



# Probity Advice **Policy**

March 2020

Policy No: CCC 011

Policy owner:	Unit Manager, Governance & Business Services
Approved by:	Chief Executive Officer
Date of approval:	March 2020
Policy category:	Operational
Content Manager No:	D13907681
Review date:	March 2022

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## Policy summary

Probity is important in all Council activities. Effective probity ensures Council provides services in a way that is fair and impartial, represents value for money, is consistent, is secure and confidential, and effectively manages conflicts of interest.

This policy relates specifically to managing probity within Central Coast Council when conducting projects or significant procurement processes.

Probity involves adopting and complying with public sector values and duties such as impartiality, accountability and transparency.

This policy draws directly and predominately from the Independent Commission Against Corruption Guidelines for Probity in Public Sector Projects.

## Purpose

1. Central Coast Council is involved in a number of projects including
  - construction projects,
  - building and engineering projects,
  - significant change management projects, and
  - the engagement of a variety of service providers and consultantseach of which present varying levels of complexity and risk to the organisation.
2. Council is committed to ensuring that all such activities are conducted to the highest ethical and professional standards.
3. To achieve this Council requires adherence to the Code of Conduct, and where required, will appoint a Probity Advisor.

## Scope

4. This Policy covers all personnel employed by Council, any person or organisation contracted to or acting on behalf of Council, any person or organisation employed to work on Council premises or facilities and all activities of the Council.
5. This policy does not confer any delegated authority upon any person. All delegations to staff are issued by the Chief Executive Officer.

## General

6. Amendment to this policy will occur in accordance with the procedure for Organisational Policy establishment.
7. It is the personal responsibility of all Council employees and agents of Council to have knowledge of, and to ensure compliance with this policy.
8. A Probity Advisor provides guidance on issues concerning process, integrity, fairness and accountability that may arise during a project or a procurement process.
9. Council will engage an external, independent Probity Advisor where an activity meets one or more of the following criteria:
  - a. The expected cost of the project is high relative to the types of projects normally undertaken by the Council.
  - b. The project itself is inherently complex or carries high risk.
  - c. There has been a relevant history of controversy or legal issues in relation to the Council, the project or one of the potential proponents.
  - d. The project is politically sensitive.
  - e. It is anticipated that there will be an in-house or public sector bid and independent scrutiny is needed to avoid actual or perceived bias. Additionally, if there is an incumbent contractor with a strong relationship with the Council other competitors may require additional assurance that the process is genuine.
  - f. The costs of bidding for the tenderers which may include design costs, technical modelling, legal advice, and specialist reports required to develop a conforming bid are expected to be high relative to the size of the contract.
  - g. The project involves significant intellectual property or highly subjective selection criteria.
  - h. The Council wishes to make substantial changes to the scope of the project or the bidding process after it has already commenced.
  - i. The evaluation process requires lengthy and detailed face-to-face meetings with individual proponents and/or site visits.
  - j. The project is expected to be privately financed; or uses a complicated contract structure such as a build-own-operate-transfer contract or alliance contract; or where a very long-term public/private partnership is to be established.

- k. Guidelines issued pursuant to section 400C of the Local Government Act 1993 (or any other guidance from the Department of Local Government) either recommend or require the appointment of a probity adviser for a public–private partnership.
  - l. The market is highly concentrated or there are very few players and information sharing, collusion or other forms of anti-competitive behaviour are a significant possibility.
  - m. A proponent has already been involved in the feasibility study or pre-tender stages of the project, having thereby potentially obtained an unfair advantage.
  - n. The Council is expecting to make a sizeable profit or generate a considerable income stream from the project.
  - o. The Council is not an informed buyer or lacks experience in the nature or magnitude of the project being undertaken.
10. The engagement of a Probity Advisor will be at the beginning of a project, that is planning stage. The cost of engagement of a Probity Advisor is a cost of conducting projects.
  11. Depending on the size of the project, the decision to engage a Probity Advisor will be determined by either the Chief Executive Officer, the relevant Executive Team member, or the Unit Manager.
  12. In respect of any project, the Chief Executive, ELT, Director, Project Sponsor or Unit Manager should review the decision to engage a probity advisor or seek probity advice at various project gateway stages, in accordance with the risk profile of the project as it stands at that gateway stage. A written record of the review should be kept on the project file.
  13. While the engagement of a Probity Advisor is to be at the commencement of a project or process, where circumstances change it is entirely appropriate to re-assess and engage a Probity Advisor during a project or process.
  14. Project leads will consider the probity advice received and apply their professional skills and experience to determine the appropriate action to take based on the advice.
  15. Probity Advisors are to be procured in accordance with Council’s guidelines and in consultation with the Procurement team. Where a suitable panel exists, this should be used when engaging Probity Advisors.
  16. The engagement of Probity Advisors must have the following:
    - a. Documented and detailed terms of reference;
    - b. Documented process to ensure suitable independence from Council;

- c. Documented process for the management of their ongoing independence and potential conflicts of interest;
- d. Documented processes to ensure appropriate access to records, people and meetings;
- e. Documented reporting lines that are aligned to the project; and
- f. A process for a post engagement review.

## Policy Implementation

- 17. This policy should be read in conjunction with the Central Coast Council Code of Conduct.
- 18. When engaging a Probity Advisor Council will adhere to the five fundamental principles espoused by the ICAC:
  - a. Best value for money
  - b. Impartiality
  - c. Dealing with Conflicts of Interest
  - d. Accountability and Transparency
  - e. Confidentiality
- 19. A brief will be prepared detailing the scope of work before the engagement of a Probity Advisor.

## Review

- 20. This Policy will be reviewed every two years.

## Definitions

- 21. The following definition are used in this policy:
  - a. **Agency** means an external representative or contractor to Council, e.g. Consulting Engineer; Architect; Auditor; Project Manager.
  - b. **Council** means Central Coast Council, being the organisation responsible for the administration of the organisations affairs and operations and the implementation of the organisations policies and strategies.
  - c. **High Risk** means activities that rate as High or Extreme on the relevant Central Coast Council Risk Tables.

- d. **ICAC Guidelines** means Independent Commission Against Corruption, 2005, Probity and Probity Advising; Guidelines for Managing Public sector Projects
- e. **Probity Advisor** means an individual or entity engaged by Council to observe, review and report on the tender and selection process in projects and advise on all probity issues. They have an ongoing involvement in the project through to its conclusion.
- f. **Probity** means integrity, uprightness, and honesty and is based on five fundamental principles: best value for money, impartiality, dealing honestly and transparently with conflicts of interest, accountability and transparency and confidentiality.
- g. **The Act** means the Local Government Act NSW 1993 as amended.

## Related resources

- 22. Legislation:
  - a. [Independent Commission Against Corruption \(ICAC\) Guidelines – Probity and Probity Advising](#)
  - b. [Local Government Act 1993 \(NSW\)](#)
- 23. Associated/Internal documents:
  - a. Council’s Code of Conduct
  - b. Council’s Record Management Policy

## History of revisions

Amendment history	Details
Original approval authority details	Chief Executive Officer
	February 2020 – Policy created under ICAC guidelines
	March 2020 – Feedback from Audit, Risk and Improvement Committee