

Mr Ray Brownlee
Chief Executive Officer
Northern Beaches Council
Dee Why
NSW 2099

30 January 2019

Dear Mr Brownlee

**Probity Report – Assessment of Draft Voluntary Planning Agreement
(VPA 2018/001)**

Procure Group Pty Ltd (**Procure**) was engaged on 30 July 2018 by Northern Beaches Council (**Council**) to provide probity oversight and advice on the assessment of a draft voluntary planning agreement (**VPA**) submitted by GLN Planning on behalf of Council and Frasers Property AHL Limited (**Frasers**) for 9, 11, 12 and 13 Fern Creek Road Warriewood. The draft VPA arises from a land swap agreed by Council in March 2016 with Frasers which provided Council with its preferred open space layout for the location and provided for the development of Fraser’s landholdings.

Council has a conflict of roles (which has been acknowledged) because it is the owner of property subject to the draft VPA and at the same time is responsible for the review of the draft VPA to ensure that it meets Council’s planning requirements.

The assessment of the draft VPA has been completed and a report prepared for the elected Councillors. The report to the Councillors provides an outline of the VPA assessment process and recommends that the VPA proceed to public exhibition.

Statement of Responsibility

This probity report has been prepared to assist Council in its decision making regarding the VPA. Procure has compiled this report based on:

- (a) Council documentation it has been given and which it has reviewed; and
- (b) Discussions with relevant Council officers.

The conclusion of this report is based upon the work performed as documented in it. While Procure has identified probity risks and considered the controls, environment and action taken by Council to address those risks, probity issues may nevertheless have arisen that have not been identified. While Procure may provide input into processes followed, Council retains responsibility for the probity of its personnel and processes. The report cannot be relied upon by any other party or for any other purpose.

Background

The draft VPA in its introduction outlines the purpose of the VPA as follows:

- A. *Council owns Lot 5 in Deposited Plan 736961 (Council Land) and the Developer owns Lots 11, 12 and 13 in Deposited Plan 1092788 (Developer Land).*
- B. *Subject to the amendment of the Pittwater LEP, Council and the Developer have agreed to swap parts of Council Land and Developer Land (the Land Swap) to enable the Council to extend a proposed public park and to enable residential development on the land transferred to the Developer following the Land Swap.*
- C. *The Land Swap is the subject of a separate agreement between the Parties and is conditional upon the Parties entering into this Agreement.*
- D. *The Developer has made an offer to the Council to enter into this Agreement to ensure the provision at its cost of public benefits in connection with a development application proposed for the Developer Land, being the construction of an extension of Fern Creek Road and the construction of new east-west road connecting Fern Creek Road with the eastern half of Sector 9 of the Release Area, the provision of associated stormwater infrastructure and a 50% contribution towards the cost of undergrounding high voltage power lines that run along the current boundary at 9 and 12 Fern Creek Road.*

The draft VPA has been assessed by Council in accordance with Section 7.4 of the Environmental Planning and Assessment Act and Regulations. It was also assessed against the Warringah Council Policy Voluntary Planning Agreements Policy No PL 600 VPA in lieu of a Northern Beaches Council Policy on Voluntary Planning Agreements.

The assessment of the draft VPA was conducted by Council planning staff with assistance from the Development Infrastructure Working Group (**Working Group**). Their assessment was reported to the Development Infrastructure Committee. Council sought independent legal advice from Matthews Folbigg in relation to the draft VPA.

The review of the draft VPA has been completed and a report prepared by Council staff for consideration by the elected Councillors at a public Council meeting.

Scope

In the letter of engagement Procure was required to:

- + *Oversee and where required provide probity advice and services in regards the negotiation, assessment and approval/refusal of the VPA.*
- + *Attend meetings between Council staff assessing the draft VPA and the applicant (including Council's Property Team) where it may be deemed that Council has a potential conflict of interest. In the event that attendance is not possible, review meeting notes of such meetings that have been held.*
- + *Review any minutes of internal meetings held as part of the assessment of the draft VPA.*

- + *At the conclusion of the VPA negotiations/assessment, undertake a probity audit of the process and prepare a report in regard to the management of the probity matters. It is anticipated that this probity report will be sent to Council when the draft VPA is reported for consideration.*

Work Performed

In undertaking this review, Procure has completed the following tasks:

- + Reviewed the following documents:
 - + Draft VPA document and related explanatory documents as provided to Council by GLN Planning on behalf of the Council Property Team and Frasers;
 - + Minutes of the meetings of the Development Infrastructure Committee held in August, September and October 2018;
 - + Correspondence between the Council officers conducting the review and the representative of GLN Planning in relation to matters of concern and questions related to the content of the draft VPA;
 - + Notes of the meeting between Council officers, the Council Property Team (as land owners) and the landowner representatives held on 10 December 2018;
 - + The draft report to be considered by the meeting of elected Councillors;
- + Noted that Council officers have provided signed conflict of interest declarations from the Strategic and Place Planning staff with responsibility for the review of the VPA and preparation of the report to Councillors. No matters were declared which prevented any Council officer participating in the review process;
- + Noted from a review of the minutes of the meeting of the Development Infrastructure Committee held on 29 October 2018, that the Committee endorsed the submission of the report on the assessment of the draft VPA to a future meeting of elected Councillors. Further noted that the Executive Manager, Property was not in attendance at the meeting;
- + Noted that on 5 November 2018, the Council staff completing the assessment of the draft VPA requested an external legal review of the draft VPA. The General Counsel of Council was responsible for arranging the legal review. Prior to the review being undertaken by Matthews Folbigg, Council's legal advisers, Matthews Folbigg were required to establish internal probity arrangements to ensure that the review of the draft VPA was undertaken by staff who had not previously provided advice to the Property Team in relation to the land swap;
- + Matthews Folbigg provided a letter on 14 November 2018 outlining their probity arrangements to ensure that the review of the draft VPA was conducted by independent staff in their office. Procure reviewed the letter and advised Council on 15 November 2018 that the arrangements outlined in the letter were satisfactory;

- + Participated in the meeting held on 10 December 2018 where matters identified in the legal review were discussed between representatives of the Council Planning review team, the Property team and landowner representatives and the General Counsel;
- + Noted the advice from Matthews Folbigg to Council on 8 January 2019 that the draft VPA had been amended in accordance with the matters agreed at the meeting held on 10 December 2018;
- + Noted the advice received by Council (email of 9 January 2019) that the Council Property team and Frasers agree to proceed on the basis of the draft VPA as amended in the advice from Matthews Folbigg on 8 January 2019;
- + The Manager, Property, Commercial and Tourist Assets confirmed to Procure on 25 January 2019 that that no members of the Property team had had any role in the review of the draft VPA and that Property team members have withdrawn from the Working Group meetings where the VPA was discussed. Nor have they been part of any other assessment of the VPA;
- + Reviewed the report and attachments prepared by Council officers for consideration by the elected Councillors at their meeting on 26 February 2019 and confirmed that it provided a detailed statement of the review process followed and the recommendation to publicly exhibit the draft VPA; and
- + Further noted that the recommendations of the Council officers and the Development Infrastructure Committee will be considered in open Council and include a recommendation for a further period of public exhibition. This provides for a fully transparent process.

Conclusion

Based upon our work performed as detailed in this report, no issues of a probity nature have come to our attention that would lead us to conclude that the process followed by the Northern Beaches Council in the assessment of Voluntary Planning Agreement (VPA 2018/001) has not been conducted in a transparent and accountable manner with due regard to probity.

Please contact Vic Baueris of Procure should you have any questions in relation to this report.

Yours sincerely,



Simon Taylor
Director
Procure Group Pty Ltd