

10.7. Probity Plan - Grosvenor Lane Carpark

AUTHOR	Neal McCarry, Service Unit Manager Strategic Planning
ENDORSED BY	Marcelo Occhiuzzi, Director Community, Planning and Environment
ATTACHMENTS	1. Probity Plan Grosvenor Lane Carpark Neutral Bay [10.7.1 - 19 pages]
CSP LINK	<p>1. Our Living Environment</p> <p>1.4 Well utilised open space and recreational facilities</p> <p>2. Our Built Infrastructure</p> <p>2.1 Infrastructure and assets meet diverse community needs</p> <p>2.2 Vibrant public domains and villages</p> <p>3. Our Innovative City</p> <p>3.1 Our commercial centres are prosperous and vibrant</p> <p>3.2 North Sydney is smart and innovative</p> <p>4. Our Social Vitality</p> <p>4.1 North Sydney is connected, inclusive, healthy and safe</p> <p>5. Our Civic Leadership</p> <p>5.1 Lead North Sydney’s strategic direction</p>

PURPOSE:

The purpose of this report is to seek Council’s endorsement of a Probity Plan to guide discussions with Coles regarding any future dealings in the Grosvenor Lane carpark adjacent to the (Coles-owned) site at 41 - 53 Grosvenor Street Neutral Bay.

EXECUTIVE SUMMARY:

- Following the granting of landowner’s consent by Council in April 2023, a development application was lodged by Coles, seeking to re-develop 41 - 53 Grosvenor Street Neutral Bay for a supermarket, shop-top housing, and to underground the existing Council-owned at-grade parking, incorporating this within the re-developed site.
- A development application was subsequently lodged by Coles in September 2023, accompanied by a letter of offer to enter into a Voluntary Planning Agreement to relocate public parking underground, thereby creating a pedestrian plaza at the Grosvenor Lane carpark. This was submitted prior to any in-principal agreement being reached or agreed to by Council.
- To ensure Council adheres to probity principles of impartiality, accountability, and transparency, and appropriately manages risk, a Probity Plan has been prepared by O’Conner, Marsden and Associates (OCM) Probity advisors. The Probity Plan provides a framework in which Council can manage probity issues whilst negotiating directly with the adjacent landowner.

- The draft Probity Plan is presented for Council's consideration and adoption. An important component of this process is the capacity to deal directly with Coles in these negotiations. This requires a formal resolution of Council; however, such decision would not constitute an agreement to any proposal, agreement, or transaction in relation to publicly owned lands. It allows more formal negotiations to be progressed prior to any recommendation being made to Council.

RECOMMENDATION:

- 1. THAT** the attached Probity Plan be adopted as the framework to guide Council's discussions and negotiations with Coles on the carpark land at Grosvenor Lane, Neutral Bay.
- 2. THAT** Council grant authority to the Chief Executive Officer to enter into formal negotiations in relation the potential redevelopment of the Grosvenor Lane carpark directly with the adjacent landowner of No 41-53 Grosvenor Street, namely Coles Group Property Development or their authorised representative.
- 3. THAT** the adjacency and relationship of the proposed development to the portion of public land to be negotiated and the capacity of others to also negotiate on a similar adjacency basis if those opportunities were sought to be explored, are the reasons why Council resolves to directly negotiate with Coles.
- 4. THAT** the outcome of any negotiations be reported back to Council.
- 5. THAT** Council acknowledges that this resolution does not infer or suggest any agreement with Coles ahead of a negotiation process.

Background

The North Sydney Development Control Plan (DCP) 2013 includes provisions that encourage the undergrounding of public parking to create a pedestrian plaza at Grosvenor Lane in Neutral Bay. This policy position is a long-standing one, going back as far as 2002.

On 26 April 2023, Council considered a report on a request for landowners' consent from Coles Group Property Development (Coles), for the purposes of lodgement of a development application (DA) seeking to re-develop 41 - 53 Grosvenor Street Neutral Bay. In doing so, Coles sought to underground the existing Council-owned at-grade parking, incorporating this within the re-developed site.

A DA (Ref DA258/23) was subsequently lodged in September 2023. The application was accompanied by a letter of offer to enter in a Voluntary Planning Agreement to deliver the undergrounding of public carparking and, concurrently, a new pedestrian plaza/public domain.

The DA seeks a significant variation to Council's current LEP height control which applies a maximum building height of 16m. As a result of the inclusion of Council-owned land in the DA, an external consultant has been engaged to undertake an independent assessment of the application.

Prior to and since lodgement of the DA, representatives of Coles have sought to meet Council staff to discuss the contents of their public benefit offer and their proposal.

On 11 September 2023, Council granted landowner's consent to an adjacent landowner (Arkadia) in Neutral Bay to lodge a DA for an alternate surface-level treatment of the existing Grosvenor Lane carpark. The scheme presented in consideration of the landowner's request, sought to convert the southern portion of the existing carpark into a partially pedestrianised plaza, retaining approximately half of the existing spaces in a reconfigured arrangement. A pre-lodgement meeting was conducted with the applicant in November 2023; no formal DA has been lodged since that time.

In February 2024, the revised Neutral Bay Village Planning Study was endorsed by Council for public exhibition. The Planning Study aims to set the strategic direction for Neutral Bay and, among other elements, includes potential building heights that may be able to be supported but does not have the effect of actually amending the planning controls. The Study identifies opportunities for provision of new areas of public domain including the creation of a Grosvenor Lane Plaza. The study also identifies the desire to retain the majority of the existing mature canopy trees on the site. The exhibition concluded on 2 April 2024, with approximately 350 submissions being received. It is anticipated that the outcomes of the exhibition will be reported to Council's meeting of late May/June 2024. An extract from the study of the area of relevance is provided below. Site 1 is the Coles-owned land.

