



Kempsey Cinema Project Probity Plan

Document status: Updated

May 2017

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Executive Summary

The purpose of the Kempsey Cinema Project Probity Plan is to provide a framework to ensure that this unique and significant project to develop a 4-screen commercial cinema complex in the Kempsey Central Business District is designed and delivered in a manner which is fair, transparent and equitable. This development is considered to be an economically significant project, generating jobs and reinvigorating the Kempsey town centre as a critical component of Council's May 2011 Pacific Highway Bypass Strategy.

The Kempsey Cinema Project is a community driven development incapable of delivery without multiple sources of partner funding. A commercial cinema complex does not currently exist in Kempsey because the population size is not sufficient to drive the revenue required to cover the start-up development costs. Multiple funding channels are therefore required to reduce the capital outlay required to make the business commercially viable in the longer term.

The likelihood of Kempsey Shire Council being able to secure both private investment and public funding was initially considered to be extremely low, given the weak history of landlord investment in the Kempsey CBD over the past 10 years and the highly competitive nature of State and Federal public funding pools.

In December 2015 however, Council was successful in securing a \$2M grant from Round 2 of the Federal Government's highly competitive National Stronger Regions Fund. This matches a \$2M loan Council resolved to contribute to the project, as well as a \$2.15M commitment from two motivated private partners. These included Gowing Bros, a local shopping centre owner motivated to increase foot traffic to its centre to secure current and prospective tenancies, and Majestic Cinemas, a regionally significant cinema operator who had long recognised the potential for a Kempsey site if start-up costs could be subsidised to make its operations viable. With this funding secured, Council is now significantly more confident that the project will provide a 4-screen commercial cinema complex within the Gowing Bros owned Kempsey Central Shopping Centre, strategically located for success in the geographic centre of the Kempsey CBD.

Council recognises that a complex financial model of this public-private nature requires clear probity guidelines to steer the project's delivery and to ensure all project partners are fully aware of this probity document and their roles and responsibilities. Whereas Council would normally be the consent authority for this development, Council's vested financial interests in the development will require an externally appointed assessor.

This Probity Plan is formulated after consideration of Public Private Partnerships Legislation and Guidelines, Circular number 05/51 (the Guidelines) that has been circulated pursuant to Part 6 of Chapter 12 of the Local Government Act 1993. In particular, with reference to Appendix 6 of the Guidelines.

Table 1: Summary of Key Project Probity Considerations and Management Responses

Consideration	Management Response
Clear probity issues	<p>In consideration of its obligations to adhere to clear probity principles, Council's management response is that the application of all processes, guidelines and standards will adhere to the core probity principles as per the Independent Commission Against Corruption (ICAC) and the Guidelines, being:</p> <ul style="list-style-type: none"> • Best value for public money; • Impartiality and fairness; • No conflicts of interest; • Accountability; and • Compliance with competition laws and principles.

Consideration	Management Response
	Further, all project staff including contractors and subcontractors are to be provided with and made familiar with the probity principles described in this plan and will be required to confirm in writing that they have understood and agree to these principles.
Good Governance	<ul style="list-style-type: none"> • The Kempsey Cinema project is guided by Council's core values of Trust, Co-operation, Service, Innovation and Pride. These values are strongly integrated into the organisation's leadership culture and performance management system. • The appointment of a Project Manager with an appropriate level of skill and experience, who will be supported by a multidisciplinary team of leaders from throughout the Council organisation. • The appointment of an external Probity Officer, whose contact details are to be included within this project plan for the benefit of members of the public who may wish to direct enquiries or seek further information. The Probity Officer shall be independent and external to the Council and other parties to the project. • Making this Probity Plan and any future amendments available to the Public. • A Project Control Group (PCG) overseen by the organisation's General Manager, senior staff and expert partners. • Regular progress reports provided to the elected Council.
Fair determination of Development Applications (DAs) associated with the development	<ul style="list-style-type: none"> • Open, timely and transparent community consultation to ensure that all issues are heard early in the project and before the DA is submitted. • Separation of Council's Sustainable Environment division from the DA assessment process through the appointment of external assessor Geraldine Haigh (GEM Consulting). • Final determination of the DA by the elected Council. • Open assessment of all written submissions on the DA as well as verbal submissions.
Management of current or potential conflicts of interest and perceived conflicts of interest	<ul style="list-style-type: none"> • All Council project staff trained in application of Council's Code of Conduct. • Project staff to sign a Conflict of Interest Declaration prior to assessing any confidential or commercial information. • Project Manager to ensure any relevant registers relating to confidentiality, pecuniary interests or conflicts of interest are maintained. • Project Control Group to oversee any potential, current, real or perceived conflicts of interest and will maintain a register of any matters arising.
Fair and equitable procurement process	<ul style="list-style-type: none"> • Procurement of cinema operator to undergo full open market Expression of Interest testing process overseen by externally appointed Probity Officer. • Private partner Gowing Bros as asset owner carries full financial risk of all construction overruns and is therefore responsible for all construction related procurement, including building contractor and sub-contractor. • All Council project staff trained and skilled in applying all procurement related processes. • Project procurement within Council's jurisdiction overseen by Project Control Group
Information	<ul style="list-style-type: none"> • All project information is entered into Council's Records Management System (HPE Records Manager). • Sensitive or commercially confidential information will be considered by the elected Council in confidence.

