Airport and approximately 6 kilometres inland of Tweed Heads (refer Figure 2). Adjoining the site to the east is a wetland protected by State Environment Planning Policy No. 14 - Coastal Wetlands, Cobaki Creek and the Cobaki Broadwater. Remnant bushland forest areas lie to the west and north of the site and are zoned for environmental protection. Agricultural land primarily used for cattle grazing adjoins the site to the south and to the north-west. To the south-west is a golf course, which is zoned for rural...

A summary of the main aspects of the Concept Plans is provided below:

Cobaki

A new mixed, residential, commercial, community use redevelopment;

- Seventeen residential precincts with a mix of housing types including detached houses, townhouses and multi-unit housing to a maximum of 3 storeys, comprising approximately 5,500 dwellings (a new population of between 10,000 and 12,000 people);
- A mixed use Town Centre and Neighbourhood Centre to a maximum of 3 storeys of retail, commercial, community and residential uses;
- Community and education precincts including 2 public primary schools;
- Active and passive open space areas covering approximately 87 hectares of land;
- Environmental protection areas covering approximately 194 hectares of land;
- Access network of roads, public transport routes and pedestrian/cycle paths;
- Landscaping and vegetation management; and
- Utility services infrastructure.

**Kings Forest**

A new mixed, residential, commercial, community use redevelopment:

- Twenty three (23) residential precincts with a mix of housing types including detached houses, terraces and attached dwellings on corner allotments, comprising 4,500 dwellings (a new population of over 10,000 residents) covering approximately 270 hectares of net developable land;
- A mixed use Town Centre and Neighbourhood Centre with building heights of 2-3 storeys with a combined land area of 14.4 hectares;
- Community and education facilities including 2 public primary schools and a community facility over 14.5 hectares of land;
- A business park covering 7 hectares of land;
- A golf course covering 57 hectares of land that also acts as a buffer between the environmental protection areas and the residential developments;
- Active and passive open space areas;
- Environmental protection areas covering 338.5 hectares of land;
- Access network of roads, public transport routes and pedestrian/cycle paths;
- Landscaping and vegetation management;
- Water management areas and lakes; and
- Utility services infrastructure.

The Minister for Planning granted Part 3A approval for the Concept Plans for both Cobaki and Kings Forest in late 2010...

As part of the Part 3A process for both sites, the Minister approved new site specific Development Codes, which generally incorporate the main planning, subdivision and engineering controls from Tweed Council's existing policy documents...

Further to the Part 3A Concept Plan processes for both Cobaki and Kings Forest, the proponent has also chosen to submit Part 3A Project Applications to the NSW Department of Infrastructure and Planning for the major infrastructure works (bulk earthworks, major roads, stormwater and the like) required to guide the subdivision framework, and future development plans for each precinct. Following the approval of the Project Applications, it is expected that Council will undertaking the role of consent authority for subsequent applications under Part 4 of the Act...

A Project Application for the Cobaki site was assessed and approved concurrently by the NSW State Government at the same time as the Minister’s Concept Plan approval in late 2010.
In late 2011, further to the Kings Forest Concept Plan approval, the proponents submitted an application to the NSW State Government to modify the Concept Plan, as well as a Project Application for bulk earthworks and infrastructure across the site, and the first development precincts, Precinct 1 (rural retail) and Precinct 5 (a residential subdivision).

Following a period of public exhibition, Tweed Shire Council endorsed a report as the basis for a submission on these plans at its meeting of 24 January 2012. The next stage of the process is for the proponent to provide a response to all the exhibition submissions, and preparation of a Preferred Project Report for final consideration by the NSW Department of Planning and Infrastructure...

Concurrent to the NSW State Governments and Tweed Council approvals processes for the Cobaki development, the proponents were also required to seek separate Federal Government approval under the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act), for what has been categorised as a “controlled action”. The assessment relates to various impacts upon listed threatened species and ecological communities, listed migratory species and Commonwealth land. Information on this action can be viewed on the Department of the Environment, Water, Heritage and the Arts website.

On 13 October 2011, approval was granted by the Federal Government for the proponent’s “controlled action” at Cobaki, subject to various conditions.

