




PROBITY POLICY

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Strategic Pillar	Capability	
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1. OUTCOMES

- 1.1 Queanbeyan-Palerang Regional Council may from time to time become involved in development projects within the local government area either as a land owner or as a partner in a joint-venture development.
- 1.2 This Probity Policy has been developed to ensure that probity principles are followed so that the community can be assured that fair, open and ethical behaviour is followed by Council in all its dealings.

2. POLICY

Role of Council in Development Projects

- 2.1 Council may have a number of potential roles in respect of Development Projects that are to be undertaken, including:
 - (a) As landowner
 - (b) As potential vendor of properties
 - (c) A responsibility for undertaking procurements relating to Development Projects
 - (d) As policy maker, acting on behalf of the community
 - (e) As the potential consent authority for the development of a property
 - (f) As a developer, either in its sole capacity or jointly with another party.
- 2.2 Council and Council officials have certain legal, policy and ethical obligations applying to their conduct in relation to the development activities, including in relation to, and arising from, the following:
 - (a) The Council's Code of Conduct.
 - (b) The responsibility of the CEO/General Manager to ensure the efficient and effective operation of the Council under section 335 of the *NSW Local Government Act 1993* (LGA).
 - (c) Conducting tenders (including for the purposes of this Probity Policy and any related Probity Plan any calls for expressions of interest) in accordance with the LGA and the *NSW Local Government (General) Regulation 2005*.
 - (d) Any other obligations that Council officials and members of Council's committees (including advisory committees) have under law and policy, including the LGA, *Local Government Regulation 2005* and related Council policies including the QPRC Code of Conduct, Statement of Business Ethics, Decision-Making Framework, Governance Framework, Legislative Compliance Policy, Procurement Policy and Unsolicited Proposals Policy.
- 2.3 The community and stakeholders involved in the Development Activities have a legitimate expectation that Councillors and other personnel involved in the Development Activities, will perform their duties in an open, fair and unbiased way and that the decisions they make will not be affected by self-interest or personal gain.

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- 2.4 The purpose of the Probity Policy is to:
- (a) Establish broad principles for identifying and managing probity issues that arise from the date of approval of the Policy until the conclusion of all significant Development Projects the Council may be party to or directly involved in within the Queanbeyan-Palerang Local Government Area.
 - (b) Complement and support the objectives of any specific Probity Plans (e.g. plans that may apply to Procurement Personnel or Development Personnel, as outlined in section 6 below).
 - (c) Ensure that Council's deliberations in relation to the Development Activities and the conduct of Project Personnel (described in section 0) always reflect due process and occur in accordance with recognised probity principles as well as other applicable legal, policy and ethical obligations as referred to in section 6.2.
 - (d) Provide a policy framework against which probity reviews can be undertaken if and when required.
 - (e) Provide general guidance to Councillors, Council staff, parties that may do business with Council and the general community on the management of probity issues.
- 2.5 This Probity Policy and any related Probity Plan does not replace, but is in addition to, any other obligations applying to the Council and Council officials, including under the LGA, *NSW State Records Act 1998*, the *NSW Government Information (Public Access) Act 2009* or other relevant law or applicable policy.

3. SCOPE OF THE POLICY

- 3.1 This Policy applies to the following personnel who may be involved in Development Activities or who may have access to information relating to the same, including:
- (a) Councillors
 - (b) Members of any Council committees, advisory (or similar) committees, including Councillors and members of such committees who are not Councillors
 - (c) Members of Council staff.
 - (d) Any advisors or consultants including sub-contractors to the Council or any committee working on, considering, or providing services in relation to a Development Project or Development Activities.
- 3.2 This Probity Policy applies to all Project Personnel and may be extended to include additional individuals over time, as those individuals commence participating in the project governance forums and/or any Development Projects.
- 3.3 Project Personnel will be provided with a copy of this Policy and are required to complete a conflict of interest declaration (see Schedule 1) and confidentiality agreement (in the form of the Schedule 2 Confidentiality Agreement) relevant to their role in the Development Activities and/or any Development Project.
- 3.4 All Project Personnel are required to read, understand and comply with this Probity Policy.

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4. DEFINITIONS

Probity — in the context of this policy is defined as acting with ‘integrity, uprightness and transparency’ to ensure that Council acts in an open and fair manner demonstrating the highest levels of integrity consistent with the public interest in all its dealings relating to development projects it may have involvement and/or an interest in.

5. LEGISLATIVE OBLIGATIONS AND/OR RELEVANT STANDARDS

5.1 The following legislation and policies are relevant for the provisions of this policy:

- *NSW Local Government Act 1993*
- *NSW Local Government (General Regulation) 2005*
- *NSW Government Information (Public Access) Act 2009*
- QPRC Code of Conduct
- QPRC Procurement Policy
- QPRC Legislative Compliance Policy
- QPRC Governance Framework
- QPRC Decision-Making Framework
- QPRC Decision-Making Policy
- QPRC Records Policy
- QPRC Unsolicited Proposals Policy
- QPRC Statement of Business Ethics

6. CONTENT

6.1 *Probity Policy and Probity Plans*

6.1.1 The Council has established this Probity Policy to govern all Development Activities with a view to ensuring adherence to the probity principles described in Section 6.2 below throughout all Development Activities.

6.1.2 This Probity Policy includes the general probity principles that will apply for the duration of all these significant Development Activities, to assist Project Personnel to manage information and conduct their roles appropriately.

6.1.3 Where any specific procurement activity is to be undertaken as part of these significant Development Activities, a separate Probity Plan in substantially the same form as the Schedule 3 Probity Plan template that will be established for that procurement activity. Project Personnel involved in the relevant procurement will be required to read, understand and comply with that Probity Plan, in addition to this Probity Policy.

6.1.4 Where specific development or divestment activity is to be undertaken as part of the Development Activities (i.e. other than procurement), the Council may choose to establish a separate Probity Plan in substantially the same form as the Schedule 3 Probity Plan template for that activity if Council considers that such a Probity Plan (additional to this Probity Policy) is necessary to maintain probity in that particular activity. Project Personnel involved in that development or divestment activity will be required to read, understand and comply with any such Probity Plan, in addition to

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this Probity Policy. Where such a Probity Plan is not developed, this Probity Policy continues to apply to those activities.

- 6.1.5 The Probity Plan(s) will include the specific Probity Protocols that the relevant Project Personnel will be required to follow for the nominated Development Activities.

6.2 ***Development Activity Probity Principles***

- 6.2.1 Council and all Project Personnel, in all dealings, must endeavour to be fair and open, and demonstrate the highest levels of integrity consistent with the public interest.

- 6.2.2 Probity principles are an important aspect of conducting open, fair, accountable and consistent processes relating to all Council activities including Development Activities.

- 6.2.3 In all commercial dealings undertaken in connection with the Development Activities, Council and all Project Personnel will observe the highest standard of probity.

- 6.2.4 The applicable probity principles are reflected in the LGA, *NSW Local Government (General) Regulation 2005* and Council policies. In addition, and without affecting such obligations, all Development Activities will comply with the following probity principles:

- (a) Honesty and impartiality
- (b) Identification and management of conflicts of interest
- (c) Appropriate security and confidentiality arrangements
- (d) Consistency, fairness and due diligence
- (e) Use of open and competitive processes, as required
- (f) Compliance with legal and policy,

in conjunction with the Council's Code of Conduct, Statement of Business Ethics, Decision-Making Framework and Policy, Governance Framework and Policy, Legislative Compliance Policy, Procurement Policy and Unsolicited Proposals Policy and other relevant Council policies as well as relevant NSW Government guidance materials.

- 6.2.5 All Development Activities should be documented to record a clear audit trail. This will provide evidence that all Development Activities have been carried out appropriately, and may assist in demonstrating that Council and Project Personnel have acted in accordance with the above probity principles, this Probity Policy and any related Probity Plan and applicable obligations under law and policy.

6.3 ***Fundamental Principles***

- 6.3.1 In order to ensure that all members of the public can have complete confidence in the integrity of the Development Activities, all Project Personnel must respect and adhere to the following fundamental principles of ethical conduct (Fundamental Principles).

- 6.3.2 These Fundamental Principles will apply to all Council Development Activities and Development Projects, in addition to the protocols set out in any Probity Plan made in conjunction with this Probity Policy.

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6.3.3 Perception of breach

Project Personnel must:

- (i) ensure that their conduct does not give rise to a perception that would allow for the erosion of industry and community confidence in the way the Development Activities are conducted; and
- (ii) avoid any conduct that may increase the risk of issues of the integrity of the Development Activities being raised as a matter of public concern.

6.3.4 Honesty and Impartiality

Project Personnel must act:

- (i) impartially and not give preferential treatment to any government entity, council, private organisation or individual; and
- (ii) lawfully, fairly, honestly and in the best interests of the Council.

6.3.5 At all times during the Development Activities, any potential suppliers, developers or purchasers must be treated in a fair, honest, and equitable manner.

6.3.6 Consistency of Information

- (a) Consistent and uniform information must be provided to the community and relevant industry participants as part of the Development Activities to ensure that any single party does not receive an unfair advantage over another in any Development Project.
- (b) Schedule 4 provides guidelines for the provision of information to tenderers to ensure consistency of information and that no one receives an unfair advantage over another.
- (c) Where appropriate, responses to enquiries to Council or a related committee in relation to the Development Activities should be provided to the community and relevant industry participants more broadly, subject to any editing necessary to maintain confidentiality.
- (d) Council and Project Personnel must not disclose proprietary information to any person who is not authorised to receive such information.
- (e) Consideration should be given to appointing a single point of contact for all enquiries in relation to any Development Activities (Contact Officer) (noting that specific Development Projects may have a different single point of contact appointed as provided for in the applicable Probity Plan.
- (f) With the exception of the Contact Officer, Project Personnel who are contacted by the community and/or relevant industry participants in the course of the Development Activities must direct them to the Contact Officer and not provide any information relating to the Development Project.

6.3.7 Conflicts of Interest

- (a) Conflicts of interest arise when persons are influenced, or appear to be influenced by personal or private interests when carrying out their public or

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professional duty. The failure to properly manage conflict of interest issues arising in the course of the Development Activities could result in:

- (i) The perception that the Development Activities lack independence; or
 - (ii) The potential for corruption,
which could affect the integrity of the Development Activities.
- (b) To avoid the potential for conflicts of interest to arise, Project Personnel:
- (i) Must exercise their powers and discharge their duties (if any) in good faith in the best interests of Council, and for a proper purpose; and
 - (ii) Should avoid placing themselves under any financial or other obligation that might unduly influence them in the performance of their role in Development Activities.
- (c) Project Personnel must:
- (i) Place loyalty to laws and ethical principles above private gain and any such personnel must not hold pecuniary interests that conflict with the performance of their role in the Development Activities.
 - (ii) Not engage in financial transactions using non-public Council information or allow the improper use of such information to further any private interest.
 - (iii) Endeavour to avoid any actions creating the appearance that they are violating the law or these ethical principles.
 - (iv) Declare any relationship that could give rise to a real or apparent conflict of interest or a potential or perceived conflict of interest in relation to the process by completing the relevant declaration, either Schedule 1A - Declaration for Councillors, Schedule 1B - Declaration for non-Councillors or Schedule 1C - Declaration for Council staff.
- (d) Project Personnel must also:
- (i) Declare any conflicts of interest that arise during the Development Activities; and
 - (ii) Act in accordance with the Council's Code of Meeting Practice in relation to declaring conflicts of interest at Council meetings and meetings of Council committees (other than advisory committees).
- (e) Project Personnel must provide a copy of their declaration of conflict of interest to the Contact Officer. The Contact Officer may refer declarations to the Probity Advisor for advice. In the event that the Contact Officer has a conflict of interest, the matter must be referred to either:
- (i) The Council's Public Officer; or
 - (ii) The Probity Advisor directly.
- (f) The Contact Officer should maintain registers of the following documents provided by Project Personnel:
- (i) A register of conflicts of interest declarations; and
 - (ii) A register of confidentiality agreements.

6.3.8 Conflict of interest arising from Council's varying roles

- (a) Council is committed to ensuring that, in the exercise of its regulatory functions, it acts consistently, transparently and without bias, particularly where an activity of the Council is affected.

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- (b) Council's varying roles in respect of the Development Activities include those roles listed in section 0.
- (c) A conflict of interest on Council's part could also arise or be perceived to arise where Council exercises other statutory functions in relation to Development Activities.
- (d) The risk is that Council's commercial interest in the matter could influence Council's exercise of its statutory duties or functions, or be perceived to do so.
- (e) For example, in its role as the relevant statutory planning authority, Council may also have to make decisions in relation to:
 - (i) Preparing, considering or determining draft plans (including local environmental plans, development control plans) or other strategic planning instruments, plans, policies or codes in connection with Development Activities; and
 - (ii) Considering and making determinations in relation to development applications that may be lodged with Council in relation to its property portfolio.
- (f) A situation where a transaction (arising from the Development Activities) taints or is seen to taint Council's exercise of its discretion as a statutory planning authority or as the consent authority must be avoided.
- (g) Accordingly, having regard to the recommendations of the Independent Commission Against Corruption (including in particular, Recommendation 9 of the ICAC position paper, *Corruption risks in NSW development approval processes*, dated September 2007, Council will take steps to engage suitably qualified experts to provide an independent assessment of development applications submitted in respect of its properties where such proposed development arises from or is in some way connected with the Development Activities. This independent assessment will include a consideration of the planning merits of the development proposal and any submissions received from the public.
- (h) The independent assessor will be required to provide Council with a report outlining its findings, which Council will take into consideration when deliberating on whether to approve the proposed development. Council will make this report publicly available.

6.4 **Probity Advisor**

6.4.1 Council will appoint a Probity Advisor from within its Legal Panel to assist with ensuring it meets all probity requirements in respect Development Activities it may be involved in. The Service Manager Legal and Risk will select the Probity Advisor in consultation with Council's CEO/General Manager.

6.4.2 The Probity Advisor will assist in establishing processes intended to ensure:

- (a) Open, fair, accountable and consistent practices, designed to help the Council realise the objectives of Development Activities, consistent with the Council's legal and policy obligations.

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- (b) Defensibility of process and activities conducted as part of the Development Activity, including those arising from legal challenge.
 - (c) That actual, potential or perceived conflicts of interest are identified and effectively managed.
 - (d) Public confidence is preserved in the Council's processes related to the Development Activities.
 - (e) That all confidential information is secured.
- 6.4.3 The role of the Probity Advisor is to provide probity advice and to assist the Council in ensuring compliance with its probity obligations, this Probity Policy, any related Probity Plan and any significant Development Project process.
- 6.4.4 The Probity Advisor does not play any part in recommending or deciding the outcome of any part of the Development Activities and as such will not take part in any evaluation or assessment discussions (but may independently observe and provide advice on such discussions).
- 6.4.5 The Probity Advisor's role includes:
- (a) Providing probity briefings to Project Personnel and relevant stakeholders as required by the Council.
 - (b) Review of documentation related to the Development Activities from a probity perspective.
 - (c) Providing probity advice to the Council, including advice in relation to any conflicts of interest that might arise, strategic probity issues and probity aspects of the Development activities generally.
- 6.5 Except as otherwise provided for in this Probity Policy or a Probity Plan, any probity issues that arise during Development Activities should be brought to the attention of the Contact Officer who will coordinate the provision of probity advice as required. However, where it is not practicable to do so, due to urgency or for technical reasons, probity issues may be raised directly with the Probity Advisor with the Contact Officer being subsequently made aware of such probity issues as soon as possible by relevant person.
- 7. AMENDING THIS POLICY**
- 7.1 Any amendments to, or departures from, the requirements of this Probity Policy will be subject to the instruction of the Council's CEO/General Manager in consultation with the Probity Advisor.
- 8. REVIEW**
- 8.1 This policy will be reviewed every four years or earlier as necessary if:
- (a) legislation requires it, or
 - (b) Council's functions, structure or activities change.

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SCHEDULES

- **Schedule 1A** – Declaration for Councillors
- **Schedule 1B** – Declaration for Non-Councillors
- **Schedule 1C** – Declaration for Council Staff
- **Schedule 2** – Confidentiality Agreement
- **Schedule 3** – Probity Plan Template
- **Schedule 4** – Communication Protocols
- **Schedule 5** – Business As Usual (BAU) Protocols

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Schedule 1 A - Declaration for Councillors

Queanbeyan-Palerang Regional Council Development Activities (Project)

A copy of this declaration must be forwarded to the Contact Officer.

Name _____

Position Title, Organisation _____

Role in Project _____

1. I acknowledge that:

- 1.1 I am a QPRC Councillor whose duties involve participating in the Development Activities.
- 1.2 As a Councillor, I am subject to certain requirements and obligations under law, including the *Local Government Act 1993 (NSW)* and *Local Government (General) Regulation 2005* relating to conflicts of interest;
- 1.3 I am aware of my responsibility to act in accordance with the QPRC Code of Conduct; and
- 1.4 I am required to declare any conflicts of interest (such as private interests or relationships) which could or could be seen to influence or impact on the performance of my role in the Development Activities.

2. I declare that:

- 2.1 The list of any conflict of interest identified below has been prepared on the basis of my personal circumstances and particular role in the Development Activities, including my role in any particular Council Development Projects.
- 2.2 With the exception of any conflict of interest identified below, to the best of my knowledge and belief, no actual, potential or perceived conflict of interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the QPRC, any activity related to the Development Activities.
- 2.3 I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived conflict of interest.
- 2.4 I will notify the QPRC Council in accordance with the Development Activities Probity Policy immediately if any circumstances arise during the course of Development Activities, including in relation to any Development Projects, which may give rise to an actual, potential or perceived conflict of interest and will comply with any directions for dealing with that conflict of interest.
- 2.5 I undertake to immediately inform QPRC of any changes to:
 - 2.5.1 my responsibilities or to the issue or subjects on which I am required to make decisions or give advice; and
 - 2.5.2 my personal circumstances that could affect the contents of this declaration and to provide an amended declaration/s using this pro forma.

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I declare that to the best of my knowledge neither I nor any member of my immediate family have any interests (pecuniary or otherwise) which could possibly be construed as having any influence, or perceived to have any influence, on the proper and objective performance by me of my duties in relation to the Development Activities other than as detailed below.

Note: Council staff completing this form should consider whether the conflicts of interest declared below (if any) also need to be declared in their annual written disclosure of interests.

Declaration Listing:
[if Nil to declare – write NIL]

Signature:

Name:

Date:

Schedule 1 B - Declaration for non-Councillors

[Note: This declaration form is intended to be used by persons who are not Councillors or members of the Council's staff but who will be participating in the Development Activities (for example, a non-Councillor member of a Council committee). Council staff should use the declaration form at Schedule 1C below]

QPRC Property Development Activities (Project)

A copy of this declaration must be forwarded to the Contact Officer.

Name _____

Position Title, Organisation _____

Role in Project _____

1. I acknowledge that:

- 1.1 I will be participating in the Development Activities.
- 1.2 Queanbeyan-Palerang Regional Council requires full probity in the Development Activities, including communications in regards to information about the Development Activities, and all Project Personnel must not be influenced by any conflict of interest.
- 1.3 If any circumstances exist or occur which may give rise to an actual, potential or perceived conflict of interest, full disclosure of the circumstances must be provided immediately to the Council, who will take appropriate steps to ensure the actual, potential or perceived conflict of interest does not adversely affect the Development Activities.

2. I declare that:

- 2.1 The list of any conflict of interests identified below, has been prepared on the basis of my personal circumstances and particular role in the Development Activities, including my role in any particular Development Projects.
- 2.2 With the exception of any conflict of interest identified below, to the best of my knowledge and belief, no actual, potential or perceived conflict of interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Council, any activity related to the Development Activities.
- 2.3 I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived conflict of interest.
- 2.4 I will notify the Council in accordance with the Development Activities Probity Policy immediately if any circumstances arise during the course of Development Activities, including in relation to any Development Projects, which may give rise to an actual, potential or perceived conflict of interest and will comply with any directions for dealing with that conflict of interest.
- 2.5 I will undertake to immediately inform Council of any changes to:

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- 2.5.1 my responsibilities or to the issue or subjects on which I am required to make decisions or give advice; and
- 2.5.2 my personal circumstances that could affect the contents of this declaration and to provide an amended declaration/s using this pro forma.

I declare that to the best of my knowledge neither I nor any member of my immediate family have any interests (pecuniary or otherwise) which could possibly be construed as having any influence, or perceived to have any influence, on the proper and objective performance by me of my duties in relation to this Project other than as detailed below.

Declaration Listing:
[if Nil to declare – write NIL]

Signature:

Name:

Date:

Schedule 1 C - Declaration for Council staff

Queanbeyan-Palerang Regional Council Property Development Activities (Project)

A copy of this declaration must be forwarded to the Contact Officer.

Name _____

Position Title within Council, _____

Role in Project _____

1. I acknowledge that:

1.1 I am a staff member of QPRC whose duties involve participating in the Development Activities.

1.2 **[For senior staff and 'designated persons' only]** I am subject to certain requirements and obligations under law, including the *Local Government Act 1993* (NSW) and *Local Government (General) Regulation 2005* relating to conflicts of interest.

1.3 I am aware of my responsibility to act in accordance with Council's Code of Conduct.

1.4 I am required to declare any conflicts of interest (such as private interests or relationships) which could or could be seen to influence or impact on the performance of my role in the Development Activities.

2. I declare that:

2.1 The list of any conflict of interest identified below has been prepared on the basis of my personal circumstances and particular role in the Development Activities, including my role in any particular Development Projects.

2.2 With the exception of any conflict of interest identified below, to the best of my knowledge and belief, no actual, potential or perceived conflict of interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Council, any activity related to the Development Activities.

2.3 I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived conflict of interest.

2.4 I will notify Council in accordance with the Development Activities Probity Policy immediately if any circumstances arise during the course of Development Activities, including in relation to any Development Projects, which may give rise to an actual, potential or perceived conflict of interest and will comply with any directions for dealing with that conflict of interest.

2.5 I undertake to immediately inform Council of any changes to:

2.5.1 my responsibilities or to the issue or subjects on which I am required to make decisions or give advice; and

2.5.2 my personal circumstances that could affect the contents of this declaration and to provide an amended declaration/s using this pro forma.

I declare that to the best of my knowledge neither I nor any member of my immediate family have any interests (pecuniary or otherwise) which could possibly be construed as having any influence, or

perceived to have any influence, on the proper and objective performance by me of my duties in relation to the Development Activities other than as detailed below.

Note: Council staff completing this form should consider whether the conflicts of interest declared below (if any) also need to be declared in their annual written disclosure of interests.

Declaration Listing:
[if Nil to declare – write NIL]

Signature:

Name:

Date:

Schedule 2 Confidentiality Agreement

THIS DEED POLL is made by,

Name: _____

Address: _____

(the **Confidant**), for the benefit of Queanbeyan-Palerang Regional Council (**Council**).

1. Background

- a. **[For Councillors and Council staff]** The Confidant is a **Councillor / member of Council staff** whose duties involve participation in the Council's Development Activities.

[OR]

[For use by other participants] The Confidant is participating in the Council's Development Activities.

- b. The Confidant provides the undertakings set out below in respect of their involvement and information to be acquired, directly or indirectly, in connection with the Development Activities.
- c. The Council will provide the Confidant with information in the course of their involvement in the Development Activities, which may include information which is Confidential Information to the Council.
- d. The Confidant may also be provided with information in the course of their involvement in the Development Activities, which includes information which is Confidential Information or Personal Information to other parties.
- e. The Confidant acknowledges their responsibility to act in accordance with the Council's *Code of Conduct* in the relation to the use and security of Confidential Information and personal Information.
- f. The Council requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this confidentiality deed poll) to ensure that Confidential Information is kept confidential and any privacy obligations with respect to Personal Information are complied with.

2. Definitions

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the Council as confidential;
- (c) in the case of the Council's Confidential Information, a party knows or ought to know is confidential; or
- (d) is comprised in or relates to the Material, but does not include information which:
- (e) is or becomes public knowledge other than by breach of this Deed or any other confidentiality obligation; or

- (f) has been independently developed or acquired as established by written evidence.

Development Activities mean the development, divestment and related procurement activities, as well as any other activities connected with the planning, undertaking, or implementation, of those activities, conducted by the Council in relation to its properties.

Material means any material that is provided by the Council to the Confidant for the purpose of their involvement in the Development Activities, as well as any material which is copied or derived from the material so provided, including, but not limited to, documents, equipment, information and data stored by any means.

Personal Information means the information or an opinion:

- (a) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion; and
- (b) of which the Confidant becomes aware because of their involvement in the Development Activities.

Privacy Act means the *Privacy and Personal Information Protection Act 1998* (NSW).

3. Non-disclosure

- 3.1 The Confidant undertakes to treat as secret and confidential all Confidential Information and Personal Information to which the Confidant has access or which is disclosed to the Confidant.
- 3.2 If the Council grants its consent for the Confidant to disclose Confidential Information, it may impose conditions on that consent.
- 3.3 The Confidant undertakes to immediately, if lawful, notify the Council if the Confidant becomes aware that any of the Confidential Information:
 - (a) has been used, copied or disclosed in breach of this deed; or
 - (b) is required to be disclosed by law or regulatory body.
- 3.4 The Confidant's obligations under this deed poll will not be taken to have been breached where the Confidant is legally required to disclose the Confidential Information.

4. Restriction on use

- 4.1 The Confidant undertakes to use the Confidential Information and Personal Information for the sole purpose of their involvement in the Development Activities.
- 4.2 The Confidant undertakes not to disclose or reproduce the Confidential Information or Personal Information to any person without the prior approval of the Council, and to take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information and Personal Information in the Confidant's control.

5. Privacy and Personal Information Protection Act 1998

5.1 In respect of the Personal Information, the Confidant will comply with the *Privacy and Personal Information Protection Act 1998* (NSW) as if they were a “public sector official” as defined in that Act.

6. Powers of the Council

6.1 Immediately on request by the Council, the Confidant must deliver to the Council all documents in the Confidant’s possession or control containing Confidential Information.

6.2 If at the time of such a request the Confidant is aware that documents containing Confidential Information are beyond the Confidant’s possession or control, then the Confidant must provide full details of where the documents containing the Confidential Information are, and the identity of the person who has control of them.

7. Survival

7.1 The obligations in this deed are perpetual.

8. Applicable law

8.1 This deed will be governed by and construed in all respects in accordance with the law of the State of New South Wales and the Confidant agrees to submit to the applicable jurisdiction of the courts of that State in respect of all matters arising under, or in relation to, this deed.

EXECUTED as a Deed Poll

Signed sealed and delivered by

in the presence of

←

←

Signature of witness

Signature of Confidant

Name of witness (print)

Name of Confidant (print)

Date of execution

Date of execution

Schedule 3 Probity Plan

NOTE:

The Probity Policy provides for the development and implementation of separate tailored Probity Plans for procurement and divestment activities.

This template Probity Plan is intended to apply to Council Development Projects in conjunction with the Probity Policy for Queanbeyan-Palerang Regional Council Development Activities.

In finalising the Probity Plan, Council should read the notes and fill in any missing details.

Council's Probity Advisor can provide further advice and assistance in drafting, finalising and implementing any Probity Plan. The Probity Advisors contact details can be obtained from the Service Manager Legal & Risk

1. Background to the Project

1.1 The Council is undertaking [*insert name of Project*] as part of its Development Activities within the Queanbeyan-Palerang Local Government Area.

1.2 The Project relates to [*insert details*].

NOTE:

Insert in this part details about the Project, including key outcomes sought and whether it is a procurement, development or divestment process.

In particular, Council should outlined who the relevant stakeholders in the Process are, whether the Process will include a competitive element such as a tender or, in the case of sale, whether processes such as an auction will be implemented.

These details will give context to the application of the probity principles and guide application of the probity protocols in this Probity Plan.

1.3 This Probity Plan has been prepared for the Project, which is a Council Development Project within the meaning of the Probity Policy.

2. Probity Plan and Probity Policy

2.1 This Probity Plan and the Probity Protocols build on the probity principles in the Probity Policy, in particular in relation to specific probity issues that may arise during the Project.

2.2 This Probity Plan should be read and understood in accordance with the Council's Probity Policy for Development Activities. Words and expressions used in the Policy are given the same meaning in this Probity Plan.

2.3 The purpose of the Probity Plan and Probity Protocols is to ensure that probity is observed at all times during the Project. This Probity Plan and the Probity Protocols apply throughout the Project Process in addition to the Probity Policy.

2.4 This Probity Plan and Probity Protocols does not replace, but is in addition to, any other obligations of Project Personnel, including under the *Local Government Act 1993 (NSW) (LGA)*, *Local Government (General) Regulation 2005 (NSW) (LGR)*, *State Records Act 1998 (NSW)* or other relevant law.

2.5 This Probity Plan and Probity Protocols apply to Project Personnel involved in the Project or who may have access to information relating to the same.

3. Probity Principles

3.1 The Probity Principles outlined in the Probity Policy apply to the Project, including:

- 3.1.1 honesty and impartiality;
- 3.1.2 identification and management of conflicts of interest;
- 3.1.3 appropriate security and confidentiality arrangements;
- 3.1.4 consistency, fairness and due diligence;
- 3.1.5 transparency;
- 3.1.6 use of open and competitive processes, as required;
- 3.1.7 compliance with legal and policy frameworks.

3.2 in conjunction with Council's Code of Conduct, Council's Decision-Making Framework, Governance Framework, Legislative Compliance Policy, Statement of Business Ethics, Procurement Policy and Unsolicited Proposals Policy, relevant Independent Commission Against Corruption guidance material¹ and other relevant Council policy.

3.3 Project Personnel must also adhere to the Fundamental Principles outlined in the Probity Policy, including in relation to perception of breach.

4. Amendment

4.1 Any amendments to, or departures from, the requirements of this Probity Plan will be subject to the same approval requirements as the Probity Policy.

5. Probity Protocols (Procurement)

NOTE

These Probity Protocols are relevant to competitive procurement focused Projects.

If the Project relates a divestment process or development process, these protocols should be deleted, as well as the Business as Usual protocols.

Council will need to assess the need for the Business as Usual Protocols (e.g. where there is an incumbent provider), see further below.

5.1 Application

5.1.1 These Probity Protocols are applicable to, and must be observed by, all Project Personnel, including members of the Tender Evaluation Team or equivalent (TET).

¹ See, for example: 'Probity and probity advising: Guidelines for managing public sector projects', November 2005, available at <http://ict-industry-reports.com/wp-content/uploads/sites/4/2013/10/2005-Guidelines-for-Probity-in-Public-Sector-Projects-ICAC-Nov-2005.pdf>; 'Corruption risks in NSW development approval processes: Position paper', September 2007, available at http://www.icac.nsw.gov.au/documents/doc_download/1280-corruption-risks-in-nsw-development-approval-processes-position-paper; and 'Corruption risks in NSW Government procurement: The management challenge', December 2011, available at http://www.icac.nsw.gov.au/documents/doc_download/3852-corruption-risks-in-nsw-government-the-management-challenge-december-2011.

- 5.1.2 The Probity Protocols apply throughout the entirety of the Project, from prior to approaching the market (**ATM**) for goods and/or services relating to the Project (for example, by issuing a Request for Proposals, Request for Expressions of Interest or Request for Tender), up to the time a contract is entered into (if any).

5.2 Breaches of these Probity Protocols

- 5.2.1 If any person becomes aware of, or believes there is likely to occur, a breach of these Probity Protocols, they should communicate their concerns to the chairperson of the TET (or equivalent, referred to as **Chair of the TET** throughout this Probity Plan) or, if the breach involves the Chair of the TET, to the Probity Advisor directly.

5.3 Distribution

- 5.3.1 A copy of the Probity Protocols (and any approved amended version) will be provided to Project Personnel, including:
- (a) the Chair of the TET;
 - (b) all members of the TET;
 - (c) the advisors, including the technical advisors; and
 - (d) any other personnel who may have access to sensitive information relating to procurement activities.
- 5.3.2 It is the responsibility of each of the above Project Personnel to read, understand, and to comply with, the requirements of these Probity Protocols.

5.4 Evaluation

- 5.4.1 The evaluation of tenders, proposals or expressions of interest (or equivalent, referred to as **Tenders** throughout this Probity Plan) will be conducted in accordance with:
- (a) the Request For Tender (or equivalent);
 - (b) the Tender Evaluation Plan (or equivalent);
 - (c) rules for conducting tenders outlined in the LGA and LGR (if applicable)²; and
 - (d) any relevant Council policies.
- 5.4.2 The roles of Project Personnel involved in the evaluation process will be detailed in the Tender Evaluation Plan.
- 5.4.3 With the exception of the Contact Officer identified in the ATM documents, the identity of members of the TET or any other personnel involved with the Project should not be disclosed to or discussed with any Tenderer.

² The rules for conducting tenders at Chapter 6, Part 3, Division 1 (Tendering) of the LGA and Part 7 (Tendering) of the LGR apply to contracts of the kind specified at section 55 of the LGA.

5.5 Gifts and hospitality

- 5.5.1 Members of the TET and any other Project Personnel must not accept gifts or gratuities from Tenderers. Gratuities include, but are not limited to items such as entertainment, transportation, lodging, or services.

5.6 Offers of employment

- 5.6.1 Members of the TET and any other Project Personnel must not knowingly solicit or accept future employment or business opportunities from Tenderers or possible future competing Tenderers during the evaluation process.
- 5.6.2 Members of the TET and any other Project Personnel who are approached by a Tenderer regarding the possibility for employment (whether the employment is intended for a period during or after the completion of the Project) must notify the Chair of the TET or the Probity Advisor immediately.

5.7 Business meetings and social functions

- 5.7.1 Members of the TET and any other Project Personnel must not attend or participate in social functions or conferences that are primarily sponsored or organised by a Tenderer unless given express permission by the Chair of the TET.
- 5.7.2 Where members of the TET and any other Project Personnel attend or are involved in social or conference activities that are not sponsored or organised by a Tenderer, but where representatives from Tendering entities may be present, discretion and care should be exercised in discussions with Tenderers at such functions in accordance with the Schedule 4 Communications Protocol (the Procurement Process must not be discussed, and, should the Tenderer raise it, they must be told to direct their query to the Contact Officer specified in the RFT, and the conversation must be recorded in writing as soon as possible).
- 5.7.3 It is possible that some personnel may have previous or on-going personal or business relationships with members of Tenderers or with companies in competition with the Tenderer's outside the RFT process. Such individuals should attempt to avoid situations likely to engender a conflict of interest. If a conflict of interest does arise or could be seen to be occurring, the individuals must immediately bring such matters to the attention of the Chair of the TET who will document the matter and inform the Probity Advisor. It is the individual's responsibility to immediately inform the Chair of the TET or Probity Advisor.

NOTE:

If council is conducting a procurement where there is an incumbent provider, Council should consider including the BAU Protocols in Schedule 4.

If the BAU Protocols are retained then sections 5.7.4 and 5.7.5 should be retained. Otherwise, those sections can be deleted, along with the BAU Protocols schedule.

- 5.7.4 The requirements of section 5.7.3 are in addition to the requirements in the Schedule 5 Business as Usual (BAU) Protocols and to the obligation to declare conflicts of interest in the Probity Policy.
- 5.7.5 The Schedule 5 Business as Usual (BAU) Protocols is a detailed Protocol for dealing with the incumbent provider. All members of the TET and any other personnel involved in the Procurement Process who have a need to communicate

with the incumbent service provider must comply with the Schedule 5 Business as Usual (BAU) Protocols.

5.8 Confidentiality and Information Security

- 5.8.1 In accordance with Part 7, Division 3 of the LGR, all Tenders received by the Council must be securely stored:
- (a) if received in hardcopy, in a secure tender box; and
 - (b) if received by electronic means, in a secure container in TRIM on the Council's computer network,
- and must only be accessible by appropriate Project Personnel.
- 5.8.2 In accordance with Council's Code of Conduct and Statement of Business Ethics Councillors must protect and maintain the integrity and security of confidential information in their possession.
- 5.8.3 All details of Tenders and matters relating to evaluation of them are to be treated as confidential during the Project.
- 5.8.4 Limited copies of Tenders may be made with the prior approval of the Chair of the TET for the purpose of evaluation, provided that each copy is noted in a register maintained by the Chair of the TET, and its confidentiality preserved.
- 5.8.5 Once the Tenders have been evaluated and Council has determined how it will proceed, the destruction of any copies will need to comply with Council policy and Council's legal obligations, including under the LGA and *State Records Act 1998*.
- 5.8.6 The Chair of the TET must ensure that any confidential information (electronic and hard copy) handled by Project Personnel is maintained securely at Council's Offices (**Secure Location**).
- 5.8.7 Confidential information must only be accessible to Project Personnel who have a need-to-know and who have signed a declaration of interests and confidentiality agreement substantially in the form attached to the Probity Policy.
- 5.8.8 Electronic Confidential information will be maintained in a secure environment within Council's electronic document management system (EDRMS) with restricted access.
- 5.8.9 The Chair of the TET is to create and maintain a register to track any documents circulated outside of the Secure Location. Approval to remove Confidential Information from the Secure Location may be provided by the Chair of the TET provided that the security of the confidential information can be assured, and the removal is tracked in the register. As far as practicable, confidential information should not be removed from the Secure Location.
- 5.8.10 Copies of confidential information are not to be produced without the prior written approval of the Chairperson.
- 5.8.11 Where it is necessary to remove confidential information and such approval is approved, its safe keeping is the responsibility of the person removing the information. Confidential information must at all times be either in the personal possession of the individual or locked in a secure environment.

6. Probity Protocols (Divestment by Tender)

NOTE

These Probity Protocols are relevant to divestments undertaken by tender.

If the Project relates to a procurement or development, the relevant protocols above or below should be adopted and these protocols removed.

6.1 Application

- 6.1.1 These Probity Protocols are applicable to, and must be observed by, all Project Personnel.
- 6.1.2 The Probity Protocols apply throughout the entirety of the Project, from prior to approaching the market for tenders up to the time the relevant contract is entered into.

6.2 Breaches of these Probity Protocols

- 6.2.1 If any person becomes aware of, or believes there is likely to occur, a breach of these Probity Protocols, they should communicate their concerns to the Chair of the TET or, if the breach involves the Chair of the TET, to the Probity Advisor directly.

6.3 Distribution

- 6.3.1 A copy of the Probity Protocols (and any approved amended version) will be provided to Project Personnel, including:
 - (a) the Chair of the TET;
 - (b) all members of the TET;
 - (c) the advisors, including the technical advisors; and
 - (d) any other personnel who may have access to sensitive information relating to divestment activities.
- 6.3.2 It is the responsibility of each of the above Project Personnel to read, understand, and to comply with, the requirements of these Probity Protocols.

6.4 Evaluation

- 6.4.1 The evaluation of Tenders will be conducted in accordance with:
 - (a) the Request For Tender;
 - (b) the Tender Evaluation Plan;
 - (c) rules for conducting tenders outlined in the LGA and LGR (if applicable); and
 - (d) any relevant Council policies.
- 6.4.2 The roles of Project Personnel involved in the evaluation process will be detailed in the Tender Evaluation Plan.

- 6.4.3 With the exception of the Contact Officer identified in the ATM documents, the identity of members of the TET or any other personnel involved with the Project should not be disclosed to or discussed with any Tenderer.

6.5 Gifts and hospitality

- 6.5.1 Members of the TET and any other Project Personnel must not accept gifts or gratuities from Tenderers. Gratuities include, but are not limited to items such as entertainment, transportation, lodging, or services.

6.6 Offers of employment

- 6.6.1 Members of the TET and any other Project Personnel must not knowingly solicit or accept future employment or business opportunities from Tenderers or possible future competing Tenderers during the evaluation process.
- 6.6.2 Members of the TET and any other Project Personnel who are approached by a Tenderer regarding the possibility for employment (whether the employment is intended for a period during or after the completion of the Project) must notify the Chair of the TET or the Probity Advisor immediately.

6.7 Business meetings and social functions

- 6.7.1 Members of the TET and any other Project Personnel must not attend or participate in social functions or conferences that are primarily sponsored or organised by a Tenderer unless given express permission by the Chair of the TET.
- 6.7.2 Where members of the TET and any other Project Personnel attend or are involved in social or conference activities that are not sponsored or organised by a Tenderer, but where representatives from Tendering entities may be present, discretion and care should be exercised in discussions with Tenderers at such functions in accordance. The Divestment Process must not be discussed, and, should the Tenderer raise it, they must be told to direct their query to the Contact Officer specified in the RFT, and the conversation must be recorded in writing as soon as possible.
- 6.7.3 It is possible that some personnel may have previous or on-going personal or business relationships with members of Tenderers or with companies in competition with the Tenderer's outside the RFT process. Such individuals should attempt to avoid situations likely to engender a conflict of interest. If a conflict of interest does arise or could be seen to be occurring, the individuals must immediately bring such matters to the attention of the Chair of the TET who will document the matter and inform the Probity Advisor. It is the individual's responsibility to immediately inform the Chair of the TET or Probity Advisor.

6.8 Confidentiality and Information Security

- 6.8.1 In accordance with Part 7, Division 3 of the LGR, all Tenders received by the Council must be securely stored:
- (a) if received in hardcopy, in a secure tender box; and
 - (b) if received by electronic means, in a secure container in TRIM on the Council's computer network,
- and must only be accessible by appropriate Project Personnel.

- 6.8.2 In accordance with Council's Code of Conduct and Statement of Business Ethics Councillors must protect and maintain the integrity and security of confidential information in their possession.
- 6.8.3 All details of Tender and matters relating to evaluation of them are to be treated as confidential during the Project.
- 6.8.4 Limited copies of Tenders may be made with the prior approval of the Chair of the TET for the purpose of evaluation, provided that each copy is noted in a register maintained by the Chairperson, and its confidentiality preserved.
- 6.8.5 Once Tenders have been evaluated and Council has determined how it will proceed, the destruction of any copies will need to comply with Council policy and Council's legal obligations, including under the LGA and *State Records Act 1998* (NSW).
- 6.8.6 The Chair of the TET must ensure that any confidential information (electronic and hard copy) handled by Project Personnel is maintained securely at Council's Offices (**Secure Location**).
- 6.8.7 Confidential information must only be accessible to Project Personnel who have a need-to-know and who have signed a declaration of interests and confidentiality agreement substantially in the form attached to the Probity Policy.
- 6.8.8 Electronic Confidential information must be maintained in a secure environment on Council's computer network and secured by a password, which is available only to relevant Project Personnel and systems administrators.
- 6.8.9 The Chair of the TET is to create and maintain a register to track any documents circulated outside of the Secure Location. Approval to remove Confidential Information from the Secure Location may be provided by the Chair of the TET provided that the security of the confidential information can be assured, and the removal is tracked in the register. As far as practicable, confidential information should not be removed from the Secure Location.
- 6.8.10 Copies of confidential information are not to be produced without the prior written approval of the Chairperson.
- 6.8.11 Where it is necessary to remove confidential information and such approval is approved, its safe keeping is the responsibility of the person removing the information. Confidential information must at all times be either in the personal possession of the individual or locked in a secure environment.

7. Probity Protocols (Development Project)

NOTE

These Probity Protocols are relevant to Project involving development, such as the consideration of development applications and related decisions by Council (and related Project Personnel).

If the Project relates to a procurement or divestment, the relevant protocols above should be adopted and these protocols removed.

7.1 Application

- 7.1.1 These Probity Protocols are applicable to, and must be observed by, all Project Personnel.

- 7.1.2 The Probity Protocols apply throughout the entirety of the Project, from prior to approaching the market for tenders up to the time the relevant contract is entered into.

7.2 Breaches of these Probity Protocols

- 7.2.1 If any person becomes aware of, or believes there is likely to occur, a breach of these Probity Protocols, they should communicate their concerns to the Contact Officer.

7.3 Distribution

- 7.3.1 A copy of the Probity Protocols (and any approved amended version) will be provided to all Project Personnel.
- 7.3.2 It is the responsibility of each of the above Project Personnel to read, understand, and to comply with, the requirements of these Probity Protocols.

7.4 Project Conduct

- 7.4.1 The Project, including the assessment of development applications and related decision making, will be conducted in accordance with the LGA, LGR and other Council policies relevant to development.
- 7.4.2 These Probity Protocols create specific obligations on Project Personnel who may deal with development applications (Applications) or the entities who have lodged such Applications (**Developers**).

7.5 Gifts and hospitality

- 7.5.1 Project Personnel must not accept gifts or gratuities from Developers. Gratuities include, but are not limited to items such as entertainment, transportation, lodging, or services.

7.6 Offers of employment

- 7.6.1 Project Personnel must not knowingly solicit or accept future employment or business opportunities from Developers, in particular when related Applications are being assessed.
- 7.6.2 Project Personnel who are approached by a Developer regarding the possibility for employment (whether the employment is intended for a period during or after the completion of the Project) must notify the Contact Officer or the Probity Advisor immediately.

7.7 Business meetings and social functions

- 7.7.1 Project Personnel involved in the assessment of Applications or related decision making must not attend or participate in social functions or conferences that are primarily sponsored or organised by a Developer.
- 7.7.2 Where Project Personnel involved in the assessment of Applications or related decision making attend or are involved in social or conference activities that are not sponsored or organised by a Developer, but where representatives from Developers may be present, discretion and care should be exercised in discussions with Developers at such functions in accordance. The Project must not be discussed, and, should the Developer raise it, they must be told to direct their

query to the Contact Officer, and the conversation must be recorded in writing as soon as possible.

- 7.7.3 It is possible that some personnel may have previous or on-going personal or business relationships with Developers or with companies in competition with a Developer outside of the Project. Such individuals should attempt to avoid situations likely to engender a conflict of interest. If a conflict of interest does arise or could be seen to be occurring, the individuals must declare that conflict of interest in accordance with the Probity Policy and inform the Probity Advisor. It is the individual's responsibility to make such a declarations and inform the Chair of the TET or Probity Advisor.

7.8 Confidentiality and Information Security

- 7.8.1 All Applications must be kept secure.
- 7.8.2 In accordance with Council's Code of Conduct and Statement of Business Ethics Councillors must protect and maintain the integrity and security of confidential information in their possession
- 7.8.3 All details of Applications and matters relating to assessment of them are to be treated as confidential during the Project.
- 7.8.4 Limited copies of Applications may be made for the purpose of assessment, provided that each copy is noted in a register maintained by the assessment team, and its confidentiality preserved.
- 7.8.5 Once the Applications have been assessed and Council has determined how it will proceed, the destruction of any copies will need to comply with Council's Records policy and Council's legal obligations, including under the LGA and State Records Act 1998.
- 7.8.6 Confidential information must only be accessible to Project Personnel who have a need-to-know and who have signed a declaration of interests and confidentiality agreement substantially in the form attached to the Probity Policy.
- 7.8.7 Project Personnel must ensure that any confidential information (electronic and hard copy) is maintained securely at Council's Offices (Secure Location).
- 7.8.8 Electronic confidential information must be maintained in a secure environment on Council's computer network.
- 7.8.9 The assessment team is to create and maintain a register to track any documents circulated outside of the Secure Location. Confidential information must only be removed from the Secure Location where there is a genuine need and provided that the security of the confidential information can be assured. Any such removal must be tracked in the register. As far as practicable, confidential information should not be removed from the Secure Location.
- 7.8.10 Copies of confidential information are to be kept to a minimum.
- 7.8.11 Where it is necessary to remove confidential information and such approval is approved, its safe keeping is the responsibility of the person removing the information. Confidential information must at all times be either in the personal possession of the individual or locked in a secure environment.

Schedule 4 Communications Protocols

1. Communications Protocol

1.1 The Communications Protocol provides guidelines for the provision of information to Tenderers, and the formulation of responses to enquiries. These guidelines are intended to provide a process for the dissemination of information that will:

1.1.1 be appropriate to the Project,

1.1.2 be open and fair,

1.1.3 maintain appropriate security and confidentiality, and

1.1.4 meet the needs of Tenderers and be capable of being accommodated within the resources of all parties.

1.2 Consistent and uniform information must be provided to all Tenderers to ensure that one Tenderer does not receive an unfair advantage over another.

2. General Enquiries

2.1 Project Personnel shall refer any general enquiries that are received in relation to the Request for Tender (or equivalent, RFT) to the Contact Officer for further details.

2.2 Any enquiries received prior to the RFT being released should be directed to the Contact Officer.

2.3 Under no circumstances should Project Personnel (with the exception of the Contact Officer as provided for in the Probity Policy or Probity Plan) make any comment about the RFT process, including comments about timing, the content of the RFT or the identity of any evaluation personnel.

3. Telephone and/or Verbal Enquiries and Conversations

3.1 The RFT informs interested parties that all requests for further information relating to the RFT must be made by email to the Contact Officer email address nominated in the RFT.

3.2 If members of the TET or any other Project Personnel are contacted by any Tenderer or any other person seeking information about the RFT, they must direct the person making the enquiry to the Contact Officer email address and must not say anything about the Project.

4. Written Correspondence

4.1 The RFT informs Tenderers that all requests for further information relating to the RFT must be made by email to the Contact Officer nominated in the RFT.

4.2 All draft responses to requests for further information must be approved by the Chair of the TET.

4.3 Draft responses to requests for further information will be referred, where appropriate, by the Chair of the TET to the Probity Advisor for advice before being issued.

4.4 All responses to Tenderers must be sent by email through the Contact Officer email address.

4.5 All email correspondence will be recorded and stored securely by Council.

5. Meetings

- 5.1 During the period after release of the RFT and until conclusion of the procurement process, contact with Tenderers will be limited to written correspondence or any other form of contact expressly provided for in the RFT.
- 5.2 Meetings with Tenderers as provided for in the RFT must only be held or attended:
- 5.2.1 if permitted by the Chair of the TET;
 - 5.2.2 in accordance with any guidelines determined by the Chair of the TET in consultation with the Probity Advisor. These guidelines may include requirements such as the following:
 - (a) that there be an agenda for each meeting;
 - (b) proceedings at the meetings are to be documented;
 - (c) responses to questions asked by Tenderers are to be confirmed in writing and provided to all other Tenderers;
 - 5.2.3 in accordance with the principles that any communications made at those meetings must not:
 - (a) give, or give rise to the perception of, an unfair advantage to a Tenderer;
 - (b) reveal proprietary or confidential information of another Tenderer; or
 - (c) unfairly disadvantage a Tenderer; and
 - 5.2.4 in accordance with any business as usual protocols where there is an incumbent provider.

6. Social functions and other business meetings

- 6.1 If members of the TET or other Project Personnel involved in the procurement are permitted to attend a meeting with, or attend a conference or social function with, an entity that may be a potential Tenderer or is a Tenderer, the following key points should be kept in mind:
- 6.1.1 **no advantage** – any contact with potential or current Tenderers should be undertaken in a way that does not:
 - (a) give, or give rise to the perception of, that that Tenderer has received an unfair advantage;
 - (b) reveal proprietary or confidential information;
 - (c) unfairly disadvantage a potential or current Tenderer;
 - (d) breach the requirements of any business as usual protocols.
 - 6.1.2 **no details of RFT** – at no time should details of the RFT be discussed with a potential or current Tenderer;
 - 6.1.3 **verbal discussions** - any discussions about the RFT process should be conducted so that they cannot be overheard by anyone who does not have a need to know, particularly potential or current Tenderers. Business matters that could affect or are connected to the procurement should not be discussed. Where an

individual attempts to raise issues in respect of the Procurement Process, they should be told that it is not appropriate to discuss such matters. The Chair of the TET should be notified of any such situations; and

- 6.1.4 **email groups** - under no circumstances should information about the RFT be disseminated via an email group which includes any personnel of a potential or current Tenderer, particularly incumbent providers (if any).

7. Media

- 7.1 Any media contacts or requests concerning the procurement should be directed to the Contact Officer and notified to the Chair of the TET.

8. Amendment

- 8.1 Any amendments to, or departures from, the requirements of this Communications Protocol will be subject to the same approval requirements as the Probity Policy.

Schedule 5 Business As Usual (BAU) Protocols

1. Application

- 1.1 In addition to the Probity Protocols in the Probity Plan and the Schedule 4 Communications Protocol, the following BAU Protocols are intended to specifically address probity risks in relation to the 'incumbent' service provider, given that it will likely be responding to the RFT.
- 1.2 The BAU Protocols recognise that Project Personnel, including some members of the Tender Evaluation Team, must be able to continue to communicate with the incumbent service provider, its subcontractors and staff (**Current Provider**) to enable the performance and administration of the current contract to continue unhindered. These Protocols refer to such communication as Business as Usual contact (**BAU contact**).

NOTE

The following section relate in part to transition out of a current incumbent contract. There may also be occasions where transition out is not necessarily relevant and Council could consider removing related sections.

The Probity Advisor can provide further advice and assistance in drafting changes to the BAU Protocols.

- 1.3 They also recognise that specific communication will be required between members of the Tender Evaluation Team and the Current Provider in order to facilitate access to information which will be required for the Procurement Process and to plan for and implement any phase out of the existing contract. These Protocols refer to such communications as **Transition Out contact**.
- 1.4 It is important that BAU contact and Transition Out contact does not provide the Current Provider with any advantage or perception of advantage as against other Tenderers. The BAU Protocols accordingly set in place a regime which, as far as possible, will ensure equal opportunity of access to information about the procurement process by both the Current Provider and all other potential Tenderers.

2. Communications with the incumbent

- 2.1 Members of the Tender Evaluation Team must avoid all communications relating to the procurement process with the Current Provider. In particular, details regarding selection criteria, terms and conditions of tender, scope of services, timing of the procurement processes, proposed responses, membership of the Tender Evaluation Team and other related matters should not be discussed under any circumstances, except as provided for in the relevant response documents.
- 2.2 Only those Project Personnel who have legitimate requirements (that is, a requirement which is clearly and expressly part of their appointment, employment or contractual responsibility) and who are authorised to do so, should communicate with the Current Provider.
- 2.3 If members of the Tender Evaluation Team or any other person who is directly involved in the procurement have a legitimate requirement to contact the Current Provider, they should do so only after being cleared to do so by the Chair of the TET. Unless it is clearly authorised by the Chair of the TET, any contact with the Current Provider must not include information about the procurement process.
- 2.4 All internal e-mail groups to be used to disseminate procurement information need to be reviewed to establish whether any of the Current Provider's officers or employees are included in the group.
- 2.5 If approached by the Current Provider to discuss matters relating to the procurement process, members of the Tender Evaluation Team and any other personnel directly involved in the procurement process should inform the Current Provider that such discussions are inappropriate and cannot be continued. The Current Provider should be referred to the Contact Officer for all further communications relating to the procurement process.

Probity Policy

2.6 Members of the Tender Evaluation Team and any other person involved in the procurement process must immediately report to the Chair of the TET any approach by the Current Provider to discuss matters relating to the procurement process.

3. Seeking advice from Probity Advisor

3.1 Prior to authorising contact with the Current Provider, the Chair of the TET may seek advice from the Probity Advisor. The Probity Advisor will consider:

3.1.1 whether the proposed contact, the Current Provider and the information to be provided could provide the Current Provider with an advantage over other potential respondents;

3.1.2 whether Council's requirement could be met in another way; and

3.1.3 whether any potential advantage to the Current Provider will be addressed by implementing other processes (for example, by the providing of the same information to all potential Tenderers).

4. Contact register

4.1 BAU contact between the Current Provider and Council does not need to be recorded unless it potentially impacts upon the procurement process (for example, if problems with the current level of service provision are discussed, or options for improvement. Any substantial BAU contact – such as feedback on performance, or discussions relating more complex projects or relating to the dispute - should be by way of meetings which are minuted.

4.2 Transition Out contact should also be in the form of meetings which are minuted.

4.3 Minutes and records of contact with the Current Provider are to be made available to the Probity Advisor on request. The Chair of the TET will discuss with the Probity Advisor in advance of each meeting whether the Probity Advisor should attend.

5. Storage of information

5.1 In accordance with the document security provisions in the Probity Plan, any information concerning the procurement process held by Council must be stored securely and Current Provider are not to be permitted access under any circumstances.

5.2 Meetings conducted in premises that the Current Provider has access to should be behind closed doors to ensure that discussions are not overheard.

5.3 Any unauthorised access to the designated secure area by the Current Provider that comes to the attention of Council must be immediately reported to the Contact Officer. The Contact Officer will initiate further investigations into the matter, as required.

6. Amendment

6.1 Any amendments to, or departures from, the requirements of this BAU Protocol will be subject to the same approval requirements as the Probity Policy.

Probity Policy

PROBITY POLICY ACKNOWLEDGEMENT

I acknowledge that I have received a copy of the Probity Policy for the Development Activities and have read and understood my obligations, roles and responsibilities under the Probity Policy.

I acknowledge that I may be subject to further obligations under a corresponding Probity Plan in relation to a specific Council Development Project in conjunction with the Probity Policy as development activities progress.

Signature:

Print Name:

Title:

Date:

