

Addendum Report

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- a9 [PR-PC] Development Application DA10/0801.02 for an Amendment to Development Consent DA10/0801 for the Cobaki Estate Subdivision of Precinct 6 Comprised of 442 Residential Lots (Including 1 Residual Lot) and Lots for Drainage, Open Space and Urban Infrastructure (JRPP) at Lot 1 DP 570076, Lots 54, Part Lot 199 & Lot 200 DP 755740 Piggabeen Road, Cobaki Lakes; Lot 1 DP 562222, Lot 1 DP 570077, Lot 1 DP 823679, Lot 2 DP 566529, Lots 46, 55, Part 199, 201, 202, 205, 206, 209, 228, 305 DP 755740 Sandy Lane, Cobaki Lakes

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA10/0801 Pt17



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
 - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
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SUMMARY OF REPORT:

At the Council Meeting held on 20 March 2014, the following was resolved in relation to this matter:

"that this item be deferred to the Planning Committee meeting scheduled for Thursday 1 May 2014, to enable:

1. *The proponent's consultant to have an opportunity to respond to the Council's memo of 18 March 2014.*
2. *Council to provide a series of questions relating to the preparation of the proponent's consultant's report; and*
3. *Council to negotiate with the proponent to determine if an arbitrator could be appointed to resolve the outcome of the openings, with costs to be shared equally between the parties.*

In response to Part Three of the Resolution, advice has been sought from Council's Legal Panel member Maddocks (advice attached as a confidential attachment) in relation to the role and responsibilities of an Arbitrator and this advice requires Council to determine a pathway to allow completion of this matter.

Addendum Report

It is noted from the legal advice that Council is not able to refer determination on a specific condition of the approval, as Council's decision making function under the Environmental Planning & Assessment Act is indivisible and this report provides council with a number of options to determine the modification application.

RECOMMENDATION:

That:

- 1. Council implements the appropriate option to determine Modification Application DA10/0801.02.**
- 2. 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.**

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REPORT:

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In response to Part Three of the Resolution, advice has been sought from Council's Legal Panel member Maddocks (advice attached as a confidential attachment) in relation to the role and responsibilities of an Arbitrator and this advice requires Council to determine a pathway to allow completion of this matter.

It is noted from the legal advice that Council is not able to refer determination on a specific condition of the approval, as Council's decision making function under the Environmental Planning & Assessment Act is indivisible, but could implement one of the following options:

1. Delegate the entire decision making ability of this modification application to an arbitrator;
2. Engage an independent expert to provide a recommendation in relation to only Consent Condition 63;
3. Reconsider the application and make a determination.

Preliminary discussions have been conducted with representatives of the proponent LEDA in relation to the appointment of an arbitrator, with no conclusion to those discussions at this stage.

OPTIONS:

1. Delegate the entire decision making ability of this modification application to an arbitrator;
2. Engage an independent expert to provide a recommendation in relation to only Consent Condition 63;
3. Reconsider the application and make a determination.

CONCLUSION:

Council is required to reach a position on the most appropriate manner in which to determine this modification application.

Addendum Report

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

As highlighted within the report.

c. Legal:

Yes, legal advice has been attached.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Advice from Maddocks (ECM 3326994)
