

Probity Plan

Rezoning and subdivision assessment for
Heydon Estate & Uniting Church Land, Ingleside

Pittwater Council

May 2004

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1. Purpose of this Probity Plan

The purpose of this Probity Plan is to support the rezoning and development assessment of the Heydon Estate and the Uniting Church Land, Ingleside being undertaken by Pittwater Council (**Council**). This plan puts in place processes and procedures to assist Council to appropriately manage and reduce the probity risks the rezoning and development assessment process (**the Project**) poses for Council as the development consent authority and a current adjacent land owner and future land owner of the site. This Probity Plan will guide Council in the following components:

- undertaking all communication and negotiations in a manner that is consistent with probity principles and is in line with relevant government and Council policies and procedures
- undertaking all decision-making, as a development consent authority, in line with relevant legislative requirements and the Memorandum of Understanding (**MOU**) between Council and the Department of Infrastructure, Planning and Natural Resources (**DIPNR**)
- ensure that all processes carried out by Don Fox Planning, undertaking the assessment of rezoning and DA's on behalf of Council for the above sites, is in line with probity principles, particularly the client relationship.

2. Background to the Project

2.1 Definitions

The **Heydon Estate** at 28 Ingleside Road, Ingleside being Lot 3 Sec F, DP 11784 and Lots 74, 79, 83, 84, 85 Sec B DP 11784. The site is currently zoned Non Urban 1(a). It is proposed to allow rural/residential development on part of the site and to rezone the remainder as Environment Protection 7(a) under Pittwater Local Environmental Plan 1993. This would enable dwellings to be constructed on 4 existing rural residential lots and 6 proposed new rural residential lots. Council's application numbers: R0005/03 & N0963/03.

The **Uniting Church land** is at 19A Wesley Street, Elanora Heights being Lot 62 DP 30255 and Lot 70 DP 32253. The zone is currently Special Uses 5(a) and it is proposed to rezone part of the site to Non Urban 1(a), Environment Protection 7(a) and Private Recreation 6(b), and to retain the remainder of the site as Special Uses 5(a) under Pittwater Local Environmental Plan 1993. This would enable dwellings to be constructed on 4 new rural residential lots on the western portion of the land. Council's application numbers: R0006/03 & N0038/04

2.2 General

Council has had a long standing interest in preserving bushland on the Warriewood - Ingleside Escarpment and has actively pursued the purchase of lands to meet this objective, including the Heydon Estate, a 27 hectare site. Land within the escarpment has been targeted for purchase to consolidate with existing Council land to create community land. This acquisition program is a component of Council's environmental vision and Plan of Management.

Planning NSW purchased the Heydon Estate in 2001. By early 2002 Council developed an MOU with the Minister of Planning to obtain the majority of the site. The MOU indicated that Council would be dedicated the majority of the site, valued by the State Valuation Office in 1999 as approximately \$5 million, following some of the land being rezoned and the Government achieving a return on its outlay. The MOU stipulates that the land would be classified as 'Community Conservation Lot'. The MOU also set out the responsibilities of both parties, including the stipulation that nothing in the MOU would fetter the Council's or Minister's statutory powers and decision-making responsibilities under the Environmental Planning & Assessment Act, 1979 (**EP&A Act**).

In late 2003 Council received two combined rezoning and subdivision applications for the sites mentioned above. As dedication of land to Council is proposed as part of these applications, especially a significant percentage of the site, Council called for Expressions of Interest for a consultant planner to undertake the assessment of the applications in accord with the EP&A Act, EPA Regulations and Council's planning controls.

2.3 Planning

The following controls and guidelines apply to the land for rezoning:

EP&A Act

EP&A Regulations

DUAP Best Practice Guidelines, *LEPs and Council Land*, Jan 1997

DUAP Director-General's Delegations to Councils for LEP Preparation, Feb 1997

NSW Threatened Species Conservation Act 1995
Environment Protection & Biodiversity Conservation Act 1999
Pittwater Local Environment Plan, 1993
Pittwater 21 draft Local Environment Plan
Draft Planning Strategy – Ingleside Warriewood Urban Land Release

The following controls and guidelines apply to the land for the subdivision development application:

EP&A Act
EP&A Regulations
Pittwater Local Environment Plan, 1993
NSW Threatened Species Conservation Act 1995
Environment Protection & Biodiversity Conservation Act 1999
Pittwater 21 draft Local Environment Plan
Pittwater 21 Development Control Plan
Draft Planning Strategy – Ingleside Warriewood Urban Land Release

3. Project Objectives

Council aims to achieve, amongst other things, the following objectives in relation to the Project:

- bringing into public ownership the Warriewood – Ingleside Escarpment as a Community Conservation Lot
- observing the spirit and intent of the MOU with DIPNR
- comply with (or exceed) the aims of the state, regional and local planning provisions for the Warriewood – Ingleside Escarpment
- maximise the community's return at the lowest possible risk
- deliver new community areas, strengthening the conservation focus of the site for the sole benefit of the community in perpetuity
- act in accord with its statutory powers and responsibilities as consent authority in an impartial manner.

4. Project Steps

In accordance with the brief for the consultant planner, this Probity Plan supports the overall risk assessment and management of the Project and the following specific components in the Project:

- **Appointment of consultant planner**
 - review EOI call documents and evaluation assessment documents
 - discuss process with relevant staff
 - review engagement contract and process to manage confidentiality and conflicts of interests
 - ensure client relationship is transparent
- **Rezoning and assessment of subdivision**
- *Rezoning applications*
 - review records to ensure tasks as defined in consultant brief are undertaken or records exist to indicate an appropriate and authorised variation
 - review the terms of reference for other advisors in accord with the probity principles in this policy
 - review records of meetings between consultant planner and Council staff and attend a number of these meetings
 - attend any relevant community/public meetings either called by the applicants, consultant planner or Council
 - attend presentation of report by consultant planner at Council meeting(s)
- *Development applications*
 - review records to ensure tasks as defined in consultant brief are undertaken or records exist to indicate an appropriate and authorised variation
 - review referrals to external bodies by Council are in accord with the probity principles in the policy and attend any meetings
 - review referrals to internal bodies
 - attend any relevant community/public meetings either called by the applicants, consultant planner or Council

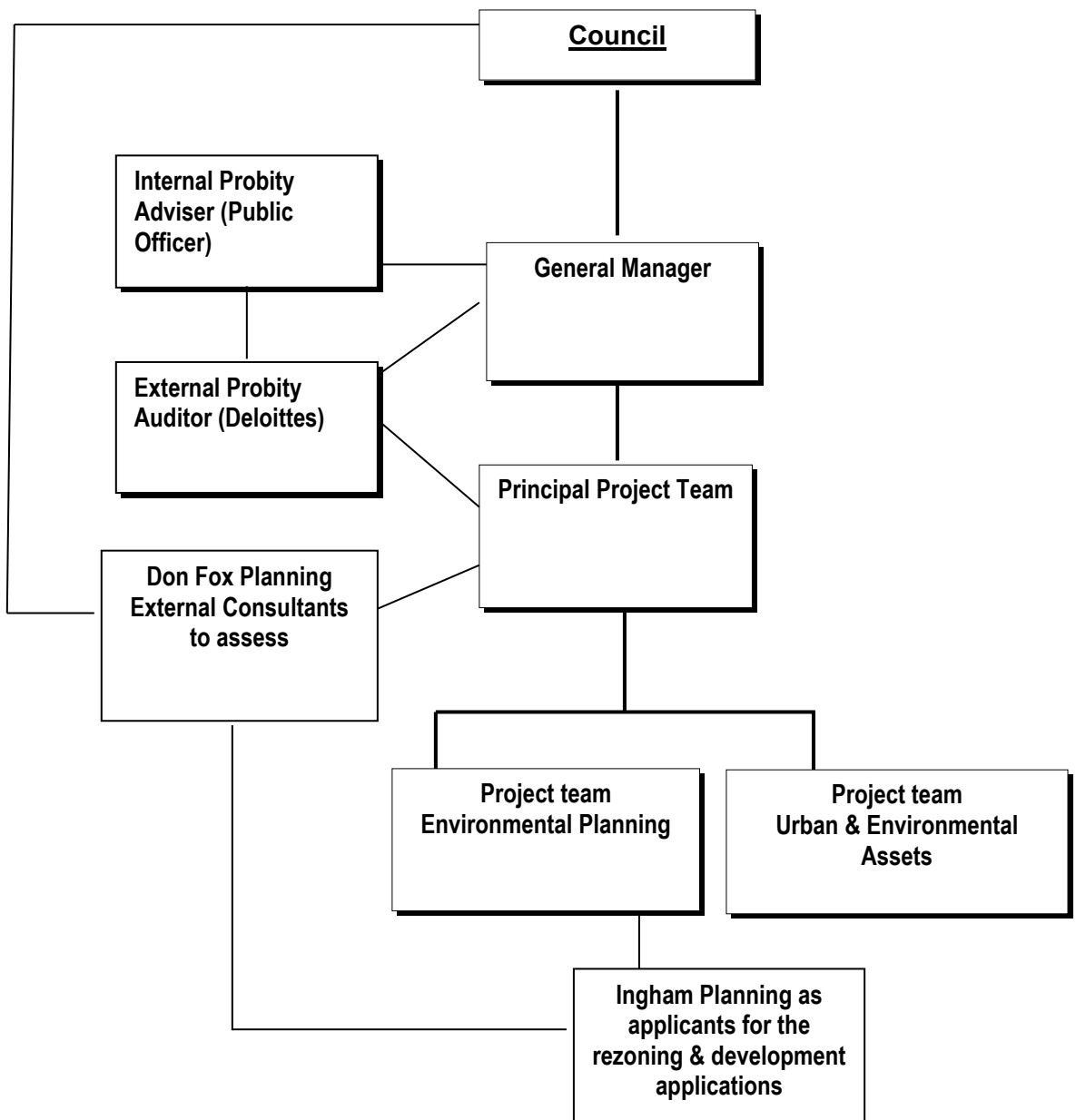
- attend presentation of report by consultant planner at Council Development Unit meeting(s) and Council meeting(s)

5. Probity Plan Objectives

This Probity Plan serves as a guide to be followed by Council to maintain the integrity of processes adopted with respect to the development of the Project. The Probity Plan addresses the management of probity risks in accordance with the generally accepted ICAC probity principles of:

- transparency
- accountability
- maintaining security and confidentiality
- managing conflicts of interests
- obtaining value for money.

6. Project Resource Structure



7. Statement of Roles and Responsibilities

7.1 DIPNR

Although the Department of Infrastructure Planning & Natural Resources (**DIPNR**) do not form part of this probity plan, they do have roles and responsibilities in respect to the project and these need to be clearly defined.

Firstly, DIPNR is the land owner and applicant for the land known as the Heydon Estate.

Secondly, under the Environmental Planning & Assessment Act (**EP&A Act**), DIPNR, the Minister for Planning, Infrastructure & Natural Resources, and Parliamentary Counsel; have responsibilities regarding the approval and gazettal of any local environmental plans (**LEP**) that may result from the rezoning applications.

Finally, DIPNR also have a responsibility under the EP&A Act to assess development applications identified as 'integrated development'.

7.2 Pittwater Council

Council as an elected body has the initial responsibility as a development consent authority for the proposed rezoning applications. The final decision-maker for the rezoning applications will be DIPNR as outlined above. In respect to the development applications, Council is the consent authority.

As Council will sit as a development consent authority for this project, Councillors will not involve themselves in any decision-making related to the assessment of the project until such time as the assessment reports are before them as members of the elected body. Further, in line with the Council resolution of 27 April 2004, Councillors will perform an observer role at any Community meetings established for the project and will refrain from talking to the proposal in support or against.

7.3 The General Manager

The General Manager is responsible for the probity plan and decisions made by the staff in respect to the project.

The responsibilities of the General Manager are to:

- forward on to Council any recommendation from the consultant planner.
- provide and update Council on a regular basis in regard to the status of the Project
- ensure that Council staff involved in this project act in accordance with the protocols, governance, rules and procedures outlined in this Probity Plan
- oversee the management of the separation of responsibilities and roles between the planning functions and the property development functions
- to refer matters under relevant legislation (eg, ICAC Act), to the relevant authorities

7.4 The Project Team – Role and Responsibilities

Membership of Project Team

For the purpose of managing delivery of the Project, Council has established a Project Team. Two arms of Council have been identified as being relevant to the project, which are listed below along with the relevant staff members who have some involvement in the project, these are:

Environmental Planning & Community

Director, Environmental Planning & Community

Manager Planning & Assessment

Principal Strategic Planner

Town Planner

Executive Secretary – Director, Environmental Planning & Community

Urban & Environmental Assets

Director, Urban & Environmental Assets

Manager Urban Infrastructure

Manager Natural Resources

Senior Engineer

Executive Secretary – Director, Urban & Environmental Assets

Council reserves the right to add to or amend the membership of the Project Team from time to time.

7.4.1 Role and Functions of the Members of the Principal Project Team

The members of the Principle Project Team are:

- Director, Environmental Planning & Community
- Director, Urban & Environmental Assets

The roles and functions of the Principal Project Team are to:

- manage the separation of responsibilities and roles between the planning functions and the property/asset development/management functions
- provide or ensure provision of expert advice on planning, legal, probity matters such that Council is appropriately informed on these matters
- review progress of Project implementation and manage delivery of the Project
- ensure that the Project Team acts in accordance with the protocols, governance, rules and procedures outlined in this Probity Plan
- note and resolve conflicts of interest that might arise amongst members of the Project Team
- undertake ongoing risk analysis
- report on a regular basis to the General Manager
- assist with the implementation of resolutions of Council and directions of the General Manager.

7.4.2 Role and Functions of the Project Team - Environmental Planning & Community

The roles and functions of the Project Team are to:

- prepare an Expression of Interest (EOI) and appoint a consultant planner
- to coordinate the management of the rezoning and subdivision assessment as per the consultant planners brief
- co-ordinate meetings, stakeholder liaison and community consultation
- report on a regular basis to the Director, Environmental Planning and Community
- assist with the implementation of resolutions of Council and directions of the General Manager.

The Project Team may obtain additional advice from appropriate sources as and when required keeping in mind Confidentiality and Conflict of Interest management.

7.4.3 Role and Functions of the Project Team – Urban & Environmental Assets

The roles and functions of the Project Team are to:

- provide relevant information to LEP on Council's future role with the land
- report on a regular basis to the Director, Urban & Environmental Assets
- assist with the implementation of resolutions of Council and directions of the General Manager.
- provide information where necessary on land management issues, Plan of Management issues, Community land issues, and processes to acquire land if necessary.

7.5 Consultant Planner

The consultant planner is to operate in accord with the terms of their engagement and the probity principles in the plan. Their specific role is to:

- provide an external independent assessment of the rezoning and development application proposals
- receive and consider all submissions from the community and statutory authorities the applications are referred to
- consider and if necessary seek alternative advice regarding the Council staff comments on the applications
- generally ensure the proper statutory process is followed.
- provide advice to the community either directly or at public forums, on the process and details of the proposal.

7.6 Internal Probity Adviser

The Probity Adviser is independent of the evaluation process, and is responsible to carry out the duties of the Public Officer under the Local Government Act.

7.7 External Probity Auditor

The Probity Auditor will provide an independent audit function to ensure the entire process complies with the following probity principles:

- confidentiality management
- conflicts of interests management
- accountability
- transparency
- obtaining value for money

The external Probity Auditor provides advice and guidance to the Internal Probity Adviser, or other members of the project team as required.

The Probity Adviser will be invited to attend Project Team and development committee meetings and all meetings with Applicants. The Probity Adviser will also attend meetings with Council and community groups, if required. The Probity Adviser will provide a final probity report and other reports as required.

