PROBITY STANDARD

Adopted: 12 August 2022

TRIM 217107.2022

1. STANDARD SUMMARY

This Standard establishes a structure and process for ensuring integrity and probity is upheld in the management and conduct of Liverpool City Council's (Council) operations by providing probity oversight of projects considered to have a medium to high probity risk.

2. BACKGROUND

Council is committed to ensuring that all activities are conducted with integrity and to the highest standard.

This Standard is aligned with Council's values and vision and provides a structure to manage risk for complex and sensitive activities. The Standard also provides an application for Council's Code of Conduct.

Effectively addressing and managing probity issues early in any process of a Council project can:

- Improve the quantity and quality of Council involvement by generating confidence in the process;
- Remove ambiguities and enhance the public's confidence in Council processes;
- Assist in ensuring overall project objectives are met; and
- Minimise costly challenges in the future concerning the integrity of processes.

This Standard outlines how Council proposes to undertake and implement probity management.

3. PURPOSE/ OBJECTIVE

This Standard has the following objectives:

3.1. To ensure that Council carries out its legislative and managerial responsibilities in an open, fair, accountable and impartial manner and that clear guidelines are established to effectively manage Council's conflicting roles as an asset owner and as a regulator in respect of that asset.

3.2. To ensure open and transparent processes are maintained to allow Council's processes to be open to scrutiny.

3.3. To ensure all dealings are for the benefit of the public and assist Council in providing the services and facilities it is charged to provide for the community.

3.4. To provide an open competitive environment in which there is confidence that proposals are treated equitably and dealt with on their merits.

3.5. To treat every proposal with impartiality.

3.6. To prevent Council Officials from improper use of their position and act in accordance with the Council's Code of Conduct.

3.7. To ensure all conflict of interests are disclosed and effectively managed.

3.8. To ensure the confidentiality of information is maintained.

3.9. To ensure that processes and protocols are in place to deal with the recognition and management of probity issues.

3.10. To establish a mechanism of independent probity review of processes to ensure the above objectives are met.

4.   DEFINITIONS

Council means the elected representatives, Councillors, who form the governing body of Liverpool City Council and the organisation responsible for the administration of Council affairs and operations and the implementation of Council policies and strategies.

Development Application has the same meaning as in the *Environmental Planning & Assessment Act 1979*.

Development Standards has the same meaning as in the *Environmental Planning & Assessment Act 1979*.

ICAC means Independent Commission Against Corruption*.*

Planning Submission means any Development Application, Voluntary Planning Agreement application and Works-in-Kind application submitted to Council.

Probity means 'Integrity, uprightness and honesty'. Council considers that probity consists of the following 'probity fundamentals' as nominated by ICAC: best value for money, impartiality, dealing with conflicts of interest, accountability & transparency and confidentiality.

Probity Advisor means an appropriately qualified external individual/organisation appointed to observe, review and provide guidance on the probity standard and/or processes of a project or activity.

Probity Auditor is an expert working independently of a project team and is engaged to verify that processes followed are consistent with Government regulations and best practice principles such as the probity fundamentals, primarily after the fact.

Probity Issue means any potential or actual breach of documented processes or the probity fundamentals. It also includes any probity risk that may give rise to questions or concerns regarding the process undertaken.

Probity Officer is an experienced internal Council official who has the necessary autonomy and independence to challenge decisions made and processes followed and, where necessary, has the ability to convey any concerns they might have to senior management and recommend options to reduce risk exposure on the project.

Probity Personnel is a collective term that includes Probity Advisor, Probity Auditor and Probity Officer.

Project includes all activities of Council which assess Proposals and Planning Submissions through the processes listed in 5.3 below.

Project Lead is the Council staff member with responsibility to administer the process listed in 5.3 below.

Proposals are any formal submission to Council seeking to conduct business with Council. This may be in response to a formal request from Council or may be an unsolicited proposal.

Standard means Council's Probity Standard, this document.

Unsolicited Proposal is an approach to Council from a Proponent with a proposal to deal directly with Council over a commercial proposition, where Council has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.

