



# Probity Plan

St Kilda Marina Project



This Probity Plan has been produced for the City of Port Phillip,  
St Kilda Marina Project by CourtHeath Consulting.

September 2017  
(revised May 2019)

**City of Port Phillip  
St Kilda Marina Project**

PROBITY PLAN

**Our Reference CH120**



**CourtHeath**  
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COVERING EVERY ANGLE WITH INTEGRITY

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## Revision History

Date	Version	Author	Nature of Change
January 2018	Initial public release version	CourtHeath Consulting, Project Probity Advisors	
May 2018	Initial public release version 1	CourtHeath Consulting, Project Probity Advisors	To reflect processes relating to the Community Panel
May 2019	Pre market release	CourtHeath Consulting, Project Probity Advisors	To reflect chosen market path

## 1. THE PROJECT

The St Kilda Marina Project (the Project) is an important and prominent project for the City of Port Phillip (Council).

Located at 42 A-E Marine Parade on the St Kilda Foreshore (the Site), the St Kilda Marina development commenced in 1968. The Marina occupies 80,000sqm of foreshore Crown Land for which the Council is appointed as the Committee of Management. Existing uses include marine activities (boat storage, repairs and sale and Coast Guard), restaurants/cafes, service station, recreational activities and car parking.

St Kilda Marina is a key strategic site within the Council's portfolio and presents a significant opportunity in terms of social, environmental, economic and cultural possibilities for the Council and potentially the State.

The 50-year head lease between the Council and Australian Marinas (A'Asia) Pty Ltd (Australia Marinas), expires on 30 April 2019.

Australian Marinas has a number of subleases with various tenants within the Marina site including but not limited to BP Service Station, Riva, The Great Provider and Australian Volunteer Coast Guard.

The expiry of the St Kilda Marina head lease presents an opportunity for the Council to undertake an integrated planning process to review the long-term use of the Site. The planning process will aim to maximise the social, economic and environmental benefits of St Kilda Marina to the municipality and the Victorian Government. It will consider community and key stakeholder needs and desires through progressive urban design and environmentally sustainable practice. This process and the outcomes will underpin the leasing methodology, particularly the leasing principles.

The Council is embarking on an integrated planning process to develop a framework for the future use and lease for the Site. The comprehensive planning phase is anticipated to take approximately one year and involves:

- development of a Project plan
- site assessments
- legislation reviews, and
- an urban design exercise underpinned by extensive community engagement and planning.

This phase will inform the delivery phase which predominantly includes the procurement for and development of a new lease, followed by lease implementation.

## 2. APPROACH TO PROBITY

This Probity Plan recognises that the Project involves a variety of stakeholders with diverse interests and views that will be considered as part of the comprehensive planning process. Council staff and councillors will engage with the community about these matters in a systematic, open and transparent way, whilst upholding probity standards.

During the delivery phase which includes the competitive leasing process, a significant community asset is to be offered to the market. As commercial interests of the incumbent lease holders and associated parties and of competitors will be involved, information security is critical.

Notwithstanding the importance of confidentiality, during this competitive market engagement phase, the Project will avoid unnecessary concealment of information.

Throughout both the integrated planning phase and the delivery phase of the Project, protocols will be implemented to ensure appropriate confidentiality, to establish processes for managing conflicts of interest and to methodically manage communications.

This Probity Plan outlines the applicable legal and policy requirements for probity and explains how they apply to Councillors, council officers and others involved in the Project.

### 3. OVERVIEW OF PROBITY PLAN

This probity plan applies to the Project through its various phases and activities leading up to and including the proposed new lease for the Site. Those activities include:

- comprehensive planning
- related procurement processes, and
- the competitive process for the proposed new lease.

Part 1 of this probity plan deals with probity in general for the Project and includes the probity requirements applicable during the planning phase.

Part 2 deals specifically with probity requirements applicable to the conduct of competitive processes such as procurement of contractors and consultants as well as the competitive process for the new lease. Whilst leasing is not regarded as procurement, it is a competitive process and similar probity considerations apply.

Protocols and guidelines may be issued in addition to this probity plan and they should be read in conjunction with this probity plan.

## PART 1 – PROJECT PROBITY

### 4. ABOUT PROBITY

#### 4.1. WHY IS PROBITY IMPORTANT?

Good probity practice is important for:

- business and community confidence in the integrity of government processes
- encouraging and enabling purchasers and businesses to deal with each other on the basis of mutual trust and respect, and
- improving the defensibility of competitive processes and outcomes.

Without good probity practices, the Council risks leaving itself open to criticism of the process and possible legal challenges.

## 4.2. WHEN TO APPLY PROBITY

Probity should underpin every aspect of the Project.

From the commencement of the Project, the probity requirements outlined in Part 1 of this Probity Plan are applicable. When the Project activities involve market engagement, the probity requirements in Part 2 of this Probity Plan are applicable.

## 4.3. HOW TO APPLY PROBITY

To achieve an ethical and transparent approach, processes must be clear, open, well understood and applied by all parties in the process.

In practice, probity requires:

- acting with integrity and impartiality
- ensuring market equality by applying an appropriate level of competition and contestability relevant to the activity
- consistent and transparent processes
- secure and confidential market engagement information
- identifying and managing conflicts of interest
- allocating appropriate capability to elements of the process and
- engaging a probity practitioner where the complexity of the process warrants independent oversight.

In all dealings, the Council will observe the highest standards of probity. In the context of the Project, probity is a defensible process which can withstand internal and external scrutiny – one which achieves both accountability and transparency. The community expects business in the public sector to be conducted ethically, displaying honesty, integrity, diligence, trust and respect when dealing with others.

## 5. COMMUNICATIONS

Systematic management of information and interaction with the community is important for probity. Except for information that may be confidential at various stages of the Project, probity does not seek to restrict communication. However, it is important from a probity perspective that communication processes are clear, open, well-understood and applied consistently by all involved in the Project.

Council has a communication and engagement plan that governs its engagement activities with stakeholders including ratepayers. This outlines the ways in which Councillors and officers will meet their obligations to the community and prioritise open engagement and communications.

Council is convening a Community Panel to support stage 3 of the Project relating to site options identification and assessment. The Community Panel will comprise 24 randomly selected community members. The community panel process will be:

- governed by
  - the *Community Panel Strategy* and

- a *Code of Conduct for Observers*
- the *Probity Protocols for the Community Panel*
- conducted so as to preserve the integrity of any subsequent procurement process and manage confidential information and conflicts of interest.

The Mayor is the principal spokesperson for the Council and may authorise the Deputy Mayor and/or a Ward Councillor to be the media spokesperson.

Councillors may express their individual personal views through the media. When this occurs, it needs to be clear that any such comment is a personal view and does not represent the position of Council. Prior to doing this, Councillors should endeavour to consult the Mayor and inform the media centre.

Council's website is the principal source of Council's public information.

Councillors may link and disseminate key information from official Council social media sources in messaging to the community but should not link or disseminate information that is inconsistent with the resolutions of Council or Council's code of conduct.

Council will, to the maximum extent practicable, be open and transparent in the provision of information and have information readily available to the public. Council may encourage community engagement on key issues of significance by actively seeking input through community reference groups, from broad cross-sections of the community and through improved community engagement practices.

Councillors, as representatives of Council, will communicate and engage with the community on Council's key directions, challenges and opportunities respectfully and in accordance with the resolutions of Council.

Throughout the Project, certain information will be confidential and not appropriate to make public or to disclose to any third party. Such information must be kept confidential.

Information must not be released if release:

- would be a breach of the *Local Government Act 1989*
- could adversely affect an evaluation or procurement process, or
- could give rise to legal action against the Council, such as release of commercial-in-confidence information which belongs to another party.

## 6. PROBITY PROTOCOLS

The following general probity protocols apply to everyone involved in the Project on behalf of the Council including Council officers, Councillors, consultants and advisors. These apply through all stages of the Project.

Council officers, Councillors, consultants and advisors must:

- disclose conflicts of interest e.g. if there may be a financial or other benefit resulting from decisions or outcomes
- avoid conflicts between public duties and personal interests/obligations
- not accept gifts, hospitality or donations from anyone who may be involved in the Project

- not disclose information that is confidential
- understand what information is confidential and what can be shared openly – ensure that information is disclosed fairly and impartially
- act with integrity and impartiality and in the interests of the local community
- not improperly seek to confer an advantage or disadvantage on any person
- act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive
- act in a way that secures and preserves public confidence in the Council and processes relating to the Project
- lead in good governance practice
- develop and maintain good working relationships to deliver positive outcomes and value to the community.

Additional probity protocols and guidelines may be issued in addition to this probity plan and they should be read in conjunction with this probity plan. They operate as if they were a part of the probity plan.

## 7. CODES OF CONDUCT

The Council has codes of conduct<sup>1</sup> for:

- Councillors
- Staff and
- Contractors, consultants and suppliers

The Council also has a procurement policy. An extract from the procurement policy relating to probity is in Appendix A.

Everyone involved with the Project must follow the relevant code of conduct and the procurement policy and this probity plan.

Many of the requirements in the codes and the procurement policy are based on specific legislative requirements which are explained below.

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<sup>1</sup> Codes of conduct for Councillors and for Contractors and Consultants are available on the City of Port Phillip website: <http://www.portphillip.vic.gov.au>. The Code of Conduct for staff is available on the City of Port Phillip Intranet: [Home](#) > [Toolbox](#) > [Tenders & Contracts](#) > Forms, Templates, Policies.

## 8. CONFLICT OF INTEREST

### 8.1. LOCAL GOVERNMENT ACT

There is specific legislation dealing with conflict of interest in local government and a breach of that legislation is an offence.

The *Local Government Act (1989)* (the Act)<sup>2</sup> provides that a Councillor, member of a special committee or a member of staff must disclose a direct or indirect interest of the type specified in the Act.

It is the responsibility of the individual to disclose conflicts of interest.

A member of Council staff who has been delegated a power, duty or function of the Council and who has a conflict of interest in a matter in which they also have delegated power, duty or function, must:

1. not exercise the power or discharge the duty or function, and
2. disclose the type of interest and nature of the interest to the Chief Executive Officer in writing, as soon as he or she becomes aware of the conflict of interest in the matter.<sup>3</sup>

Council staff during their employment must:

- (a) act impartially
- (b) act with integrity including avoiding conflicts of interest.<sup>4</sup>

### 8.2. IDENTIFYING AND DISCLOSING A CONFLICT OF INTEREST

There are two steps in the process of determining a conflict of interest:

First, there must be a relevant direct or indirect interest. For example, this could be a special advantage to a family member, a responsibility to another organisation or a person could be personally affected by possible changes to visual amenity or parking where they live.

Second, the direct or indirect interest must intersect or overlap with a person's official duty. This may involve a decision to be made by a Council officer who has been delegated a Council power or one who is advising Council.

Staff who have approved arrangements for undertaking (or are engaged in) secondary employment must be alert to possible conflicting interests.

Caution is also required regarding gifts and hospitality. Staff should be familiar with and apply Council's policy on these matters.

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<sup>2</sup> Sections 77A to 81 or any conflict of interest provisions that may replace them in any amended or replacement legislation.

<sup>3</sup> Section 80B

<sup>4</sup> Section 95

A gift may create a conflict of interest. Staff members should be made aware of the consequences of accepting a gift from a potential supplier which may be a crime. If a gift is given in exchange for favourable consideration it may constitute a 'secret commission' which is a criminal offence.<sup>5</sup>

The Act lists many circumstances that may appear to be a conflict of interest, but are not conflicts for the purposes of the Act.<sup>6</sup> For example if the direct or indirect interest is remote and would not affect a decision.<sup>7</sup>

It is better to disclose a conflict of interest rather than risk committing an offence under the Act.

A conflict of interest form has been created for this project to facilitate identification of and management of conflicts of interests as required for anyone involved in the project. Refer to Appendix C.

## 9. CONFIDENTIALITY

Councillors and Council staff are bound by confidentiality obligations:

- Councillors are bound by the Act<sup>8</sup> and the Councillor Code of Conduct.
- Staff are bound through their respective common law employment contracts, written contracts of employment and Staff Code of Conduct.

In addition, everyone with access to Response-related information is required to sign an appropriate confidentiality undertaking.

Maintaining confidentiality means not disclosing or discussing confidential information with anyone who has not signed a confidentiality agreement in relation to the Project.

Throughout the Project there will be some information that is confidential and some that is not. Some information may start off as confidential and then become public information. Information that is not confidential can be shared in the normal way in accordance with Council practices.

A confidentiality form has been created for anyone involved on this project to execute. This is to help safeguard all confidential information. Refer to Appendix C. The release of information to the public will be managed via approval of the City of Port Phillip project sponsor.

## PART 2 – PROBITY FOR PROJECT COMPETITIVE PROCESSES

Part 2 of this plan deals with the probity requirements applicable to the competitive processes for the Project. In this case there will be a two-stage process – a public Expression of Interest followed by a Request for Tender.

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<sup>5</sup> Under the *Crimes Act 1958*

<sup>6</sup> Sections 77A (4)(5) & (6), 78A (3), 79C

<sup>7</sup> Section 77A(4)

<sup>8</sup> Section 77

## 10. DEFINITIONS

In this part, the following definitions apply:

“evaluation team” is used to mean the group of people who evaluate Responses to an Invitation. They could be called another name during a procurement process; e.g. evaluation panel, jury etc. The evaluation team will evaluate Responses according to the procedures set out in an evaluation plan for the competitive process.

“Invitation” is used to mean an invitation issued by the Council seeking offers for supply of goods and/or services or to lease the St Kilda Marina site. It includes processes called Invitation to Supply, Request for Tender, Request for Quotation, Invitation or Call for Expressions of Interest or similar market approach.

“Respondent” is used to mean a person or organisation responding to an Invitation.

“Response” is used to mean the response to the Invitation.

## 11. PROBITY CHECKLIST

A probity checklist has been developed based on the step-by step tasks in the table in Appendix A. A high-level flowchart of the process is shown in Table 1 below. Probity during these activities will be reviewed for transparency and fairness.

## 12. SECURITY OF INFORMATION

### 12.1. GENERAL

Information from Respondents must be kept confidential and not be released unless they agree to it in advance. A lack of Respondent confidence on security could deter them from responding or reduce the detail and volume of information provided in support of Responses – neither would be in the Council’s interests. The evaluation team is required to follow the rules below:

- Documents which contain Response-related, commercially sensitive information are to be stored at all times in secure conditions, with access only for authorised persons.
- Only authorised staff with a direct ‘need to know’ are to be allowed access to Response-related commercially sensitive information.
- Limited numbers of copies of Response-related documentation are to be produced, and each copy should be numbered. Only non-sensitive documents are to be emailed unless they are adequately secured by way of passwords or encryption.
- Confidential information transferred on a portable device such as a USB stick should be encrypted, and password protected.
- When any confidential document is being sent by email, the document and the address for the party it is being sent to must be double checked by another member of the Project team.
- Should any Respondent request a copy of any document, approval must be obtained from the Project Manager before delivery. To ensure that no Respondent receives an advantage, all other Respondents should be advised of the availability of the document.

- No person unless specifically named in the Invitation or authorised by the Chair of the evaluation team will communicate any information contained in a Respondent's document, or relating to any evaluation process, in whatever form, to any other person who is not authorised to receive the information.
- Under no circumstances will any person answer any questions or provide any confidential information to the media in regard to a competitive process without the express permission in writing by the Manager, Asset Management and Property (the Manager) on the Council's behalf.

## 12.2. RECEIVING AND RECORDING RESPONSES

The protocols that Council sets for receiving, opening and recording Responses apply to all Responses received. These protocols are provided in the procurement portal on the City of Port Phillip Intranet.

## 12.3. PAPER INFORMATION

Paper information is to be kept in a secure place, which can be locked and is only accessible by evaluation team members. Extra copies are not to be produced unless necessary. A movement control register is to be maintained, if documents are removed from direct control of the responsible officer.

## 12.4. ELECTRONIC INFORMATION

Electronic information is to be kept secure, especially during evaluation.

Information maintained on a computer is to be stored on a network drive only if it is secure and accessible only by Project team members or the folders or files are password protected.

During the evaluation stage of a competitive process, access to the files for that process should be restricted to the evaluation team members only.

Documents should not be held on a portable storage device.

Any e-mail messages of significance, particularly messages relating to distribution of information, should be kept on file.

## 12.5. COMPLETION OF EVALUATION

After the evaluation and agreement process is complete, all hardcopy and electronic files containing commercial-in-confidence information, which need to be held on file for the public record are to be returned to the Project Manager. All other information not required for record management purposes must be destroyed.

The destruction process is to be managed by the Council's Project Manager.

## 13. COMMUNICATION WITH RESPONDENTS

### 13.1. GENERAL

Any information that is not public knowledge must only be communicated to a Respondent if it is communicated to all Respondents. Communication of such information should be in writing and forwarded through the Project Manager.

No discussion should be held with any known Respondent about the competitive process, in relation to any aspect of a proposal, or the selection process, without prior approval – or at the direction of the chair of the evaluation team.

Personnel must provide consistent information if making presentations to Respondents. This information must be supplied uniformly to ensure that no Respondent receives any advantage over another Respondent. The information presented must be based upon information approved for distribution in advance, by members of the evaluation team.

No Respondent should receive, or be perceived to have received, additional information to that which is publicly available in respect of the proposed Response, unless this information is expressly released by an appropriate authority as nominated by the evaluation team. Respondents are to deal direct with the personnel nominated in the Invitation in all matters in relation to any proposed Response, their proposal or its status.

Details of discussions with those who are actual or potential Respondents should be minuted, and copies of all correspondence should be copied to the Chair of the evaluation team – even when meetings and correspondence relating to a Respondent are of a non-specific nature.

If personnel are asked questions during a presentation or interview they should provide only a factual answer. Do not under any circumstance provide an opinion. If the information provided is relevant to all Respondents and could be perceived as providing an unfair advantage to that Respondent the Chair of the evaluation team should be advised immediately.

Where inappropriate persistent inquiries or comments are made, the meeting should be terminated. A file note should be prepared detailing the conversation. A copy of this file note should be forwarded immediately to the Chair of the evaluation team.

Should any Respondent request a copy of any document, approval must be obtained from the Project Manager before delivery. To ensure that no Respondent receives an advantage, all other Respondents should be advised of the availability of this document.

If a Respondent requests a meeting with a member of the evaluation team, or its advisors during the Respondent selection process, the matters addressed in the meeting must be clearly identified and submitted in writing to the Chair of the evaluation team at least five working days prior to the meeting.

### 13.2. RESPONDENT BRIEFING SESSION

If a briefing session is held, Respondents are to be provided with the opportunity to raise questions before the session to be answered during the briefing – anonymity must be respected, if required.

The briefing session will provide an opportunity for Respondents to learn more about the proposed arrangements to decide whether to submit a Response and provide feedback on the proposed content and format of the Response.

The briefing will also provide an opportunity for the Council to explain the purpose of the competitive process, technical features, evaluation criteria, likely timetable, major milestones, contractual or administrative issues and relevant government policies.

### 13.3. POSITIVE GUIDANCE MEETINGS

Where appropriate, the Invitation process may involve the conduct of Positive Guidance Meetings.

If this is to occur, the evaluation team may meet with each Respondent on a one-on-one basis, before the closing time for the invitation. The objective is to allow open discussion of the Invitation and clarification of issues without prejudice, and without other Respondents being present.

The Respondent has an opportunity to ask questions. Such a meeting can optimise the resources required to prepare a Response and the quality of Responses by improving the focus on the Council's requirements.

To ensure probity risks are mitigated, the protocols for conduct of these meetings should be strictly observed and Respondents must sign a form confirming their agreement about the conduct of the meeting. If positive guidance meetings are to occur, Council will develop protocols and an agreement form based on the samples included in Appendix B.

## 14. STAFF GUIDELINES

Outside parties with whom Council has a business relationship may contact staff (who do not have a direct involvement in the procurement/evaluation) as part of normal day to day relationship. It is important that staff follow the following guidelines throughout the entire process:

- No discussions should be held with any Respondent about the selection process in relation to any aspect of any public competitive process or the selection process without the prior approval or at the discretion of the Chair of the procurement team.
- No Respondent should receive or be perceived to have received additional information.
- Respondents should be advised to deal directly with the contact person nominated in the Invitation in all matters in relation to the selection process or its status. Any other person contacted by a Respondent should refuse to enter discussions of this nature and report the attempted contact with the Chair of the evaluation team.
- If a Respondent requests a copy of a document, they should be referred to the Project Manager. No documents should be provided by other staff.
- Unusual or exceptional invitations from any party with a declared interest in the Project should not be accepted.
- Routine business meetings and social activities continue as usual, but the Council's managers and employees must exercise caution, and must not discuss the evaluation, selection procedures, or contents of any Response.
- Where any party in an unrelated business meeting or social situation seeks to raise issues with respect to the evaluation and selection process or contents of any Response the employee should indicate that it is not appropriate to discuss such matters.

## 15. RECORD KEEPING

### 15.1. DOCUMENTATION

Records of all contact with potential Respondents should be maintained on the files under the direction of the Chair of the evaluation team.

These records should indicate details of all discussions with Respondents and matters such as their interest in a business.

Minutes of any meetings with potential Respondents should be retained recording the substantive issues of the discussion.

These records should be updated throughout the process and all issues identified by parties addressed in a timely manner.

Key documents which should be retained are:

- Strategic planning documents
- Probity plan or plans if more than one is required
- All invitation documentation
- Respondent queries and clarifications
- Responses and response history
- Post tender correspondence
- Notice of meetings
- Users contacted
- Response briefing meeting
- Response distribution register
- Responses received register
- Lodgement of Responses list
- Conflict of interest declarations
- Evaluation summary
- Minutes of meetings
- Non-shortlisted Respondent list
- Shortlisted Respondent list
- Unsuccessful Respondent notifications
- Shortlisted Respondent notifications
- Successful notification(s)
- Post Response negotiation documents
- Council reports/Response acceptance report

- Agreement/contract
- Proof of insurance and lodgement of security deposit.

## 16. COMPLAINTS

Each competitive process should provide participants with a procedure for making complaints. This is best practice. Council has established the following channel for complaints about procurement: [tender@portphillip.vic.gov.au](mailto:tender@portphillip.vic.gov.au).

Council's policy provides the following in relation to complaints:

*The Council recognises and acknowledges the right of the community to complain regarding any aspect of its operations. Complaints are a vital form of feedback that must be captured and addressed to ensure that appropriate processes are followed, and service levels maintained.*

*The Council has adopted and adheres to clear and transparent processes to support all of its tender preparation, evaluation and contract management processes. The following principles must be strictly adhered to at all times.*

- a) the Council will deal promptly with any complaints about its tendering or contract management processes*
- b) each complaint regarding the tendering or contract management processes must be lodged in writing and will be referred to the CEO. The CEO will investigate the complaint and respond to the complainant. The CEO may utilise the services of a probity auditor if, after initial investigation, the complaint is felt to warrant a detailed external investigation*
- c) contracts may require service providers to develop and adhere to a service charter that details the manner and timeframe in which complaints relating to service delivery will be addressed*
- d) complaints regarding service delivery are to be managed by the service provider.*

*Where the Council receives complaints, they are to be referred to the service provider to be addressed. The service provider is to advise the contract manager of actions taken to address the complaint. Where the contractor's action is inappropriate or has failed to satisfy the complainant, intervention by the Council may be required.*

*The CEO will determine the manner in which the complaint should be investigated and actioned.*

*In the event that a complainant is not satisfied with the result of the Council's complaint management process, the complainant can pursue the matter with Independent Broad-based Anticorruption Commission and the Ombudsman.*

In addition, the Council has a general complaints procedure, a Privacy Policy and Protected Disclosure Procedures<sup>9</sup> which are all available on the Council's website.<sup>10</sup>

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<sup>9</sup> In accordance with Section 58 of the Protected Disclosure Act 2012

<sup>10</sup> <http://www.portphillip.vic.gov.au/complaints.htm>

## Appendix A                      PROCUREMENT POLICY

### EXTRACT FROM THE CITY OF PORT PHILLIP PROCUREMENT POLICY JUNE 2017

*This policy is available on the City of Port Phillip Intranet: [Home](#) > [Toolbox](#) > [Tenders & Contracts](#) > [Forms, Templates, Policies](#).*

#### ETHICS AND PROBITY

- 1.1 At all times, Councillors, Council staff and other persons undertaking procurement on Council's behalf must:
  - a) conduct themselves ethically and with integrity
  - b) comply with the Gifts and Hospitality Policy and not seek or receive personal gain
  - c) declare and effectively manage real, perceived and potential conflicts of interest
  - d) maintain confidentiality and security of information
  - e) comply with the Code of Conduct.
- 1.2 Councillors must not improperly direct or improperly influence council staff in the exercise of any duties or powers related to procurement.
- 1.3 Council officers with delegated Council powers or duties related to procurement are prohibited from exercising those powers, duties or functions if they have conflicts of interest.
- 1.4 All persons engaged in the evaluation of quotations or tenders must adhere to this policy and complete and lodge a Conflict of Interest Declaration and a Deed of Confidentiality.
- 1.5 A Tender Evaluation and Probity Plan must be developed for all high value (more than \$500,000 over life of contract) and/or high-risk procurements. A Probity Auditor or Advisor should be considered.
- 1.6 Any purchase in excess of \$50,000 must include a Quotation (Probity) Declaration.
- 1.7 An audit trail must be kept for all procurement that shows clearly that a process has been undertaken and that the process is fair, transparent and reasonable.
- 1.8 Beneficiaries of goods or services cannot approve the expenditure. Council staff may not for example approve their own training, coaching or professional development.

## Appendix B POSITIVE GUIDANCE MEETING PROTOCOLS

### 1. Scope

These protocols explain how Positive Guidance Meetings should be conducted.

### 2. Introduction

A Positive Guidance Meeting is a meeting between a Respondent (or prospective Respondent) and the Council, on a one-on-one basis, during the period between when the Invitation are issued and the closing date for Responses. The objective is to allow open discussion of the Invitation and clarification of issues without prejudice, and without other Respondents being present. The meeting enables dialogue in a controlled environment to clarify issues and may assist to close any “expectation gap” that exists between the Council and prospective Respondents as to the outcome of the procurement process.

The Council and the Respondent can each be given an opportunity to present key messages and to ask questions. Such a meeting can optimise the resources required to prepare a Response and the quality of Responses by improving the focus on Council requirements. It’s a very valuable opportunity for industry and Council alike.

### 3. Collaborative dialogue

In its 2012 report *Towards Agreed Expectations: Tender Strategies to improve Design & Construct infrastructure delivery outcomes* the Victorian Department of Treasury and Finance has recognised the importance of aligning expectations between an organisation seeking tenders (Council) and bidders.

An effective collaborative dialogue such as that held in a positive guidance meeting can assist in this process. Such dialogue can also result in Respondents saving time that would have been spent trying to understand Invitation documentation in isolation, as well as resulting in a superior Response. The focus is on communicating a full understanding of what the contractor needs to do and what the client is expecting will be functionally delivered rather than on preparing the Response.

This collaboration is not the same as partnering. For the collaboration to be effective, the Council and the Respondents must act in accordance with the rules of the competitive process. Once a contract is awarded the other party will want to, and is entitled to, satisfy their contract obligations in the manner which best suits them, whilst acting in a professional, diligent and reasonable manner.

### 4. Conduct of the meeting

To ensure all probity risks are mitigated, appropriate safeguards must be documented in the protocols for conduct of these meetings, and the protocols should be strictly observed.

The basis of the meeting should be understood by all involved. This means that before each meeting the Council should draw the attention of the Respondent to the applicable conduct protocols. This is best done in the Invitation conditions. Each Respondent attending the meeting should be asked specifically to confirm their agreement to be bound by those protocols. In addition, the purpose of the meeting and the applicable probity framework should be explained at the start of the meeting.

A positive guidance meeting process should not be conducted without probity advice, and a probity practitioner should be present at each meeting.

Because the meeting is without prejudice, neither party is bound by what is said. This means that:

- The Council is not changing its requirements or procurement process (unless the meeting leads to an addendum being issued).
- Nothing said by the Respondent at the meeting will bind the Respondent or be considered in evaluation, unless it is restated in the Response.
- Where the Council discloses generally applicable information during a meeting that has not previously been disclosed to all Respondents, the Council will issue relevant information to all Respondents – otherwise, the meeting is confidential and meeting discussions are not disclosed to people outside the meeting.
- The Council may take notes and distribute them to the Respondent concerned, but not to any other Respondent or anyone else outside the meeting process. The proceedings and minutes will be treated as confidential
- The Council is not bound to answer questions but will usually do so. This is the most valuable aspect from the Respondent's perspective. If necessary, the Council representatives may withdraw from the meeting to discuss how best to answer a question. Questions can be taken on notice and answered in writing at a later stage as part of the meeting process

## 5. Planning and preparation for the meeting

Careful consideration should be given to planning the meeting. Respondents should be invited well in advance, and advised how many representatives can attend. A maximum of five Respondent representatives is often sufficient though it may sometimes be appropriate to have a smaller number.

It will greatly enhance the process if the Council:

- makes full use of the opportunity for dialogue with the Respondent
- plans carefully what key messages to emphasise
- prepares some anticipated questions with answers

It is important that there is no inconsistency in responses provided by Council representatives, either with the Invitation documentation, or with responses provided to other Respondents. Responses must be consistent against all Respondents, so some Respondents are not disadvantaged by the meeting.

## 6. Conditions of meeting

If a Positive Guidance Meeting is to be conducted, it's important to clearly state protocols for the meeting. Ideally these protocols are structured into the invitation conditions. The provisions in the re invitation conditions are designed to ensure there is strict management of procurement process risks that arise from one-on-one dialogue with Respondents. The procedures provide for the meetings being conducted in a way that gives no advantage to any particular Respondent. Unless the meeting protocols are carefully drafted and implemented, and meetings are properly conducted, the process may be challenged, and may not withstand scrutiny.

Invitation conditions can provide for the prospect of a meeting by including a clause like the following:

*The Council intends to offer each Respondent the opportunity to meet once only with the Council's officers prior to the closing date. This meeting will take the form of a "positive guidance" session, allowing discussion of the Invitation, and the clarification of issues without prejudice and without other Respondents being present.*

*Respondents should contact # to make arrangements for the meeting.*

*The procedures which will apply to the conduct of any such meeting are set out in #.*

## 7. Protocols

Protocols based on the following should be developed and applied for the conduct of any positive guidance meetings:

- Respondents' questions should be limited to functional concepts or specific questions relating to information in the Invitation, including seeking the Council's view as to whether it considers a particular proposal meets the Council's requirements as detailed in the Invitation.
- Respondents should not seek endorsement, approval or evaluation of revised concepts or other issues. Importantly, the review of concepts or other issues undertaken by the Council at the meeting does not in any way constitute an 'evaluation' of the concept, and does not form part of the evaluation process.
- The Council will endeavour to draw Respondents' attention to any element of their proposal which it considers may be inconsistent with the Invitation. However, the Council cannot ensure (and does not represent) that every inconsistency will be picked up and commented on. Consistent with this, Respondents should explicitly acknowledge that silence from the Council does not in any way constitute endorsement.
- In responding to specific questions from a Respondent, the Council may unilaterally indicate where it has concerns regarding proposals or other information presented.
- Where the Council is unsure as to whether a specific concept complies with the Invitation (e.g. due to the level of detail provided, or due to the limited time the Council has for review), the Council may direct the Respondent's attention to the specific requirements of the Invitation.
- The Council's representatives should be able to meet away from the Respondent - during the meeting - to discuss the Respondent's proposal, and collectively agree on appropriate responses.
- Questions from the Council and Respondent, and the answers given, may be minuted and distributed to both parties. The Council may elect to take any question on notice and provide a subsequent written response.
- Generally, the questions asked by a Respondent and the answers provided will not be distributed to others but will be kept confidential. There is one exception to this rule –if the question points to a shortcoming/gap in the Invitation such as lack of detail in the specification, the Council may distribute an addendum or question and answer to all Respondents.
- The meetings are not intended as an opportunity for Respondents to "sell" their product or services. Respondents should be requested not to take up valuable meeting time with sales presentations.
- The meetings are without prejudice and confidential.

## 8. Definitions

“Council” is used to mean the organisation that is inviting suppliers to make offers and includes a department, government agency, statutory authority or local government.

“Invitation” or is used to mean an invitation issued by a Council seeking offers for supply of goods and/or services and includes processes called Invitation to Supply, Request for Response, Request for Quotation, Invitation or Call for Expressions of Interest or similar market approach.

“Respondent” is used to mean a person or organisation responding to an Invitation.

“Response” is used to mean the response to the Invitation.

“without prejudice” is used to mean not binding on either party unless confirmed subsequently in an addendum, clarification or Response.

## POSITIVE GUIDANCE MEETING PROTOCOLS FORM

The following protocols apply to the conduct of the Positive Guidance Meetings:

- The Respondent's questions should be limited to functional concepts or specific questions relating to the information set out in the Invitation including seeking the Council's view as to whether it considers a particular proposal meets Council's requirements as detailed in the Invitation.
- The meetings are not an opportunity for Respondents to "sell" what they are offering.
- Respondents should not seek endorsement, approval or evaluation of revised concepts or other issues. Importantly, the review of concepts or other issues undertaken by the Council at the meeting does not in any way constitute an evaluation of the concept, and does not form part of the evaluation process. Therefore, it is important for a Respondent to restate in their Response any detail, concept or proposal that it wishes the Council to consider in evaluation.
- The Council will endeavour to draw the Respondent's attention to any element of a proposal which it considers may be inconsistent with the Invitation. However, the Council cannot ensure (and does not represent) that every inconsistency will be picked up and commented upon. Consistent with the above, the Respondent agrees that silence from the Council does not in any way constitute endorsement.
- In responding to specific questions asked by a Respondent, the Council may unilaterally indicate where it has concerns regarding proposals or other information presented to it.
- Where the Council is unsure as to whether a specific concept complies with the Invitation (e.g. due to the level of detail provided or due to the limited time that the Council has for review), the Council may direct the Respondent's attention to the specific requirements of the Invitation.
- The Council's representatives may meet away from the Respondent during the course of the meeting to discuss the Respondent's proposal and collectively agree on an appropriate response.
- Questions from the Council and the Respondent and the answers given may be minuted and distributed to both parties. The Council may elect to take any question on notice and provide a subsequent written response.
- The meetings are without prejudice. Neither party is bound by what is said in the meeting unless it is subsequently restated in an addendum or in the Response.
- The meetings are confidential. However, when a Respondent asks a question that indicates to the Council:
  - an omission or error in the Invitation, the Council may correct the Invitation and inform all Respondents
  - an issue relevant to all Respondents that requires clarification, the Council may provide clarification to all Respondents



Reference Number	
Invitation title	
Name of Respondent	
Name/s of Respondent personnel attending Positive Guidance Meeting	
Signature of Respondent's Authorised Representative signifying agreement to comply with the protocols outlined below	
Date	



## Appendix C

## CONFIDENTIALITY AND CONFLICT FORMS



Deed of  
Confidentiality - St Kil



Conflict of Interest  
Declaration - St Kilda