8. Probity Plan Application

This Probity Plan applies to all Councillors, Council staff and any external consultants or advisers connected with the Project. It has been developed to promote awareness of probity principles and issues and to assist in the application of those principles, the management of any probity issues which may arise and the method in which these issues are resolved and documented.

8.1 Review and Amendment of Probity Plan

This Probity Plan outlines the general approach to ensure probity is maintained. It is acknowledged that this Probity Plan has been developed to focus on the assessment component of the rezoning and subdivision development applications. Should the Council need to engage in further discussion or negotiation with DIPNR as to transfer of land outside of the process stipulated in the MOU an additional or revised probity plan may be required. Any such probity plans will be prepared in accordance with the principles outlined in this Probity Plan.

8.2 Process for Amendment

This Probity Plan sets the framework and controls to be applied in the assessment of the combined applications and any submissions in respect of the subdivisions. The probity plan also addresses the communication between Council and the

consultant planner, inclusive of the final report to Council. This Plan may be amended if required by the endorsement of the General Manager. Reasons for amending the Probity Plan must be clearly documented.

9. Probity Principles

Council will observe the highest standards of probity and act in accord with its existing policies and procedures, including the Code of Conduct. Council, in all its dealings must be fair, open and demonstrate the highest levels of integrity consistent with the public interest. It is impossible to prescribe rules for every situation. Rather, it is incumbent on every participant in the process of developing the Project to understand and apply the principles of probity set out below in all their dealings as public employees, or as consultants to Council.

This Project will be conducted according to the following principles in conjunction with Council's own Code of Conduct and related policies for staff. The principles are described as follows:

Obtaining Best Value: Obtaining value for money is enhanced when there is open competition and the market is tested regularly. Impartial, open and competitive processes are an important stepping stone in achieving value for money. Market testing can facilitate in finding out whether a service can be carried out more effectively and efficiently. Consistent with Council procurement policy, a competitive process should be used at all times when procuring goods and services and where direct negotiations are involved independent valuations obtained.

Transparency of the process: If fairness and impartiality are not apparent and perceptions arise there is a problem with the process, applicants and the community may think twice about submitting an application or submission and may also be deterred from involvement in future assessment processes. As a result, the best assessment may not be achieved and individual complaints may arise. Transparency may be increased by informing proponents of the assessment process, appointing a probity adviser and maintaining adequate process documentation. Each process in the Project shall be consistent and conducted in accordance with predetermined assessment criteria. Such processes will be open and reviewable.

Addressing Conflicts of Interest: Conflicts of interest arise when persons are influenced, or appear to be influenced by personal interest when doing their job. It is therefore likely to result in a lesser standard of service delivery and can create the perception of such. Inadequate systems for dealing with conflicts of interest provide opportunities for corruption, maladministration and serious waste of public resources. All participants should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties. Any person involved in the Project is to declare any interest which may compromise their position.

Confidentiality: The processes adopted for receiving and managing information are to ensure the security and confidentiality of intellectual property, proprietary information or otherwise sensitive information

Accountability: Focusing on accountability and probity need not be at the expense of effective outcomes and value for money. Appropriate accountability mechanisms can result in decreased opportunities for corruption. Public sector accountability requirements are intended to save money, resources and time in the long term and prevent corruption, maladministration and substantial waste of public resources. Council and Council officers and consultants working for Council will be accountable for their actions in the development of the Project. All aspects of the process will be recorded meticulously.

Monitoring and Evaluating Performance: Performance evaluation is an important prerequisite for determining whether value for money was obtained from the contract. It is important to specify explicit, objective and measurable performance indicators before the commencement of the Project. The performance indicators should also relate to the predetermined selection criteria developed for the contract brief. Consultants should know from the outset not only what performance is expected of them, but also what methodology will be used to evaluate their performance.

These principles are intended to achieve an equitable, justifiable and sound process according equal opportunity for all participants rather than an approach that is necessarily procedurally perfect. The process should be applied with common sense and with flexibility in process design where appropriate.