Voluntary Planning Agreement (VPA) is a voluntary agreement or other arrangement between a planning authority and a developer, where the developer proposes to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

Works-in-Kind (WIK) refers to the construction or provision of the whole or part of public amenities, public services and/ or land that are identified in a works schedule in the contributions plan that applies to the site.

5. STANDARD STATEMENT

This Standard applies to the following:

5.1. This Standard covers all elected members of Council, all personnel employed by Council, any person or organisation contracted to or acting on behalf of Council, any person or organisation employed to work on Council premises or facilities and all activities of the Council.

5.2. This Standard does not confer any delegated authority upon any person. All delegations to staff are issued by the Chief Executive Officer.

5.3. This Standard provides specific guidance in relation to the following activities of Council

    5.3.1. Procurement;

    5.3.2. Unsolicited proposals;

    5.3.3. Works in Kind agreements; and

    5.3.4. Voluntary Planning agreements.

Probity considerations for Council activity outside of the above services are covered by Council's Code of Conduct and other existing policies of Council.

5.4. Council shall ensure that policies and procedures in the service areas set out in 5.3 above are consistent with this standard.

5.5. Council shall ensure that the nominated Probity Personnel have full access to all information considered relevant to the brief.

5.6. Probity Personnel shall not make decisions about a particular course of action contemplated by Council. The role of Probity Personnel is to provide advice for consideration by Council.

5.7. Probity Personnel shall not offer advice on decisions about a particular course of action contemplated by Council, except in respect of probity matters.

6. STANDARD IMPLEMENTATION

6.1. This Standard should be read in conjunction with related policies as set out in section 13 below.

6.2. Council delegates the following:

- Coordinator Governance the authority to engage a Probity Advisor for Projects rated "High Risk"; or to Senior Governance Officers as instructed.
- Council's Probity Officer to conduct probity reviews for Projects deemed "Medium Risk".

- Project teams are to manage probity reviews through procedural compliance and sound decision making for projects rated "Low Risk".

The level of risk will be determined in accordance with the procedures set out in sections 7 to 11 below.

6.3. Where a Probity Officer is engaged, they will prepare a Probity Review Checklist at the completion of the process.

6.4. Where a Probity Advisor is engaged, a written report will be supplied at the conclusion of the process to support Council decision making.

6.5. Manager Governance may at their discretion engage a Probity Advisor in the event that its Probity Officer/s are unavailable, or the proposed project has such a degree of complexity that it cannot be appropriately managed internally.

6.6. The Chief Executive Officer or Head of Audit and Risk or General Counsel may initiate a Probity Audit for any reason. The Probity Auditor will examine and evaluate the information and relevant processes from beginning to end for a project requiring probity assessment. They will document the outcomes of the audit including an expression of their opinion and adopted audit methodology.

6.7. For projects where Probity Personnel are engaged, the Project Lead is to ensure that:

- the Probity Personnel are instructed in a timely manner;
- any probity issues/risks are brought to the immediate attention of the Probity Personnel for advice;
- that the Probity Personnel is provided with all relevant documentation upon their request in order to carry out their function; and
- where a Probity Advisor is engaged, that they are made aware of all project related meetings to enable attendance by the Probity Advisor.

6.8. For all projects determined to be low risk, it is the responsibility of the Project Lead and all personnel associated with the project to ensure that the principles of probity are adhered to. Any Probity issues must be immediately reported to Coordinator Governance.

6.9. It is the personal responsibility of all Council employees and agents thereof to have knowledge of, and to ensure compliance with this Standard.

7. PROCUREMENT

7.1. For Procurement related projects, the Project Lead is typically the Tender Chairperson.

7.2. Prior to releasing procurement documents to the market, the Tender Chairperson must ensure that a Probity Risk Assessment is completed and verified by the Procurement Convenor to assess the probity risk level of the procurement activity.

7.3. Following completion of the Probity Risk Assessment a Probity Officer (for medium risk) or Probity Advisor (high risk) is to be engaged prior to the procurement being released to market. Where a Probity Advisor is engaged, they are to be engaged by Council's Governance team.

7.4. At the conclusion of the evaluation period, the Probity Personnel is to provide a report that will accompany the evaluation report for Council approval.

8. UNSOLICITED PROPOSALS

8.1. For Unsolicited Proposals, the Project Lead is typically the Manager City Economy.

8.2. Unsolicited Proposals are considered high risk as the opportunity to determine fairness and value for money through a tendering process is not available. As such, Council is to appoint Probity Advisor's to all unsolicited proposal projects that proceed to Stage B of assessment.

8.3. A Probity Advisor's report is to accompany recommendations at completion of the unsolicited proposal process.

9. VOLUNTARY PLANNING AGREEMENTS (VPA)

9.1. For VPAs, the Project Lead is typically the Planning Agreements Officer and/or the Coordinator Contributions Planning.

9.2. VPAs in conjunction with a development application that includes a proposed variation, greater than 10% to development standards, are considered high risk. For these VPAs, a Probity Advisor is to be engaged. All other VPAs or variations to executed VPAs are considered medium risk and will require the appointment of a Probity Officer.

The probity report/probity checklist is to be submitted at two points within a VPA process. These are at endorsement prior to public exhibition and for final delegated approval following public exhibition.

10. WORKS IN KIND AGREEMENTS

10.1. For Works in Kind Agreements, the Project Lead is typically the Land Development Engineer.

10.2. Prior to assessment of any WIK application, the Land Development Engineer must ensure that a Probity Risk Assessment is completed and verified by the Coordinator Governance to assess the probity risk level of the application.

10.3. Following completion of the Probity Risk Assessment, a Probity Officer (for medium risk) or Probity Advisor (high risk) is to be engaged prior to commencement of the assessment. Where a Probity Advisor is engaged, they are to be engaged by Council's Governance Unit in accordance with Council's Procurement Policy.

10.4. At the conclusion of the application assessment, the Probity Personnel is to provide a report that will accompany the WIK Agreement for approval.

11. ORGANISATION WIDE REPORTING

11.1. It is the responsibility of all Project Leads to ensure that a copy of all Probity Reports from Probity Advisors and Probity Auditors are provided to the Coordinator Governance. This is to ensure any trends of probity issues are appropriately addressed at a whole of Council level.

11.2. The Coordinator Governance will report to the Audit and Risk Committee bi-annually on probity risk, controls and adherence. The report will include at a minimum, the use of probity resources across projects, any probity risk or issue trends identified and any Council wide mitigation actions initiated in response to issues arising.

12. THIS STANDARD HAS BEEN DEVELOPMENT IN CONSULTATION WITH

- Planning and Compliance
- Audit, Risk and Improvement
- Executive Leadership team
- Audit Risk and Improvement Committee

13. RELATED POLICIES/GUIDELINES
Code of Conduct
Procurement Standards
Procurement Policy
Ethical Governance: Internal Reporting Policy
Enterprise Risk Management Policy

Fraud and Corruption Prevention Policy
Sale of Council Owned Land Policy
Works-In-Kind Policy
Works-in-Kind Procedure
VPA Policy
VPA Procedure
Development and Subdivision of Land Policy
Partnership and Joint Venture Policy
Unsolicited Proposal Process Guide
Division of Local Government: *Tendering Guidelines for NSW Local Government*
NSW Government Procurement: *NSW Government Code of Practice of Procurement 2005*
NSW Ombudsman: *Good Conduct and Administrative Practice 2017*
ICAC: *Corruption and Integrity in the Public Sector: An assessment of current trends December 2018*
ICAC: *Probity and Probity Advising: Guidelines for managing public sector projects 2005*
ICAC: *Direct Negotiations: Guidelines for Managing Risk August 2018*
ICAC: *Corruption Risks in NSW Development Approval Processes September 2007*
ICAC: *Lobbying Local Government Councillors August 2006*

AUTHORISED BY
Chief Executive Officer

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DEPARTMENT RESPONSIBLE
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VERSIONS

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1	CEO	New Standard	12/08/2022	217107.2022