Consideration	Management Response
	<ul style="list-style-type: none"> • Sensitive or commercial material will be safely secured in locked space. • All project related information (with a few exceptions) can be made available subject to a Government Information – Public Access (GIPA) application. • Probity Plan made available to the public.

1. Description of Project

The Kempsey Cinema Project forms part of Council's strategic response to the revitalisation of the Kempsey Central Business District, as highlighted in the 2011 Kempsey Shire Council Pacific Highway Bypass Strategy. Specifically, Council has resolved to pursue a financial model incorporating private and public funding streams to enable a commercially sustainable cinema development to occur in the Kempsey CBD. As a result, Council has secured both Federal Government funding and two motivated commercial partners to progress the development. Consequently, a 4-screen commercial cinema complex will be constructed by Gowing Bros within the Kempsey Central Shopping Centre, which is strategically located at the Smith and Belgrave Streets junction adjacent to Kempsey Bridge and the iconic Macleay River.

1.1 Project Objectives

The objectives of the Kempsey Cinema Project are to:

- Revitalise the Kempsey Central Business District following the opening of the Pacific Highway Bypass in March 2013 and subsequent loss of 74 direct jobs from the former highway corridor.
- Provide a catalyst business for the Kempsey CBD which will significantly increase foot traffic from both locals and visitors to the CBD, encourage extended retail trading hours and address significant issues of retail leakage from the Kempsey CBD.
- Provide a sustainable new business that will generate job growth and associated economic activity during its construction and post-construction phases, as summarised in the table below:

Item	Value	Output	Value-add	Wages	Jobs	Visitors
Construction	\$6.15M	\$9.4M pa	\$2.85M pa	\$2.15M pa	32 EFT	
Retail sales including additional tourism	\$2M				20 EFT	22,000 additional per annum

- Secure the long-term viability of the Kempsey Central Shopping Centre, including the 129 jobs currently held amongst the existing tenancies.
- Enhance Kempsey's lifestyle appeal for professionals and investors seeking to establish and invest in the local community.
- Provide a new cultural entertainment option which will alleviate social issues associated with youth boredom, and provide greater social and cultural inclusion.

1.2 Financial Sustainability

In order to deliver a long-term commercially viable cinema complex to the Kempsey Central Business District and its community, Kempsey Shire Council has developed a shared financial partnership model consisting of the following sources of revenue:

Federal Government (R2, NSRF) \$2M (grant)

Gowing Bros/Majestic Cinemas	\$2.16M (capital investment, building extensions and cinema fitout respectively)
Kempsey Shire Council	\$2M (up-front equity provided with the intent that this be repaid over the 10-year lease period, with a second 10-year repayment option to be negotiated at the end of the first 10-year lease period).

The project's commercial partners' motivation, business acumen and track record are critical to the project's financial sustainability. The ability for Council to secure public funding and provide a loan to reduce the upfront capital outlay also supports the long term commercial viability of the business.

Council has negotiated and endorsed a shared risk financial model that will enable Majestic to repay the \$2M loan to Council over a period of time aligned with the lease term being sought by Gowings as landlord. Terms are as follows:

1. The Council/Majestic split of the profit or loss of 75%/25% to be applicable from the first day of operations, capped to the agreed management fee of \$70,000 p.a. over the life of the agreement.
2. A 10-year term with a review for the following ten years (to align with the lease terms being sought by Gowings).
3. Majestic to be fully responsible for the cost of the internal/specialist cinema fit-out, for which the cost has been variously estimated to be between \$150,000 - \$180,000.
4. Majestic to provide Council with complimentary use of the cinema facilities up to 10 times per year as event/meeting/seminar/workshop space at mutually agreed, non-peak trading periods.

The detailed financial terms will be reflected in the project's legal contract documentation binding the three parties to their respective financial responsibilities.

2. Probity principles and core requirements

The Probity Plan is the control framework document establishing the tasks, procedures, processes and options for managing any real or perceived issues that obstruct the delivery of fair and due process for the common good.

Kempsey Shire Council in all its business dealings, including those related to the Kempsey Cinema Project, observes the highest standards of probity. Council's business dealings are fair, open and demonstrate high level integrity that is consistent with public interest. It is incumbent on every project staff member to understand and apply the principles of probity set out below in all their dealings as public officers, or as consultants to Council.

Council's four guiding probity principles are based on the probity guidelines from the NSW Independent Commission Against Corruption (ICAC) and the Guidelines:

- Best value for money
- Fairness and impartiality
- Conflicts of interest
- Accountability; and

- Compliance with competition laws and principles.

Council has established a Project Control Group consisting of Council's General Manager, members of the Executive staff, an external Probity Officer, and the commercial partners to oversee the project's implementation and to ensure adherence to the processes and standards described in the Probity Plan.

2.1 Principles

Council's principles are described in detail below:

Best value for public money

- *Use of a Competitive Process.* Where procurement responsibility resides with Council, at all times Council's actions will be consistent with Council's Procurement Policy in undertaking a competitive process to procure goods and services. Although price is important, other factors may play a role in the selection of services, such as quality, experience, design, reliability, ability to identify and address specific needs and requirements, examples of other relevant works and outcomes from reference and financial checks. Support for local businesses is also a consideration. The Probity Plan acknowledges and provides for Gowing Bros, as the partner carrying sole financial risk for full construction costs, including any potential cost overruns, that they shall be responsible for the procurement of the development's construction company, including sub-contractors, and that this will be detailed in all relevant legal documentation and contracts.
- *Selflessness.* All decision making will rest exclusively on how well the public interest is served in relation to the matter at hand.

Fairness and Impartiality

- *Equity.* The design and construction process must be conducted equitably and fairly. No person or commercial entity should receive an unfair advantage over any other.
- *Consistency and Transparency of Process.* Each process or sub-process covered by this Probity Plan must be consistent and conducted in accordance with predetermined criteria.
- *Security and Confidentiality.* All information of a sensitive or commercial nature will be dealt with in accordance with Council's guidelines regarding confidentiality, intellectual property and proprietary information. Council has technology in place to ensure the safe-keeping of all information.

Conflicts of Interest

- *Identification and Resolution of Conflicts of Interest.* Any person involved in any project covered by this Project Plan is to declare any interest which may compromise their position. This interest will be discussed by the Project Control Group which will address any actual or perceived conflict of interest. The Project Control Group will make a decision on the matter.
- *Integrity.* Kempsey Shire Council staff, contractors and tenderers involved in any project covered by this Probity Plan should not place themselves under any financial or other obligation to individuals or organisations that might influence them in the performance of their official duties.

Accountability

- *Personal Accountability.* Council and Council officers are responsible and accountable for their decisions and actions and will be assessed on how well the core Council values of Trust, Co-operation, Service, Innovation and Pride are demonstrated.
- *Objectivity.* All decisions regarding public business, such as making public appointments, awarding contracts, will be based on an individual or a panel's evaluation of merit as per predetermined criteria and in accordance with Council's documented procurement policy and process.
- *Public Accountability.* This Probity Plan shall be made available and accessible to the public.

2.2 Core Requirements

Council staff and partners with direct involvement with the Kempsey Cinema Project are covered by this Probity Plan and thereby required to:

- Sign the Conflict of Interest declaration at [Appendix A](#)
- Sign the Confidentiality Agreement at [Appendix B](#)
- Sign a declaration that they have read and understood their obligations under this Probity Plan at [Appendix C](#)

The Project Manager and the external Probity Officer will monitor and report on any probity issues as they arise. These probity issues will be provided, in the first instance, to the Project Control Group. The Project Manager can also, at his or her discretion, request an internal investigation into any matter it deems as necessary.

This Probity Plan may be amended if required, subject to endorsement by the Project Control Group and final approval of the General Manager. Reasons for amending the plan must be clearly documented.

3. Good Governance

This section explains Council's governance structure and establishes overall roles and responsibilities.

3.1 Roles and responsibilities

a) Council

In the interest of the public, Council will ensure the cost-effective delivery of the project while minimising any impacts on local government services.

The project is founded on Council's shared values of Trust, Co-operation, Service, Innovation and Pride. These values underpin project specific approaches to engagement with the community, as well as adherence to Council's internal processes and guidelines.

As per Kempsey Shire Council's Behaviour of Councillors and Staff Polity (5.1) and its Statement of Business Ethics Procedure (5.1.2), the following three principles form the basis of Council's business agreements:

- 4.2.1 Obtain the best possible value for public money.
- 4.2.2 Impartiality through all stages and processes.
- 4.2.3 Ensuring our business relationships are fair, honest, ethical and consistent.

All members of the Kempsey Cinema Project Team are bound to comply with these guidelines. Further, Council expects that those conducting, or wishing to conduct, business with it will maintain relationships with Council personnel that are based on mutual trust, and which will stand up to public scrutiny and preserve public trust.

A Project Manager with appropriate skills and experience has been appointed and will be supported by identified staff resources from across the organisation, including the externally appointed Probity Officer for the project's duration.

A Project Control Group, comprised of the General Manager, Executive Team, the externally appointed Probity Office, and the private partners, will oversee the project. See further details and terms of reference below.

b) Elected Council

The elected Council will be kept briefed on the Kempsey Cinema Project as the project progresses, including active decision-making.

The elected Council will also be responsible for providing development approvals (should the value of any DAs received fall below the Joint Regional Planning Panel's threshold, which has been the case). As an update to this Probity Plan, it is noted that the two DAs associated with the Kempsey Cinema development were both beneath the Joint Regional Planning Panel threshold and were therefore assessed by Council using independent planning consultant Geraldine Haigh (GEM Consulting).

Council is required to decide on any recommendations that legally require Council's approval. To be able to achieve the best interests of the community, Councillors will need to be able to strategically view recommendations put to them. In order to guarantee the Councillors independence and ensure they maintain a clear overview, Councillors will not be involved on any committee, working group etc in direct relation to the project. Councillors will be engaged through formal briefing sessions and all decisions and direction made through Council meetings.

c) General Manager

The General Manager will be responsible for providing strategic direction to the Project Control Group and for authorising resource allocations through the Executive Management Team and Project Control Group.

d) Project Control Group

The Project Control Group will act as the oversight team for any project covered by this Probity Plan. The Terms of Reference for the Project Control Group are as follows:

- Direct operation of the project team
- Ensure the highest level of project probity through the ongoing appointment of an externally appointed probity officer.
- Provide advice to the General Manager
- Ensure due diligence has been conducted in relation to relevant decisions
- Approve phase or sub project specific Probity Plan as well as keep this probity plan updated
- Receive, evaluate and endorse recommendations from the Project Team

- Formally endorse all Evaluation Reports
- Appointment of all Project Team members
- Seek clarification from Project Team
- Report and make recommendations to the General Manager on any issue that is required to be decided in Council
- Report to Council items that require its approval

The Chair of the Project Control Group has a casting vote if a vote is required on making a recommendation to Council or any matter.

The Project Manager will attend any Project Control Group meetings to provide project updates. The administration of the Project Control Group meetings is to be arranged and carried out by the Project Manager.

3.2 Project Team and Advisors

The Project Team comprises the following positions, as approved by the Project Control Group:

Project Director and planning advice – Director, Sustainable Environment
 Project Manager - Manager, Economic Sustainability
 Cinema Operations – CEO, Majestic Cinemas
 Shopping Centre Operations/Construction – GM, Gowing Bros
 Community Engagement – Director, Community Engagement
 Probity – Probity Officer John McKenzie is independent and external to the Council

The Project Team will draw upon the expertise of internal and external advisors and subject matter experts from time to time as required. Advisors are not members of the project team or the Project Control Group. Advisors provide expert advice to the project team and Project Control Group for their consideration in the process and are subject to the same probity procedures as project team members.

3.3 Role of Probity Officer

The Probity Officer will ensure that all those submitting tenders or expressions of interest are given an equal opportunity, that the bid assessment procedures result in a fair and unbiased consideration of all bids, and that confidential material is duly protected. In general terms, probity means, for the whole project, the adoption and implementation of values of integrity, fairness and honesty. The Probity Officer will also address and advise as to conflicts of interest as and when they arise, with the probity process producing accountability of decision making at all levels.

4. Fair determination of Development Application (DA)

For the Kempsey Cinema Project, Kempsey Shire Council recognises it has a vested financial interest in the development through both the provision and repayment of the \$2M loan, and also for its reporting requirements under the Federal Government Funding Agreement for the \$2M National Stronger Regions Fund grant.

In recognition of this vested interest, Council appointed an external planning consultant to assess the two DAs lodged in association with the development (Geraldine Haigh, GEM Consulting).

4.1 Council's probity measures during the DA process

The two lodged DAs in association with this project have been placed on public exhibition to provide the community with the opportunity to provide comment on the proposed

design and all other relevant factors, so that these may be taken into account by the elected Council in making their final determinations (approvals).

Proponents and persons who made a submission have had the opportunity to address the elected Council and it is noted that no objections were received to the development by members of the public.

Both DAs lodged in association with the Kempsey Cinema project must meet the statutory requirements under the *Environmental Planning and Assessment Act 1979*. This includes accounting for how the project impacts on the environment, what social and economic impacts there may be in the locality, as well as consideration as to the overall public interest.

As owner of the building asset, project partner Gowing Bros carries responsibility for preparing the DAs required for the development, utilising appropriately qualified engineering and architectural consultants.

Decisions related to any DAs lodged have been publicly notified.

4.2 JRPP probity measures during DA process

It is noted that in this updated version of the Probity Plan that the value of the two DAs submitted for the Kempsey Cinema project was beneath the threshold required for assessment by the Joint Regional Planning Panel.

5. Conflict of Interest

Real or perceived conflicts of interest arise when persons are influenced, or appear to be influenced, by personal interest when doing their job. The Project Manager, Project Control Group members and the Project's externally appointed Probity Officer John McKenzie, are responsible for bringing any actual or potential conflicts of interest to the attention of the Chair of the Project Control Group, Council's General Manager. Each individual project officer has a responsibility to report any conflict of interest matters to their supervisor, other manager or the Project Manager.

a) Conflict of Interest Declaration

The Project Manager is responsible for ensuring that any person with a direct involvement in the project sign a 'Conflict of Interest Declaration' prior to assessing any confidential information or offering comments or views. The signed 'Conflict of Interest Declaration' forms are to be kept by the Project Manager.

b) Register of Interest

The Project Manager will maintain a Register of all related interests reported through the project. All entries in this Register will be discussed by the Project Control Group, with any actions determined to be taken to be documented.

c) Meeting Agenda Item

The Chair of the Project Control Group and the Project Manager will remind members and advisers of the committees of their responsibility to avoid conflicts of interest and to confirm on a regular basis that members do not have any conflicts. This will be a standing item on the Project Control Group meeting agenda.

6. Procurement

All tendering by Kempsey Shire Council as required for the Kempsey Cinema Project will be conducted in accordance with the Kempsey Shire Council Procurement Policy & Procedures, as well as this Probity Plan. It should be clearly noted that project partner Gowing Bros will, as the owner of the asset with full financial risk for all construction costs, including any construction overruns, will carry responsibility for all construction procurement related to the development of the cinema within the Kempsey Central Shopping Centre complex. This will essentially be a private sector method of engagement of contractors and sub-contractors, in order for Gowing Bros to gain maximum quality and value for money based on its strong industry track record of developing and operating successful shopping centres in metropolitan and regional Australia. As Council is not, for the purposes of this project, the owner of the asset to be developed, there is no requirement for Council's procurement policy and procedure to apply to the construction stage of the project.

7. Information Management & Documentation

Council's approach to community consultation and stakeholder management is to be transparent, open and accountable. Council will release relevant project information and reports progressively at its website and will also notify community members directly of any upcoming events or key project outcomes.

At the same time, Council will carefully manage and secure any information that is commercial-in-confidence or of an otherwise sensitive nature.

Public transparency and commercial confidence both require systems, guidelines and standards for diligent information management so that accountability can be demonstrated throughout the project.

7.1 GIPA Requests

The Government Information (Public Access) Act 2009 (GIPA Act) introduced a new right-to-information system that covers personal and non-personal information held by government in NSW.

In the interests of transparency, the GIPA provides the public with the statutory right to access information held by Council unless there is an overriding public interest against release. Government information is anything held in a record by an agency, on behalf of an agency by a government contractor, or by the State Records Authority. A record means any document or other source of information compiled, recorded or stored in written or electronic form.

Specific GIPA requests for this project will be dealt with through the normal Council process by Council's nominated GIPA officer. Further information and a GIPA application form is available through Council's website,

<http://www.kempsey.nsw.gov.au/corporate/gipa/gipa-forms.html>

Certain information cannot be made publicly available in order to ensure that:

- No unfair advantage is given to a potential tenderer
- No Council Officer or Consultant or anyone connected with them gains personal benefit from information
- Information that may undermine Council's commercial position or give unfair advantage to anyone is protected.

Specific confidential items that must be protected for probity reasons include any proprietary information; information related to the tendering process; any legally privileged information; and any information that is not made available to the public needs to be justified in accordance with the GIPA Act.

7.2 Confidentiality

Confidentiality is a core probity consideration throughout the project implementation and following completion. The following measures are in place to ensure probity and are described in further detail below:

- Confidentiality Declaration
- Securing project (hard copy) information
- Electronic information management
- Copying of Information
- Minutes and record keeping

Confidentiality Agreement

A Confidentiality Declaration is to be signed by:

- Every member of the Project Team
- Every member of the Project Control Group
- Any consultants or advisors engaged by the Project Control Group or the Project Team
- Any other Council officer who has been engaged to assist any project covered by this Probity Plan and has access to the confidential information specified above.

A register of persons who have signed the Confidentiality Declaration is to be maintained by the Project Manager who has the responsibility of ensuring that all relevant personnel have signed the Confidentiality Declaration.

All Council officers are to have the confidentiality provisions contained in this plan explained to them and are to be reminded that any breach to such provisions could be a disciplinary offence under Kempsey Shire Council's Code of Conduct.

Securing Project (hard copy) Information

A secure project area for storage of hard copy confidential project information has been identified. Only persons with authorised access to the project area are to enter or have access to this area.

As far as practicable, confidential project information should not be removed from the project area. Where it is necessary to remove confidential information, the person removing it is fully responsible for its security. Confidential information must at all times be either in the personal possession of the individual or locked in a secure environment.

Approval to remove confidential information from the project area may be provided by the Project Manager or member of the Project Control Group only if security can be guaranteed. The security measures to be implemented will be documented. A Movement Control Register is to be maintained by the Project Manager if the documents are circulated outside of the secure project area.

Electronic Information Management

All electronic project information is to be stored within Council's Electronic Data Management System (HPE Records Manager) on a dedicated computer directory, access

to which is password controlled and available to evaluation team members and systems administrators only.

Electronic information is to be kept secure at all times. Information stored in HPE Records Manager will be given a secure classification in consultation with the Records Team Leader.

Any copies maintained on a PC are to be stored on a secure network drive and secured by a password.

Any email messages relating to any project covered by this Probity Plan are to be saved on HPE Records Manager in the secure container.

Access to any electronic information should be auditable, so as to show the time, date and personal details of who accessed the electronic information. An audit of access to information in any secure directories or on HPE Records Manager is to be conducted as directed by the General Manager and/or the Chair of the Project Control Group.

Copying of Information

Confidential information must not be copied (including electronic copies, photocopies, facsimiles, or the printing of electronic files) without the prior permission of the Project Manager or member of the Project Control Group. In the event that confidential information is copied, the Project Manager must make a file note describing what was copied and that authority was given for the information to be removed and copied.

Minutes of Meetings and Record Keeping

All key issues discussed and actions agreed at the Project Control Group and Project Team meetings will be minuted, including:

- Meeting details
- Attendance
- Confirmation that committee members have no conflict of interest
- Reminder of confidentiality obligations
- Decisions and recommendations made
- Actions agreed
- Responsibility and timeframe

Minutes of any meetings with potential commercial partners or tenderers should be retained recording the substantive issues of the discussion, with a copy provided to any participant upon request.

All records of project progress and management must be maintained in order to ensure the accountability and transparency of the process.

All members of the Project Team, including any contractors conducting negotiations on behalf of the Council, must provide the Project Manager with detailed notes of meetings with any person connected with any project covered by this Probity Plan. Notes of phone conversations, email correspondence or any other conversations must be kept on file, or noted in the stakeholder and community consultation database for the project.

All information and documentation management systems and processes will be communicated to all Council officers who participate in any project covered by this Probity Plan.

8. Other Probity Considerations

This plan has highlighted the key systems, processes and standards that are of direct relevance to ensuring a fair and transparent process. However, there are a number of other considerations of a more indirect nature that are also important in considering the Kempsey Cinema Project's overall probity. These include the organisational culture of Council, Project Management and Risk Analysis methodology; and Statement and Community Engagement.

8.1 Organisational Culture

'Probity' means, in general terms, for the whole project, the adoption and implementation of values of integrity, fairness and honesty. This entails that Council, as an organisation, can only go so far to ensure probity through direct measures, systems and processes as outlined in this plan. The execution of 'probity' ultimately will depend on the moral and ethical conduct of those people who are involved in the project.

Kempsey Shire Council is a values based organisation. This means that Council's values of Trust, Co-operation, Services, Innovation and Pride are the foundations of Council's organisational culture, including its recruitment and performance management. This fosters strong ethical and moral conduct within Council's organisational culture.

8.2 Council Assets

All the material things that Council owns are called Council assets, as is Council's title to real property and the ownership of buildings. Council also controls significant intangible assets exemplified by Council's authority to make decisions in relation to planning and the development of planning instruments.

Prior to any activity taking place that involves the use, allocation, disposal or acquisition of Council assets, Council will obtain an independent professional valuation of all the Council assets relevant to the process, including intangible public resources. This will be used as the basis for a cost benefit analysis and a risk management plan to ensure that Council achieves value for money and achieves the outcome it is seeking.

8.3 Stakeholder & Community Engagement

Stakeholder and community engagement is an important aspect of this project.

All engagement with stakeholders and the community in general will be done in accordance with Council's Community Engagement Strategy (Procedure 2.3.1).

The objective of this strategy is to define a consistent approach to be taken by Council when engaging with the community for the purposes of:

- Improving the relationship between Council and the community
- Enabling the community to be better informed about Council issues, processes and decisions which might affect them
- Developing trust and credibility both internally and externally
- Helping to identify actual and potential problems/issues
- Reducing misinformation and misconception
- Increasing meaningful participation
- Developing stronger communities
- Receiving valuable feedback
- Valuing the input of the community, and

- Providing sustainable outcomes to the Council.

8.4 Probity Breaches

A probity breach occurs when the integrity of the procurement process is compromised. Deviation from the Probity Plan or agreed process for managing probity issues can lead to a probity breach. Where the fairness of the process is brought into question or information security is threatened, there may be a breach. There need not be preferential treatment or actual leaking of information to constitute a breach. The appearance of bias or lax security can compromise probity and undermine the procurement process.

Probity breaches may include:

- An evaluation team member seeking to influence the outcome
- An evaluation team member not observing the established processes and guidelines
- Information provided to one tenderer not being given to others
- A tenderer obtaining information unofficially that provides an unfair advantage
- A tenderer seeking to influence an evaluation team member
- Published evaluation criteria or weightings are not applied
- Evaluation criteria are used other than those published as applying to the process
- An evaluation team member accepting gifts or hospitality from a tenderer
- Government officials outside the Tender Evaluation Panel seeking to influence an evaluation team member or the tender outcome

In the case of a suspected probity breach staff will, in the first instance, discuss this with the Project Manager, who is obligated to record and investigate the matter and to notify the Probity Officer. If staff are not comfortable to discuss the matter with the Project Manager, they should discuss the concern with the Chair of the Project Control Group.

Following a report of a serious probity breach, it may be appropriate to obtain legal advice.

Tenderers should not be advised about any probity breach until legal advice is sought on how and when this should be done.

Council should consider options for legal and/or other solutions and formulate a strategy for resolving the probity breach.

9. Kempsey Cinema Project Team

Entity	Delegate	Responsibility
KSC	David Rawlings, General Manager	Project Director
	Susannah Smith, Manager Economic Sustainability	Project Manager
	Elected Councillors	Project Hosts & Community Representation
	Robert Pitt, Director Sustainable Environment	Planning Advice

	Robert Scott, Director Infrastructure Services	Infrastructure Advice
	Kathy Oliver, Director Community Engagement	Community Engagement Advice
	Daryl Hagger, Director Corporate Services	Governance Advice
External	Hadyn Oriti, Donovan Oats Hannaford	Legal Advice
	John McKenzie, Barrister	Probity Officer
	Garth Grundy, General Manager Gowing Bros	Project Partner/Asset Owner/Cinema Construction
	Kieren Dell, CEO, Majestic Cinemas	Project Partner/Provider of Cinema Services/Cinema Fitout

10. Project Control Group

Entity	Delegate	Responsibility
KSC	David Rawlings, General Manager	Project Director
	Susannah Smith, Manager Economic Sustainability	Project Manager
	Daryl Hagger, Director Corporate Governance	Corporate Governance
External	Hadyn Oriti, Donovan Oats Hannaford	Legal Advice
	Garth Grundy, General Manager Gowing Bros	Project Partner/Asset Owner/Cinema Construction
	Kieren Dell, CEO, Majestic Cinemas	Project Partner/Provider of Cinema Services/Cinema Fitout

11. Project Team and Project Control Group Roles and Responsibilities

- To participate in a cooperative and professional manner to progress the Kempsey Cinema Project, being respectful of others opinions and views, and being willing to communicate openly and honestly.
- To provide expert advice to ensure the Kempsey Cinema Project is developed and delivered using processes and procedures appropriate to its requirements.
- To meet the project timelines by being available for meetings and reading pre-meeting documentation.
- Uphold the principles that councils are responsible to their communities for the prudent management of community assets and finances.

- Ensure the Kempsey Cinema Project is and is seen to be open and transparent, that conflict of interest is avoided, pecuniary interests declared and that it complies with competition laws and principles as well as relevant government procedures and guidelines.
- Maintain confidentiality in regards to all commercially sensitive information relevant to the project.

12. Summary of Project Probity Issues and Control Measures

The table below summarises current status of key project milestones/actions, potential probity issues and control measures that are being proactively undertaken during the course of the implementation of the Kempsey Cinema Project.

Project Milestone/Action	Potential Probity Issue	Control Measure
September 2014 – Council resolves to explore opportunities for a cinema in Kempsey.	Methodology for private partner selection.	<u>Cinema</u> 3 x reputable cinema companies contacted by telephone. Response received from one of the three. <u>Landlord/Investor</u> Discussions held with CBD landlords to determine preparedness to invest, as well as Chamber of Commerce president, to identify an interested landlord with capacity to invest. Interest shown by Gowing Bros, owners of Kempsey Central Shopping Centre. Market testing not considered to be warranted given weak history of private investment in CBD and highly limited number of suitable CBD locations for such a development.
October 2014 – Council resolves to apply for NSRF funding to progress cinema development.	MOU between Majestic/Gowings/KSC developed to support funding application did not undergo market testing.	Market testing not considered be warranted at this point, weighted against the likelihood of the grant application being successful.
November 2014 – Council resolves to commit \$2M for purposes of NSRF funding application.	Public interest/value/support for Council's \$2M commitment.	Council commissions a statistically representative resident telephone survey, undertaken by independent research company, Jetty Research, to quantify community support. Survey confirms 81% of residents believe it "very or quite important" to have a cinema in Kempsey and 84% supporting Council's efforts to attract a cinema to Kempsey. The survey provides assurance to Council that its commitment of \$2M to the project is valued and supported by the community.
December 2015 – Council is advised that its \$2M NSRF funding application is successful.	Project now viable and subject to PPP guidelines.	KSC lodges PPP application and General Manager David Rawlings meets with OLG staff (March 2016).
March 2016 - OLG staff recommend market testing for cinema operations.	Open market opportunity required to be undertaken for cinema operations.	Council undertakes rigorous EOI process overseen by independent external Probity Officer (Barrister John McKenzie). The EOI process is the subject of its own Probity Plan.
February 2016 – Council resolves a PPP be entered into to provide cinema services located in Kempsey.	Review project processes to ensure adherence with PPP guidelines.	Council continues to liaise with OLG staff to provide information and support documentation requested by OLG.
August 2016 – Council resolves to enter negotiations with Majestic	Ensure EOI assessment process is fair and open.	EOI Probity Plan.

Cinemas as preferred operator (from EOI process)		
August 2016 – Project’s planning assessment phase commences.	Potential conflict identified if Council were to assess DAs associated with the project, given Council’s financial interest in the project	Council appoints independent external assessor (GEM Planning Projects) to assess any forthcoming DAs relevant to the cinema project.
September 2016 - Project’s legal documentation phase commences	Legal advice and expertise required to ensure Council’s financial interests and risk exposure is limited.	Donovan Oats Hannaford legal firm appointed to prepare draft legal documentation, including summary of terms for Management Agreement, Management Agreement Risk Matrix & Project Development Agreement.
November 2016 – Council notes approval of first of two DAs (structural strengthening) relevant to cinema development.	Potential conflict identified if Council were to assess DAs associated with the project, given Council’s financial and vested interest in the project.	DA assessed by GEM consulting. No objections received during public exhibition period.
December 2016 – Council receives and approves second (design) of two DAs for Cinema Development. Council also resolves to accept financial terms negotiated with Majestic Cinemas.	<u>DA</u> Potential conflict identified if Council were to assess DAs associated with the project, given Council’s financial and vested interest in the project. <u>Financial Terms</u> Methodology for private partner selection	<u>DA</u> DA assessment of second cinema DA referred to GEM Planning Projects. <u>Financial Terms</u> Addressed in detail in EOI Probity Plan.
December 2016 – Gowings calls for construction tenders.	Council’s preference is local construction companies with capacity to deliver to be given the opportunity to tender.	Under the cinema business model, Gowing Bros remains the owner of the building asset. As such, Gowing Bros will carry primary responsibility and financial risk for the construction phase of the project, including meeting any construction cost overruns. Gowings Bros at its discretion has invited building companies to tender for the project with whom it has confidence can deliver the project on time and on budget. At Council’s request, Gowings has invited two Kempsey-based businesses, including O’Donnell & Hanlon, and Lahey’s Constructions, to tender for the cinema construction. Of the two local companies invited, one company declined the invitation while a second has submitted a tender. The successful tenderer is due to be announced in January 2017.
May 2017 – Probity review of entire project to date.	Review the project processes to date to confirm compliance with Public Private Partnerships Legislation and Guidelines, Circular number 05/51 (the Guidelines) that has been circulated pursuant to Part 6 of Chapter 12 of the Local Government Act 1993; and in particular, Appendix 6 of the Guidelines.	Council appoints John McKenzie, Barrister, to act as Probity Officer for the Project to provide a probity review of activities to date and to continue in that role for the duration of the project.

Attachment A: Conflict of Interest Declaration

16 June, 2016
David Rawlings
General Manager
Kempsey Shire Council

Kempsey Cinema Project

As a Council officer to Kempsey Shire Council for the Kempsey Cinema Project I state the following:

- I am fully aware of my obligations under the terms of my contract/Kempsey Shire Council of Conduct with Kempsey Shire Council to avoid all conflicts of interest or potential conflicts of interest in carrying out my duties under the terms of that contract/code of conduct, and to disclose any potential conflicts of interest if they emerge in the course of my official duties.
- I have read the Kempsey Shire Council Code of Conduct dealing with conflicts of interest and I agree to abide by the principles in it.
- I have no conflicts of interest in relation to my duties regarding this project.
- I will disclose any such potential conflicts of interest as they arise to Kempsey Shire Council's Manager of Corporate Services.

Yours sincerely,

Attachment B: Deed of Confidentiality

16 June, 2016
David Rawlings
General Manager
Kempsey Shire Council

Dear Sir,

Kempsey Cinema Project

I understand that I will handle and obtain confidential information (the "Confidential Information") during the term of my appointment for the Kempsey Cinema Project in accordance with the Probity Plan for the project and any other measures that safeguards confidential information.

The expression "Confidential Information" means, as the context requires, the whole or any part thereof.

I agree that any such Confidential Information must be kept confidential at all times during and after the term of my appointment. Specifically, I undertake:

- not to disclose Confidential Information to respondents to the quotation contractors and their employees, consultants and their employees, representatives of other public and private sector organisations or the general public unless expressly authorised to do so by the General Manager or his nominated delegate;
- to take all necessary precautions to ensure that no person other than a person known to me to be authorised by the Council is able to gain access to the Confidential Information and to ensure that the Confidential Information is safely and securely stored;
- not to personally retain, destroy or remove from the Council's offices any original documentation, records, notes, copies or reproductions of any Confidential Information; and
- not to disclose any Confidential Information gained during the period of my engagement with the Council after it has terminated.

If I am unsure whether or not any information is Confidential Information and cannot be disclosed I will consult with the General Manager or his nominated delegate.

I understand that this undertaking does not apply to disclosing Confidential Information:

- if required under a binding order of a government agency or any procedure for discovery in any proceedings;
- if required under any law or any administrative guideline, directive, request or policy having the force of law;
- to the Council's legal advisers and consultants who have signed a Deed of Confidentiality in favour of the Council in a form approved by the Council;
- which is in the public domain; or
- with the prior consent of the Council.

Yours sincerely,

Attachment C: Declaration of Understanding of Probity Plan

16 June, 2016
David Rawlings
General Manager
Kempsey Shire Council

Dear Sir,

Kempsey Cinema Project

As a Council officer to Kempsey Shire Council involved in the Kempsey Cinema Project I can state the following:

- I have read the Probity Plan for the Kempsey Cinema Project.
- I have understood my obligations under that Probity Plan and will follow the provisions contained therein.

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

Yours sincerely,