



December 2023

Probity Plan

Terminal Protection Structure at Wamberal Beach

Version Control

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Amendments		

Approvals

This document has been approved by:

Name	Signature	Title	Date
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1. Overview

1.1 Background

- 1.1.1 Wamberal Beach, which stretches from Wamberal Lagoon to the Terrigal Lagoon, is located within the Central Coast Council local government area. Being a popular and desirable location to live, the southern end of Wamberal Beach is characterised by private properties that back directly onto the beach. The remaining land alongside the beach is owned either by Council or Office of Strategic Lands (**OSL**).
- 1.1.2 Wamberal Beach is one of several locations across NSW that is vulnerable to coastal erosion, and it has severe erosion problems having borne the brunt of several major storms over the last 50 years. The most recent storm, which occurred in mid-2020, eroded the ground under those properties at the southern end of Wamberal Beach and approximately 54 residents had to be evacuated for public safety reasons. These homes (as well as other coastal infrastructure) are at risk today of further damage, collapse or otherwise being swept away by the sea.
- 1.1.3 To combat the erosion risks and ensure that there continues to be recreational amenity and public access to Wamberal Beach for the community, a long-term sustainable solution is needed. The solution that Council has resolved to implement is the construction of a 1.4km long seawall at Wamberal Beach (**Project**) in line with its long-term strategy for protecting its coastline from erosion at Wamberal Beach outlined in the *Gosford Beaches Coastal Zone Management Plan dated 3 April 2017*.
- 1.1.4 However, this will involve Council, as a landowner, working with the Wamberal Protection Association Incorporated (**WPA**), a group of residents who also own land along Wamberal Beach, as well as other consultants, to first seek development consent under the *Environmental Planning and Assessment Act 1979 (EP&A Act)* for the coastal protection works, and then to undertake its construction.
- 1.1.5 While there is currently no development application(s) on foot in respect of the Project, it is understood that the WPA will take on a coordination role in respect of any development application(s) required for the Project (the **DA**), and it will be one who engages the consultants needed to prepare the necessary information to support the DA on behalf of all its members as well as Council. Council may also be required to exercise functions as a consent authority for any DA lodged for the Project.
- 1.1.6 There are therefore two main teams within Council who will play key roles in relation to the delivery of the Project:
- (a) the Environment Management Unit (**EMU**) who is responsible for representing Council's interest as a landowner in relation to the Project; and
 - (b) the Development Assessment Unit (**DAU**) who may be responsible for the assessment and determination of any DA submitted, or otherwise play a role in the assessment of it and assist another consent authority in its determination of the DA, including providing the assessment report and recommendation.
- 1.1.7 Both sit within the Environment and Planning Directorate of Council, and a clear organisational separation is required to manage their respective roles and functions in relation to the Project. This is discussed in more detail in clause 10 below.

2. Background and purpose of this Probity Plan

2.1 Council's roles

2.1.1 It is important to recognise that Council has a number of overlapping roles in respect of the Project, which may give rise to a perception of a conflict between their various interests in it, including:

- (a) as landowner – noting the Council currently owns the following Road Reserves on the Wamberal Beachfront: ¹
 - (i) between 25 & 27 Ocean View Drive Wamberal;
 - (ii) between 65 & 67 Ocean View Drive, Wamberal; and
 - (iii) between 4 Surfers Road & 1 Calais Road Wamberal.
- (b) as potentially the consent authority under the EP&A Act, or alternatively, if another consent authority is designated (for example, a planning panel), Council will play a supporting role in the assessment of any DA for the Project, including the preparation of an assessment report; and
- (c) as a policy maker acting on behalf of the community.

2.2 Probity Principles

2.2.1 Because of this, Council needs to set standards of practice and behaviours for those involved in the Project to ensure that all aspects are conducted according to the following fundamental principles:

- (a) integrity;
- (b) fairness and impartiality (consistent with the rules of procedural fairness);
- (c) accountability and transparency;
- (d) independence;
- (e) the maintenance of security and confidentiality of documents;
- (f) the management of conflicts of interests; and
- (g) achieving value for money,

(together, the **Probity Principles**)

and also in accordance with:

- (a) Council's various Policies, Codes of Conduct and its Statement of Business Ethics; and

¹ Council may, during the course of this Project, acquire or be vested with or otherwise be deemed responsible for other Road Reserves and/ or parcels of land within the embayment that may form part of the Project. In this circumstance, Council's role as a landowner as described under 2.1.1 (a) would also extend to those Road Reserves and/or parcels of land.

- (b) the ICAC's guidance material (including Corruption risks in NSW development approval processes dated September 2007 and Probity and probity advising dated November 2005, and other related policies).

2.2.2 Some of these principles as well as other probity considerations are discussed in more detail in clauses 7 - 12, below.

2.3 Purpose of this Probity Plan

2.3.1 This Probity Plan therefore seeks to:

- (a) identify the probity risks that may arise from the Project generally and the various roles that Council will play in it;
- (b) establish the probity controls, principles and procedures that apply;
- (c) facilitate transparency and accountability through a comprehensive and documented audit trail;
- (d) ensure stakeholder engagement activities and information-sharing are managed consistently, ethically and transparently (consistent with confidentiality obligations);
- (e) establish a process for how probity complaints and queries are dealt with; and
- (f) assist Council and Project Personnel in identifying and managing probity issues and ensure that all those involved in the process have guidance on key issues, and adhere to the probity principles (as described in clause 2.2, above).

3. Application of this Probity Plan

3.1 Application

3.1.1 This Probity Plan is intended to apply to, and provide guidance for:

- (a) Councillors;
- (b) all members of Council staff;
- (c) all members of any Council committees that are established, advisory (or similar) committees, including Councillors and members of such committees who are not Councillors;
- (d) the External Probity Advisor; and
- (e) any Council advisors or consultants,

3.1.2 who may be involved in the Project, or who may have access to confidential information related to the Project, herein after referred to as the "Project Personnel".

