



Lindfield Village Hub Project

Probity Plan

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For Ku-ring-gai Council

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1 Executive Summary

1.1 Purpose of this document

Effective project governance will support the success of the Project and provide for efficient, effective and timely decision-making. The aims of this Probity Plan are to:

- Build a common sense of ownership of the Project between all stakeholders;
- Create an environment of trust between the dedicated Project Delivery Team (Project Team), the Council, and the wider stakeholder community;
- Set out lines of responsibility and accountability for the delivery of the Project;
- Support the Project Team to deliver the required outcomes by providing resources, giving direction, and providing timely decision taking;
- Provide a structure for issue resolution;
- Set out the process by which independent expert advice is procured, as required;
- Enable the appropriate retention, storage and dissemination of information by reporting to stakeholders so that they can effectively fulfill their roles; and
- Provide a framework for project disclosures and communication channels, including with community groups and other external parties with an interest in the project.

This Probity Plan is developed in accordance with Office of Local Government *Capital Expenditure Guidelines (December 2010)* (the Capital Expenditure Guidelines).

1.1.1 Probity Framework

In accordance with the Capital Expenditure Guidelines, the Probity Plan is required to ensure that each aspect of the process is, and is seen to be, open and transparent, that any conflict of interest is avoided, pecuniary interests declared and that all aspects of the Project process complies with relevant legislation.

In accordance with the Capital Expenditure Guidelines, the Probity Plan includes documentation of the relationship between parties involved in the Project, including the independence of any parties engaged by Council to undertake any relevant consulting, be it financial, market and economic analysis, or any other relevant assignment for the Project.

The Probity Plan includes details of probity fundamentals that are contained within the Independent Commission Against Corruption's probity advising guidance material and the key measures and management controls be implemented during the Project to ensure that these principles are met.

1.2 Project Background and Objectives

1.2.1 Project Background

The Lindfield Village Hub Project (**Project**) is the first project to be released to market as part of the Activate Ku-ring-gai program.

The Project is one of the largest urban renewal projects Council has undertaken in its 100-year history. Situated on approximately 1.34 hectares of Council owned land, approximately 150 metres west of Lindfield train station and on the western edge of the Lindfield town centre, the Project is also one of

the most significant transit-oriented development project opportunities in Sydney's affluent northern suburbs.

Council's vision for the Project is: *"To be a vibrant mixed-use precinct that will be a meeting point for the local community. The Project will demonstrate leadership in design excellence, innovation and environmental sustainability."*

The Project is intended to transform the Project Site into an attractive and dynamic urban village and to play an important part in stimulating the local economy. It is an ideal location for a mix of green open space and community buildings including a library, child care and community centre, coupled with new residential, commercial, dining and retail outlets and underground short-term and commuter parking.

Council is intended to select the development partner for the project via a two stage procurement process. The Expression of Interest (**EOI**) has been concluded resulting in five tenderers being shortlisted for the Request for Tender (**RFT**) phase. It is intended that the RFT will be released in early 2020 with the Project Delivery Agreement (**PDA**) executed with the successful development partner in late 2020.

1.2.2 Project Objectives

As identified in the EOI documentation, the project has the following objectives:

1. Financial and Economic Objectives:

- a) CAPITAL FUNDING – Capital to build the Community Component;
- b) ONGOING REVENUE – Revenue streams to fund the cost of staffing, operating, and maintaining the Community Component;
- c) GROWTH – New jobs and population in Lindfield to sustain the local economy;
- d) LEGACY – Council to retain ultimate ownership of land and improvements for future generations; and
- e) CATALYST – Investment attracted to Lindfield and Ku-ring-gai.

2. Community Objectives:

- a) AESTHETIC – Aesthetically pleasing buildings that the community can be proud of;
- b) LIVEABLE – A desirable and safe place to live and visit;
- c) ACCESSIBLE SERVICES – Community services for all age groups;
- d) ENGAGING – Local activities, amenities and experiences;
- e) COHESIVE – Places, communities, and events that bring diverse groups together; and
- f) ADAPTABLE – Adaptable to future social and technology change.

3. Property and Infrastructure Objectives:

- a) ACTIVE PLACES – Rejuvenated Lindfield Local Centre;
- b) NEW FACILITIES – New library, community centre and child care centre;
- c) ACCESSIBLE – New roads and vehicular parking, pedestrian, and cycle facilities;
- d) HOUSING – New homes; and
- e) OPEN SPACE – New park and public plaza.

1.3 Organisational Values

Ku-ring-gai Council's core values are the building blocks that set the foundation for all decisions and actions within the Project. They underpin the vision for the Project and provide the standard by which all who are involved with this Project will deliver the desired outcomes of the Project to the Lindfield and wider Ku-ring-gai community. This Probity Plan builds upon these values, as articulated in Council's Code of Conduct and reflects Council's respect and accountability to its community.

Key values in association with this Project are outlined below and are consistent with the Council Code of Conduct General Conduct Obligations.

- **Do what is Right:** We act with integrity in everything that we do and say. We make transparent, ethical and consistent decisions that support the vision of Council.
- **Show Respect:** We are considerate towards others ensuring fairness, dignity and equality. We practice and encourage transparent communication.
- **Own our actions:** We are accountable for our decisions. We take responsibility for the outcomes of our choices, behaviors and actions.
- **Strive for excellence:** We work together as a team to achieve our full potential. We have the insight and passion to lead Council into the future.

2 Project decision-making

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

2.1 Principles for local government

2.1.1 Guiding principles for local government

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

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

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

2.1.2 Decision-making

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.

All projects have unique circumstances and challenges. Each project presents different challenges and requires different management and governance structures. In developing this Probity Plan, Council will adopt the key principles of the governance framework required for local government Capital Expenditure Projects and will meet the requirements of the Capital Expenditure Guidelines.

The governance framework outlined within this document is consistent with these required arrangements. A diagrammatic outline of the project governance structure is at Appendix B.

2.1.3 Principles of sound financial management.

Council identifies in its *Long Term Financial Plan 2019-2029* that “*Council’s overall guiding principle is to maintain a healthy financial position, underpinned by a sound income base and commitment to control and delivery of services, facilities and infrastructure demanded by the community in an effective and efficient manner*”.