In summary, the Department of Planning Major Assessment Process was as follows:

<table>
<thead>
<tr>
<th>Department of Planning - Major Project Assessments</th>
<th>Date</th>
<th>Determination</th>
</tr>
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<tbody>
<tr>
<td>Kings Forest, Kingscliff 06 0318 Residential Community Concept Plan</td>
<td>May 2010</td>
<td>Y</td>
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<tr>
<td>Kings Forest, Kingscliff 06 0318 MOD1, to the Concept Plan for Kings Forest (Development Cycle)</td>
<td>Dec 2010</td>
<td>Y</td>
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<tr>
<td>Kings Forest, Kingscliff 08 0194 Stage 2 Project Application and Minor Modification to the Concept Plan (MOD 2)</td>
<td>Aug 2013</td>
<td>Y</td>
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<td>08 0107 Cobaki Road, Cobaki Town (9) to Rural Residential Subdivision</td>
<td></td>
<td>Withdrawn</td>
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<td>Cobaki Residential Development, Piggabeen Road, Cobaki Lakes 06 0316 Concept Plan - Residential Community Development</td>
<td>Nov 2010</td>
<td>Y</td>
</tr>
<tr>
<td>Cobaki Residential Development, Piggabeen Road, Cobaki Lakes 08 0200 Project Application - Open Space</td>
<td>Feb 2011</td>
<td>Y</td>
</tr>
<tr>
<td>Cobaki Residential Development, Piggabeen Road, Cobaki Lakes 08 0200 Mod 1 Project Application - Central Open Space</td>
<td>May 2013</td>
<td>Y</td>
</tr>
<tr>
<td>Cobaki Residential Development, Piggabeen Road, Cobaki Lakes 06 0316 Mod 1 to Concept Plan - Cobaki Residential Development Concept Plan</td>
<td>May 2013</td>
<td>Y</td>
</tr>
</tbody>
</table>
LEDA raised a number of issues of complaint in various documents to Tweed Shire Council dated:

- August 2011 (Kings Forest) and provided to Council in October 2011;
- October 2011 (Cobaki) and provided to Council in November 2011;
- January 2013.

In October 2011 and November 2011 LEDA provided the two (2) 2011 reports concerning Kings Forest and Cobaki developments to the then Council General Manager and each Councillor.

Council reviewed these complaints internally, and in January 2012, a “Management’s Response to the LEDA Reports: (Tweed Shire Council’s Dealings Connected with Kings Forest and Cobaki)” [Management Response Report] was submitted to the 24 January 2012 Council meeting. This Management Response Report was authored by Mr Mike Rayner, the then General Manager and Mr Vince Connell, Director Planning & Regulation. This Management Response Report was a review of the two (2) 2011 LEDA reports and the complaints and issues contained within the two (2) reports. The Management Response Report was dated 13 January 2012 and also contained a summary of complaints and the actions taken by Council.

In response to the Management Response Report, LEDA submitted another report to Council dated January 2013 titled “Reply by Leda to Tweed Shire Council’s Management response Report, a report to the NSW Department of the Premier & Cabinet Division of Local Government”. This LEDA report contained a number of issues of complaint primarily in relation to how Council had investigated the matters raised by LEDA in their two (2) 2011 reports.

It should be noted that the then General Manager Mr Mike Rayner resigned on 27 April 2012 and Mr David Keenan served as the Council’s General Manager from 30 April 2012 to 21 March 2013 (approximately 12 months) before his position was terminated. At the time of this review, Mr Troy Green was Acting General Manager and a recruitment process was being undertaken to appoint a new General Manager.

The Division of Local Government reviewed the process of Council’s termination of the General Manager Mr David Keenan, and issued Council a letter dated 12 April 2013 advising of the outcome of their review which was that “...the Division has identified no evidence to suggest that the decision was made on improper or illegitimate grounds and is satisfied that it was one that was reasonably open to the Council to make in the circumstances...” and also provided “guidance to assist the Council to move forward”. Part of this guidance was to recommend an independent person to review the concerns raised by LEDA developments.

In June 2013, Tweed Shire Council engaged SINC Solutions Pty Ltd to conduct a “Review of Documents with Findings”.

A number of documents were provided by Tweed Shire Council to the review, and LEDA provided a further submission dated July 2013 with various attachments, plus other correspondence via email, further highlighting issues they had raised with Council that remained outstanding or were (in their view) not previously reviewed to a satisfactory level.
In essence, LEDA across all their reports have complained about two (2) main issues:

1. Council’s assessment of LEDA’s proposals to develop both the Kings Forest and Cobaki areas; and
2. Council’s investigation of the two (2) LEDA 2011 complaints.

The terms of reference for this review are as per the Division of Local Government’s letter dated 12 April 2013 to Council and includes:

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 on its Part 3A applications;
3. The review should have particular regard to the adequacy and integrity of the investigation into the LEDA complaints by the former General Manager, Mr Rayner;
4. The findings of the review should inform recommendations for policy or procedural reform or the development of protocol to address any issues identified by the review.