3.2 Existing obligations

3.2.1 Council and Project Personnel are bound by a number of statutory obligations, policies and procedures in respect of the Project generally, as well as probity requirements, including confidentiality and conflicts of interest.

3.2.2 Some of the requirements include:

- (a) *Local Government Act 1993*
- (b) *Local Government (General) Regulation 2021*
- (c) *Environmental Planning and Assessment Act 1979*
- (d) *Environmental Planning and Assessment Regulation 2021*
- (e) Central Coast Local Environment Plan 2022
- (f) Central Coast Development Control Plan 2022
- (g) Central Coast Council Statement of Business Ethics
- (h) Central Coast Council Code of Conduct & Procedures
- (i) Central Coast Council Code of Meeting Practice
- (j) Central Coast Council Records Management Policy
- (k) Central Coast Council Gifts and Benefits Procedure
- (l) ICAC – Probity and probity advising – Guidelines for managing public sector projects
- (m) NSW Ombudsman – Good Conduct and Administrative Practice Guidelines

3.2.3 This Probity Plan does not seek to replace any obligations that arise in respect of these statutory obligations, policies and procedures. Rather they are additional to them, and do not derogate from them in any way.

3.2.4 As such, this Probity Plan should be read in conjunction with those obligations, policies and procedures, including the ICAC guidance material and the NSW Ombudsman probity fundamentals.

4. Administration and interpretation

4.1 Distribution

4.1.1 A copy of this Probity Plan (and any approved amended version) will be provided to all Project Personnel, as well as any person who may have access to sensitive information about the Project.

4.1.2 It is the responsibility of each of the above to read and understand, and to comply with, the requirements of this Probity Plan.

4.2 Amendments to the Probity Plan

- 4.2.1 The Probity Plan may only be amended if required and as necessary, following consultation with the External Probity Advisor. The reasons for amending the Probity Plan must be documented.

4.3 Interpretation

- 4.3.1 The interpretive provisions, including defined terms, are set out in Schedule 2 to this Probity Plan.

5. How to comply with this Probity Plan and dealing with breaches

5.1 Obligations in respect of the Project under this Probity Plan

- 5.1.1 Project Personnel must ensure that, in everything that they do in respect of the Project, they:
- (a) act in the interests of the community as a whole and not in their own self-interest or for personal gain, and also a way that complies with, or gives effect to, the Probity Principles - in a common-sense way and with flexibility where appropriate;
 - (b) perform their duties in a fair and unbiased way and act reasonably and fairly in the way they make decisions to instil public confidence in the Project and any decisions made in respect of it;
 - (c) ensure their conduct in connection with the Project is to the highest and ethical and professional standards, and does not impact upon the integrity of the Project or give rise to a perception that would allow for the erosion of confidence in the way the Project is being conducted.

5.2 Complying with this Probity Plan

- 5.2.1 All Program Personnel must therefore:
- (a) read this Probity Plan;
 - (b) understand how their role fits into the Project;
 - (c) be aware of and mindful of the fundamental probity principles outlined in this Probity Plan (in particular, those matters outlined in clauses 7 - 12, and how they are relevant to your role);
 - (d) consider if they have any conflicts of interest that need to be declared and promptly declare them (clause 8);
 - (e) ensure they update their conflict of interest declarations throughout the Project if their situation changes;
 - (f) ensure they understand how Program Information is to be handled (clause 9) and the information barriers (clause 10) that need to be in place and implement the required controls;
 - (g) ensure they understand the communication protocols (clause 11) and record keeping protocols (clause 12) and how they are relevant to their role;

- (h) ensure they know who to contact if they have a query or wish to raise something (clause 14);
- (i) sign the Declaration of Understanding and of Conflicts of Interest Form at **Attachment A** and return the signed copy to the Probity Officer to signify their acceptance of the Probity Plan and their agreement to comply with the terms contained in it.

6. Key roles and responsibilities

6.1 Individuals, bodies and agencies who may play a role in the Project

There are a number of specific individuals and bodies who may play a role in the assessment and determination of any development application submitted to Council in relation to the Project, whether it is considering information provided, making a decision, responding to a referral or engaging an external consultant. This includes:

- 6.1.1 the Elected Council or the Administrator, whose role will be governed by the requirements in the LG Act;
- 6.1.2 the Hunter and Central Coast Region Planning Panel or any other Panel established for the purposes of the Act, who may play a role in the assessment and determination of any development application submitted to Council in relation to the Project, and in doing so will provide independent, merit-based decision making in relation to it in;
- 6.1.3 the Chief Executive Officer;
- 6.1.4 Council staff including the Director, Environment and Planning, whose role is to provide overarching support in the Project to implement the Council's strategic direction.

6.2 Consultants

- 6.2.1 Council may also engage a range of external consultants to assist it undertaking its functions in respect of the Project.
- 6.2.2 Any consultants who are directly engaged by Council must be engaged in accordance with the Council's statutory obligations and procurement policies and guidelines. They must also comply with the written terms of their engagement, Council's Code of Conduct, its Statement of Business Ethics and this Probity Plan.
- 6.2.3 Consultants are required to sign confidentiality and conflict of interest undertakings. In addition, conflicts of interest which arise before or during the consultant's assignment must be disclosed to the Probity Officer or External Probity Advisor as soon as possible.

6.3 Specific units within Council involved in the Project and their roles

6.3.1 EMU

- (a) The EMU is comprised of the persons outlined in Part 1 of Schedule 1. The Coordinator for this team is its Unit Manager.