The *Long Term Financial Plan* also identifies the following principles:

- Maximise funds available for infrastructure renewal and refurbishment
- Satisfy applied tests of financial sustainability.

Further details in relation to this can be obtained from Council’s *Long Term Financial Plan*.

2.1.4 Lobbying

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

Lobbying is common in local government. The ICAC has released a guide called *Lobbying local government councillors* and 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 by tenderers is not permissible. This extends to lobbying of councillors by third parties (any party outside of Council) during a procurement process. The procurement call documents (the RFT documents) will include the conditions for participation in the process 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 procurement process, are unable to be contacted or approach by any tenderer, or third party with an association or identified links with a tenderer, during the procurement 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.

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

The Office of Local Government *Councillor Handbook (October 2017)* refers to appropriate lobbying in Section 3.1.6. The Handbook states:

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

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

2.2 Reporting requirements

Council's reporting requirements for the project are identified in the Office of Local Government Capital Expenditure Guidelines³. 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.

2.3 Key roles and responsibilities

2.3.1 Elected Officials (Councillors)

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

Council is a body politic. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Local Government Act 1993, and is responsible for policy determinations.

Councillors must not direct staff in the performance of Council functions. Councillors are entitled to such information necessary for the performance of their functions. However this is counterbalanced by the obligation to use this information appropriately and to maintain the integrity and security of confidential information.

Councillors role is as decision maker, not evaluator in the tender evaluation process. There is a need to ensure that Councillors are not perceived to influence the evaluation process for the RFT and not fetter their decision making role.

Appropriate and inappropriate lobbying

The Councillor Handbook (October 2017) identifies appropriate and inappropriate lobbying, as outlined below.

³ Refer to Section 12: Reporting *Capital Expenditure Guidelines (December 2010)*

1. Appropriate lobbying behaviours:

- Keeping records of meetings with lobbyists or objectors
- Holding meetings in appropriate locations such as council offices
- Ensuring other people are present
- Making sure that information obtained when being lobbied is available to council staff and other councillors

2. Inappropriate lobbying:

- Disclosing confidential information while being lobbied
- Accepting a political donation in return for a favourable exercise of discretion during decision making
- Giving undertakings to an interested party prior to consideration of all the information relevant to a decision.

Lobbying by tenderers (or third parties with links to tenderers) during an active procurement process is NOT acceptable. Links to tenderers may include any party where they have an actual or perceived association with a tenderer who is a respondent to the procurement process.

Dual roles as planning authority and landowner

The probity risks associated with Council's dual planning and commercial roles are of particular relevance to the Project. In circumstances where there are inadequate separations between these two roles within a council, a perception can arise that commercial factors and goals are driving or influencing the planning and approval process.

Council is the landowner of the Project site as well as having a significant interest in the planning controls, and having a role in the lodgement of any Planning Proposal as required, as well as a commercial interest in the project. Council has two roles and both are legitimate *public* interest 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.

For this Project there are two key areas to carefully manage – one relates to commercial outcomes and the other to planning outcomes:

1. Whether the approach being taken by Council will achieve the best price for the development rights and whether it will obtain the benefits it seeks for the best possible price (a "value for money" issue)
2. Whether the development will conform to planning controls and requirements for the area, or whether concessions will be given that would not be given were Council not a party to the project delivery agreement (an "impartiality" issue).

Planning proposal if required

The Project will involve the lodgement of a planning proposal to seek amendments to the planning controls in the Ku-ring-gai Local Centres LEP 2012.

Council received advice from Minter Ellison in May 2018 that Council is the most appropriate party to prepare a planning proposal for the Project, rather than shift the responsibility to a Developer. Accordingly, Council staff have appointed consultants to advise on planning matters and prepare a planning proposal if this is resolved by Council. The consultants are:

1. SJB Planning will advise Council-as-landowner on planning matters relating to the Project and prepare and lodge a planning proposal if required. SJB Planning will represent Council-as-landowner in their liaisons with KMC Planning,
2. AJC Architects will prepare masterplan options to inform a planning proposal and, with their sub-consultants, produce the technical assessments to support a planning proposal.
3. Precinct Planning, community engagement specialists, have facilitated community workshops to inform and seek feedback from the community on the relevance of Council's vision and the potential benefits/disbenefits of height and density, should controls be lifted.

Communication protocols have been developed to ensure that the planning proposal process is undertaken in parallel with the procurement process but as a separate process in order to manage Council's dual roles.

2.3.2 Managing Council roles with potential conflicts of interest

As part of the dual roles mitigation strategies, the Director, Development and Regulation (who is responsible for development assessment and compliance/regulation services) and Director, Strategy & Environment (who is responsible for LEP and DCP amendments) will not be involved in the assessment of the tenders submitted in response to the RFT. This area within Council will also be responsible for managing, with the above consultants, the Planning Proposal process.

Key steps to manage the probity of any planning discussions during the tender include:

- Discussions between Council and external consultants, as well as Tenderers (where relevant) relating to the Planning Proposal will be undertaken separately to the procurement process and kept confidential unless there is a need to share information arising from the Planning Proposal process with tenderers;
- Indicating to each tenderer that the meeting is for information only, is not binding on Council and the tenderer is reliant on their own enquiries;
- Indicating that information discussed will be confidential unless it requires a change to the RFT requirements, in which case all tenderers will be informed (via TenderLink);
- Indicating that each party is responsible for keeping its own records;
- Involving more than one Council staff member in each meeting;
- Asking each tenderer to confirm their agenda items prior to a meeting;
- Including a statement at each meeting that any aspect of the RFT, outside of planning discussions, will not be discussed; and
- Keeping a record of each contact, attendees at any meeting and the key outcomes achieved.

2.3.3 LVH Project Governance Framework

The Project follows a structured governance model developed for Council's Major Projects which incorporates input from the community, independent experts, Council staff and Councillors to progress the Project and support decision making.

The governance structure is documented in the diagram in **Appendix B** and a summary of these groups is identified below.

Council – ultimate decision making and oversight body with respect to the Project.