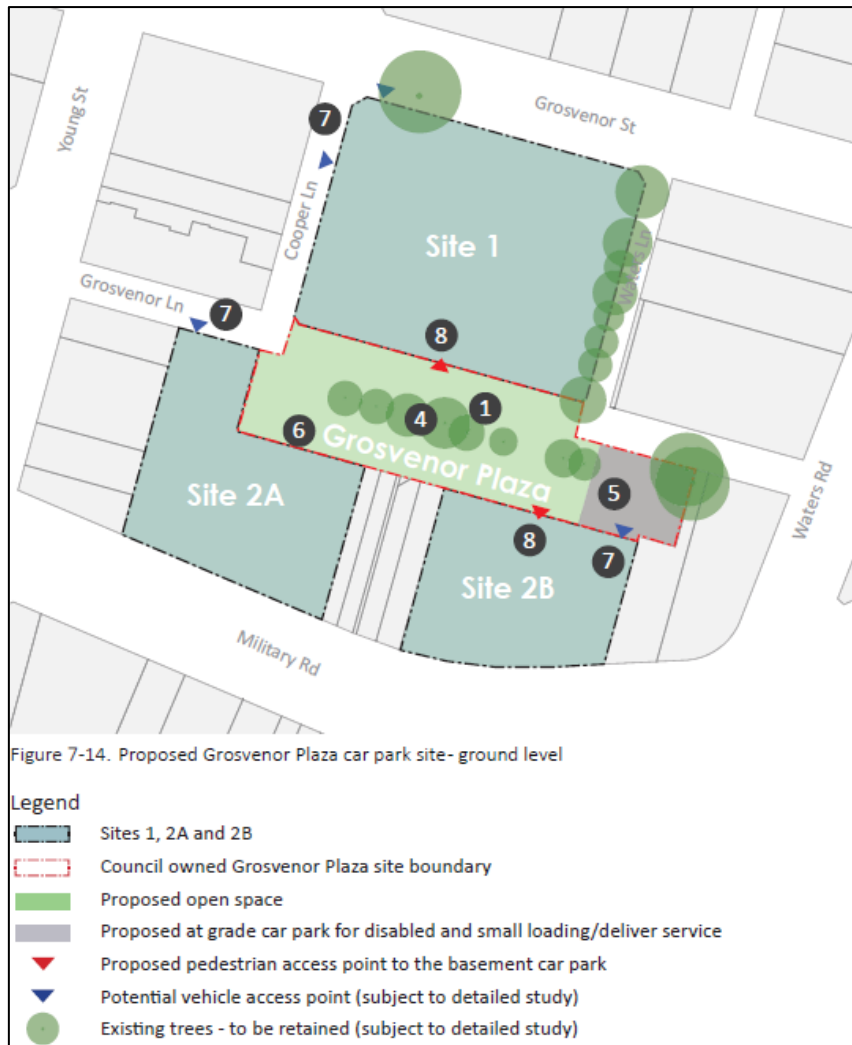


Diagram 1 – Exhibited site layout – identifying sites 1, 2A, and 2B

Report

Dual role of Council

Council plays a dual role as both regulator of development and, in this case, landowner. Appropriate care needs to be taken to ensure that probity principles such as integrity, fairness, honesty, and transparency are not compromised in conducting these dual roles. This includes Council ensuring that the community maintains a level of confidence in Council's ability to act impartially whilst seeking to best manage Council-owned land, and explore opportunities for urban renewal and rejuvenation.

The appointment of an independent planner to undertake the detailed merit assessment of the DA helps ensure that this process is not influenced by Council's interest in the site. The value of the DA means that it will be determined by the Sydney North Planning Panel, which is also independent of Council.

Probity framework

In order to ensure that effective probity management occurs, a probity framework has been developed. The Probity Plan (Attachment 1) sets out the probity principles, probity risks to be considered and managed, as well as minimum conduct requirements for Council to adhere to whilst Council explores opportunities for renewal of the town centre. The Probity Plan provides an important framework to ensure confidence that Council is acting transparently and with the broader community's best interest at heart.

Direct Dealings

The probity advice includes the following statement;

Prior to entering into direct dealing, Council should satisfy itself that from a legal and probity perspective, in the circumstances, direct negotiations are appropriate and reasonable in this instance, and in accordance with the requirements under Section 55 of the LG Act.

Section 55 of the Local Government (LG) Act requires that Council invite tenders for the acquisition or sale of various products and or services. It states in part, that:

*55. A council must invite tenders before entering into any of the following contracts:
(g) a contract for the disposal of property of the council,
(h) a contract requiring the payment of instalments by or to the council over a period of 2 or more years,*

An exception is included at S.55(3)(i) as follows:

(i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.

The Independent Commission Against Corruption (ICAC) Guidelines (2018) provides a useful guide to considering this question. The Guidelines outline that *as a general rule, direct negotiations should be avoided unless they clearly fall within the government's legislative and policy framework and/or the risk of corrupt conduct.* They recognise that in some instances, direct negotiations are appropriate and sometimes necessary, and provide examples of such instances. One of these is adjacency of real property. The Guidelines cite that *there may be situations in which an agency sells or leases real property via direct negotiations that is on, or near, the site of a proposed project.* The Guidelines further outline how negotiations should be conducted. In this current case, this is where the attached Probity Plan plays an important role.