- (b) It is responsible for:
 - (i) entering into arrangements with the WPA to represent Council's interests in the development application process, as part of a whole of embayment solution for the Project;
 - (ii) engaging with the WPA and any consultants it engages to prepare and provide input into the preparation of supporting documents, reports, plans and other material or information that may be required to support a development application for the Project – including but not limited to landscape, planning, geotechnical and design matters.
 - (iii) providing landowners consent for the lodgement of any development application for the Project;
 - (iv) participating in and providing input into the assessment of any development application submitted for approval under the EP&A Act – including meetings with Council's DAU to discuss landowner issues and concerns about the Project;
 - (v) any other activities required to represent Council's interest in the Project as a landowner.

6.3.2 DAU

- (a) The DAU is comprised of the persons outlined in Part 2 of Schedule 1. The Coordinator for this team is its Unit Manager.
- (b) It may be responsible for undertaking the full and complete assessment of any submitted development application, and associated functions such as pre-lodgement advice and includes any associated administrative tasks, in accordance with the requirements of the EP&A Act. Potentially including the following:
 - (i) pre-lodgement advisory services and meetings with applicants and referral authorities;
 - (ii) the checking of any development application lodged for completeness as well as any general requirements;
 - (iii) the triaging of a lodged application including the registration of the application and supporting documents, and the updating Council's development application tracker.
 - (iv) initiating notification and exhibition requirements;
 - (v) identifying and initiating any internal and external referrals which may be required;
 - (vi) engaging consultants to carry out various assessment functions, such as planning, engineering requirements, etc. This may include liaising with relevant Government agencies or a Planning Panel to assist with the assessment of an aspect of the development application;
 - (vii) requesting additional information from the applicants and the consideration of any responses received;

- (viii) the detailed consideration of environmental or planning matters, as required by the EP&A Act, as part of the assessment of the development application;
- (ix) identifying conditions of development consent that should be applied to any consent granted for the Project;
- (x) assess any development application(s) and provide an assessment report and recommendation to the consent authority, in a format suitable for inclusion in the Council's business papers and determination by the determining authority;
- (xi) any other activities required for this purpose.

6.4 Probity roles

6.4.1 Probity Officer

- (a) Jade Maskiewicz holds the position of Probity Officer within Council.
- (b) The Probity Officer will be responsible for:
 - (i) ensuring that Project Personnel have been given a copy of the Probity Plan, understand their obligations under it and that it is observed at all times;
 - (ii) ensuring that Project Personnel complete their Declaration of Understanding and Conflicts of interest Form in line with the form at Attachment A;
 - (iii) reviewing the implementation of this Probity Plan and monitoring and assessing all relevant procedures for accountability, confidentiality and security of documentation;
 - (iv) conducting reviews and investigations into any matters that may be in breach of the Probity Plan; and
 - (v) engaging with the External Probity Advisor for advice on probity issues as they arise.

6.4.2 External Probity Advisor

6.4.3 Maddocks has been appointed as the external probity adviser to Council (External Probity Advisor) for the Project.

6.4.4 The External Probity Advisor's contact details are as follows:

Maddocks,
Angel Place,
Level 27, 123 Pitt Street, Sydney NSW 2000
Telephone: (02) 9291 6167

6.4.5 Council may (if it considers it appropriate) appoint a different external probity advisor in respect of specific aspects, activities or work streams for the Project.

6.4.6 Part of the role of the External Probity Advisor is to work with Council to establish processes that are intended to ensure:

- (i) that the Project is conducted in an open, fair, accountable manner and in accordance with consistent practices that are designed to help Council to realise its legal and policy objectives for the Project; and
- (ii) the defensibility of the Project and its ability to withstand adverse scrutiny;
- (iii) that actual, potential and perceived conflicts of interest are identified and managed; and
- (iv) that all confidential information is secure.

6.4.7 The External Probity Advisor's tasks include:

- (i) assisting in development of and then sign off of this Probity Plan;
- (ii) explaining the Probity Plan to Project Personnel;
- (iii) providing advice and guidance on probity issues as they arise during the Project;
- (iv) attending meetings, when requested by Council or where the External Probity Advisor is of the view that it is necessary to ensure compliance with the Probity Plan;
- (v) reviewing the implementation of this Probity Plan and where probity requirements are not being met, identifying the non-conformities and any reasons for them in writing, and, if necessary, suggesting solutions to be implemented to ensure compliance and monitoring their implementation;
- (vi) engaging with Council's Probity Officer on probity issues as they arise;
- (vii) providing a final probity report confirming whether all aspects of the Project has been conducted in accordance with the Probity Plan; and
- (viii) other activities as may be required under this Probity Plan.

7. Fundamental probity principles in detail

7.1 Acting with integrity and accountability

- 7.1.1 Project Personnel involved in the Project are under an unequivocal obligation to act ethically in the performance of all of their duties. This means acting morally and in good faith with the community, each other, all levels of government and other agencies in all dealings and their decision making.
- 7.1.2 All Project Personnel must act in good faith, that is, with honesty, for a proper purpose and without exceeding any powers conferred upon them. All dealings undertaken with each other, and relevant stakeholders must be conducted in a frank and honest manner and should avoid any conduct that would give rise to the perception of any departure from these principles.

7.2 Acting reasonably, impartially and fairly

7.2.1 The community expects the Project will be undertaken in an impartial and unbiased manner by people who have no personal interest in the outcome. Because any form of bias (where actual, perceived or potential) has the potential to affect the integrity and outcome of this matter, it will be important that all Project Personnel involved in implementing these processes do so in a way that demonstrates that their practices are consistent, accountable, transparent and open. This will ensure confidence in the outcomes and that any decisions are beyond reproach.

1.1.2 Any Project Personnel involved in the Project must not participate in the process or act as a decision maker in relation to a matter in which they have a personal interest in the outcome. In addition, where a discretionary power is to be exercised, it must be done so by Project Personnel in an impartial and fair manner and in a way that is reasonable and has regard to all facts and the circumstances.