Councillors Major Projects Consultation Forum (CMPCF) – for Council staff and consultants to provide briefings to Councillors on the Project and enable an open and interactive discussion on key

issues and progress as required. Meetings held at least quarterly and are not open to the public as content being discussed is considered commercial and in confidence.

Major Projects Steering Committee (MPSC) – the peak Council staff oversight body for the Project. The MPSC is chaired by the General Manager. The MPSC is responsible for endorsing Project priorities, reviewing project progress including risk management activities and reviewing and endorsing key recommendations prior to reporting to Ordinary Meetings of Council. Meetings are held at least six times per annum.

Major Projects Advisory Committee (MPAC) – consists of four independent members of the public with expertise in property construction and development matters. Significant Project decisions are reviewed by MPAC prior to reports being provided to Council. A written report is prepared by MPAC and provided to Council along with Council staff recommendations for significant decisions.

Council Audit, Risk and Improvement Committee (ARIC) – is a committee tasked with providing independent assurance and assistance to the Ku-ring-gai Council on risk management, control, governance, and external accountability responsibilities and to provide relevant advice with a view to ensuring that there is an adequate and effective system of internal control throughout Council and to assist in the operation and implementation of the Internal and External Audit Plans. Project risk is reported to the committee in a report that is presented as requested.

Community Forums – will be established as required with Terms of Reference resolved by Council to support engagement with the community.

Major Projects Team – led by the Group Lead, Major Projects and consists of Council staff and consultants responsible for undertaking and coordinating Project development activities.

Tender Evaluation Committee – will be established for the assessment of tenders received as part of Developer procurement for this Project.

Details of the Terms of Reference for the above Committees is documented in the Major Projects Governance Model as well as the Charters for the relevant groups including the MPAC and MPSC.

2.3.4 Probity Responsibilities of Project Governance Framework Bodies

Major Projects Steering Committee

The specific tasks of the MPSC in relation to managing probity for the Project include:

- Confirming the scope and terms of reference of this Probity Plan as well as varying this Probity Plan as required to ensure that it remains relevant and maintains the integrity of the tender process;
- Ensuring that the Project is undertaken within the bounds of the Probity Plan and Council's Resolutions and Policies;
- Managing conflicts of interest between Council planning and project delivery roles;
- Receiving and considering Project update reports and Council recommendations from the Group Lead, Major Projects;
- Endorsing selection of the Tender Evaluation Committee members, Terms of Reference and endorsing recommendations from the Committee prior to submission to Council;
- Endorsing information to be released to Tender parties for the RFT related to the Project.

Major Projects Advisor Committee

Consistent with the Charter for the MPAC, the primary objective of this Committee is to provide Council with independent advice in relation to property development, land acquisition, and disposal activities. In particular, the MPAC will provide advice on all aspects of property development and assist Council in its decision making (as a property owner and not a statutory authority) in respect of:

- Any development opportunities involving Council owned or controlled land with a project value of greater than \$5 million
- Property development projects defined as Major Projects
- Major Projects involving Council that are referred to the Committee by Council or Council's General Manager.

Tender Evaluation Committee

The Tender Evaluation Committee may seek advice during the process from the MPSC and relevant external advisors on key areas of the Project. The Evaluation Committee will make a recommendation to the MPSC following the assessment of submissions received during the procurement process. This recommendation will be considered by the MPSC and the Major Projects Advisory Committee prior to a decision by Council.

Further details on the Terms of Reference for the Evaluation Committee will be documented in the procurement Evaluation Plans for the Request for Tender.

2.4 Document framework

As part of this Project, Council has developed the following documented in relation to this Project:

- Major Projects Governance Model
- MPSC Charter
- MPAC Charter
- The Project Management Plan
- Risk Management Plan.

In addition to the above, this Probity Plan can be read in conjunction with the following Council policies and NSW Government guidelines:

- Council's Access to Information Policy;
- Council's Code of Conduct;
- Council's Code of Meeting Practice (June 2019);
- Council's Community Consultation Policy (December 2016);
- Customer Service Charter;
- Council's Councillor Access to Information Interaction with Staff Policy (October 2012);
- Ku-ring-gai Council Community Strategic Plan 2038;
- Council's Gifts and Benefits Policy (May 2019);
- Council's Privacy Management Plan;
- Council's Procurement Policy (October 2009);
- Local Government Capital Expenditure Guidelines (December 2010) (Office of Local Government)

- NSW Local Government Tendering Guidelines (October 2009).

Council has developed standard template documents for undertaking the evaluation of tenders and proposals. The Evaluation Committee will evaluate all submissions and tenders based on:

- Council's Tender Evaluation Guidelines;
- The Tender Evaluation Plan;
- Council's Probity Policy; and
- The contents of this Probity Plan.

3 Probity Principles and Application

This Probity Plan aims to ensure a managed information sharing process which is appropriate to the nature of the Project, is open and fair, meets the needs of Council, Stakeholders, and the general public, and can be accommodated within the resources of all parties. The operation of these principles will be monitored by the MPSC to ensure that they are effective, and amendments made as required. These principles and associated actions are aligned to Council's Procurement Probity Guidelines and the Capital Expenditure Guidelines.

3.1 Fairness, consistency and transparency

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

Transparency with regard to the procurement and tendering process refers to the preparedness to open all aspects of the procurement and tendering processes to scrutiny. This also involves providing reasons for all procurement and tendering decisions that are taken, keeping an audit trail for the process and decision making and the provision of appropriate information to relevant stakeholders.

Key strategies for maintaining transparency during the Project include:

- *A clear Project Programme* – This comprises clear and timely task and procedural information.
- *Appropriate Project Management* – This includes all the necessary documentation to ensure that the project is clearly managed in accordance with an identified and agreed process, so that all parties know and understand what the Project is and how it is to be conducted.
- *Good record keeping practices* – In order to maintain transparency in the conduct of all phases of the Project, including but not limited to the preparation for, and assessment of tenders, strict record keeping practices are adopted by the Project and the Project Team. This would include records such as all correspondence, Council's final internal working documents, all documentation produced by Council or provided to Council as part of any meetings by any party to that meeting, relevant procurement documentation, any background documentation used, minutes of meetings, and MPSC minutes. Council should ensure that responsible and appropriate documentation is maintained to support and account for decisions moving forward.
- *Maintenance of an audit trail* – It is important that a clear documentation process or audit trail for the Project be maintained outlining the decision making process and how this aligns with the tasks at hand, the phase of the Project, as well as the overall objectives of the Project.
- *Defining working, confidential and public information* – the Project will involve a range of information at different phases, some of which may be working documentation, which at the time is confidential until it either becomes confidential to the Project; some of which may be confidential information, such as commercial-in-confidence; and other information may be fully public and

accessible to anyone in the wider community. This will need to be defined for all key documents with the Project.

3.1.1 Transparent communications

At different phases of the Project, different communications will be needed with a wide variety of possible parties affected by or involved with the Project. These include the Council's residents and ratepayers, the general public, Stakeholders, Tender Parties, Authorities, Project Team Members, and potential Project Team Members. Much of this will be covered in the Project's Communication Strategy Plan. It is noted that Council has undertaken a level of community consultation on the Project. Council also has newsletters that the community can obtain with updates on the progress of the Project. Council has made information, including the various reports to Council on the progress of the Project as well as seeking resolution for various aspects of the Project, on the dedicated Lindfield Village Hub section of its website which assists in enhancing the transparency of the Project.

As identified in section 2.4 above (Document Framework), members of the Project Team should ensure they are aware of the link between this Probity Plan and other relevant Plans that have been established for the Project including any community consultation plans and Project Plans.

With regard to probity, different requirements may be needed for each of the potential phases, or even individuals or groups being communicated with. For example, Authorities will have particular reporting and data retention requirements that may need special dispensation in how communications are recorded and information exchanged.

Broadly speaking there will be six types of communication within the Project framework:

1. *Communication within the Project Team.* All members of the Project Team should have signed a Confidentiality and Conflict of Interest Deed Poll (included at Appendix A of this Probity Plan), which defines what information they have access to. For example, not all of the design team may have access to all of the commercial or governance information or correspondence
2. *Communication within Council.* A mixture of public and confidential information will be involved, with provision for protection of any confidential information
3. *Communication with Authorities.* A mixture of public and confidential information will be involved, with provision for protection of any confidential information
4. *Communication with involved Stakeholders.* A mixture of public and confidential information will be involved, with provision for protection of any confidential information
5. *Communication with wider Stakeholders.* This will generally be public information, however, where a stakeholder may be involved in a particular issue, some confidential information may be involved
6. *Communication with the General Public.* This may include Ratepayers, Residents, Business Owners and Tenants, and the wider General Public. This will involve publicly available information, which should be disseminated according to a Communication Strategy Plan and Council's Community Consultation Policy (last revised December 2016).

Communication in regard to procurement and tendering is the subject to section 3.2 of this document, and it covers negotiations, briefings and de-briefings generally as well as in regard to procurement and tendering.

In all cases, where information is given out, a project record/issue sheet should record who has been given what documents.

Communication with Community Groups and other stakeholders

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

Communication with Community Groups and other stakeholders should also be consistent with other Plans, such as any Communication Plan developed for the Project and terms of reference for committees.

Generally, the following principles should be applied to communication with Community Groups and any meetings held:

- The Group Lead, Major Projects will make the decision to request, accept or decline a meeting in consultation with the General Manager and Manager, Corporate Communications;
- Meetings should be held at Ku-ring-gai Council or other government offices. In cases where this is not possible, the Group Lead, Major Projects may determine the appropriate location;
- If the contact is by telephone, the discussion and outcome needs to be recorded in the same way as if a meeting was held;
- Every Project meeting should be attended by at least two (2) Council officers; and
- A record should be kept of the meeting which includes key points, proposals or arguments as well as any outcome or agreement reached.

External (Consultants, outside members of Committees, etc.) access to Confidential Information

Council is aware of the potential risk of people external to the Council gaining access or being perceived to be able to gain access to Council's confidential information via external people involved in the Project (be they any external member of the Project Team, and any external member of any taskforce, group, committee as well as any external individual, consultant, company or other group associated with the Project) either previously or still engaged by Council. Managing Council's confidential information and conflicts of interest arrangements are an important probity consideration for a project of this size, monetary value and significance.

Key issues that must be managed include:

- Ensuring that no real, potential or perceived conflict exists for external individuals, organisations, companies, consultants and consultant entities associated with the procurement process;
- Minimising self-review threats by restricting individual external individuals, organisations, companies, consultants and consultant entities acting in the same role on both sides of any transaction;
- Maintaining confidentiality of information at a physical and electronic level and ensuring appropriately senior assurance of this is provided at key points;
- Ensuring, wherever possible, equal opportunity and access to information for all who need access to that information. For example, in a tendering situation, if a consultant who is tendering is privy to information relevant to the Project, due to their previous involvement in the Project that is not available to all Tenderers, that information should be made available to all Tenderers, subject to appropriate assurances of use being obtained (i.e. commercial-in-confidence considerations and

Council's Confidentiality Deed being executed). If such assurances cannot be obtained or that information is not able to be shared with all Tenderers, that consultant needs to assure that different staff who do not have access to the subject information will be involved in putting together the tender, or the role of that consultant needs to be restricted and assurances they have maintained confidentiality provided regularly.

Council requires consultants to provide confidentiality and conflict of interest undertakings. These undertakings will be regularly reviewed and updated throughout major phases of the Project to ensure that they remain current. Council has included certain clauses to the effect that should Council become aware of any probity risk associated with the use of a previous, or current, consultant, or its confidential information, Council may be able to rely on those clauses to mitigate these risks by requiring Tenderers to implement appropriate procedures and restrict involvement of personnel.

Internal staff access to Confidential Information

Council is aware of the potential risk of staff gaining access or being perceived to be able to gain access to any project-related confidential information. Managing Council's confidential information and conflicts of interest arrangements are an important probity consideration for a project of this size, monetary value and significance.

Key issues that must be managed include:

- Ensuring that no real, potential or perceived conflict exists for any members of staff; and
- Maintaining confidentiality of information at a physical and electronic level and ensuring appropriate senior assurance of this is provided at key points.

Council requires all project-related staff to sign confidentiality and conflict of interest undertakings. These undertakings should be regularly reviewed and updated throughout major phases of the Project to ensure that they remain current.

