

PROBITY PLAN

Hornsby Shire Council

Westleigh Park Development

July 2023

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1 Introduction

1.1 Description of the Project

Westleigh Park (the Project) was acquired by Hornsby Shire Council (Council) in 2016 from Sydney Water. The land comprises a central cleared zone zoned R2 Residential, which has been subject to a variety of past uses including landfill. This cleared zone adjoins areas of remnant and regenerating bushland on all sides which includes an area of E3 (Environmental Management) zoning. The land was acquired with the purpose of addressing multiple objectives, including:

- remediation of the past developed and landfill zone;
- provision of recreational facilities; and
- conservation and management of bushland areas.

Council's Sports Facility Strategy identified the need for additional sporting facilities to meet current and future needs within the Local Government area. Westleigh Park has been identified by Council as a key opportunity to help meet this demand. Council commissioned a concept Master Plan in 2018 to review potential arrangements of recreational uses on the site integrated with an approach to site remediation and earthworks. Council's brief identified potential uses to be considered:

- multi-use sporting fields (night lit and irrigated) for various organised sports including the possibility of a synthetic grass sportsground and athletics track,
- amenities buildings and maintenance sheds,
- play facilities and provision for active and passive recreation,
- bushwalking tracks and mountain bike trails,
- pedestrian and cycle shared ways with links to nearby Ruddock Park,
- car parking areas to service park and all recreation facilities,
- roads for access and circulation, and
- a link road between Quarter Sessions Road and Sefton Road.

In order to facilitate the implementation of the park proposals, a specific Plan of Management (**PoM**) was developed which documents proposed park use, community land categorisations and other general Local Government Act requirements.

The PoM is supported by a Master Plan which has been developed for the site, accompanied by recommendations for the staged implementation of proposals for the various park elements. The preparation of the PoM enables Council to strategically address recreation needs in a staged manner and commence the development of new open space facilities at Westleigh Park.

Council's Planning and Compliance Directorate has engaged an independent planner to assess the Development Application (DA) relating to the Project on behalf of Council and it is expected that the independent planner will refer the DA to the Sydney North Planning Panel.

The expected date for lodgment of the DA by Council is September 2023.

1.2 What is Probity?

The term probity means integrity, fairness, honesty and transparency.

For public officials and public sector agencies, creating and maintaining probity involves more than simply avoiding corrupt or dishonest conduct. It involves applying and complying with public sector values and duties such as impartiality, accountability and transparency. Ensuring probity in public sector activities is part of every public official's duty.

Effective probity management is concerned with the procedures, processes and systems used rather than the outcome of an activity, undertaking or project. It should also be recognised that, despite good management of probity risks, mistakes, delays and disputes can arise. Similarly, even the best probity processes do not guarantee that a project or activity will be immune from issues or criticism.

Considering and addressing probity issues should be a normal part of project management, regardless of whether an external probity practitioner is appointed.

Dealing with probity issues early as part of the project planning can:

- Improve the quantity and quality of private sector involvement by generating confidence in how the process will be conducted
- Remove ambiguities in the assessment of proposals
- Assist in ensuring overall project objectives are met
- Minimize costly challenges in the future concerning the integrity of the conduct of the Project.

1.3 Purpose and objectives of the Probity Plan

This Probity Plan sets out the principles by which probity is to be maintained for activities of Hornsby Shire Council (**Council**) in relation to the Project.

The Probity Plan provides a framework to identify, assess and mitigate probity risks which may arise during the project, having regard to the NSW Government's principles of:

- Accountability of the participants and transparency of the process;
- Fairness, impartiality and honesty in carrying out the process;
- Management of actual, potential and perceived conflicts of interest;
- Maintenance of confidentiality and security of documentation and information; and
- Attaining value for money in the prevailing circumstances.

The objectives of the Probity Plan are to:

- Set out the governance arrangements for managing probity activities of Council in relation to the project;
- Provide a reference and information for Council with regard to the probity framework that applies to activities of Council in relation to the project;
- Encourage and foster a culture on the project that is aware, understands and supports the need for probity;
- Provide a framework for demonstrating the application of probity principles and compliance with:
 - *Hornsby Shire Council Conflict Of Interest Policy For Proposed Council Development And Applications Involving Council Staff Or Councillors, February 2023*
 - *Local Environmental Plan Making Guideline, December 2022*
 - *Environmental Planning and Assessment Act 1979*
 - *Local Government Act 1993*
 - *Local Government (General) Regulation 2021*

The project must be undertaken in a manner whereby all involved in the process:

- Act within the limitations of prescribed policies, rules and guidelines;
- Take into account only relevant matters;
- Apply rules consistently but not inflexibly; and
- Make decisions demonstrably free from external influences.

The Probity Plan should be implemented with common sense and flexibility so that achievement of the overall project objectives take priority.

1.4 Scope and application of the Plan

The Probity Plan applies across the Development Application process and each governance level of the project. Probity is the responsibility of each team member or organisation engaged on the project and this Probity Plan applies to:

- Any member of the project governance structure;
- Project team members;
- External contractors or consultants; and
- Any other person or organisation that assists Council with the conduct of the Project including representatives from any other government department of agency.

This Probity Plan is not intended to replace or supersede any previous government requirements. Rather, it is intended to provide guidance and be read in conjunction with the relevant government requirements.

This Probity Plan will be updated from time to time as required to reflect any relevant change in circumstances or project documentation.

1.5 Conduct obligations

Each member of the project team, advisors, and any other person with involvement in the project has a responsibility to ensure that their personal behaviour does not adversely impact on the integrity of the project. Each person is to:

- Act in accordance with the conduct guidelines, Probity Plan, and other Council processes;
- Avoid conflicts of interest;
- Maintain the confidentiality and security of confidential information;
- Act at all times in a professional manner;
- Avoid the acceptance of gifts, hospitality and other benefits that may be perceived to affect the integrity of the project;
- Not make public comment about the project without appropriate authorisation;
- Report any breaches of the Probity Plan or other probity concerns, to the Project Manager / Director and the Probity Advisor immediately; and
- Maintain appropriate records of decision making.

Further details in relation to the Conduct obligations can be found in Section 3 of this Probity Plan.

1.6 Related documents

The Probity Plan should be read in conjunction with the project specific management plans, including:

- Westleigh Park Master Plan
- Westleigh Park Plan of Management

1.7 Amendment

Any amendments proposed to this Probity Plan are to be approved by the relevant Council representative. Reasons for amendments should be clearly documented in the approval documentation.

2 Governance framework for the project

Council is the ultimate decision maker in relation to the nature, execution and process for the project. Within this framework Council will need to appropriately exercise its powers under any relevant Act, especially the Local Government Act 1993.

2.1 Principles of Local Government

2.1.1 Guiding Principles for Local Government

As a statutory body, Council is required to exercise its functions in accordance with all duties and obligations imposed upon it by statute and common law.

Pursuant to section 8A of the *Local Government Act 1993*, the guiding principles for local governments include the following:

- to provide strong and effective representation, leadership, planning and decision-making;
- to carry out functions in a way that provides the best possible value for residents and ratepayers;
- to plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community;
- to apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements;
- to work co-operatively with other councils and the State government to achieve desired outcomes for the local community;
- to manage lands and other assets so that current and future local community needs can be met in an affordable way;
- to work with others to secure appropriate services for local community needs;
- to act fairly, ethically and without bias in the interests of the local community; and
- to be responsible employers and provide a consultative and supportive working environment for staff.

2.1.2 Guiding Principles for Local Government

The following principles apply to decision-making by Council (subject to any other applicable law):

- to recognise diverse local community needs and interests;
- to consider social justice principles;
- to consider the long term and cumulative effects of actions on future generations; and
- to consider the principles of ecologically sustainable development.

Council has a responsibility to its community for the prudent management of community assets and finances. Local Government has responsibilities that go beyond the responsibilities of a private sector partner or project proponent due to the management of the public “good” and “interest.” Land owned and controlled by a Council is a public asset to be held, administered and used for the benefit of the public/local community and to assist the Council in providing the services and facilities it is charged to provide for the community.

All projects have unique circumstances and challenges. Each project presents different challenges and requires different management and governance structures.

2.1.3 Principles of sound financial management

In June 2022, Council released the document, *Your Vision Your Future 2032 Hornsby Shire Community Strategic Plan (CSP)*. In this Plan, Council identified one of its community long-term goals under the Theme of “Collaborative” and Strategic Direction of “*Smart and Innovative*” as “*Integrated and sustainable long term*”

planning for the Community’s Future.” The plan of action to achieve this goal was described in this Plan as, “*Ensure the culture, capability and capacity of Council enables delivery of adopted strategies*” and “*Ensure the financial sustainability of Council through strategic management of assets and short, medium and long term financial planning.*”

This CSP also identified a Long-Term Financial Plan as a Resourcing Strategy in achieving the planned outcomes for which it is responsible for maintaining its long-term sustainability. This is a 10 year plan that identifies the Council’s current and future financial capacity to deliver outcomes while continuing to deliver high quality services, facilities and infrastructure to the community.

Further details in relation to this can be obtained from Council’s *Your Vision [Your Future 2032 Hornsby Shire Community Strategic Plan June 2022.](#)*

2.1.4 Lobbying

Lobbying is considered to be any communication with a public official for the purpose of influencing the making of a decision, including the making or content of policy or legislation, the awarding of a contract, allocation of funding or the making of a planning decision.¹ The ICAC position on lobbying recognises that it is “*important to strike a balance between allowing freedom of access and ensuring that freedom is not abused to the detriment of the public interest*”.²

Lobbying is common in local government. The ICAC has released a guide called ‘*Lobbying local government councillors*’ and it states “*the most common form occurs when a group or individual makes direct contact with a councillor in an attempt to influence a council decision.*” The guide also states that “*inappropriate or unlawful conduct on the part of someone lobbying a councillor usually involve an attempt to obtain preferential consideration or treatment based on factors other than the merits of a matter.*”

The Office of Local Government *Councillor Handbook (October 2021)* refers to appropriate lobbying in Section 3.1.6. The Handbook states:

“Councillors would be aware that at some time they are likely to be lobbied by a wide range of people including individuals, organisations, companies, and developers. It is essential that councillors understand the difference between appropriate and inappropriate lobbying, and do not engage in lobbying which could be considered inappropriate or unlawful and likely to undermine community confidence in a council’s decision making.

Inappropriate lobbying usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of the matter.”

2.2 Key Roles and Responsibilities

Position / Group	Roles & Responsibilities
Sydney North Planning Panel	<p>The Sydney District Planning Panels (SDPP) and Regional Planning Panels (RPP) were introduced in NSW on 1 July 2009 to strengthen decision making for regionally significant development and certain other planning functions under the EP&A Act.</p> <p>The Planning Panels are independent bodies representing the Crown and are not subject to the direction of the Minister, except on matters relating to Planning Panel procedures or where the Minister issues a formal direction under the EP&A Act.</p> <p>The principal functions of Planning Panels are to determine regionally significant DAs/Planning Proposals and undertake rezoning reviews. Additional functions of Planning Panels include:</p> <ul style="list-style-type: none"> • preparing Planning Proposals if they are directed to be a Planning Proposal Authority • determining Crown DAs • determining modification applications for regionally significant development • determining DA reviews • determining SCCs

¹ *Lobbying in NSW: An Issues Paper on the nature and management of lobbying in NSW (May 2010)* – page 9

² *Lobbying in NSW: An Issues Paper on the nature and management of lobbying in NSW (May 2010)* – page 9

Position / Group	Roles & Responsibilities
	<ul style="list-style-type: none"> advising the Minister upon request. <p>In accordance with the Development Application Approval process, the Planning Panel will be the consent authority for any development application relating to the Development of the Site on the basis that:</p> <ul style="list-style-type: none"> Council is one of the landowners The DA will have a capital investment value of greater than \$5 million.
Planning Panel	<p>The members of the Planning Panel are, as follows:</p> <ul style="list-style-type: none"> Chair- Peter Debnam Members – Nicole Gurrán, Brian Kirk, Mark McCrindle and Sue Weatherly
Councillors	<p>The Committee of the Whole will be the key decision maker in endorsing the final business case.</p> <p>In relation to this project's development application, Council will receive a report from the internal planning staff, and an external consultant, on the review of the development application prior to it being considered by the Sydney North Planning Panel.</p>
General Manager	<p>The role of General Manager will include:</p> <ul style="list-style-type: none"> Endorsement of the Final Business Case prior to the consideration by the Committee of the Whole Receipt of the Council report on the assessment of the DA, in conjunction with the external consultant, prior to being considered by the Committee of the Whole for noting, and referral to the Planning Panel

2.3 Council's Dual Roles

As identified in the Roles and Responsibilities table above, Council has more than one role in relation to this project which will require practical and effective management during the Project to avoid any probity risks associated with the dual roles. ICAC's publication *Corruption risks in the development approval process (September 2007)* notes that in this type of situation there may be a "conflict of roles", that is, it is possible for the two roles to come into conflict. The relevant probity aim is to ensure that both roles are properly performed, that is, that they are carried out with due regard to probity principles. The 2 roles are:

- Commercial Role:** Council as a landowner will effectively be the applicant for any development application for the development of the Site as well as have an interest in achieving the best yield and outcome for its landholdings. This function will be undertaken by Council's Property Team.
- DA Assessment Role:** As identified in the table in Section 2.3 above, any development application for the project will be considered by the Sydney North Planning Panel on the basis that Council is a landowner and the capital investment value is greater than \$5 million. On this basis, Council does not have a regulatory role in relation to this Project. Instead, consistent with the Development Application Approval Process, Council's role will be to undertake an assessment of the DA for consideration as part of the Sydney North Planning Panel's approval process.

As part of this role, it will be Council's responsibility to prepare an assessment report addressing all statutory requirements and properly considering all issues. Council has engaged an Independent planner to assess the Development Application for this project on its behalf and prepare an assessment report. The assessment report must identify how the proposal meets the relevant requirements for the regionally significant development and the Sydney North Planning Panel then makes a determination in relation to this.

Set out in the table below is each of the relevant roles in the DA approval process, as well as the key stages of this process. We have set out in this table where each of these roles will have involvement in the DA assessment and approval process. In setting out these roles and responsibilities, Council has had regard to the following:

- Ensuring that Council as an applicant is not treated in a way which is inconsistent with or less involved than any other applicant in a DA process i.e. that Council is not being treated differently to a private developer would have in the planning approval process for a similar project;
- Ensuring that the perception risk associated with Council's Planning Team assessing an application where Council is the applicant is managed through the engagement of an independent assessor; and
- Recognising that, in this instance, Council is not the regulator as this power sits with the Sydney North Planning Panel based on the existing controls and processes in the NSW Government planning pathways.

	Applicant (Property Team)	Planning Team	Approver (SNPP)	Council representatives on the (SNPP)
Pre-lodgement meeting	Yes ³	Yes	No	No
Development Panel meeting to consider pre-lodgement requirements	Yes ⁴	Yes ⁵	No	No
DA assessment	No	Yes ⁶	No	No
DA determination	No	No	Yes	Yes

³ Consistent with the role of an applicant in any other DA process

⁴ Consistent with the role of an applicant in any other DA/ process

⁵ Using an external independent consultant as the assessor

⁶ Using an external independent consultant as the assessor

3 Probity Principles

This Probity Plan and framework has been developed in the context of the following probity principles:

- Accountability
- Transparency
- Conflict of interest management
- Confidentiality management
- Value for money

In preparing the Probity Risk Framework consideration has also been given to the ICAC direct negotiations guidance material, as above.

3.1 Accountability of the participants and transparency of the process

Accountability and Transparency are related concepts. Accountability involves agencies being able to justify the use of public resources to an appropriate authority by allocating and taking responsibility for past and expected performance. This includes aligning the decision making process with the appropriate delegated authority, and keeping adequate records that will leave an auditable trail. Transparency refers to the preparedness to open a project and its processes to scrutiny and possible criticism. This also involves providing reasons for all decisions that are taken and the provision of appropriate information to relevant stakeholders.

3.2 Fairness, impartiality and honesty

Individuals and organisations involved in preparing and submitting proposals are entitled to expect impartial treatment at every stage of the process. If they do not consider the process to be fair, impartial and honest they may withhold valuable ideas or be deterred from bidding in the future. Any form of bias, whether driven by personal interests or not, could jeopardise the integrity of the project. Procedures that include multiple person panels, independent members and observers mitigate this risk.

3.3 Management of Conflicts of Interest

A conflict of interest is a conflict between the public duty and private interests of a public official where the public official has private interests which could improperly influence their official duties and responsibilities. The community have a right to expect that public officials will make decisions that are not influenced by private interests. Similarly, when the private sector is engaged to perform public sector duties, there is an obligation to ensure that conflicts of interest are disclosed and effectively managed. Perceived or potential conflicts of interest can be as damaging as actual conflicts, and procedures should be implemented to mitigate the effect.

3.4 Maintenance of confidentiality and ensuring security

Although accountability and transparency are fundamental to the work of public sector organisations and public officials, there is some information that needs to be kept confidential, at least for a specified period of time, in order to protect the integrity of the process. This information can include the content of Development Application and intellectual property. Importantly, much of the information relating to the project needs to be kept confidential up to the point where the process is complete. However, once this has happened, government guidelines require that certain information be released, consistent with the fundamental principles of public sector accountability and transparency, as discussed above. Procedures must be implemented to ensure that no unauthorised release of confidential information occurs.

3.5 Attaining value for money

This is generally demonstrated by the use of an open competitive environment in which the market is tested regularly, and tenderers can make attractive, innovative proposals with the confidence that they will be assessed on their merits. In relation to this project and the proposed selection of the site, Value-for-Money will be enhanced through the clear and documented rationale for the selection of the site, valuation of the identified site and sufficient financial benchmarking.

4 General Probity Considerations

4.1 Conflicts of interest Management

Conflicts of interest arise when persons are influenced, or appear to be influenced, by personal interest when doing their job. The community have a right to expect that public officials will make decisions that are not influenced by private interests. Similarly, when the private sector is engaged to perform public sector duties, there is an obligation to ensure that conflicts of interest are disclosed and effectively managed.

Conflicts of interests can be pecuniary or non-pecuniary in nature. Unmanaged conflicts of interest of persons involved in the Project result in a lesser standard of independence than that required to maintain the integrity of decision making process. In relation to the Project, conflicts of interest may exist or arise for:

- Council employees undertaking work in relation to the Project;
- Councillors performing their duties in relation to the Project, especially those who also sit on the Sydney North Planning Panel and have a dual role in this project ; and
- Advisors and consultants engaged by Council to perform work in relation to the Project.

Provisions relating to conflict of interest will apply to members of staff and to any other person engaged in assessments.

All those who are involved in the Project in any capacity (including employees, Councillors, advisors and consultants) are required to make a full declaration of their pecuniary interest or any other interest, either real or perceived, which may impinge on their capacity to conduct their duties in relation to the Project. For external advisors and consultants, the form of the declaration will be a “Declaration of Freedom from Conflict of Interest”. For Council staff and Councillors adherence to the Council Code of Conduct is required. Council staff and Councillors who are also members of the Sydney North Planning Panel must also ensure that they act in accordance with the Sydney District and Regional Planning Panels Code of Conduct in relation to Conflicts of Interest and Conflicts of Duties.

All participants in the Project are responsible for informing the Manager of their business unit if a change in their associations results in a conflict of interest and any updated *Conflict of Interest Undertakings* are to be provided to Council’s Chief Governance Officer.

Any external consultant engaged by Council will be required to adhere to the same measures applicable to other Council offices involved in the project, including as identified in Council’s Code of Conduct.

4.2 Maintenance of Confidentiality and Ensuring Security

A significant quantity of confidential information is likely to be generated as a result of this Project. In general terms, Council must assess each document and piece of information gathered in connection with the Project against its obligations under the Local Government Act 1993, the Government Information (Public Access) Act 2009, and the Privacy Personal Information Protection Act 1998.

4.2.1 Confidential documents

As a minimum, all documents considered confidential will be appropriately labelled and securely stored. If there are any doubts about the confidentiality status of information then it should be referred to Council’s Manager, Governance and Customer Service. Council will endeavour to only keep information confidential for the shortest possible period to these being reported in a public Council meeting.

Where relevant, Council may consider reports in a closed session of Council in accordance with the Local Government Act 1993. This includes where information being considered in the report has the potential to prejudice the commercial position of the information being considered or would confer a commercial

advantage on a person with whom the council is conducting (or proposes to conduct) business e.g. the landowners.

4.2.2 Confidentiality undertaking

An internal confidentiality agreement favouring confidentiality on behalf of Council is to be signed by external advisors and consultants involved in the Project. For Council staff and Councillors adherence to the Council Code of Conduct is required.

The relevant business unit manager will be responsible for ensuring that all advisers and consultants in the Project, sign the Deed of Undertaking prior to assessing any confidential information or offering comments or views. The signed forms are to be maintained by Council's Chief Governance Officer or his delegate.

All Council staff and Councillors are to abide by the Council Code of Conduct when handling confidential information.

4.2.3 Councillors access to confidential information

The Council forums through which councillors will have access to confidential information in respect of this Project are as follows:

- Councillor Workshops; and
- the contents contained within Council documents marked Confidential, i.e. the Council report or in any attachments or addendums to a Council report.

4.2.4 Communication Strategy and Confidentiality

Project related information considered inappropriate for release into the public domain should be identified at various stages of the project. The release of confidential information, including through a public communication/consultation process, may adversely impact on project objectives and the ability for Council to negotiate a purchase price for the site which demonstrates value for money when considering the value of the site as well as the strategic benefit for the linear park.

4.2.5 Communication with Community Groups or Stakeholders

During the Project there is the potential for Council to be contacted by Community Groups and other stakeholders seeking information on the status of the Project. Council may hold meetings with these Community Groups and provide information on the status of the Project, subject to confidentiality obligations applicable to the Project. Specifically, any information provided to Community Groups or stakeholders should be publicly available information or, where the information may not be in the public domain, approval should be obtained from the Group Lead, Major Projects in terms of the release of this information. The reasons for the release of the information should be clearly documented. Communication with Community Groups and other stakeholders should also be consistent with other Plans, such as any Communication Plan developed for the Project and terms of reference for committees.

4.3 Achieving Value for Money

Value for money in this Project, such as appropriate benchmarks will be determined in Council's Business Case, Business Plan and other related Project documentation, including but not limited to any Financial Feasibility Assessments, Project risk assessment(s) and Cost Benefit Analyses.

4.4 Transparency of the process

Transparency refers to the preparedness to open a project and its processes to scrutiny, be it an audit or otherwise, and hence possible criticism. This involves providing clear and easy to follow reasons for all decisions that are taken throughout all project phases and the provision of appropriate and timely information to relevant participants, stakeholders and the wider community. Key to this is the proper and appropriate documentation of the Project, as well as the maintenance of an audit trail across all aspects of the Project.

Transparency in the process helps ensure fairness and the delivery of value for money, as well as reducing opportunities for corruption, maladministration and substantial waste of public money. Each process associated with the project should be consistent and conducted in accordance with appropriate methodologies. Such processes should be well documented and reviewable.

Key strategies for maintaining transparency during the Project include:

- *A clear Project Program* – This comprises clear and timely task and procedural information.
- *Appropriate Project Management* – This includes all the necessary documentation to ensure that the project is clearly managed in accordance with an identified and agreed process, so that all parties know and understand what the Project is and how it is to be conducted.
- *Good record keeping practices* – In order to maintain transparency in the conduct of all phases of the Project, strict record keeping practices are adopted by the Project and the Project Team. This would include records such as all correspondence, Council's final internal working documents, all documentation produced by Council or provided to Council as part of any meetings by any party to that meeting, any background documentation used and minutes of meetings. Council should ensure that responsible and appropriate documentation is maintained to support and account for decisions moving forward.
- *Maintenance of an audit trail* – It is important that a clear documentation process or audit trail for the Project be maintained outlining the decision-making process and how this aligns with the tasks at hand, the phase of the Project, as well as the overall objectives of the Project.
- *Defining working, confidential and public information* – the Project will involve a range of information at different phases, some of which may be working documentation, which at the time is confidential until it either becomes confidential to the Project; some of which may be confidential information, such as commercial-in-confidence; and other information may be fully public and accessible to anyone in the wider community. This will need to be defined for all key documents with the Project.

4.4.1 Contact with persons outside Council

Contact with persons outside Council may be by the following methods:

- Community consultation in relation to Project;
- Disclosure of the Project, once finalised; and
- Any public disclosure of information associated with the Development Application, if enacted.

4.4.2 Review and Amendment of Probity Plan

Need for Flexibility

This Probity Plan outlines the general approach to ensure probity is maintained. It is acknowledged that this Probity Plan has been developed to cover the Development Application process which may involve amendments and changes. The Probity Plan must therefore provide a framework that is flexible.

Process for Amendment

The Plan may be amended if required by the endorsement of the Manager, Governance and Customer Service. Reasons for amending the Probity Plan must be clearly documented.

4.4.3 Gifts and Benefits

A general 'No Gifts and Benefits Rule' applies to all personnel involved in any aspect of this Project.

Any gifts or benefits offered to project personnel should not be accepted and should be reported to the General Manager and/or the Probity Advisor, and dealt with in accordance with Council's Code of Conduct.

Personnel involved in any aspect of this project shall not offer any gifts or benefits to any engaged party or prospective proponent during the process.

This 'No Gifts and Benefits Rule' is to be communicated to all personnel engaged in this Project and to interested external parties.

Appendix A: Definitions

For the purpose of this Probity Plan, the following definitions apply:

Term	Definition
Pecuniary Interest	A pecuniary interest can also be referred to as a material interest and refers to when a person has a financial interest in something. Pecuniary interests involve an actual or potential financial gain or loss and may give rise to an actual or perceived conflict of interest arising from a tendency toward favour or prejudice resulting from their ability to gain or lose financially from a certain outcome.
Probity Advisor	A probity advisor acts as part of an RFX project team and works contemporaneously with project managers. The principal role of a probity advisor is to provide probity advice and solutions throughout the RFX process.
Non-pecuniary interest	Non-pecuniary interests do not have a financial component and relate to the views or beliefs that may be held by that person as a result of their particular association. They may arise from the person's personal or family relationships, an association with a particular interest group or political group, or involvement in sporting, social or cultural activities.
Probity	OCM has adopted the Standards Australia definition as stated in the handbook <i>Assuring probity in decision making (HB 325-2008)</i> . <i>HB 325-2008 states "...probity means that decisions are made with integrity, honesty and fairness while observing due process as necessary elements in the pursuit of value for money. As such, probity is a key element of governance."</i>

Appendix B: Probity Risk Assessment

OCM has identified in the table below the key probity risks for the Westleigh Park Development:

Probity Risks	Risk Mitigation Strategies
<p>Roles and responsibilities are not clear.</p> <ul style="list-style-type: none"> Hornsby Shire Council (Council) Staff, Councillors and external consultants do not have a clear understanding of their roles and responsibilities during the Development Application (DA) Process. Council Staff, Councillors and external consultants do not have a clear understanding of their obligations to maintaining the probity of the process. 	<p>Confirmation that this Probity Plan</p> <ul style="list-style-type: none"> Describes the roles and responsibilities of the relevant governance structure; and Describes the probity requirements and obligations.
<p>Lack of clarity around Council's Dual Roles</p> <ul style="list-style-type: none"> The roles and responsibilities of Council in relation to its dual roles are not clear and there is no clear governance structure for the DA Assessment process. 	<p>The Probity Plan sets out the</p> <ul style="list-style-type: none"> roles and responsibilities of the relevant governance structure; and roles and responsibilities of Council in relation to its:- <ul style="list-style-type: none"> Commercial Role; and DA assessment Role.
<p>Lack of transparency and clear Project program for the project and the DA process.</p>	<p>Council's Westleigh Park Plan of Management and Master Plan are publicly available on Council's website and downloadable at Project Documentation Hornsby Shire Council (nsw.gov.au)</p>
<p>Lack of good record keeping practices and audit trail</p> <ul style="list-style-type: none"> Appropriate records were not maintained of the DA process. 	<p>The Probity Plan sets out good record keeping Practices and documentation requirements, including:</p> <ul style="list-style-type: none"> Final Internal working documents; meeting minutes; documents produced by Council or provided to Council in meetings; and Background documents used in minutes of meetings.
<p>Inappropriate Communication by Council with the public, Community groups or stake holders.</p>	<p>The Probity Plan sets out information and requirements for Council in relation to communication with the public, Community Groups and Stakeholders.</p>

Probity Risks	Risk Mitigation Strategies
<p>Inappropriate Lobbying impacts the integrity of the DA process.</p>	<p>Councillors should refer to the Office of Local Government Handbook (October 2021) in relation to appropriate lobbying as well as seek guidance from the ICAC guide '<i>Lobbying local government Councillors</i>' in relation appropriate lobbying.</p>
<p>Lack of skills and experience by Council in relation to certain aspects of the DA process.</p>	<p>Use of experts/advisors to assist Council with the DA process.</p>
<p>A conflict of interest impacts on the integrity of the DA process</p> <ul style="list-style-type: none"> • A conflict of interest (either pecuniary or non-pecuniary) is found to have corrupted or unduly influenced the DA process. 	<p>Council Staff and Councillors must adhere to Council's Code of Conduct.</p> <p>External advisors and consultants must complete and sign a "Declaration of Freedom from Conflict of Interest".</p> <p>Any Council member which holds a dual role as a member of the Sydney North Planning Panel must also act in accordance with the Sydney and District Planning Panel's Code of Conduct.</p> <p>Any declaration of a conflict of interest is to be managed independently of the declarant.</p>
<p>Lack of clarity of confidentiality arrangements</p> <ul style="list-style-type: none"> • Members of the Project Team are not clear on what information is confidential. • Lack of clarity in relation to the storage of confidential information, both electronic and physical storage. • Lack of understanding on who information can be shared with – e.g., rights to know the information leading to inadvertent release of information. <p>Not clearly communicating confidentiality requirements to all persons with access to confidential information, including advice on how to respond to any enquiries received on the DA process from parties outside the process.</p>	<p>This Probity Plan sets out the obligations of Council staff, Councillors and external advisors/consultants for the maintenance of confidentiality during the DA process.</p> <p>Use of document management protocol.</p> <p>Inclusion of Communication protocols with the public, Community Groups and stakeholders in the Probity plan.</p>
<p>Council Staff and Councillors are unclear about receiving and accepting Gifts and Benefits</p>	<p>A general "No Gifts or Benefits" rule applies to all Council Staff and Councillors and all personnel should adhere to Councils Code of Conduct in relation to receiving and accepting Gifts.</p>

Appendix C: Conflict of Interest and Probity Register

Name of Individual	Details of the disclosed interest / Probity matter raised	Management Strategy	Status

POLICY TITLE:	CONFLICT OF INTEREST POLICY FOR PROPOSED COUNCIL DEVELOPMENT AND APPLICATIONS INVOLVING COUNCIL STAFF OR COUNCILLORS	
FOLDER NUMBER:	F2007/00307	
POLICY OWNER / DIVISION:	Planning and Compliance	
POLICY OWNER / BRANCH:	Development Assessments	
FUNCTION:	Council Property & Land Development	
RELEVANT LEGISLATION:	Environmental Planning and Assessment Act 1979 Environmental Planning and Assessment Regulation 2000 Local Government Act 1993	
POLICY ADOPTION/AMENDMENT DATE:	8 February 2023	REPORT NUMBER: PC1/23
REVIEW YEAR:	2025	
AMENDMENT HISTORY:	18 February 1998 (Report No ST5/98) 21 June 2000 (Report PLN 180/00) 14 July 2004 (Report PLN 168/04) 3 May 2006 (Report PLN108/06) 17 July 2013 (Report PL69/13) 9 December 2015 (Report PL101/15) 12 September 2018 (Report PL24/18)	

Part 1: Preliminary

(1) Scope

This policy applies to council-related development and development submitted by councillors and council staff.

(2) Definitions

- (1) In this policy:

application means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent. It does not include an application for a complying development certificate.

council means Hornsby Shire Council

council-related development means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority

Note: *Council-related development applications do not include development applications which includes development on public roads managed by a council, such as driveway for a dwelling house across a footpath or other minor works.*

development process means application, assessment, determination, and enforcement

the Act means the *Environmental Planning and Assessment Act 1979*.

- (2) A word or expression used in this policy has the same meaning as it has in the Act, and any instruments made under the Act, unless it is otherwise defined in this policy.
- (3) Notes included in this policy do not form part of the policy.

Note: This policy does not apply to activities under Part 5 of the Act and Review of Environmental Factors (REF)

Part 2: Development Applications submitted by councillors or council staff

(3) Aim

This Part aims to manage potential conflicts of interest and increase transparency at all stages of the development process for councillor and council staff-related development to ensure:

- (1) impartial and comprehensive development assessment of development applications submitted by councillors or council staff (including any relatives); and
- (2) development applications in which councillors or council staff have a pecuniary or other interest are independently assessed, free of any influence or bias.

(4) Management controls and strategies

- (1) The management controls outlined in Clause 2 apply to development where the applicant or land owner is:
 - a) a councillor; or
 - b) a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.
 - c) a member of council staff who is not involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979, however, public submissions are received by way of objection to the application.including any relatives of the above.
- (2) Development applications for specified applications under this Part shall be managed as follows:
 - a) The assessment of an application and/or modification of an application must be undertaken by an Independent Town Planning Consultant.
 - b) The application be determined by the Hornsby Local Planning Panel in accordance with the Minister for Planning's Local Planning Panel Direction – Development Applications and Applications to Modify Development Consents under Section 9.1 of the Environmental Planning and Assessment Act, 1979 (unless excluded under the Minister's Direction).

- (3) Where an application and/or modification is made by a member of council staff (including any relatives); who is not involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979 and no public submissions are received by way of objection to the application, the application may be assessed by Council staff and the Manager Development Assessments or the Director Planning and Compliance may determine the application under delegated authority.

Part 3 Development Applications submitted by council

(5) Aim

This Part aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development.

(6) Management controls and strategies

(1) The following management controls apply to:

- a) the assessment of an application for council-related development (Development Application)
 - The assessment of an application and/or modification of an application must be undertaken by an Independent Town Planning Consultant.
- b) the determination of an application for council-related development
 - By the Hornsby Local Planning Panel in accordance with the Minister for Planning's Local Planning Panel Direction – Development Applications and Applications to Modify Development Consents under Section 9.1 of the Environmental Planning and Assessment Act, 1979 (unless excluded under the Minister's Direction)
 - Council applications with a Capital Investment Value (CIV) of more than \$5 million are required to be determined by the Regional Planning Panel in accordance with State Environmental Planning Policy (Planning Systems) 2021.
- c) the regulation and enforcement of approved council-related development
 - By a private certifier
- d) Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process.

(2) The management strategy for the following kinds of development is that no management controls need to be applied:

- a) commercial fit outs and minor changes to the building façade;
- b) internal alterations or additions to buildings that are not a heritage item;
- c) advertising signage;
- d) minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services); or
- e) development where the council might receive a small fee for the use of their land.

(7) Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls

- (1) Development applications lodged with council that are council-related development are to be referred to the General Manager (or a delegate) for a conflict-of-interest risk assessment.

(2) The General Manager is to:

- a) assess whether the application is one in which a potential conflict of interest exists;
- b) identify the phase(s) of the development process at which the identified conflict of interest arises;
- c) assess the level of risk involved at each phase of the development process;
- d) determine what (if any) management controls should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any controls and strategies outlined in clause 6 of the policy and the outcome of the General Manager's assessment of the level of risk involved as set out clause 7(2)(c) of the policy,

Note: The general manager could determine that no management controls are necessary in the circumstances.

- e) the proposed management approach for the proposal in a statement that is to be published on the NSW Planning Portal.

(8) Implementation

To be implemented by Hornsby Shire Council.

(9) Declarations of Conflicts of Interest

Where a staff member, team within Council, or a Councillor, is party to a development application as applicant and/or land owner, the person(s) must advise their supervisor of their conflict of interest and ensure that this procedure and Council's Code of Conduct are adhered to. Declarations must be made when submitting an application via the NSW Planning Portal.

(10) Review

This policy must be reviewed within one year of the election of every new Council, or earlier should circumstances arise to warrant revision.