7.3 Accountability and transparency

7.3.1 Accountability and transparency are interrelated concepts. Councils need to be able demonstrate and justify their use of public resources and make sure they are achieving value for money. Transparency means that the Project will be open to scrutiny and potential criticism. Using transparent and clearly documented processes will be essential in this Project and will enhance confidence in the outcomes.

7.3.2 In developing the processes for any aspect of the Project, Project Personnel must ensure that clear criteria are established to enable the efficient and effective assessment and determination of the Project such that any assessment or decision is fair, transparent, consistent and repeatable.

7.3.3 In addition, Council and Project Personnel should ensure that:

- (a) they keep appropriate records;
- (b) they correct mistakes;
- (c) there is appropriate access to information;
- (d) they take responsibility for past and expected performance; and
- (e) they accept scrutiny.

These practices will promote accountability and transparency in the Project.

7.4 Confidentiality, record keeping and maintenance of independence through the establishment of an information barrier

7.4.1 All Project Personnel are responsible for keeping personal, commercially sensitive and confidential information in the Project confidential, secure, and protected from authorised access and disclosure. Any information obtained for the purposes of the Project should only be used or disclosed for an approved purpose.

7.4.2 Because of Councils different roles in relation to the Project, there is a need to preserve independence through the establishment of an information barrier to ensure that documents and other information in relation to the two separate roles are kept separate and appropriately quarantined from each other.

- 7.4.3 For more information about the confidentiality, record keeping and information barrier protocols that apply in respect of this project, see clauses 9, 10 and 12 below.

8. Conflicts of interest

8.1 Overview

- 8.1.1 Conflicts of interest arise when persons are influenced or appear to be influenced by personal or private interests when carrying out their public or professional duty.
- 8.1.2 Where Project Personnel have a conflict of interest in relation to the Project, inadequate handling of that conflict could result in:
- (a) the perception that the Project lacks independence; or
 - (b) the potential for corruption;
 - (c) which could affect the integrity of the Project.
- 8.1.3 As a result, Council seeks to ensure that conflicts of interest are disclosed and effectively managed. Therefore actual, potential or reasonably perceived conflicts of Project Personnel must be identified, and appropriate action taken to deal with the conflict to the satisfaction of the Probity Officer and the External Probity Advisor.
- 8.1.4 In addition, to avoid the potential for conflicts of interest to arise in the Project, Project Personnel participating in the Project:
- (a) must exercise their powers and discharge their duties in good faith in the best interests of Council, and for a proper purpose;
 - (b) should avoid placing themselves under any financial or other obligation that might influence them in the performance of their official duties; and
 - (c) declare any interests or relationships that give rise to a conflict of interest (or could be perceived to) by completing and executing the Confidentiality and Independence Form at Attachment A of this Probity Plan.

8.2 Declarations

- 8.2.1 The Probity Officer will be responsible for ensuring that all the Project Personnel make their declarations by signing the Declaration of Understanding and Conflicts of interest Form at Attachment A.
- 8.2.2 These declarations should be made by Project Personnel before they participate in the Program and must (if a conflict of interest is declared) fully and appropriately disclose the type of conflict that arises.
- 8.2.3 In addition, conflicts of interest that arise during the course of the Project must immediately disclosed to the Probity Officer. Failure to disclose any conflict of interest may result in disciplinary action and/or the termination of the relationship.
- 8.2.4 The Probity Officer will also remind Project Personnel of their responsibility to avoid conflicts of interest and to confirm on a regular basis that they do not have any conflicts.

- 8.2.5 All Project Personnel are required to declare that they have no current financial or other relationship which could be perceived to create a conflict of interest in relation to the Project.

8.3 Receiving declarations

- 8.3.1 The Probity Officer is to receive any declaration of conflict of interest disclosed by any Project Personnel and to ensure that they are handled in accordance with the requirements set out in clause 8.4.
- 8.3.2 All completed forms must be stored electronically in an appropriate file for the probity aspects of the Project in a secure file on a server within Council's computer network or in some other secure cloud-based service with appropriate classifications and security protections including passwords, in accordance with clause 12.

8.4 Handling declarations

- 8.4.1 For Project Personnel generally, the consideration of any declared conflicts of interest and the management of those declared conflicts should be referred to and initially handled by the Probity Officer.
- 8.4.2 The Probity Officer will apply a flexible and pragmatic approach to the management and mitigation of conflicts of interest, who may seek the advice of the External Probity Advisor in respect of the conflict of interest that has been declared.
- 8.4.3 Any conflicts of interest on the part of a Councillor or the General Manager should be dealt with in accordance with the LG Act and Council's Code of Conduct and Statement of Business Ethics and advice sought from the External Probity Advisor.
- 8.4.4 If the risks attached to the declaration of any conflict of interest are identified but are classified as 'manageable', this is to be recorded by the Probity Officer with the details of any action required. If management or mitigation measures are needed, any that are adopted should be pragmatic but defensible.
- 8.4.5 Whatever management or mitigation measure is adopted, the Project Personnel, the subject of the conflict-of-interest issue, must also ensure that they comply with measures or actions adopted and recorded to address identified the conflict of interest.

8.5 Advice from the External Probity Adviser

- 8.5.1 The advice of the External Probity Adviser should be obtained where there is doubt as to whether a conflict of interest exists, or how to handle the conflict.
- 8.5.2 Where conflicts of interest are identified or are perceived to exist, the External Probity Advisor (in consultation with the Council and the Probity Officer) will give consideration to the issues and their likely impact on the transparency and independence of the process.
- 8.5.3 Where necessary, advice will be provided as to whether it is appropriate for the person(s) concerned to discontinue their involvement as part of the Project or whether appropriate procedures or remedies can be implemented to preserve the integrity of the process.

