

Mr Dick Persson
Administrator
Northern Beaches Council
Dee Why NSW 2099

By email (per): liza.cordoba@northernbeaches.nsw.gov.au

15 May 2016

Dear Dick

PROBITY REPORT – ASSESSMENT OF PLANNING PROPOSAL PP0002/16

Procure Group Pty Ltd (**Procure**) was engaged by Northern Beaches Council (**Council**) on 27 June 2016 to provide an independent probity review in relation to the assessment of Planning Proposal PP0002/16 (**Planning Proposal**). Council is the landowner of 9 Fern Creek Road Warriewood and is the proponent for this application. The Planning Proposal arises from a land swap agreement between Council and Frasers Property involving 11, 12 and 13 Fern Creek Road. The land swap enables the development of properties owned by Fraser Property and provides Council with the opportunity to establish improved open space for the use of the local community.

The assessment report to Council provides the following summary:

Council received a Planning Proposal from GLN Planning Consultants on behalf of Council's Property Management and Commercial Business Unit relating to 9, 11, 12 and 13 Fern Creek Road, Warriewood.

The Planning Proposal seeks to amend the Pittwater Local Environmental Plan 2014 to primarily enable the creation of the southern portion of the planned Central Local Park. A secondary objective is to enable the development of the remaining land in an orderly and economic manner for housing. This will be achieved through an amendment to the Land Zoning map, amend the Height of Building map, and amend the dwelling provisions contained in Part 6 Clause 6.1(3) Pittwater Local Environmental Plan 2014.

As Council is a landowner and party to the land swap to mitigate potential probity issues, an independent planning consultant was engaged to prepare the Planning Proposal (GLN Planning) on behalf of Council's Property Management and Commercial Business Unit and an independent planning consultant was engaged to assess the application (MBWA Consulting) on behalf of Council's Planning and Community Business Unit.

In the circumstances where Council is the owner of land the subject of a Planning Proposal before Council, Council has a conflict of roles which must be addressed. Council has taken steps in this regard and has requested Procure to conduct a review of the steps taken and to confirm their adequacy.

This report has been completed to assist Council in its decision-making relating to the Planning Proposal. The report cannot be relied upon by any other party or for any other purpose. While the Probity Advisor may provide input into the processes followed, Council retains overall responsibility for the probity of its personnel and processes.

Vic Baueris has conducted the review on behalf of Procure and has prepared this report.

Probity Fundamentals

In undertaking the probity advisory role, Procure has had regard to the “probity fundamentals” described in the ICAC publication “Probity and Probity Advising (November 2005)”. These probity fundamentals are:

- + Maintaining impartiality
- + Managing conflicts of interest
- + Maintaining accountability and transparency
- + Maintaining confidentiality
- + Obtaining value for money (not relevant in this case)

Our work performed to review the application of each of these probity fundamentals to the assessment process is documented below.

Key dates

| Activity | Date |
|---------------------------------------|---------------------------|
| Planning Proposal received by Council | 8 August 2016 |
| First exhibition period | 15 to 29 August 2016 |
| Updated Proposal received by Council | 17 January 2017 |
| Second exhibition period | 25 March to 10 April 2017 |
| Assessment report completed | 8 May 2017 |

Work Performed

In completing this engagement, Procure has completed the following tasks.

- + Noted that Council at its meeting held on 19 March 2016 determined that as landowner and party to the land swap there was a need to mitigate potential probity issues. In this regard, Council’s Property Management and Commercial Business Unit engaged an independent planning consultant - GLN Planning Consultants - to prepare and lodge the Planning Proposal on Council’s behalf. Council’s Strategic Land Use Planning Unit engaged an independent planning consultant – MBWA Consulting – to assess the Planning Proposal;
- + Noted that the Planning Proposal was received by Council on 8 August 2016 and that (non-statutory) notification of the Planning Proposal was undertaken between 15 and 29 August 2016;
- + Participated in an initial meeting on 10 August 2016 with Council officers and the independent assessor to agree on the probity processes to be followed and Procure’s role. Confirmed at the meeting that the independent assessor did not have any conflicts of interest which prevented her from conducting the assessment;
- + Noted that on 22 August 2016 Council staff in the Technical Team who may be required to provide comment on the Planning Proposal were advised that Procure had been engaged to oversee the probity arrangements for the conduct of the independent review of the Planning Proposal assessment process. Procure’s contact details were provided these Council officers in order for contact to be made should any probity issues arise. Recipients were also reminded to ensure the confidentiality of any matters related to the assessment process.;
- + Matters referred by Council to Procure during the assessment period related to potential conflicts of interest by Council officers. No such matters involved any conflict of interest that required action other than disclosure. No referrals or complaints were received from the public;