Maintaining a Register of Confidentiality & Conflict of Interest Deed Polls

A Register must be maintained by a designated Council Officer of signed Confidentiality and Conflict of Interest Deed Polls, from all external and internal parties involved in the Project. This register is to be updated annually. The Group Lead, Major Projects is to periodically check this Register to ensure that any real or potential risks are identified and addressed.

Procurement/Tender Communications

A key probity issue related to any procurement or tendering process is the control and release of information in relation to the procurement/tendering process to ensure that the awarding of the eventual contract is unbiased and fair.

Any information that is not general public knowledge must only be communicated to a Tenderer if it is communicated to all Tenderers (unless Council determines otherwise). Communication of such information should be made via a formal 'Request for Information' process, a briefing session or meeting.

Personnel must provide consistent information if making presentations to Tenderers. This information must be supplied uniformly to ensure that no Tenderer receives any advantage over another Tenderer.

No Tenderer should receive, or be perceived to have received, additional information to that which is publicly available in respect of the proposed submission unless this information is expressly released by the relevant delegated Council Officer. Should this circumstance arise, this should be fully documented in the Project Records/Files.

No discussion should be held with any individual Tenderer about or in relation to any aspect of a submission or the process, without the prior approval or at the direction of the relevant delegated Council Officer. Should this circumstance arise, this should be fully documented in the Project Records/Files.

Tenderers should be advised to communicate with the relevant delegated Council Officer via the 'Request for Information' process or at meetings in which all matters in relation to their tender or its current status could be mentioned to all potential Tenderers.

Details of any discussions with those who are Tenderers should be minuted, and copies of all correspondence should be copied to the Project Manager, even where meetings and correspondence relating to a tender are of a non-specific nature.

Should Council staff or consultants working for Council be asked a specific question during a presentation or interview they should provide only a factual answer. They should not under any circumstances provide a personal opinion. In any case, the information provided in their answer may well be relevant to all Tenderers, and should be communicated to all Tenderers, as to not do this could be perceived as providing an unfair advantage to that Tenderer.

Where inappropriately persistent inquiries or comments are made, the meeting should be terminated. A file note should be prepared detailing the conversation. A copy of this file note should be forwarded immediately to the relevant delegated Council Officer and placed on the Project Files.

Should any Tenderer request a copy of any document, approval must be obtained from the Group Lead, Major Projects prior to delivery. To ensure that no tenderer receives an advantage, all other Tenderers should be supplied this document at the same time, with a note how the document came to be supplied, i.e., in response to a request by one of the Tenderers.

Routine business meetings and social activities may continue as usual, but Council advisers and employees must exercise caution, and must not discuss the evaluation, selection procedures, or contents of any tender.

If a Tenderer requests a meeting with Council or its advisers during the process, the matters to be addressed in the meeting must be clearly identified and submitted in writing to Group Lead, Major Projects, at least 2 (two) business days prior.

Meetings with individual Tenderers

During the procurement process, questions or clarifications specific to a tender are expected and requests for meetings will be made and agreed to at the Council's discretion. The preference is for meetings to only be held if available to all Tenderers and for general tender briefings open to all. It is important that no Tenderer receives an advantage; therefore all other Tenderers should be supplied this information following the meeting, with a note about how the information came to be supplied, i.e., following a meeting requested by one of the Tenderers.

Written enquiries and responses

Council must manage any written enquiries and responses between Council and the Tenderers by virtue of the 'Request for Information' process. Council is to maintain copies of all correspondence sent and the responses received from the Tenderers and is to provide these for inspection by the Independent Probity Advisor.

Presentations

Council may request Tenderers to make presentations in relation to aspects of their tender. All such presentations shall be conducted in accordance with programs and processes to be determined by the

Chair of the Evaluation Committee, and in line with requirements under this Probity Plan, and otherwise to be acceptable from a probity perspective to the Independent Probity Advisor.

Procurement/Tender Briefing Sessions

A briefing session will provide an opportunity for Tenderers to learn more about the proposed arrangements, any decisions or directions made or planning to be made by Council which will impact upon the Project.

A briefing session will also provide an opportunity for Council to explain the purpose of the particular procurement, technical features, evaluation criteria, likely timetable, major milestones, contractual or administrative issues, relevant government policies and, if any, significant changes to the Project.

Prior to conducting a briefing session, an agenda should be prepared by the Tender Contact Person who will be leading this process. This should be signed off by the Group Lead, Major Projects. The information to be provided should be clearly documented to ensure that only appropriate information is provided.

Records of the briefing session should be maintained including:

- Name and details of attendees;
- All information provided in connection with the briefing session; and
- Any and all issues arising during the briefing session.

The Independent Probity Advisor may attend one or all briefing sessions.

Independent Observation and Audit

The Probity Advisor is independent of the wider project process. The Probity Advisor is responsible for reviewing the application of the probity principles described in this Probity Plan, to the Project's phases and processes. The Probity Advisor is also responsible for the provision of advice and reports as requested and agreed to by management and others involved in the wider project process on probity aspects of any uncertain event or process point.

The Probity Advisor will attend meetings with Council staff and Councillors, as requested.

3.1.2 Demonstrating that the process is conducted fairly, and with integrity and honesty

Multiple and Independent Decision Makers

A quorum for the Evaluation Committee will be set out in any Evaluation Plan developed during the procurement process. The Evaluation Plan will also include information regarding the engagement of any external advisors and technical experts during the process.

Management of bias and the consideration of factors that should not affect the delivery

Any factor that may cause bias in a member of the Evaluation Committee, and that is not directly declared in the conflict of interest documentation, should be brought to the attention of the Chair of the Evaluation Committee for resolution as soon as it becomes apparent. Factors outside the scope of the evaluation criteria for the Project and that do not affect the desired outcome for the Project or consistency with Local Government Tendering Guidelines should not be considered.

Right of Reply

A Tenderer may need to be given the “Right of Reply” to any negative report sourced from a third party. In seeking such comments from tenderers, the source of the report must be kept confidential.

Independent Observation and Audit

The Probity Advisor is responsible for reviewing the application of the probity principles described in this Probity Plan to the evaluation process, and the provision of advice and reports as requested and agreed to by those involved in the evaluation process on probity aspects of the evaluation process.

The Probity Advisor will attend tender briefings, Evaluation Committee meetings, and any meetings with tenderers, as well as other Project meetings as requested.

Related Tenderers

Council needs to manage any issues that arise concerning consultants or advisers being engaged by two or more tenderers in a timely manner to ensure that the integrity of the process is not called into question by the tenderers. Legal and probity advice should be sought when faced with issues concerning Related Tenderers. Council needs to be satisfied with the arrangements put in place by the consultants to manage confidential information and any perceived or actual conflict of interest.

Treatment of Non-Conforming Bids

Council must include within the tender documentation, the manner in which non-conforming bids will be processed.

3.1.3 Confidentiality Management & Protection of Intellectual Property

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 stakeholders the confidence to do business with the Council, on this Project. This information can include reports commissioned for the Project, working documents, Project budgetary and financial information, the content of proposals, intellectual property, stakeholders pricing, and profit structures.

A significant quantity of confidential information is likely to be generated prior to and during the evaluation and assessment process. A potential risk in the Project is that sensitive or confidential information could be leaked between stakeholders and/or the media.

Further, a major issue relating to the management of confidentiality relates to ensuring that there is no impression by a third party that Council is directly dealing with a tenderer, as opposed to the evaluation and assessment of proposals.

In the assessment of proposals, any component marked as being confidential or comprising the intellectual property of the tenderer should be carefully guarded so as to protect these rights. Where no such rights have been sought intellectual property guidelines state that these rights are forfeited. However, under these circumstances it remains Council’s responsibility to maintain and control that information, so that its own intellectual property rights are not at risk.

Any information that could give any tenderer an unfair advantage must be kept totally confidential until such time as it is made publicly available to all tenderers.

It is therefore important that all Project Team members are aware through this Probity Plan as well as education and briefings of what information is confidential as well as where to go for further information

if they are unsure. If there are doubts about the confidentiality status of any information then it should be referred to the Independent Probity Advisor.

As part of the strategy to mitigate the risk of losing control of confidential information, Council will undertake the following to reduce the risk of the unauthorised release of confidential information:

- *Commercially sensitive information* – Any information that is commercially sensitive or commercial in confidence will remain confidential. Any information that is proprietary information will remain confidential and access should be limited to a “need to know” basis. It is critical that the Project Team form an opinion and advise Council what information is considered to be confidential or commercial in-confidence. Guidance in relation to this can be found in the *Working with Government – Intellectual Property Guidelines*, which aims to effectively describe intellectual property aspects in relation to Government.
- *Physical security* – Council will designate a dedicated lockable project office space for the Project that centralises the keeping of hard copy information and ensure that it is securely maintained. All files should be appropriately labelled. Procedures for copying and moving any confidential information will be established to ensure documents are appropriately secure and protected from unauthorised access. A document transfer register will be maintained to record when confidential documentation is transmitted between parties. Material considered confidential or attracting intellectual property rights may include (but are not limited to) inventions, original designs, patents, registered designs, trade secrets and proprietary know-how. In certain cases these rights may be assigned to Council, or shared on a common basis.
- *Electronic security* – Ensure that all confidential information held in electronic format is appropriately secured and protected from unauthorised access; including applying password access to electronic information and designation of a drive that can only be accessed by officers involved in the Project and authorised administrators. All EOI/tender-related documentation must be access-restricted in HPE Records Manager (TRIM) to members of the MPSC, the Evaluation Committee and designated administration personnel.
- *Personal undertakings* – All participants in the Project – any member of the Project Team, and any member of any group or committee as well as any individual, consultant, company or other group associated with the Project – who will have access to confidential information are required to sign Council’s Confidentiality and Conflict of Interest Deed Poll. All are to execute Council’s Deed Poll prior to being provided with the confidential information in hard copy, or accessing the confidential information in a soft copy format, either via electronic distribution or a project specific Data Room (if relevant). Note that access to confidential information is on a need to know basis. Furthermore, one or more Council officers (to be designated) should be placed in responsibility of establishing and maintaining a register of persons who have signed Council’s Deed Poll.
- *Documenting security systems* – If confidential information is released, Council may be required to show what measures it undertook to secure confidential information. Council will document the security procedures it has followed to keep its commitment to protect confidential information.

If there are doubts about the confidentiality status of any information then it should be referred to the relevant delegated Council Officer. Any information that is deemed to be kept confidential will be confidential (subject to any legislative responsibilities).

3.1.4 Documentation

A record of correspondence with any individuals, consultants, companies, organisations, commercial partners or Tenderers shall be maintained by members of the project team in accordance with the requirements of the State Records Act 1998 (NSW).

The principles to apply are transparency and accountability. Council should be able to demonstrate that all contacts with any potential individuals, consultants, companies, organisations, commercial participants or Tenderers have not been improper or been partial in any way.

3.1.5 Confidential Documents

The following items should be maintained as confidential:

- Any Project Financial and Budgetary Documentation which may be used as a benchmark during the evaluation of submissions as part of the procurement process;
- Any information related to the Project and process that is not publicly available;
- Procurement clarification questions and responses;
- Confidential information produced as part of the evaluation process (e.g. meeting minutes, evaluation reports, reports *inter alia*);
- Other information related to the processes that is not publicly available; and
- Any other information determined by the MPSC, Project Team or Evaluation Committee, to be confidential.

3.1.6 Confidentiality and Conflict of Interest Deed Poll

A confidentiality Deed is to be signed by any person who has access to confidential information. Anyone who is involved in the Project should sign a copy of Council's Confidentiality and Conflict of Interest Deed Poll (the Deed) (refer above). A Register of persons who have signed the Deed is to be maintained by the relevant delegated Council Officer. Any external member of the Project Team, and any external member of any taskforce, group, committee as well as any external individual, consultant, company or other group associated with the Project will be required to execute a Deed prior to accessing any confidential information.

3.2 Accountability in relation to decision making

Accountability and Transparency/Openness are related concepts⁴. Accountability means the imperative for agencies and public officials to be able to answer for and justify their behaviour and use of public resources to an appropriate authority, from which they derive their authority, by allocating and taking responsibility for their past and expected future performance. This includes aligning the decision making process with the appropriate delegated authority, and keeping appropriate and well-documented records that will leave a clear and easy to follow auditable trail. It is important that redress is available, where anyone involved in the Project does not perform their duties as expected, or meet their commitments as required.

Accountability also includes the development of oversight mechanism, such as this Probity Plan to ensure that appropriate standards are met. Documentation for accountability in the Project will ensure that all participants and consultancies have documented their:

- Terms of Reference/Charters;
- Decision making structure;
- Delegation of Authority to make decisions;

⁴ For more information on Accountability and Transparency, please see the Transparency and Accountability Initiative - <http://www.transparency-initiative.org/>

- Expertise in the subject matter;
- Documented procedures;
- Understanding of the process;
- Process monitoring procedures; and
- Gap analysis and training provision.

All participants in the Project are to be accountable for their actions. Council needs to ensure that all staff are appropriately qualified and experienced to undertake their particular role in the Project.

3.2.1 Responsibilities Defined

The responsibilities of all persons with a role in the Project and its processes should be clearly documented and communicated to each person with the particular responsibility. Responsibilities will in most instances be included in the phase specific Evaluation Plan.

The Evaluation Committee established for the Project procurement will undertake a detailed assessment of each submission received as part of the procurement process and any subsequent phases in the procurement process. The specific terms of reference for the Evaluation Committee will likely be as follows:

- Evaluate the submissions in accordance with the agreed evaluation criteria;
- Confirm the terms of reference for external advisors, if any;
- Undertake an initial assessment of the submissions;
- Should it be necessary, invite proposals to make detailed presentations;
- Identify further clarifications required from tenderers;
- Review responses, advisors' analysis and reference checks for tenderers;
- Hold meetings with tenderers for clarification purposes, where required, in the presence of an independent Probity Advisor, when deemed necessary; and
- Score all responses against agreed evaluation criteria as per the agreed methodology.

The Evaluation Committee may obtain additional advice from appropriate sources as and when required keeping in mind Confidentiality and Conflicts of Interest.

3.2.2 Records Maintenance

All records should be maintained in accordance with the State Records Act (1998) and Ku-rung-gai Council's Records Management Policy 2009.

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3.2.3 Decision Making and Sign Off

The responsibilities of persons required to make decisions with respect to the Project processes should be clearly documented and provided to the individual with the responsibility. All key decisions should be documented and signed-off by the relevant decision-maker. Each member of any Group or Committee will be required to sign any Report prior to consideration by the MPSC and Council (elected).

3.2.4 Minutes of Meetings

All key issues discussed and actions then agreed at any key meeting relating to the Project should be recorded including:

- meeting details;
- attendance;
- confirmation that participants have no real, potential or perceived conflict of interest and/or probity status;
- decisions and recommendations made;
- actions agreed; and
- responsibility and time frame.

The Chair (or their nominated representative) of the MPSC and Evaluation Committee will arrange for minutes to be documented and maintained.

3.3 Identification and resolution of conflicts of interest

Council's Code of Conduct states that a conflict of interest "*exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty*"⁵

A conflict of interest is a conflict between the public duty and private interests of any participant in the Project, where that participant has private interests which could improperly or unduly influence their official duties and responsibilities in regard to the Project. The community and potential stakeholders have a right to expect that any public officials or participant involved in the Project will make decisions that are not influenced by any 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 fully and extensively disclosed and effectively managed.

Perceived or potential conflicts of interest can be as damaging as actual conflicts. These will need to be disclosed or identified, and procedures should be implemented to firstly managed them, ensuring that any potential conflicts of interest are removed, and any effects of perceived conflicts of interest are mitigated.

3.3.1 Management of conflict of interests

In conjunction with the obligations under Council's Code of Conduct, Councils and all members of the Project Team, and any member of any taskforce, group, committee as well as any individual, consultant, company or other group associated with the Project will undertake the following:

- *Declaring a conflict* – All those who are involved in the Project in any capacity are required to make a full declaration of their pecuniary interest or any other association, either real or perceived, which may impinge on their capacity to conduct their duties in relation to the Project by completing the Confidentiality and Conflict of Interest Deed Poll.

The application of the Code of Conduct to any participant should not derogate from their obligation to adopt and follow the principles for managing conflicts of interest as set out in this Probity Framework.

⁵ Section 4.1 of the Model Code of Conduct for Local Councils in NSW (March 2013), adopted by Ku-ring-gai Council

- *Conflict of Interest register* – Council is to nominate a contact person, to whom related interests will be reported and who will maintain a register of related interests to allow Council to manage them appropriately
- *Managing Interests* – Once an interest or association has been identified, Council officials responsible for the Project or process will be required to assess whether the interest is such that it needs to be specifically managed, in that it is likely to, or is likely to be perceived to, have the potential to interfere with proper decision making associated with the Project.

If it is considered that the interest is one that requires management, Council will consider a variety of options, from restricting that person's duties in particular areas of the Project, process, approval process or Project to eliminating that person from the process, approval process or Project altogether.

Note that having such an interest does not necessarily preclude a person from participating in the Process, approval process or Project.

- *Documenting* – Council will document how it addresses the related interests of persons involved in the project. This will enable Council to show, if questions are asked about the probity of decision making, how a related interest did not interfere with proper decision making. It also helps increase the transparency of decision making by Council. This includes where specific consultants, individuals, organisations or other groups are introduced to the Project by any member of the Project Team, and any member of any taskforce, group, committee as well as any individual, consultant, company or other group associated with the Project, and whether they will gain any commission or referral fees, referrals for potential future work, or wider benefits from introducing anyone to the Project.
- *Updating Interest Declarations* – During the course of the Project, situations may change to a degree that might mean declarations need to be updated. For example, different and additional private sector parties might have become intimately involved in the Project. Council will periodically review the statements of Project participants to identify if they need updating or if declarations made earlier have become more relevant and need to be addressed.
- *Meeting agenda item* – Conflict of Interests declarations should be sought at all meetings as an agenda item. As an individual's circumstances may change throughout the course of a Project, this provides that individual with the opportunity to declare any potential conflicts as they arise.
- *Educating staff* – Those persons who are placed in a position that requires them to make decisions or have a particular responsibility need to understand how a personal interest can present them with a conflict of interest and how to manage these interests when they arise.

All Project participants to be given a copy of this Probity Plan, be provided with training or briefings about what may constitute a conflict of interest and how they can/should be handled, if they have not already undertaken such training. This will include informing them of how to report a potential conflict of interest (or 'related interest') and who to report this to.

- *Gifts and benefits* – In accordance with Council's Code of Conduct and Gifts and Benefits Policy adopted in May 2019, any member of the Project Team, and any member of any taskforce, group, committee as well as any individual, consultant, company or other group associated with the Project must not accept a gift or benefit that may be regarded by the public as likely to influence the performance of their public duties in relation to this Project.

3.4 Open competitive processes focused on achieving value for money

This is demonstrated by the use of an open competitive environment in which the market is tested regularly, and stakeholders 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.

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

As part of the value for money considerations Council will need to ensure that all consultant procurements are aligned to Council's legislative requirements for tendering.

Appendix A: Confidentiality and Conflict of Interest Deed Poll

Confidentiality and Conflict of Interest Deed Poll (the Deed)



made on(date)

by:(“ **Recipient** “)

in favour of : Ku-ring-gai Council, 818 Pacific Highway, Gordon, NSW 2072.

Background

As a result of the Recipient’s role in the Lindfield Village Hub Project (the Project), the Recipient will become acquainted with Confidential Information.

Confidential Information

1. For the purposes of this Deed “**Confidential Information**” is any information relating to the Project which has come to the knowledge of the Recipient by any means and which is given to the Recipient either directly or indirectly by Council or by a person on behalf of Council, but does not include:
 - (a) information which, at the time of disclosure, was in the public domain; or
 - (b) information which, subsequent to disclosure, enters the public domain except through breach of this Deed or any other obligation of confidence.

Acknowledgements, warranties and covenants

2. The Recipient acknowledges and agrees that:
 - (a) the Confidential Information is of a secret and confidential nature;
 - (b) it is requirement of the Recipient’s role in relation to the Project that strict confidentiality as described below is maintained at all times; and
 - (c) improper use or disclosure of any Confidential Information may be detrimental to Council in connection with the performance of its functions, and may cause harm to Council.
3. The Recipient undertakes to treat and keep the Confidential Information in the strictest of secrecy and confidentiality and not disclose the Confidential Information except as expressly authorised and permitted to do so under paragraph 5 below.

4. Further, the Recipient undertakes not to disclose to any person that the Confidential Information has been made available to the Recipient and undertakes:
 - (a) to protect and safeguard Confidential Information against unauthorised publication or disclosure; and
 - (b) not to use, copy or reproduce Confidential Information for any reason or purpose as directed by Council or in the discharge of the Recipient's duties in connection with the role in the Selection Process; and
 - (c) safeguard the physical security and storage of Confidential Information and comply with any specific security and storage measures in connection with Confidential Information that may be required by Council.

Authorised disclosure

5. The Recipient may disclose Confidential Information:
 - (a) if a duly authorised representative of Council approves in writing the disclosure of Confidential Information in accordance with the terms of that approval;
 - (b) if required under a binding order of a government agency or any legal proceeding;
 - (c) if required under any law or any administrative guideline, directive, request or policy having the force of law; and
 - (d) to employees, consultants and other advisers of Council who have executed undertakings in favour of Council substantially the same as this one.

Return of Confidential Information

6. If Ku-ring-gai Council requests it, the Recipient must:
 - (a) promptly return to Council all documents and other physical records of Confidential Information in the Recipient's possession, custody, power or control except where the Recipient is required by law to retain them or such documents or records are required to be retained in accordance with any administrative guideline, directive, request or policy by which the Recipient is bound; and
 - (b) provide a statutory declaration to Council confirming that all those records have been returned.

Conflict covenant

7. The Recipient confirms that:
 - (a) by indicating a "NIL" response on the **Conflict of Interest Declaration** form set out as Attachment 1, the Recipient does not have a conflict of interest in relation to its role in any Selection Process as part of the Project;
 - (b) any interest of the Recipient that may create, or may be perceived to create, a conflict of interest as at the date of this Deed is documented in the Declaration; and
 - (c) it will promptly notify the Chair of the Evaluation Committee of any interest of the Recipient arising after the date of this Deed that may create, or may be perceived to create, a conflict of interest in relation to its role in any Selection Process as part of the Project.

Non-waiver

8. The failure of Council to enforce any of the provision of this Deed or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of Council to enforce that or any other provision at a later date.

Continuing obligations

9. Each obligation of the Recipient under this Deed is a continuing, perpetual obligation and survives any expiry, performance or termination of this Deed.

Governing law

10. This Deed is governed by and subject to the laws of New South Wales.

In signing this Deed Recipients are confirming that they have read and understood their obligations as identified in the Probity Plan.

Signed, by the Recipient

.....

in the presence of:

.....

Witness

.....

Name (printed)

Attachment 1 – Conflict of Interest Declaration Form

Attachment 1 – Conflict of Interest Declaration (the Declaration)



Name:

Organisation:

Date:

Definition

Conflicts of interest arise when persons are influenced, or appear to be influenced by personal interest when doing their job. Conflicts of interest of persons involved in the evaluation or decision making process result in a lesser standard of independence than that required to maintain the integrity of the evaluation process.

Either section 1 or 2 must be completed.

Section 1

I do not have any related interest to declare that may create, or be perceived to create, a conflict of interest in relation to my role in the Lindfield Village Hub Project.

Tick here for NIL response

Section 2

I have the following related interest(s) to declare.

Description of related interest:.....

.....

.....

.....
Description of possible conflict:.....
.....
.....
.....

Action to avoid Conflict of Interest: The following action has been agreed in order to avoid a conflict of interest:.....
.....
.....

I hereby declare that the above details are correct to the best of my knowledge and I make this Declaration in good faith and commit to the implementation of any agreed management action.

.....
.....

Signature

Date: / /

I hereby declare that I have received and appropriately noted this Declaration and confirm the agreed Management Actions.

.....

Signature (Panel Chair / Project Manager)

Date: / /

Appendix B: Project Governance Model