8.6 Questions to ask in deciding whether there is a conflict of interest

- 8.6.1 It is the responsibility of the individual involved to raise any interest which might give rise to an actual or perceived conflict which might affect the integrity of the Project.
- 8.6.2 The following questions will help the person with the interest in question in deciding the issue, in the first instance, as to whether a conflict of interest exists, or whether a person's behaviour could create the impression that it does, and so undermine confidence in Council or the Project.
- 8.6.3 If a person answers 'Yes' to any of the following questions, they must seriously consider their position and seek advice from the Probity Officer and/or the External Probity Advisor:
 - (a) Is there a reasonable likelihood that I, a relative, partner or associate stand to receive an appreciable financial gain or loss from Council's decision or action in relation to the Project?
 - (b) Do I, a relative, partner or associate stand to gain or lose my/our reputation because of Council's decision or action in relation to the Project?
 - (c) Have I made any promises or commitments to any person in relation to the Project?
 - (d) Have I received or been promised a benefit or hospitality from someone who stands to gain or lose from Council's decision or actions?
 - (e) Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisation or individuals, who stand to gain or lose from Council's consideration in relation to the Project?
 - (f) (For Councillors) Is the Respondent an election campaign donor or someone who helped during my election campaign?
 - (g) Could there be benefits for me in the future that could cast doubt on my objectivity?
 - (h) If I do participate in assessment or decision-making process of the Divestment Process, would I be concerned if my colleagues or the public became aware of my association or connection with a Respondent?
 - (i) Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?
- 8.6.4 Other matters to consider:
 - (a) Do I need to seek advice or discuss the matter with an objective party?
 - (b) Am I confident of my ability to act impartially and in the public interest?

8.7 Questions for the Probity Officer (and if appropriate the Council) to ask themselves when handling a disclosed interest

- 8.7.1 When conflicts of interests are declared by Project Personnel, the party the disclosure (see clause 8.4 above) is to determine the appropriate management or mitigation measures to minimise any risks associated with these interests. It would

be prudent to err on the side of caution and seek advice of the External Probity Advisor where there is doubt.

- 8.7.2 Disclosures should be handled having regard to the following questions:
- (a) Does the matter fall within the definition of a pecuniary or non-pecuniary interest in the LG Act and Council's Code of Conduct?
 - (b) Is all the relevant information available to ensure proper assessment?
 - (c) What is the nature of the relationship or association that has given (or could give) rise to a conflict of interest?
 - (d) Has appropriate legal and other advice been obtained?
 - (e) Is the matter or issue one of great public interest? Is it controversial?
 - (f) Could the individual's involvement cast doubt on their integrity?
 - (g) Could the individual's involvement cast doubt on Council's integrity or the integrity of the Project?
 - (h) How would it look to a member of the public?
 - (i) What is the best option to ensure impartiality, fairness and protection of the public interest?
 - (j) Should the matter be referred to the ICAC?

8.8 Mitigation Measures

- 8.8.1 The Probity Officer and Council together with the External Probity Advisor will determine what if any mitigation measures are needed, consistent with this Probity Plan, where Project Personnel involved identify any conflicts.
- 8.8.2 Action will be taken to deal with a conflict of interest as soon as it has been identified, and all Project Personnel involved must comply with any measures put in place, to the satisfaction of the Probity Officer.

8.9 Hospitality, Gifts and Benefits

- 8.9.1 Members of the community need to be confident that Project Personnel are not influenced by gifts or benefits in carrying out their duties. Gifts and favours include, but are not limited to, free (or less than market value) accommodation, entertainment, hospitality, vouchers of any kind and travel.
- 8.9.2 Gifts and other favours can cause a conflict of interest to arise because they create a sense of obligation in the receiver. The principles of Council's Code of Conduct and Statement of Business Ethics will strictly apply in relation to any gifts and favours in relation to the Project.
- 8.9.3 To maintain the integrity of the Project, Project Personnel and members of their immediate family must not seek or accept benefits from interested parties (or any associated parties) themselves or anyone else. Project Personnel must also avoid giving any indication that hospitality, gifts and other benefits will be accepted, or that these could influence decisions or recommendations.

- 8.9.1 If a Project Personnel participating in the Project (or anyone in their immediate family) is offered a gift or favour from interested parties (or any associated parties), they must immediately inform the Probity Officer and External Probity Advisor immediately and provide details of the offer that was made, irrespective of whether the offer has been accepted or not. In addition, token benefits or moderate acts of hospitality must be reported to the Probity Officer.
- 8.9.2 Where a gift is given without the person's prior knowledge or consent, or where a gift is given as a token of goodwill to Council, this should be immediately reported to the Probity Officer or External Probity Advisor as soon as possible.
- 8.9.3 Council Associates must also comply with the Gifts and Benefits sections in Council's Codes of Conduct that applies to them.

9. Confidentiality and information security requirements

9.1 What is Project Information?

- 9.1.1 **'Project Information'** means information created or received in the course of the Project that:
 - (a) is non-public and by its nature confidential or sensitive to the Project;
 - (b) is non-public and was obtained as a consequence of the Project Personnel's involvement in the Project;
 - (c) the Project Personnel knows or ought to know is confidential or sensitive;
 - (d) was received in the course of the Project and:
 - (i) it is specifically identified by a participant as confidential;
 - (ii) it contains personal information or is otherwise commercially sensitive (i.e., the information should not generally be known or ascertainable);
 - (iii) its disclosure would cause unreasonable detriment to the owner of the information or another party; and
 - (iv) it was provided with an expressed understanding that it would remain confidential;

but does not include information that:

 - (i) is or becomes public knowledge other than by breach of this Probity Framework or another obligation of confidentiality;
 - (ii) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
 - (iii) is required to be disclosed by law. This includes information that is required to be exhibited and published under the EP&A Act.