- + Noted that as the result of additional information required to complete the assessment following the first period of public notification, a second period of non-statutory public notification of the Planning Proposal took place between 25 March 2017 and 10 April 2017;
- + Confirmed that for both public notifications, properties within Warriewood Valley and registered Community Groups were sent notification letters (approximately 1,750). Advertisements notifying of the Planning Proposal and inviting comment, were placed in the Manly Daily on 13 August 2016 and 25 March 2017. The relevant documents were made available electronically on Council's website on the 'Exhibitions' page and via the 'ePlanning' portal, and in hard copy in Customer Service Centres at Manly, Dee Why, Mona Vale and Avalon. In addition, a notification sign was placed on the site for both notification periods;
- + Noted that the public agencies being Rural Fire Service, NSW Office of Water and Ausgrid were also advised of the Planning Proposal and requested to provide comment;
- + Participated in meetings with Council officers and the independent assessor on 3 and 20 April 2017 to review progress;
- + Confirmed with the independent assessor in discussions on 10 May 2017 that she had not been subject to any influence or interference from Council officers in relation to the conduct of the assessment;
- + Confirmed with the Planner, Land Release who had overall administrative responsibility for the Proposal application process, that all the documentation related to the assessment process will be stored in a confidential folder in the Council Records System. At the time of conducting this review, Procure was advised that the confidentiality of all records has been maintained;
- + Confirmed with the Manager, Property Management and Commercial Business Unit on 10 May 2017 that total separation was maintained between her Unit and the assessment process. This was required as this Unit acted as the developer for the Planning Proposal and had engaged the planning consultant who prepared the Planning Proposal;
- + Noted that the Council report prepared to present the Assessment Report, the probity report and other relevant documents to Council includes the following details in relation to a Voluntary Planning Agreement (VPA) submitted along with the revised Planning Proposal (17 January 2017):
 - *The amended Planning Proposal, received on 17 January 2017, did not change in terms of the proposed amendments to the PLEP 2014 but responded to Council's request for additional information, addressing issues raised in its consultant's preliminary assessment and the submissions. A significant piece of new information accompanying this amended Planning Proposal was a preliminary 'draft version' of the Voluntary Planning Agreement (VPA) and Explanatory Note, "in the interest of clarity and transparency at this non-statutory exhibition phase". The Draft Voluntary Planning Agreement and Explanatory Note formed part of the documentation package that was released for preliminary (non-statutory) exhibition.*
 - *The preparation of a Draft Voluntary Planning Agreement (Draft VPA) originated from the Memorandum of Understanding between the then Pittwater Council and Frasers Property (formerly Australand) for the subject properties (now the subject of this Planning Proposal) in October 2015. On 19 March 2016, Council resolved, to authorise the General Manager to sign the Deed of Agreement where the parties are to enter into a future Planning Agreement as part of the completion conditions stipulated by the Deed.*
 - *On 18 April 2017, following the conclusion of the second preliminary (non-statutory) notification period for the Planning Proposal, the applicant formally withdrew the draft version of the Voluntary Planning Agreement.*
- + Noted that withdrawal of the VPA (as outlined in the previous point) removed the potential for a conflict of role for Council officers. This would have arisen in the circumstances where submissions in response to the Planning Proposal required comment and response from Council officers who

- previously had a role in preparing the VPA. Noted that the VPA will require presentation to Council and public exhibition before finalisation;
- + Reviewed the Assessment Report to Council which details the outcome of the assessment. Noted that it includes the following summary of public responses to the Planning Proposal:
 - *Six written submissions were received as a result of the second non-statutory notification of Planning Proposal P0002/16 – 1 submission in support of the proposal; 4 clearly objecting to the proposal; and 1 submission offering comment and clarification.*
 - + Further noted that the Assessment Report to Council included:
 - Outline of advice received from each Council Business Unit with responses;
 - Outline of advice received from each of the public agencies invited to comment on the Planning Proposal;
 - Outline of submissions from the community with responses; and
 - Outline of Assessment Criteria used and assessment comments in relation to each criterion
 - + Noted that to further maintain Council's independence from the decision-making process, Council is not seeking delegation to exercise the LEP making powers delegated under Section 59 of the Environmental Planning and Assessment Act 1979 in regard to this Planning Proposal. Instead the Department of Planning and Environment will undertake the plan making functions for the Planning Proposal;
 - + No breaches of confidentiality or other probity concerns have been reported to Procure;
 - + Noted then when the Assessment Report is presented to Council, members of the community will have the opportunity to present their views on the recommendations made by the independent assessor.

Conclusion

Based upon our work performed in the conduct of the review, as detailed in this report, no issues of a probity nature have come to our attention that would lead us to conclude that the assessment of Planning Proposal PP0002/16 by Council has not been undertaken in a transparent manner with due regard to probity.

Yours sincerely



Warwick Smith
Director
Procure Group Pty Ltd