The land which would be the subject of negotiations with Coles (Site 1 below) is most effectively able to be accessed via Grosvenor Street given the desire by Council to underground the public parking and create a more pedestrianised public plaza environment.

The access arrangements via Grosvenor Street are an existing situation (with some loading functions occurring in Grosvenor Lane).

Vehicle access via Military Road is not possible. Theoretically, access via Grosvenor Lane or Waters Lane to sites 2A and/or 2B, as shown in Diagram 2 below (as exhibited under the draft Neutral Bay Town Centre Planning Study) is also possible but comes with increased pedestrian impacts.

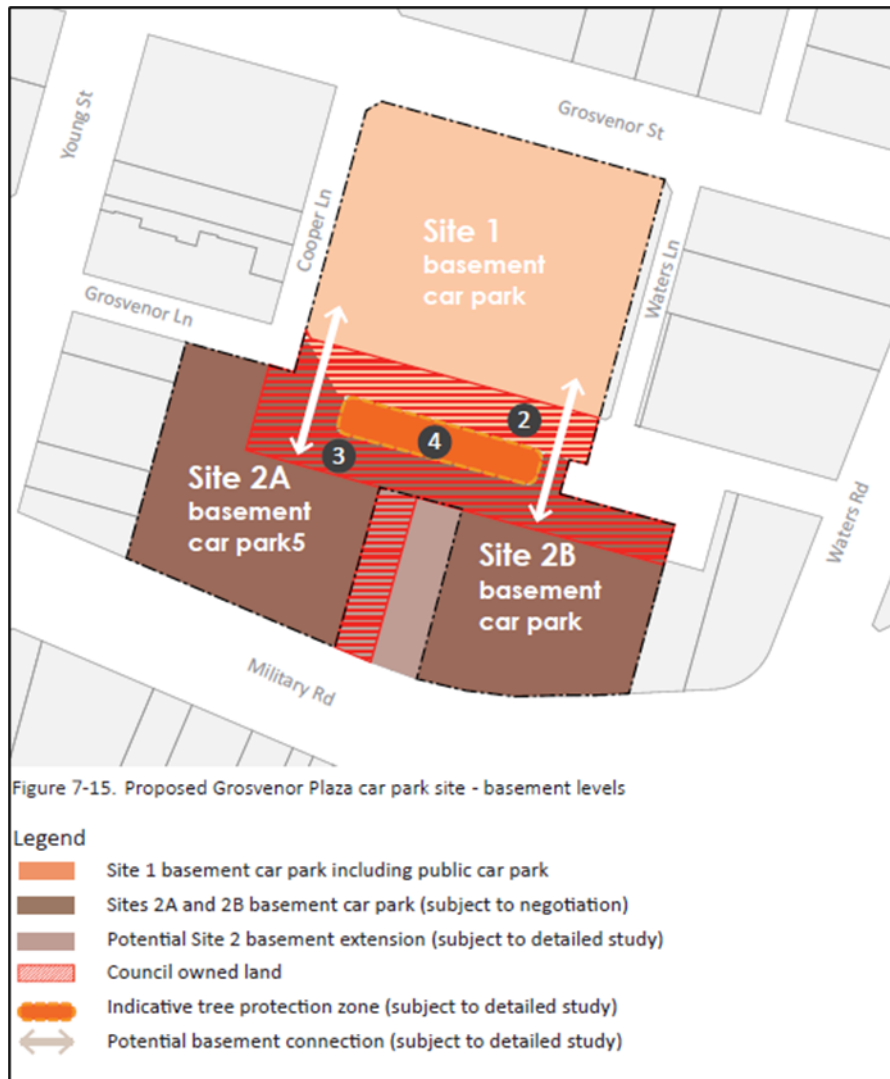


Diagram 2 – Exhibited indicative basement level layout

Notwithstanding the above, the capacity to negotiate with Coles would only be on land immediately adjacent to its existing holding. It is considered reasonable to have the capacity to deal directly with Coles on its in-principle offer to engage on land immediately adjacent to its own. In doing so, it is acknowledged that there is sensitivity amongst adjacent landowners as to how far this adjacency extends and this will need to be closely considered in Council’s negotiations. It would also be considered reasonable to directly deal with the adjacent landowners to the south if that approach was made and the appropriate probity plan were to be put in place.

Neutral Bay Town Centre Planning Study

The Neutral Bay Town Centre Planning Study is nearing completion after its exhibition in March 2024. It is appropriate that negotiations with any adjacent or nearby landowner be guided by an adopted Council-policy position. This has been Council's consistent approach when dealing with other adjacent or nearby property interests. The final policy position and Council resolution is yet to occur and important negotiations premised on a draft position of Council are not considered best practice and therefore premature.

Consultation requirements

Community engagement is not currently required. The outcomes of any negotiations will be the subject of further reports to Council. Should a detailed design resolution be achieved, then this would be the subject of further consultation with the community and stakeholders.

Financial/Resource Implications

The progression of any detailed negotiations will result in internal allocation of staff resources and time. Further specialist advice will incur additional costs which are able to be met under existing budget lines. In any dealing associated with Council land, Council needs to ensure that fair value for the community is achieved in any potential future transaction. Independent valuations and costings will need to be undertaken to ensure that the various components of any lease, transaction, or other arrangement are appropriately and fairly valued including land, costs associated with any improvements, value to the developer including increased parking, and manoeuvrability/circulation and the like.