9.2 Project Information security measures

- 9.2.1 Project Information must, at all times, be:
 - (a) marked accordingly;

- (b) kept confidential, secure, protected from unauthorised access and only used or disclosed for the approved purposes for which was obtained;
- (c) managed in accordance with the Project Information's sensitivity, the Councils security classification level, any specific direction(s) of the person who provided it, as well as the Councils information management policies and processes;
- (d) only accessible by, or disclosed to, individuals (whether Project Personnel, or otherwise) who have a genuine 'need to know' about the information for the purposes of fulfilling their official role or functions in relation to the Project;

9.2.2 Project Personnel with access to Project Information must:

- (a) be aware that the protection of confidential information and commercially sensitive information is integral to ensuring the probity of the Project;
- (b) be conscious of and respect the need to protect confidential and commercially sensitive information during the Project;
- (c) ensure that all such information remains confidential and is not disclosed to anyone other than those that have a need to know;
- (d) comply with any information security requirements established under this Probity Plan;
- (e) comply with any of Councils Records and Information Management Policies (as updated from time to time) and any other processes established with respect to the Project Information;
- (f) ensure that all electronic copies of all documents generated during the Project are stored on devices which are password protected and/or in an area of the electronic document records management system or staff network that is only able to be accessed by Project Personnel who are working on the Project;
- (g) ensure that they cannot be overheard by anyone who does not have a 'need to know';
- (h) ensure Project Information is only stored in the approved system(s) and filing location(s) for the Project with appropriate access control restrictions applied; and
- (i) not email Project Information to personal or other non-work email addresses.

9.2.3 Council's Probity Officer may put in place other measures to control documents and Project Information (including electronically stored information) that are in the possession or control of Project Personnel, and which contain Project Information, in order to preserve confidentiality, where necessary.

9.2.4 The obligations to maintain the confidentiality of Project Information continue indefinitely (including, for the avoidance of doubt, after Project Personnel or Participants have ceased to be involved in the Project).

9.3 Electronic Copies

All electronic copies of Project Information received or otherwise generated during the Project must be stored on devices which are password protected and/or in an area of the computer or network that is only able to be accessed by personnel who are working on that component of the Project.

9.4 Reproduction, Photo or Electronic copying

Project Information must only be reproduced or duplicated in accordance with the express permission of the Unit Managers, or a person nominated by them to give that permission. The number of copies should be kept to a minimum.

9.5 Access/Dissemination

9.5.1 Project Information should be distributed on a 'need to know' basis only and should not be disclosed except as expressly permitted for the purposes of the proper conduct of duties in relation to the Project.

9.5.2 Any officer or employee who is not directly involved in the Project should not be exposed to confidential or commercially sensitive information relating to it. Where reasonable, such persons should be informed of the importance of not disclosing confidential information.

9.6 Confidentiality acknowledgements and deeds

9.6.1 All Project Personnel must complete and execute the Declaration of Understanding and Conflicts of interest Form at Attachment A.

9.6.1 Completed Declaration of Understanding and Conflicts of interest Form must be returned to the Probity Officer and stored in a secure probity file for the Project on a server within Council's computer network or in some other secure cloud-based service with appropriate classifications and security protections including passwords, in accordance with clause 12.

9.7 Disclosure of Program Information to other individuals (not Project Personnel)

9.7.1 Where appropriate, the Probity Officer may ask that individuals who are not Project Personnel, but who the Probity Officer determines have a legitimate need to access a specific component of the Project Information, to comply with conditions before being given access to that information. Such conditions could include (but are not limited to):

- (a) signing a confidentiality deed poll;
- (b) signing a conflict-of-interest declaration;
- (c) receiving a probity briefing.

9.7.2 The Probity Officer may seek advice from the External Probity Adviser before making a determination under clause 9.7.1, and should document any such determination together with reasons.

10. Information barrier protocols

10.1 To ensure:

- 10.1.1 independence, probity and correct management of Project Information; and
- 10.1.2 that any processes and actions undertaken in respect of the Project are robust, transparent and defensible;

the following information barrier protocols outlined in this clause 10 will be implemented by Council between the EMU and the DAU. This means that the Project Personnel in these Units will operate separately from each other at all times.

- 10.2 Except in the usual course of liaisons and discussions between a consent authority and a landowner, including but not limited to:

- 10.2.1 pre-lodgement discussions about development application;
- 10.2.2 the assessment process for a development application including exhibition; and
- 10.2.3 additional information requests,

no discussions are to occur between the EMU and DAU on an informal or casual basis in respect of this Project. No discussions about sensitive Project Information related to any aspect of the Project may occur outside of the Units.

- 10.3 Clause 10.2 does not prevent the EMU and DAU from liaising or discussing the Project in circumstances where the information discussed is already in the public domain. For example, at meetings with community representatives, when updating the Council's website content, non-sensitive Project Information discussed at briefings with the Administrator or Chief Executive Officer.

- 10.4 Project Personnel in each Unit must also take effective steps to protect the confidentiality of all correspondence, meetings, telephone and video calls and similar communication between themselves and between themselves and any other person. No information is to be shared by the EMU with the DAU (and vice versa).

- 10.5 Except in the usual course of liaison and discussions between a consent authority and landowner, meetings held by each Unit about the Project should be behind closed doors to ensure that discussions are not overheard by the other Unit or others who do not have a need to know.

- 10.6 To the extent that Project Personnel in each Team must engage with Project Personnel in the other Team in respect of the Project, including pre-lodgement meetings and any conducted during the course of the development application assessment process, the meeting should be conducted in a professional and on an arm's length basis, and an appropriate record of the meeting created in accordance with the record keeping requirements outlined in clause 12.

- 10.7 Any discussions or other interactions in relation to the Project between Project Personnel in different Units must be recorded in a file note or other record immediately, and this should contain key details about the substantive issues that were discussed, any decisions made, any agreed actions and next steps. These records must be kept on file within the relevant Team's secure file/folder in ECM.