This report examines the above four (4) issues. However, in order to conduct a thorough review of all the issues raised by LEDA, a table of complaints was developed which is attached to this report as Attachment B. This table summarises the issues raised by LEDA and provides a determination for each issue based upon this review. Some of the issues within the table are discussed in more detail within this report where relevant, whilst other issues are of minor nature, or where the allegation is not specific enough to allow adequate review, have not been reviewed. It should be noted that whilst some complaints have a finding of “Not Reviewed: not enough evidence provided”, these matters will not be considered for all, further review should additional information be provided.

This review by SINC solutions should also be considered to be a ‘line in the sand’ review by each party, whereby there has been ample opportunity provided by both parties over an extended period of time to provide information. To subsequently provide information in relation to such complaints would be considered unreasonable by either party.

A total of 182 issues of complaint were identified within all the LEDA reports and submissions. Of these 182 issues, 80 main issues were identified, with an additional 102 issues contained within the 80 main issues of complaint.

As part of the review process, questions were sent to the following persons by letter, and all persons responded to the review’s questions by return letter or email:

- David Keenan - Former General Manager
- Mayor Barry Longland
- Vince Connell – Director Planning and Regulation
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- Troy Green – Acting General Manager
- Reg van Rij – LEDA Regional Manager Residential

Mr Mike Rayner - Former General Manager, was also forwarded a letter detailing questions from this review. Mr Rayner chose to be interviewed over the telephone on 27 August 2013 in relation to the questions raised by SINC Solutions.

The above letters and any documentation received by either Council, LEDA and SINC Solutions has been used and referenced in this review where relevant.

LEDA forwarded to SINC Solutions a further submission dated 15 August 2013 containing the results and documentation received from Tweed Shire Council in response to a GIPA application dated 26 March 2013 (and internal review). This documentation has also been used and referenced in this review where relevant.

LEDA also forwarded additional submissions dated 20 and 27 August 2013 providing further details in relation to the matters previously raised. As part of the 27 August 2013 submission, LEDA alleged seven (7) Code of Conduct “Infringements” in relation to the conduct of four (4) Councillors. In accordance with the Tweed Shire Council Code of Conduct and Procedures for the Administration of the Model Code of Conduct dated March 2013, SINC Solutions were not able to consider these Code of Conduct complaints for two (2) reasons. Firstly, the matters raised were not part of the terms of reference of this review, and secondly, the lodgement of any Code of Conduct allegations must comply with the requirements of the Code of Conduct and the associated procedures. By letter dated 29 August 2013, SINC Solutions advised LEDA of the appropriate procedures for Council to consider the complaints. It should be noted that the review did not identify any matters relating to the current conduct of existing staff or Councillors that required referral to the Acting General Manager for review.
Summary of Findings

Finding 1
That Council would have found the determination of the actual complaints raised within the two (2) 2011 LEDA reports difficult to extract due to the poorly presented and complicated nature of the LEDA reports.

Finding 2
That the LEDA two (2) 2011 reports did not clearly detail alleged breaches of the Council’s Code of Conduct by staff or Councillor.

Finding 3
That significantly, the two (2) 2011 LEDA reports did not state to Council either their expectations or the outcome they wanted within a set timeframe, and did not identify an author or a representative of LEDA. The lack of this information, would have made the processing of these complaints by Council more difficult.

Finding 4
That given the poorly presented and complicated nature of the two (2) 2011 LEDA reports, it would have been essential for any investigator (internal or external to Council) to have clarified with the complainant (LEDA) via interview or in writing, the exact nature of each complaint and evidence thereof prior to conducting an investigation.

Finding 5
That the Kings Forest report marked “Not for Publication”, and delivered to Council by LEDA on 20 October 2011, was also available to the media as reported in two (2) media outlets on 29 October 2011.

Finding 6
That the unauthorised release of the Kings Forest LEDA report to the media and the resulting media stories, reflected negatively on Council and its staff, and presented a one-sided view of events.

Finding 7
That the former General Manager Mike Rayner misinterpreted the LEDA complaints (1) and (2) as not being Code of Conduct complaints. It is the view of this review that the LEDA reports (1) and (2) constituted Code of Conduct complaints about both staff and Councillors (albeit unclearly), and had they been Code of Conduct complaints, correspondence from the DLG would have indicated such.

Finding 8
That under the obligations of the Code of Conduct, the former General Manager Mr Rayner should have formally assessed the complaint made by LEDA against any Councillor in accordance with the then Code of Conduct provisions.
Finding 9
That the former General Manager Mr Rayner should have advised LEDA that their two (2) 2011 reports were not considered by Council as Code of Conduct complaints and provided them with the opportunity to clarify this aspect in writing.

Finding 10
That it was not procedurally fair for Tweed Shire Council to not advise LEDA that any complaint that they made in their two (2) reports concerning Councillors was not going to be investigated without Council receiving a further written complaint from LEDA. LEDA without receiving such advice from Council, would have reasonably held the view that Council would pursue the subject complaints.

Finding 11
That it was procedurally fair for the Councillors concerned to have an allegation made against them and the allegations not be reviewed in accordance with the provisions of the then Code of Conduct.

Finding 12
That it was procedurally fair for the Mayor, Councillor Longland had responsibility to assess and determine any complaints made by LEDA about the then General Manager, Mr Rayner under the provisions of the Code of Conduct.

Finding 13
The delay by Council in investigating the LEDA complaints reflected poorly on Council. Further, such action may be viewed as hindering working relationships between Council and LEDA.

Finding 14
That although it was intended for the Management Response Report to be reviewed by a third party, it was never formally reviewed and the outcomes reported to Council. The Management Response Report was only supplied to Blackadder Associates for their information in relation to their "provision of facilitation services".

Finding 15
That this current review by SINC Solutions Pty Ltd is the only independent external review that has been undertaken of the Council's Management Response Report (January 2012).
Finding 18
That Council's review of the matters raised by LEDA in 2011 in their two (2) reports to Council (which resulted in the production of the Management Response Report) was not in accordance with Council's Complaints Handling Policy (version 1.3) and Complaints Handling Procedure (version 1.2). Since Council considered the complaints from LEDA not as Code of Conduct complaints, then the process followed by Council should have been in strict accordance with this complaint Handling Policy and Procedure. However, it is noted that complaints were not lodged in accordance with Council's Policy. Further, procedural fairness was not afforded to Councillors and staff as the matters became public prior to being reviewed.

Finding 19
That given the length of time that has passed since the lodgement of the LEDA complaints, Council should not investigate any of the Code of Conduct complaints raised against Councillors and staff in the LEDA submissions from 2011 or 2013. Council should formally write to LEDA and advise them that they will not be investigating any conduct that relate to the August 2011, October 2011 and January 2013 LEDA Documents. LEDA should also be advised that any new complaints relating to the alleged inappropriate conduct by Council staff or Councillors since the date of LEDA report are to be submitted in accordance with the provisions of the 2013 Tweed Shire Council Code of Conduct.

Finding 20
That the review finds that the concept of having an external facilitator with the aim of improving working relationships between Council and LEDA was a positive step. It is unfortunate for both parties that this did not occur in 2012, and has since not occurred.

Finding 21
That the review considers that the terms of reference proposed by the former General Manager Mr Rayner in his email dated 20 December 2011, was appropriate as it acknowledges that there were, or may have been, valid concerns raised by LEDA and that Council were prepared to find a solution.

Finding 22
That the former General Manager Mr Rayner and Mayor, Councillor Longland initiated talks with LEDA about a facilitation process prior to the finalisation of the Management Response Report in January 2012. The notion to endorse Blackadder Consulting to conduct this facilitation was lost at the Council meeting of 24 January 2012, but following a Council resolution on 21 February 2012 using Council procurement processes, Blackadder Associates were engaged by Council in April 2012.

Finding 23
That there was no assessment done by Council of the actions taken by Council post the Management Response Report, and there remains no complete list of what actions (if any) remain outstanding. It is the view of this investigation, that any actions resulting from the Management Response Report should have had a timeframe and person responsible allocated to the action point and this should have been followed up within six (6) months of the Management Response Report by the former General Manager Mr Keenan.
Finding 24
That Council inappropriately, did not consult with LEDA before or after the release of the Management Response Report regarding the five (5) action points listed in the Management Response Report as being the responsibility of LEDA.

Finding 25

Finding 26

Finding 27

Finding 28

Finding 29

Finding 30
That the Mayoral Minute which presented the Management Response Report to Council on 24 January 2012 did not seek endorsement from Council on the report, or for Council to consider the report recommendations.
Finding 31
That the Management Response Report is not written clearly, and does not include all the complaints that had been raised by LEDA.

Finding 32

Finding 33

Finding 34

Finding 35
That the Management Response Report lacked a specific “purpose”. Not only was the purpose of the Management Response Report unclear, the review finds that the intended purpose of the Management Response Report by its two (2) authors was to advise the Council of the actions taken in response to the complaints made by LEDA. The complainant (LEDA) were then provided with a copy of the Management Response Report following the Council meeting with no follow-up actions.

Finding 36
That no official meeting records were kept by Council in relation to staff interviews held regarding the matters raised by LEDA.

Finding 37
That the Management Response Report reflects the informal nature of the investigation process undertaken which was inappropriate in this circumstance.

Finding 38
That the Management Response Report does not indicate whether further clarification was sought or not by Council from LEDA. The review confirmed this clarification did not take place. This further clarification would have ensured that all issues to be investigated were clear to both parties prior to their investigation by Council.

Finding 39
That it was not procedurally fair to LEDA for Council to have raised some related “other issues” not only in the Management Response Report, but to have also raised and concluded upon them without LEDA having an opportunity to comment or be interviewed by Council.
Finding 40
That the Management Response Report inappropriately raises the issue of the existence of a poor relationship between Council and LEDA since 2008. The Management Response Report appears to use this fact to demonstrate to the reader that this is the fault of LEDA. However, what this point reflects is that Council have failed to adequately address issues with LEDA since 2008.

Finding 41
That the inclusion of the media article in the Management Response Report with the reference to reducing corruption in the Part 3A process should have included a further statement by Council in the Management Response Report as to its relevance given LEDA did not make any allegations of corrupt conduct in their 2011 reports to Council.

Finding 42
That the information provided in the Management Response Report regarding the Part 3A process, although provided as background information, does not provide substance to the investigation of the actual individual issues raised by LEDA and is therefore irrelevant within the Management Response Report.

Finding 43
That without providing LEDA details of specific events to respond to, Council was not being procedurally fair to LEDA in making conclusive statements in the Management Response Report in relation to alleged poor behaviour by LEDA representatives to Council staff.

Finding 44
That the Management Response Report often refers to a poor working relationship between LEDA and Council since 2008, but does not review or correct any existing issues that may have had a direct impact on the working relationship.

Finding 45
That whilst it is LEDA's prerogative to make GIPA requests to Council the large number of detailed GIPA requests; their relevance, or lack thereof to the current developments; the internal reviews; and the appeals to the ADT, have not assisted the working relationship between Council and LEDA.

Finding 46
That there were no clear findings of fact made by Council in the Management Response Report.

Finding 47
That the tone and words used within the Management Response Report are at times not appropriate, may on occasion be considered biased and at times err on personal statements, which is contrary to a proper independent investigation report.

Finding 48
That the Management Response Report did not address all the specific complaints raised by LEDA.
Finding 49
That the Management Response Report does not include any specific detail on this matter (that a Councillor provided to the Director another person’s submission to the Department of Planning, promoting its use by Council assessment officers). The Management Response Report did not: detail the identity of the Councillor; the identity of the author of the submission; or make reference to relevant dates of documents. Without this information, readers of the Management Response Report cannot fully comprehend the context of the report comments.

Finding 50
That the Management Response Report does not adequately address the issue (that a Councillor provided to the Director another person’s submission to the Department of Planning, promoting its use by Council assessment officers) raised by LEDA.

Finding 51

Finding 52
It is the view of this review, in the absence of any contradictory documentation, that Council, at the time of their involvement with the Part 3A processes for Kings Forest and Cobaki, had a role to make comment and provide local technical advice from Council staff to the Department of Planning for their consideration. The inclusion of consideration of other non-Council requested information such as other people’s submissions to the Department, or direct community correspondence to Council should have been noted by Council as such or not included into Council’s technical staff submission.

Finding 53
That the review agrees with the Management Response Report that there is no issue in the Director passing on the email received from Councillor Milne to the relevant assessment officers in order to avail themselves of all relevant information.

Finding 54
That the review proceeds with the Management Response Report that “It is clearly in Council’s interest to avail itself of all relevant material and reports to be fully informed and thereby being in a position to put forward for Council’s consideration a comprehensive report...”. However, the information used by Council should be independently validated as detailed below.
Finding 55
That it is inappropriate for Council to include information and comments from a submission from a member of the public that has already been received by the Department of Planning some seven (7) months’ earlier. Having received a copy of the submission through a third party, Council did not have any evidence available to them to substantiate it was an official submission to the Department of Planning from [redacted] or what valid technical information he had relied upon to write the submission. Council should have instead considered and used any source information from formal studies and/or scientific reports that have been officially published and authored by [redacted] and referenced those documents accordingly within the Council submission document. Conversely if there were no formal studies and/or scientific reports that have been officially published and authored by [redacted] available to support this information, the information should not have been used by Council.

Finding 56
That the Management Response Report fails to identify the significance of the incorrect inclusion of information and quotes from the Milledge submission to the Department of Planning into the Council submission to the Department of Planning. There is also no other corrective action taken such as informing the Department of Planning of the error at a later date.

Finding 57
That the Management Response Report is correct in concluding that “there was no obvious indication in these documents that such an indiscretion has occurred”.

Finding 58
That the review finds that Council appropriately forwarded the Council report to the Department of Planning in accordance with the Council resolution.

Finding 59
That the Council meeting minutes of 20 October 2009 directly references the document [redacted], and the Management Response Report correctly concludes that “such Notice of Motions are often politically motivated and are a legitimate component of the democratic process”.

Finding 60
That the Management Response Report should have sought to determine whether the un-named Council officer had breached the Council Code of Conduct in addition to the Council’s Use of Communication Devices Protocol. It is noted that that it was determined that the Council’s Use of Communication Devices Protocol was not breached by the Council officer.

Finding 61
That Council’s action in instructing the officer to have no further involvement with the Kings Forest development was appropriate (although the officer’s role at Council was unknown to the reader of the Management Response Report), but the Management Response Report failed to address any possible future related issues for the Cobaki development.
Finding 62
That the Management Response Report lacks detail. For example, it does not determine the full extent of the matter and does not specifically detail who the submission was passed onto, other than Tweed Valley Wildlife Carers or Friends of the Koala organisation. Further, it does not determine how the information was passed on, for example, via the Council officer's email address.

Finding 63
That the Management Response Report should have sought to determine whether the Council officer had breached the Council Code of Conduct.

Finding 64
That this review does not agree with the Management Response Report statement that "Council officers, elected Councillors and members of the public would share information and work in a more co-operative manner as Part 3A respondents to LEDA's Kings Forest proposal". Council, as a tier of government should be seen to be independent and impartial in Part 3A developments. This is important, given the Part 3A development will result in Council involvement in other development approvals and regulatory functions where impartiality is required.

Finding 65
That Council's Use of Communication Devices Protocol be reviewed to ensure that any personal submission made by staff or Councillors relating to Council activities, including development applications, be prohibited including the use of Council’s email system.

Finding 66
That although LEDA have presented in their report evidence of Council using documents which are against the proposal at Kings Forest, thereby highlighting a potential bias by Council officers, neither the LEDA report or the Management Response Report provide any information as to the contrary. That is, what documents, if any, have been used that support the proposal at Kings Forest.

Finding 67
That irrespective of the content of the Council officers assessment reports to Council, it is ultimately the responsibility of the elected Council to determine Council’s position which is provided to the Department of Planning.

Finding 68
That the actions of [redacted name] in the capacity of [redacted role] on 31 March 2010 was appropriate in forwarding to all Councillors the email by [redacted name] which had been sent to a number of media outlets (Subject: Cobaki and Kings Forest Letter to Ed).

Finding 69
That the Management Response Report action of counselling the staff officer [redacted name], who then made an apology to LEDA at a meeting thereafter is appropriate.
Finding 70
The Management Response Report’s comments that LEDA’s “strident criticism of the Test of Adequacy letter to be highly subjective and unreasonable” may be the case. However, there is no evidence available to show that Council provided LEDA procedural fairness in being able to clarify their complaint on this issue and provide any necessary evidence to support their claims.

Finding 71
That this review has not reviewed the complaint regarding the level of detail required for the “Test of Adequacy” and the Concept Plan and no such review is recommended to be undertaken.

Finding 72
That the Management Response Report provides a one-sided approach to the complaint that Council officers did not consult with LEDA and Government Agencies before finalising the Test of Adequacy submission. Whilst information available to this review suggests that Council had minimal consultation with LEDA, this has been done in the absence of any specific guidelines from the Department of Planning. Reference is made to other findings within the report regarding Council’s role in the assessment process.

Finding 73
That the information presented in the Management Response Report in relation to this complaint reflects that Council have acknowledged long standing complaints by LEDA dating back to 2008.

Finding 74
That the Management Response Report conclusion on this matter reflects that Council did not provide LEDA procedural fairness in being able to clarify their complaint on this issue and provide any necessary evidence to support their claims. Similarly, Council did not receive the information in a form that easily identified the complaints raised.

Finding 75
That the review agrees with the Management Response Report that it is appropriate for any council officer to thoroughly review and query documentation available to them to use in their assessments.

Finding 76
That the Management Response Report addressed the issue of the number of submissions, but did not address the issue of the influence Council allegedly had over the community comments.

Finding 77
That Council’s process in concluding upon the public submission received by them is in accordance with other Council’s use of public submissions on developments. It is noted that some other NSW Councils fully analyse public submissions received, but not all NSW Council’s use this approach.

Finding 78
This review agrees with the Management Response Report that the “actions of the DP&R were totally appropriate and practical in the circumstances”.

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Finding 79
That the Management Response Report in the Concluding Comments on this matter reflects that Council did not provide LEDA procedural fairness in being able to clarify their complaint on this issue and provide any necessary evidence to support their claims. However, the Council did not receive the reports in a format which made the complaints easily identifiable under Council's Complaints Management requirements.

Finding 80
That the Management Response Report in the Summary of Response to the Kings Forest Document reflects that Council did not provide LEDA procedural fairness in being able to clarify their complaint on this issue and provide any necessary evidence to support their claims. As noted above, however, the Council did not receive the reports in a format which made the complaints easily identifiable under Council's Complaints Management requirements.

Finding 81
That Council should decide for itself what technical experts it believes are appropriate to use for the particular purpose at the time.

Finding 82

Finding 83
That the Management Response Report layout is contrary to the format and ordering of the complaints within the LEDA report. This re-ordering makes the Management Response Report difficult to interpret after reading the LEDA Cobaki report.

Finding 84
That the Management Response Report identifies six (6) “areas of criticism” in the LEDA report, but does not then clearly address these individual complaints in the report.

Finding 85
That the Management Response Report identifies the key points of complaint from LEDA in their “A Report on Tweed Shire Council's Dealings connected with Cobaki” dated October 2011.

Finding 86
That in relation to the wording of the Council report recommendation two (2), (Council meeting 19 October 2010) Council verbally apologised twice to LEDA.

Finding 87
That it is the view of this review that regardless of any verbal addresses made at a Council meeting, it is up to each and every Councillor to make their own informed decision on the matters presented to Council and upon the information provided in the business papers. The review notes that Councillors had available to them the letter from LEDA dated 19 October 2010 detailing their concerns with the Council report. Councillors therefore had the option of raising and discussing this matter at the Council meeting should they have so desired.
Finding 88
That the Management Response Report does not detail whether in fact any response was sent to LEDA in relation to their letter dated 19 October 2010, or whether it was discussed at the Council meeting. The review notes that based upon information available to this review, no response was sent by Council to LEDA.

Finding 89
That the Management Response Report does not adequately address or acknowledge that LEDA’s four (4) main issues were issues raised by Council but were not supported by the Department of Planning in their determination. The review acknowledges however, that not all consent authorities will agree entirely with recommendations received by Councils.

Finding 90
The review acknowledges the short timeframes allowed for by the Department of Planning for Council’s input, and the resultant lack of time to consult with or involve, LEDA in this process.

Finding 91
That the review finds that Councillors did have a considerable amount of documents to review for the Council meeting on Tuesday 19 October 2010 which included the agenda item on the Cobaki development. It is noted that Councillors were provided with an additional three (3) days beyond statutory requirements. Further, as the matter was deferred, Councillors were provided with a further month to consider the information.

Finding 92
That providing considerably voluminous Council business papers to Councillors on a regular basis is not good practice, and Council may consider reviewing this practice 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 Independent Hearing and Assessment Panel (IHAP).

Finding 93
That given the length of time that has passed since the lodgement of the LEDA complaints, Council should not investigate any of the Code of Conduct complaints raised against Councillors and staff in the LEDA submissions from 2011 or 2013. Council should formally write to LEDA and advise them that they will not be investigating any conduct that relates to the August 2011, October 2011 and January 2013 LEDA Documents. LEDA should also be advised that any new complaints relating to the alleged inappropriate conduct by Council staff or Councillors since the date of this report are to be submitted in accordance with the provisions of the 2013 Tweed Shire Council Code of Conduct. (This recommendation is also reflected at Finding 19).
Finding 94
That the review notes that the former Code of Conduct which was relevant at the time, is silent on this issue (that the Code of Conduct makes no provision for the investigation of a complaint jointly by the General Manager and another person(s). However, best practice suggests that where the General Manager (or his delegate) chooses to investigate a staff complaint, other persons may be involved in the investigation process, as long as they are not conflicted by their own role in the matters being investigated.

Finding 95
That in relation to the allegations by LEDA in their January 2013 report to Council, under the heading of “The general relationship between Ledo and Council”, the review makes the following findings:

a) None of LEDA’s reports identified the author. It appears that Council have perceived that the author of these reports was [REDACTED];

b) That the review agrees that LEDA have always held the view that an independent investigation was required, and this review supports that view. However, Council were not, and are not, obligated to undertake any review of administrative/relationship type complaints; and

c) The review notes that the issue of “relationships” is a key driver of this matter and disagrees with the LEDA comment.

Finding 96
The review notes that [REDACTED] was the focus of LEDA’s complaints and agree that it was correct for LEDA to have this focus based upon [REDACTED] role and responsibility as the [REDACTED] However, some of LEDA’s comments focused on [REDACTED] as a person rather than the position he holds and the area for which he has responsibility. As such, some comments were of a personal nature and were not appropriate.

Finding 97
That the status of any facilitation or resolution of issues between Council and LEDA from June 2012 had no further direction or confirmed process of the way forward. Both LEDA and the Councillors were under the impression that an investigation was occurring as indicated by the former General Manager, Mr Keenan, and this was not the case.

Finding 98
That it is inappropriate and unreasonable for LEDA or any person or company external to Council to make demands or requests of Council to work with particular staff within Council, or conversely not work with particular Council staff. The same would be expected of Council working with LEDA.

Finding 99
That Council already has in place an adequate suite of applicable Policy, Procedure, Statements and Strategies, to be able to deal with issues relating to LEDA developments. The review notes that Council’s engagement of these documents prior to this review would have greatly assisted Council in having an improved working relationship with LEDA.

Finding 100
That following a LEDA complaint in 2008, a project management protocol was developed between Council and LEDA. Although a positive step in relationships between Council and LEDA, this was not maintained by Council.

Finding 101
That since the major organisational restructure in October 2009 only minor staff changes have been made by Council in planning and assessment.

Finding 102
That based upon the information available to the review, this did not appear to be any significant involvement by Council's strategic planners and an economic strategy in the processing of LEDA's development proposals to date.

Finding 103
That there was also no evidence available to this review suggesting inappropriate conduct by any Council staff member that remains unresolved and that warrants referral to any external agency for their investigation, or referral to the Tweed Shire Council General Manager or Mayor in relation to Code of Conduct breaches.

Finding 104
That Council did have two (2) external environmental assessment reviews conducted in relation to the Kings Forest development.

Finding 105
That the review has observed that both LEDA and Council were critical of each other in many aspects of the development assessment process. It is noted that it is unrealistic of both parties to expect the other party to agree and comply with every aspect of the submission or planning requirement.

Finding 106
That Council consider streamlining its internal referral process and develop Service Level Agreements between Assessment Services and other relevant sections of Council which details expected service standards in terms of quality, timeframes and priorities amongst other things.

Finding 107
That there is no value to Tweed Shire Council in proceeding with a detailed planning review of the LEDA development proposals completed to date.

Finding 108
That the move by Council to have the meeting on 21 December 2010 to discuss relationship issues was a positive step in developing the working relationship between Council and LEDA, however, it demonstrates that efforts to date by Council and LEDA have been ineffective.

Finding 109
That the Tweed Shire Council’s Vision Statement, Mission Statement, and Corporate Values; do not appear to have been emphasised or utilised in working relationships to date between LEDA and Council.

Finding 110
The review finds that a structured approach to meetings and communication between Council and LEDA is paramount to a future successful working relationship between Tweed Shire Council and LEDA developments.

Finding 111
That a Communications Strategy should be developed by Council to document clearly how communications will be conducted between Council staff, developers and Councillors in relation to planning and development matters. Further, an interaction between Councillors and Staff Policy should be developed by Council which supports this Communication Strategy.

Finding 112
That a facilitated approach should not be pursued between LEDA and Council, but rather a clearly defined process involving a highly experienced Independent Chair be undertaken.

Finding 113
That when the Independent Chair is unable to resolve an issue which involves legal contention, that an agreed brief be developed between the parties and an independent legal advisor appointed to determine the issue. Where a brief between the parties cannot be agreed, the usual legal options are available for each party to pursue as they see fit.

Finding 114
That both the Division of Local Government and the Department of Planning & Infrastructure chose not to investigate the LEDA complaints at the time they were initially raised.

Finding 115
That the Department of Planning & Infrastructure assessment timesframes were directly affected by Tweed Shire Council's policy of referring its submissions to the Department to a Council meeting. It should be noted that the review is not of the opinion that this approach of referring matters to the Elected Council prior to submission to the Department of Planning & Infrastructure should change.
Recommendations

It is recommended that:

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 of 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 or the following:
1. Scheduling more regular Council Meetings;
2. Scheduling complex matters more effectively;
3. Undertaking a Designations 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 the initial 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.

Report prepared and authorised by SINC Solutions Pty Ltd.

Kath Roach
Managing Director
SINC Solutions Pty Ltd

9 October 2013

Attachment A – Review Procedures
Attachment B – Listing of LEDA Complaints
Attachment C – Independent Chair Process
Attachment A