These comments relate to the financial implications of the negotiation process itself and not the proposed plaza project.

Legislation

The legislative requirements set out in Section 55 of the Local Government Act 1993 and Part 7 of the Local Government (General) Regulation 2021 are of relevance in relation to this report. Related process including Planning Proposals, Development Applications, Voluntary Planning Agreements are required to be carried out in accordance with the Environmental Planning and Assessment Act 1979.

PROBITY FRAMEWORK

North Sydney Council

**Redevelopment of Grosvenor Lane Carpark
and Coles Site at 41-53 Grosvenor Street,
Neutral Bay Project**

April 2024

Version Control

Version	Date	Author and Title	Purpose for Issue
1	15/03/24	OCM, Probity Advisor	Draft for Council review
2	26/04/24	OCM, Probity Advisor	Response to Council comments and clarifications
3	30/04/24	OCM, Probity Advisor	Finalisation of Plan

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1 Details of the Project

1.1 Background to the Project

On 24 January 2022, Council resolved to develop an 'updated strategic development framework for the Military Road Corridor including the Neutral Bay Centre by engaging with the community and stakeholders to prepare a revised recommendation that has a better balance between development height and the provision of additional public open space' (**The Project**). Council commenced a revised planning study for the Neutral Bay precinct, called the 'Neutral Bay Town Centre Planning Study' (**NBTCPS**).

The proposed redevelopment of the Neutral Bay Town Centre in the North Sydney Council LGA, will transform the area and bring new connections and economic opportunities. Council believes it is an opportunity to address the ongoing decline of employment-generating floorspace under existing planning controls, leverage a range of public benefits and public domain improvements from planned and targeted growth and maintain and enhance the local character and amenity of the Neutral Bay Town Centre.

To progress the intent of the resolution, Council currently has on public exhibition the 'Neutral Bay Town Centre Planning Study Draft Report', dated February 2024. This draft report presents a draft plan guiding the future growth of the Neutral Bay Town Centre, protect retail and commercial uses and deliver public domain and community infrastructure. Council has previously undertaken a Planning Study for the Military Road Corridor (**MRCPS**). The draft study in its entirety was exhibited in mid-2020. Council formally rescinded the MRCPS in January 2022, with a further Council report being tabled in May 2022 outlining the broad scope of the planning study foreshadowed for the precinct.

The NBTCPS is currently out on public exhibition inviting feedback and submissions by the community, with a closing date of 2 April 2024.

A Local Character Statement (**LCS**) has been developed as part of the NBTCPS, which was developed in 2023. This study accounted for the strategic significance of the delivery of infrastructure through VPA's, provision of diverse community facilities, protecting the character and identity of the existing town centre, supporting local business, improving pedestrian amenity and integrating open space network.

Council is a landowner within the Neutral Bay Town Centre, with other significant landowners including Coles (Coles Group Limited). Council's landholding in the middle of the Project, could be comprehensively developed to meet the objectives of the desired future character of the Town Centre as identified in the LCS.

Council considered a report on a request for Owners' Consent from Coles Group Property Development (**Coles**) in April 2023, for the development of Council owned Grosvenor St, Neutral Bay and associated roads in Neutral Bay, as part of a redevelopment of the Coles site, at 41-53 Grosvenor ST, Neutral Bay. Council had been advised that Coles was in the process of preparing a mixed-use residential/commercial development. The new CD sought to replace the current existing supermarket and incorporate shop-top housing create an "at-grade" [plaza, by replacing the current Grosvenor Lane Carpark with an underground format.

Council is awaiting the conclusion of the public exhibition period on the NBTCPS, from which it will determine the proposed pathway for the potential delivery of the Project. However, at the same time Coles has lodged a DA in relation to the site, for which Coles had previously sought Council's consent as the landowner. Further to this, representatives of Coles seek to meet with the Chief Executive Officer and Mayor to discuss their proposal.

Council recognises that there are a number of pathways and opportunities which may be explored as part of the Project, which may include:

- Discussions and potential direct negotiations with adjacent landowners
- Joint development and delivery of the project with a development partner, which may take the form of a Public Private Partnership or entering into a development agreement
- Planning Proposal, which may be as a result of a possible joint outcome sought by project participants
- Lease agreement on Council owned land
- Voluntary Planning Agreement on part or all of the site with a developer or land owner.

1.2 Project map

The below map identifies the landholdings within the town centre precinct.



Figure 7-14. Proposed Grosvenor Plaza car park site - ground level

- Legend**
- Sites 1, 2A and 2B
 - Council owned Grosvenor Plaza site boundary
 - Proposed open space
 - Proposed at grade car park for disabled and small loading/deliver service
 - Proposed pedestrian access point to the basement car park
 - Potential vehicle access point (subject to detailed study)
 - Existing trees - to be retained (subject to detailed study)

Figure 7-15. Proposed Grosvenor Plaza car park site - basement levels

- Legend**
- Site 1 basement car park including public car park
 - Sites 2A and 2B basement car park (subject to negotiation)
 - Potential Site 2 basement extension (subject to detailed study)
 - Council owned land
 - Indicative tree protection zone (subject to detailed study)
 - Potential basement connection (subject to detailed study)

2 Probity Framework purpose

2.1 Objectives of the Probity Framework

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.

This Probity Framework sets out the probity principles, some of the identified probity risks to be considered by Council at this stage of the project, as well as the minimum conduct requirements for Council to adhere to the probity principles while Council explores opportunities for the renewal of the town centre.

2.2 Limitations on the Probity Framework

Nothing in this Probity Framework overrides or otherwise supersedes the legislative requirements applicable to Council or Council's own policies and procedures, including with regard to:

- Legislative and policy requirements associated with the NSW Planning System including the lodgement and assessment of Planning Proposals, entering into Voluntary Planning Agreements, and the consideration of development applications.

This Probity Framework includes considerations for Council in relation to the management of risks associated with Council's dual roles as both a landowner in the Town Centre (Council's Commercial drivers) and Council's role in the planning approval process (Council's Regulatory role). Refer to Appendix B for further information in relation to this.

- Council's framework for the acceptance and consideration of unsolicited proposals.
- Council's policy and procedures for the lease and sale of Council owned land.
- The legislative requirements set out in Section 55 of the Local Government Act 1993 and Part 7 of the Local Government (General) Regulation 2021 regarding tendering for specific contracts.
- Conduct obligations for Council staff and elected officials as set out in the Code of Conduct and relevant policies.

2.3 Probity principles

Set out below are the probity principles which are generally accepted by government agencies including local government and which have informed the development of this Probity Framework.

2.3.1 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.

2.3.2 Fairness, impartiality and honesty

Parties to a process undertaken by government agencies are entitled to expect fair treatment at every stage. If they do not consider the process to be fair, impartial and honest they may be reluctant to engage with Council or explore opportunities to work with Council on the Project. Any form of bias, whether driven by personal interests or not, could jeopardise the integrity of processes undertaken by Council.

For this project, this also includes ensuring that there are controls in place to ensure that there is appropriate separation of roles and that actions of Council do not fetter its decision-making responsibilities, including any planning related matters.

2.3.3 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 and stakeholders in this project 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.

2.3.4 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 and give landowners and tenderers the confidence to do business with government. This information can include the content of proposals, intellectual property and tenderers' pricing and profit structures. Importantly, much of the information relating to the project needs to be kept confidential until Council resolves a specific outcome or decision. 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, particularly as part of the opportunities being explored by Council and discussions which may occur during the process and ensuring that this does not detrimentally impact on a future process (such as procurement activities).

2.3.5 Attaining value for money

This is 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.

Value for Money is not necessarily achieved by accepting the lowest available price. The process should include: the evaluation of non-price criteria (such as the quality of the goods or services offered, the experience and past performance of the providers, the financial strength of the companies, the differing risk factors, the quality of the personnel, etc.); cost-benefit analysis against a target outcome or budget; the assessment of the total cost over the proposed life of the project; and, where appropriate, whether the outcome is best achieved by the Private Sector, using a Public Sector Comparator.

3 Minimum conduct obligations

All personnel involved in the Project have 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 Framework and other Council policies and procedures including the Code of Conduct.
- Avoid conflicts of interest and ensure that any interests and associations which could give risk to a conflict have been disclosed, documented and managed.
- Maintain the confidentiality and security of confidential information, including understanding what information about the Project can be shared and what information is required to be kept confidential at this stage.
- 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.
- Avoid contact with participants that may be perceived to affect the integrity of the Project, unless there is a formal process in place for this engagement, there is approval for the discussions or engagement to be undertaken and the probity risks have been identified and managed.
- Not make public comment about the project without appropriate authorisation.
- Report any breaches of the Probity Framework or other probity concerns immediately.
- Maintain appropriate records of decision making.

Further details in relation to the risk management strategies can be found in Section 4 of this Probity Framework.

4 Probity risks and mitigations

As noted above, the Probity Framework is intended to identify some of the key probity risks that Council will need to consider at this stage of the Project, being exploring opportunities for the renewal of the Town Centre.

It is recognised that this is not a definitive list of the probity risks for the Project, as this will depend on the proposed pathway to be undertaken as well as the delivery method for the Project. The probity risk assessment for the Project will be reviewed and updated as required as the Project progresses and Council resolves further on the pathway for the delivery of the Project and the usage of Council owned property.

The table below sets out some of the probity risks which have been identified for this stage of the Project, as well as the risk mitigation strategies to be adopted by Council for the management of the risks.

Probity Risk	Probity management strategies and minimum requirements
That there are informal discussions with landholders without due process	<ul style="list-style-type: none"> • Any discussions with landholders should have a minimum of two representatives from Council present. • Appropriate records should be maintained of any discussions and meetings including: <ul style="list-style-type: none"> ○ Time and date of the meeting; ○ Parties present at the meeting; and ○ Matters discussed and action items arising from the meeting. • Where there is the potential for the discussions to progress to formalized discussions and potential negotiations: <ul style="list-style-type: none"> ○ appropriate approvals should be obtained to progress further, including any relevant Council resolutions should this be required under the relevant legislation; ○ consideration be given to whether a discussion protocol or negotiation protocol is required to be entered into; and ○ controls are in place for the identification of conflicts of interest and the management of confidential information. • Early identification of the appropriate governance structure for the discussions and negotiations to ensure there is appropriate separation of roles – e.g., there should be a clear separation between parties involved in the negotiations, the outcome of the assessment of the negotiations, and the final decision making process including where the decision is required to be made by Council resolution.
That Council's elected officials are lobbied by landholders or other interested parties which fetters their decision-making role for the Project and impacts on the integrity of the process	<ul style="list-style-type: none"> • Elected Officials are to be briefed on the probity risks and management strategies for the project including the requirement to disclose any discussions with landholders or other stakeholders where this may be identified as lobbying activities and where the elected officials may be required to make a decision in relation to the matter.
There is a lack of documentation and audit trail to support decisions made by Council for the project	<ul style="list-style-type: none"> • Records should be maintained of the following as a minimum: <ul style="list-style-type: none"> ○ Any discussions and meetings with parties (e.g., landholders, stakeholders, potential delivery partners etc.) regarding the project ○ Conflict of interest and confidentiality declarations which have been entered into for the project ○ Approvals obtained for progressing with discussions and negotiations ○ Evaluation of the outcome of the discussions and negotiations and any decisions to progress further ○ Any decisions made in relation to the Project.

Probity Risk	Probity management strategies and minimum requirements
Engagement with landholders or other potential partners which may lead to direct dealing without the appropriate processes and framework in place	<ul style="list-style-type: none"> • Prior to entering into direct dealing, Council should satisfy itself that from a legal and probity perspective, in the circumstances, direct negotiations are appropriate and reasonable in this instance, and in accordance with the requirements under Section 55 of the LG Act.
Discussions with potential partners, landholders and stakeholders detrimentally impact on the ability for Council to undertake a future competitive process (e.g., a tender process for the selection of a development partner) and the fairness of this process.	<ul style="list-style-type: none"> • Any decision to enter into direct negotiations should be made at a senior level within the organisation, which may include through a Council resolution • Parties involved in the negotiations should be separate to the individuals assessing the outcome of the negotiations as well as those making the decision • Parties involved in the direct negotiations should be free from conflicts • Consideration should be given, and appropriately documented, as to whether there is sufficient justification to support direct dealing, whether the opportunity should be market tested and how value for money will be tested and confirmed in the absence of a competitive process.
Lack of a framework for the identification and management of conflicts of interest by consultants or contractors engaged by Council on the project, Council staff and project team members and elected officials	<ul style="list-style-type: none"> • 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. • 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 Director Corporate Services and documented in the Conflict and Probity Register (refer to Appendix C for an example Register). • Any external consultant engaged by Council will be required to adhere to the same measures applicable to other Council officers involved in the project, including as identified in Council's Code of Conduct.
Council is perceived to be acting in a manner which favours its Commercial drivers over its Regulatory function and Council's dual roles are not appropriately managed	<ul style="list-style-type: none"> • Identification of Council's dual roles relevant to the matter being considered (e.g., Planning Proposal, direct negotiations etc.) and establishment of a governance structure to ensure there is a clear and documented separation of roles (Refer to Appendix B for information on the management of dual roles).
Breach of confidentiality during discussions with potential partners, landholders or other stakeholders	<ul style="list-style-type: none"> • Clear identification of information which is deemed confidential to the project and is only to be shared on a need to know basis • Review of the information to be shared during discussions and negotiations and, if information is being provided which is not in the public domain, consideration be given to entering into a confidentiality undertaking with the recipient of the information • If formal discussions and negotiations are being undertaken, the discussion or negotiation protocol should clearly identify the requirements for the management of confidential information.

5 Governance Considerations

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

5.1 Principles of Local Government

5.1.1 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
- to be responsible employers and provide a consultative and supportive working environment for staff.

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
- 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.

5.1.2 Principles of sound financial management

In June 2022, Council released the document, *NORTH SYDNEY VISION 2040 Community Strategy Plan (CSP)*. In the CSP, Council identified five delivery strategies, which are underpinned by 3 guiding principles. Of relevance are:

- *"Direction 5 Civic Leadership of the CSP: Our community has confidence in North Sydney's strategic direction and trusts Council..... Council demonstrates transparency and leadership in its decision making, is accountable to the community, and respectful in its interactions".*
- The guiding principle of *"Integrity...The community rightly expects that services will be delivered professionally and with integrity. Resources are managed in a responsible,*

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efficient, and accountable manner in accordance with best value principles”.

The CSP 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 *NORTH SYDNEY VISION 20410 Community Strategy Plan*.

The following principles of sound financial management apply to Council:

- spending should be responsible and sustainable, aligning general revenue and expenses.
- to invest in responsible and sustainable infrastructure for the benefit of the local community.
- to have effective financial and asset management, including sound policies and processes for the following:
 - performance management and reporting,
 - asset maintenance and enhancement,
 - funding decisions,
 - risk management practices.
- to have regard to achieving intergenerational equity, including ensuring the following:
 - policy decisions are made after considering their financial effects on future generations,
 - the current generation funds the cost of its services.
- Integrated planning and reporting principles that apply to Council.

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by Council:

- to identify and prioritise key local community needs and aspirations and consider regional priorities.
- to identify strategic goals to meet those needs and aspirations.
- to develop activities, and prioritise actions, to work towards the strategic goals.
- to ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- to regularly review and evaluate progress towards achieving strategic goals.
- to maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- to collaborate with others to maximise achievement of strategic goals.
- to manage risks to the local community or area or to the council effectively and proactively
- to make appropriate evidence-based adaptations to meet changing needs and circumstances.

5.1.3 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 ICAC guide clearly states that lobbying of Councillors is not permissible. This extends to lobbying of councillors by third parties (any party outside of Council) at any time. During a procurement process, the procurement call documents (the RFT documents) will include the conditions for participation in the process

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

including prohibition of tenderers approaching councillors or other Council staff outside the communication protocols established during the procurement process.

Any Councillors or members of the Project team, outside the nominated contact officer for the Project, are unable to be contacted or approached by any proponent, or third party with an association or identified links with the project or process. Consistent with the conditions of participation in the procurement process, any approaches or communication outside the nominated communication protocols may result in the tenderer being excluded from further consideration in the process.

In June 2021, ICAC following its report regarding Operation Eclipse, released the report: *'Investigation into the regulation of lobbying, access and influence in NSW'*. ICAC recommended that new legislation or significant reform of the current *Lobbying of Government Officials Act 2011 (the LOGO Act)*, to safeguard the public interest against the inherent lobbying risks of corruption and undue influence. The Report also states that *"Based on analysis of complaints and investigations, the Commission notes that lobbying is common in Local Government. This point was made in the Commissioner's recent report on its 'Investigation into the conduct of councillors from the former Canterbury City Council and others (Operation Dasha), where it was recommended that the provisions of the LOGO Act be extended to apply to local government. To date the LOGO Act has not been amended.*

The Office of Local Government *Councillor Handbook (December 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."

5.2 Reporting Requirements

Under the Office of Local Government Capital Expenditure Guidelines (2010), projects relating to land purchases and Public Private Partnerships are exempt from the reporting requirements. However, it is expected, that in accordance with best practice, councils should apply the principles of these guidelines to all capital projects. These reporting requirements are summarised below:

- Quarterly reporting to the council on the progress of the Project
- Quarterly reporting to the council on the costs and budget variances regarding the Project. Where costs and budget variances are reported by line item, the report should also include the impact on the total budget
- Any issue that may have an adverse impact on the project (this may include monetary and non-monetary inputs and outcomes)
- Reporting capital works projects in Council's annual report.

Appendix A: Governance Structure

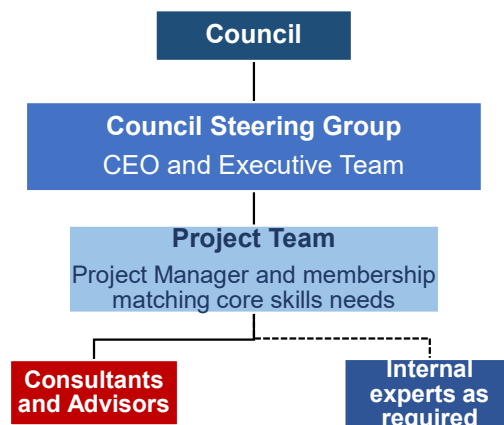
Council is conscious that the eventual delivery of its vision for the Project may incorporate a range of outcomes, including but not limited to:

- Joint Venture/s and/or Public/Private Partnerships
- Land swaps
- Consolidation of lots
- Land purchases
- Land sales
- Compulsory acquisitions.

Council is conscious that it may make future decisions as part of this process which may result in uplifted values of land including Council owned properties.

Council wishes to ensure appropriate governance and probity arrangements are in place prior to progressing this process further.

Below is the Governance Structure diagram.



Based on the above governance structure, the table below lists the key roles and responsibilities of each of these groups. The roles and responsibilities of each group are segregated to provide for a transparent and defensible process and protection against perceptions of partial conduct by individuals involved in the process. At the same time, the roles and responsibilities set out below permit relevant parties to be informed and to contribute to the process.

Position / Group	Roles & Responsibilities	Composition
Elected Council	Act as the decision maker for any activities undertaken by Council which require a Council resolution, including but not limited to: <ul style="list-style-type: none"> • direct negotiations and direct dealing as an exceptional circumstance under the legislation • proceed with a PPP arrangement for the delivery of the project 	Elected Councillors

Position / Group	Roles & Responsibilities	Composition
	<ul style="list-style-type: none"> proceed with procurement activities required under Section 55 of the Act enter into contracts as required under Section 55 other Council approval points throughout the process at milestones and gateways <p>Provide overall strategic oversight of the project:</p> <ul style="list-style-type: none"> Approve as appropriate recommendations from the Council Steering Group Receive regular updates and progress reports from the Steering Group Provide feedback and direction to the Council Steering Group through the Chief Executive Officer Approve funding and appointment of consultants as recommended by the Project team 	
Chief Executive Officer	<p>The Chief Executive Officer:</p> <ul style="list-style-type: none"> Is Project Sponsor. Is a full member of the Steering Committee May direct the secondment or other similar mechanism of providing relevant internal support to the Project Team 	Chief Executive Officer
Council Steering Committee	<ul style="list-style-type: none"> Receive regular updates and progress reports from the Project Team Ensure the information provided to the Reference Group is on a need to know basis and that members of the Reference Group do not have access to information that provides a benefit to any member. Ensure adequate segregations are maintained between stakeholder engagements, lobbying activities, or other external relationships Endorse key decisions such as stakeholder engagement plans, consultant scope and membership of the Project Team Ensure relevant policy, project and assurance processes are adhered to including risk assessment and mitigation Provide guidance to the Project Team 	CEO and Executive Team to support
Director Planning and Environment	<p>The Director Planning and Environment has two distinct areas, relevant to this Plan that report to it – the Manager of Development Services, who manages development assessment, and the Manager of Strategic Planning, who will be managing VPA negotiations. As such, Council recognises that this position has two roles that need to be appropriately managed to ensure there is sufficient separation between Council’s dual roles regarding its commercial interest and regulatory functions.</p> <p>For the purpose of this project, the development application assessment will be undertaken by an independent assessor, consistent with the risk mitigation strategies agencies such as the ICAC recommend for when Council has a dual role. The Director, Planning and Environment will not be involved in any aspect of the Development Application assessment as this will be managed by the independent assessor and then reported to the Independent Regional Planning Panel. Where there is the need for any input from Council on this development application assessment, this will be managed by the Manager of Development Services, with input as required from the Executive Team.</p>	
Project Team	The Project Team will be led by a Project Manager, responsible for overseeing and progressing the Project, and for ensuring all Project	Council to confirm

Position / Group	Roles & Responsibilities	Composition
	<p>governance and reporting obligations are met.</p> <p>The Project Manager provides reporting to the Council Steering Committee.</p> <p>Key tasks include:</p> <ul style="list-style-type: none"> • Provide secretariat support for the Reference Group • Identify and address actual or potential conflicts between the duties of Project Team members in respect to the Project and Council business as usual activities. • manage the Project's business aspects, including budget strategy, ongoing financial feasibility, oversight of contractor performance, achievement of milestones and benefits realisation • ensure the timely preparation of quality reporting and other documentation as required by the Council Steering Committee. • manage the effective and efficient deployment of Council resources to the Project • ensure that the Project is undertaken in accordance with Council's resolutions and policies • identify and address substantive Project issues and risks in a timely manner, including by maintenance of a formal risk register • identify and address other risks which have major implications for the Project • reconcile differences in opinion and approach and resolve disputes arising from them. 	

Appendix B: Management of dual roles

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 two roles are:

- **Commercial Role:** Council as a landowner will have commercial drivers and objectives that it is trying to achieve in order to deliver a value for money outcome for the renewal of the Town Centre.
- **Regulatory Role:** Depending on the potential pathway being considered for the Project, Council will have a regulatory role in relation to matters such as VPAs, Planning Proposals and development applications which may be submitted as part of the Project. Depending on the consent authority for the planning matter, Council may refer a matter to the relevant Planning Panel but will retain some involvement in the development of assessment reports. Where Council has a competing Commercial Role for the planning matter, Council will seek to engage an independent assessor to undertake the assessment report, consistent with the risk mitigation strategies set out in the ICAC publication.

Set out in the table below is each of the relevant roles in the development application approval process, as well as the key stages of a typical planning approval process (e.g., a development application or Planning Proposal). The intention of this table is to identify the points in the process where Council, as the landowner, would have involvement in a planning 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 development approval 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
- Recognising that, in this instance, Council is not the regulator as this power sits with the relevant Planning Panel based on the existing controls and processes in the NSW Government planning pathways.

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

Based on the above, the table below lists the key roles and responsibilities of each of position and groups specifically in relation to where Council has a dual role which is required to be managed.

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

⁴ Consistent with the role of an applicant in any other development application process

⁵ Using an external independent consultant as the assessor

⁶ Using an external independent consultant as the assessor

Position / Group	Roles & Responsibilities
Regional Planning Panel	<p>The Planning Panels determine regionally significant development applications (DAs), certain other DAs and s4.55(2) and s4.56 modification applications including:</p> <ul style="list-style-type: none"> • Regionally significant development, as outlined in Schedule 6 of the State Environmental Planning Policy Planning Systems 2021 • Regionally significant development relating to Aboriginal land, as outlined in Chapter 3 of the State Environmental Planning Policy Planning Systems 2021 • Development with a capital investment value (CIV)* over \$30 million. • Development with a CIV* over \$5 million which is: <ul style="list-style-type: none"> ○ council related ○ lodged by or on behalf of the Crown (State of NSW) ○ private infrastructure and community facilities ○ eco-tourist facilities ○ extractive industries, waste facilities and marinas that are designated development ○ certain coastal subdivisions and ○ certain coastal protection works. <p>For this project, the Regional Planning Panel will consider the Coles DA given the value exceeds \$30 million.</p>
Councillors	<p>In relation to planning matters related to this Project, the elected officials may receive a report from the internal planning staff, and any external consultant, on the review of the development application prior to it being considered by the consent authority NLSPP.</p>
Chief Executive Officer	<p>The role of Chief Executive Officer will include:</p> <ul style="list-style-type: none"> • 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
Planning Team	<p>Through an independent assessor, undertake an assessment of the proposed development application or planning approval and provide a report, via Council, to the consent authority.</p> <p>Where Council has a Commercial Role, the Planning team will not be involved in any negotiations with the landowner or potential development partner and there will be clear separation between the planning team and Council's Property Team and/or Project Team involved in the project delivery.</p>
Property Team	<p>The Property Team will be responsible for the following during the Project:</p> <ul style="list-style-type: none"> • engagement with adjacent Landowners in the precinct. • engagement of relevant consultants during the Project including those identified in the Procurement Plan for the Project • where the Project progresses and Council proceeds with the development application, the Property Team will effectively be the "applicant" for the purpose of the development application. In this capacity, the Property Team will attend the pre-lodgement meeting and Development Panel meeting with Council to discuss lodgement requirements for the DA • hold relevant discussions with Council's planning team as part of the DA lodgement process noting the planning team will be assisted as required by an independent assessor • Following the DA consent on the consolidation of the Site, undertake the relevant procurement activities for the engagement • Development of reports to the Chief Executive Officer and the Committee of the Whole providing updates on the status of the Project as required.

Appendix C: Conflict of Interest and Probity Register

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

Appendix D: Communications Register

Name of Agency representative	Name of Tenderer / Proponent	Request for Information	Information Provided	Other comments