- 10.8 No member of the EMU will also be a member of the DAU and no member of DAU will also be a member of the EMU at any time. If there is a need for additional Unit members to be involved in the Project, the Unit Manager for that Unit will notify the responsible manager for the other Unit advising them of such change. From the date of their appointment to a Unit in this matter, the new Unit member will be responsible for complying with this Probity Plan.

- 10.9 Each Unit will create separate restricted access files for the storage of hard copy and electronic information and other documents in relation to their aspects of the Project

(Restricted Matter), on a server within Council's computer network or in some other secure cloud-based service with appropriate classifications and security protections including passwords.

- 10.10 Electronic access to a Restricted Matter is restricted to members of the members of the EMU and DAU team. No member of either Unit should access the Restricted Matter of the other Unit.
- 10.11 Each Unit should ensure that when they print anything that is required for their aspect of the Project, each Unit member is responsible for waiting and collecting their printing immediately from the printer that they access with their security card and passcode. No printing related to the Project may be left at any printer. If the printing is sent to a default printer but not collected within 24 hours, the relevant Unit member should ensure that they delete the printing from the queue.
- 10.12 No member of either the EMU or DAU should leave any documents relevant to their aspect of the Project anywhere within Council's Chamber including on a Unit member's desk and to the extent they are (even for a short period), they should be face down and not identifiable.
- 10.13 Each Unit Manager must ensure that the above measures are conveyed and adhered to by the Program Personnel in all Units and are responsible for ensuring each Unit member understands the seriousness of these protocols.
- 10.14 Each Unit Manager must otherwise monitor the operation of the information barrier and compliance with these protocols.
- 10.15 These protocols remain effective after completion of the matter (on an ongoing basis).

11. Communication protocols

11.1 Program communication generally

- 11.1.1 Where Project Personnel must communicate with any person in another team within Council or externally in relation to the Project, the interaction should be documented with key details about the substantive issues that were discussed, any decisions made, any agreed actions and next steps. These records must be kept in each Team's restricted access file for the Project (clause 10.8), and in accordance with the record-keeping requirements outlined in clause 12.
- 11.1.2 Any records detailing any substantive discussions and issues should also be made available to anyone who participated in that discussion following the creation of the record or on request.
- 11.1.3 Project Personnel in the EMU and DAU should also ensure that they adhere to the information barrier controls outlined in clause 10.

11.2 Enquiries from the public

- 11.2.1 General Public enquiries / other general communication with members of the public about regarding the Project and the assessment of any development application(s) will be recorded and dealt with in accordance with the probity principles and practices outlined in this Probity Plan.
- 11.2.2 If any Project Personnel is contacted by an organisation or individual (who is not involved in the Project) about the Project, they must direct the person making the enquiry to the point of contact for the Project and must not say anything about the Project, unless otherwise authorised by their Unit Manager.

- 11.2.3 The Probity Officer must be notified of any grievances or complaints relating to probity about the Project.

11.3 Media

- 11.3.1 Any media contacts or requests concerning the Project should be directed to media@centralcoast.nsw.gov.au.

12. Record keeping requirements

12.1 General

- 12.1.1 It is important that records relating to the Project are maintained in order to allow for independent audit and review. The maintenance of appropriate records increases the accountability and transparency of the process.
- 12.1.2 All aspects and activities undertaken in respect of the Project, including phone conversations, emails, correspondence, and communications and meetings with the public, are to be documented to record an appropriate audit trail. This will provide evidence that all aspects of the program have been carried out appropriately and will help Council to demonstrate that it has acted in accordance with the probity principles in this Probity Plan and any applicable obligations under law and policy.
- 12.1.3 All Project records whether created or received are to be captured and stored in a secure file on a server within Council's computer network or in some other secure cloud-based service with appropriate classifications and security protections including passwords. Where appropriate, locked folders will be used to ensure that only individuals with the 'need to know' the information will have access to the relevant records.
- 12.1.4 Any unauthorised access to the designated secure area by a Current Provider that comes to the attention of the NCA must be immediately reported to the Project Director. The Project Director will initiate further investigations into the matter.

12.2 Minutes of meetings

- 12.2.1 All key issues discussed, and actions agreed at meetings must be recorded including:
- (a) attendees;
 - (b) confirmation that no attendee has any conflict of interest;
 - (c) reminder of confidentiality obligations;
 - (d) decisions and recommendations made;
 - (e) actions agreed; and
 - (f) responsibility and time frame.
- 12.2.2 The Unit Managers will arrange for minutes of these meetings to be maintained.
- 12.2.3 Where Council has appointed independent advisers, records will be made of all key issues raised by those advisers, and the meeting's deliberations on these issues.

13. Breaches of this Probity Plan

- 13.1 A probity breach occurs when there is a deviation from this Probity Plan and agreed process or mitigation measures put in place for managing the probity issues. Where this occurs, this may result in:
- 13.1.1 the integrity of the Project process being compromised;
 - 13.1.2 damage to Project Personnel and Council's reputation;
 - 13.1.3 disciplinary action;
 - 13.1.4 political embarrassment; and
 - 13.1.5 adverse scrutiny into the matter and any decisions.
- 13.2 Any concerns or complaints regarding the probity or conduct of Project Personnel or any suspected breach of this Probity Plan should be promptly brought to the attention of the Probity Officer, who must record and investigate the matter. Following a report of a serious probity breach, it may be appropriate to refer the matter to the External Probity Advisor for legal advice.
- 13.3 The Probity Officer and/or External Probity Advisor may consider options for legal and/or other solutions and formulate a strategy for resolving the probity breach.

14. Assistance and questions

- 14.1 If you have any questions or need assistance, please contact Council's Probity Officer at first instance:

Jade Maskiewicz
0418 756 184
Jade.maskiewicz@centralcoast.nsw.gov.au

Schedule 1 Team Members

Note: This Schedule may be updated from time to time.

Part 1

EMU

Name	Title	Company/Organisation
██████████	Unit Manager, Environmental Management	Central Coast Council
██████████	Section Manager, Catchments to Coast	Central Coast Council
██████████	Senior Coastal Management Officer, Catchments to Coast	Central Coast Council

Part 2

DAU

Name	Title	Company/Organisation
██████████	Unit Manager, Development Assessment	Central Coast Council
██████████	Section Manager, Development Advisory Services	Central Coast Council

Schedule 2 Interpretation

1. Glossary

A term or expression used in this Probity Plan has the meaning given to it in this Glossary, unless the context otherwise requires:

Administrator	The Person appointed by the Minister for Local Government under s 66 of the LG Act.
Council	Central Coast Council, and where the context permits, includes its authorised delegates
Councillor	includes Councillors and the Mayor of Council
Council Contact	Council's nominated contact person for communications with Respondents
CZMP	The Gosford Beaches Coastal Zone Management Plan dated 3 April 2017
DAU	Development Assessment Unit
Declaration of Understanding and of Conflicts of Interest Form	The form inserted as Annexure A.
Director, Planning and Environment	The Person employed in that position by Council from time to time.
Elected Council	Means the governing body of Central Coast Council, and includes an administrator
EMU	Environmental Management Unit
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
External Probity Adviser	The person or persons identified as the Probity Adviser in clause 6.4.2.
GIPA Act	<i>Government Information (Public Access) Act 2009 (NSW)</i>
ICAC	Independent Commission Against Corruption
LG Act	<i>The Local Government Act 1993 (NSW)</i>
LG Regulation	<i>The Local Government (General) Regulation 2021 (NSW)</i>
OSL	The Office of Strategic Lands
Person	Includes an individual, a corporation, an association or joint venture (whether incorporated or unincorporated), a partnership or a trust
Probity Plan	This Probity Plan dated September 2023, including any amendments made to it
Probity Officer	The person or persons identified as the Probity Officer in clause 6.4
Project	The Terminal Protection Structure at Wamberal Beach Project, being the submission of a joint development application under EP&A Act for the construction of a 1.4km long seawall at Wamberal Beach to protect the coastline from erosion
Project Personnel	Council's councillors, officers, employees, consultants, nominees, agents, contractors and advisors
Unit	Either the EMU or the DAU
WPA	the Wamberal Protection Association Incorporated

2. Interpretation

In this Probity Plan, unless the context otherwise requires:

- (a) words denoting the singular include the plural and vice versa;
- (b) the word 'includes' in any form is not a word of limitation;
- (c) where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) headings and sub-headings are for ease of reference only and do not affect the interpretation of the EOI;
- (e) no rule of construction applies to the disadvantage of the party preparing the EOI on the basis that it prepared or put forward this EOI or any part of it;
- (f) any covenant, term, condition or provision to be performed or warranty or guarantee or indemnity given by two or more persons shall bind those persons jointly and each of them severally;
- (g) where this EOI provides that Council 'may' do a thing, it may do so in its absolute discretion; and
- (h) a reference to:
 - (i) a gender includes all other genders;
 - (ii) any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
 - (iii) any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
 - (iv) writing includes writing in digital form;
 - (v) 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
 - (vi) a person includes a firm, partnership, joint venture, association, corporation or other body corporate; and
 - (vii) a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee.

Attachment A Declaration of understanding and of conflicts of interest

The Probity Officer for the Terminal Protection Structure at Wamberal Beach Project
Central Coast Council

As a Project Personnel, involved in the Terminal Protection Structure at Wamberal Beach Project, in signing this form, I:

1. Acknowledge that:

1.1 I have received a copy of the Probity Plan dated September 2023 in relation to the Project, and I have read and understood my obligations and responsibilities under it;

1.2 I am aware of any requirements that I may have under law;

OR

I am subject to certain requirements and obligations with respect to my conduct by virtue of the contractual arrangements underpinning my engagement, or my employer's engagement, by Council;

1.3 in addition to the legislative duties and obligations to which I am subject, I am also subject to common law and equitable duties of non-disclosure;

1.4 I am required to declare any conflicts of interest (such as private interests or relationships) that I have, or any member of my immediate family has, which could or could be seen to influence or impact on the performance of my role in the Project; and

1.5 I am also required to ensure I keep any information that I receive as part of this matter confidential.

2. Declare that:

2.1 the list of interests or relationships identified in the box below has been prepared on the basis of my personal circumstances and my particular role in the Project;

2.2 with the exception of any interest or relationship identified below, to the best of my knowledge and belief, no interest or relationship exists which may hinder or prevent me from undertaking, fairly and impartially, and in the best interests of the Project, any activity or work related to the Project that comes within my role and responsibilities;

2.3 I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived conflict with my ability to carry out my duties and responsibilities in relation to the Project fairly and impartially;

2.4 I will promptly notify Council if I become aware of any circumstances or changes to my current declaration that give rise to a conflict of interest or a potential or perceived conflict of interest and that I will provide sufficient details to accurately describe the nature of the conflict and submit to any action deemed necessary to manage such a conflict to the Council's satisfaction; and



2.5 to the best of my knowledge, neither I, nor any member of my immediate family, have any interests (pecuniary or otherwise) or relationships which could be construed as having any influence, or perceived to have any influence, on the proper and objective performance by me of my duties in relation to the Project, other than as detailed in the box below.

Declaration Listing:
[if Nil to declare – write NIL]

I understand that if I breach the provisions of the Probity Plan that I could be liable to disciplinary action for a breach of the Council's Code of Conduct or legal action for breach of contract or otherwise.

Yours sincerely

Signature

Printed name:

Date: