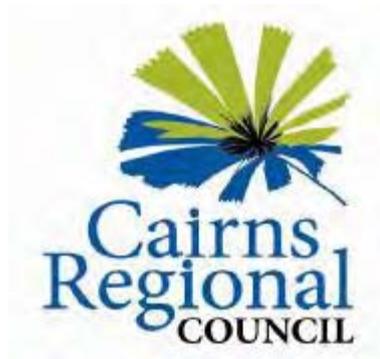


appendix 5 – Probity Plan



CAIRNS REGIONAL COUNCIL
CULTURAL PRECINCT PROJECT

PROBITY PLAN
ASSESSMENT AND SELECTION OF TENDERERS

07 March 2011

Version 2

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REFERENCE DOCUMENTS

***To be listed.**

1. CULTURAL PRECINCT PROJECT DESCRIPTION AND BACKGROUND

Cairns Regional Council is about to commence the design of the most exciting public cultural facilities ever delivered in Far North Queensland. The Cairns Cultural Precinct, located on a 1.5ha site fronting Wharf Street, Cairns, will provide opportunities and facilities for the performing and visual arts industries, and the region's families and communities, that have not been previously available.

The proposed development will include a Performing Arts Centre comprising a proscenium arch theatre of approx 1000 seats, a studio theatre of approx 400 seats, rehearsal spaces, technical offices and support spaces together with a public plaza, some complementary retail/commercial space and carparking. The site also includes the opportunity to achieve the adaptive re-use of a heritage listed, derelict building known as "White's Shed", for facilities related to a regional museum, also planned to be built on site.

In late 2008 Cairns Regional Council (Council) commissioned Project Services, a business unit of the Qld Department of Public Works, to prepare a feasibility study, concept and businesses cases for the development of major cultural and performing arts facilities on a 1.5ha site at Wharf Street, Cairns - close to the Cairns waterfront, the cruise ship terminal, and the Cairns Convention Centre. The site (now known as the "Cultural Precinct") is owned by the Queensland Ports Authority, Ports North. It is surplus to the Ports' strategic and operational requirements and in late 2008 Council and Ports North executed a Heads of Agreement setting out a framework within which this major public project could be developed on the site. In June 2010, the State Government announced that the site would be transferred to Council on a 99 year lease at a peppercorn rent.

The site feasibility study and related work was consolidated into the Cultural Precinct Concept Planning Report (2009). The Report expresses the vision for the site to be:

...“a magnetic and memorable form and place of National, State and Regional significance for Cairns. It is to include:

- *A world class performance space – a highly flexible performing arts facility, of international standard that can stage a broad diversity of cultural events.*
- *Vibrant gathering space – a locus of multi-cultural performing arts, tourist and cultural facilities, and a gateway centre to the arts and culture and natural environment of the Cape.*
- *A captivating architectural form particular to Cairns and recognised around the world.”*

The feasibility and preliminary business cases propose several major public facilities as Stage 1: a regional performing arts centre, complementary retail space and car park. These facilities are planned to be owned and operated by Council, with operational funding provided under Council's annual budget.

The second stage of the project proposes the development of a major regional museum, as an integrated component of the adaptive re-use of an early 20th century heritage-listed, derelict building located within the site area known as "White's Shed". At this time an operator and operational funding for the museum have not been secured and a program of advocacy for support from the State and Federal Governments is being developed.

In every sense, the Cultural Precinct is to be a public gathering place representing the identity of the people of the Cairns region. The new development will address and support the changing nature of the Cairns CBD by providing a catalyst for business growth, and by encouraging longer business hours, greater public amenity and safety. The Cultural Precinct will also deliver economic benefits to the city from business events and tourism.

The performing arts centre will be an integral part of the Precinct, interfacing seamlessly and comfortably with the museum, and plaza area. Within the site area there is also the potential for some complementary space such as an arts hub, commercial or educational space. The opportunities and development potential of this additional footprint have not yet been explored.

A broad order of costs prepared in 2009 by consultants to Project Services estimated that, on the basis of the feasibility and related work detailed in the Concept Planning Report, the total project costs, including the performing arts centre, museum, carpark and plaza to be approximately \$241 million. The total project costs for the performing arts centre, plaza and carparking were assessed at approximately \$180 million, although every attempt to value manage the design in order to reduce costs is to be made through the architectural phases.

Early, partial commitments to project funding have been received from the State and Federal Governments, including a grant from the State specifically to undertake further business planning together with the preparation, costing and evaluation of at least two design concept options. This work and the design concepts, including public exhibition of the options for community comment, are to be completed by June 2011.¹

Council has committed funding for design and consultancy services in its 2010/2011 budget and has identified the availability of Council funding for one-third of the cost of construction of the performing arts centre, plaza and carpark. It is actively pursuing the balance of funding from the State and Federal Governments.

¹ The early design concepts for the site detailed in the Concept Planning Report were developed to support the site feasibility, and to give life and form to the spatial requirements detailed by the arts consultant, *Positive Solutions*. These options do not represent the final site masterplan, nor the built form.

2. PROBITY PRINCIPLES

Introduction

This Probity Plan sets out the principles and processes to be adopted by Cairns Regional Council in its advertising, assessment, selection and contracting of tenderers for the Cultural Precinct Project, for contracts with a value of more than one hundred and fifty thousand dollars.

In its commercial dealings, the Cairns Regional Council will observe the highest standards of probity. Council business must be fair, open and demonstrate the highest levels of integrity consistent with the public interest.

The key probity principles supporting all stages of the Cultural Precinct Project are:

2.1 Fairness and impartiality

Potential tenderers are to be treated equally and must have the same opportunity to access information and advice.

2.2 Use of a competitive process

Consistent with legislative requirements, a competitive process will be used at all times.

2.3 Consistency and transparency of process

Tenderers are to be evaluated in a systematic manner against explicit predetermined evaluation criteria.

2.4 Security and confidentiality

The processes adopted for receiving and managing supplier information are to ensure the security and confidentiality of intellectual property and proprietary information.

2.5 Identification and resolution of conflicts of interest

Any person involved in the tender process is to declare and address any actual or perceived Conflict of Interest prior to undertaking any quote or tender evaluation.

These key requirements are intended to achieve an equitable, justifiable and sound process affording equal opportunity for all tenderers. The process is to be applied with common sense, with flexibility in process design where appropriate, so that the task of selecting the best tender in a fair and equitable manner takes priority.

In the event that an error or omission in the tender process nevertheless occurs, Council is to seek advice and will not enter into any immediate communications with the tenderer(s) until strategy options have been considered to address the concern. Options for legal and/or other solutions will then be adopted to address any potential problems at later stages of the process. Tenderers will be informed of any changes to the process or new factors which may affect their offers.

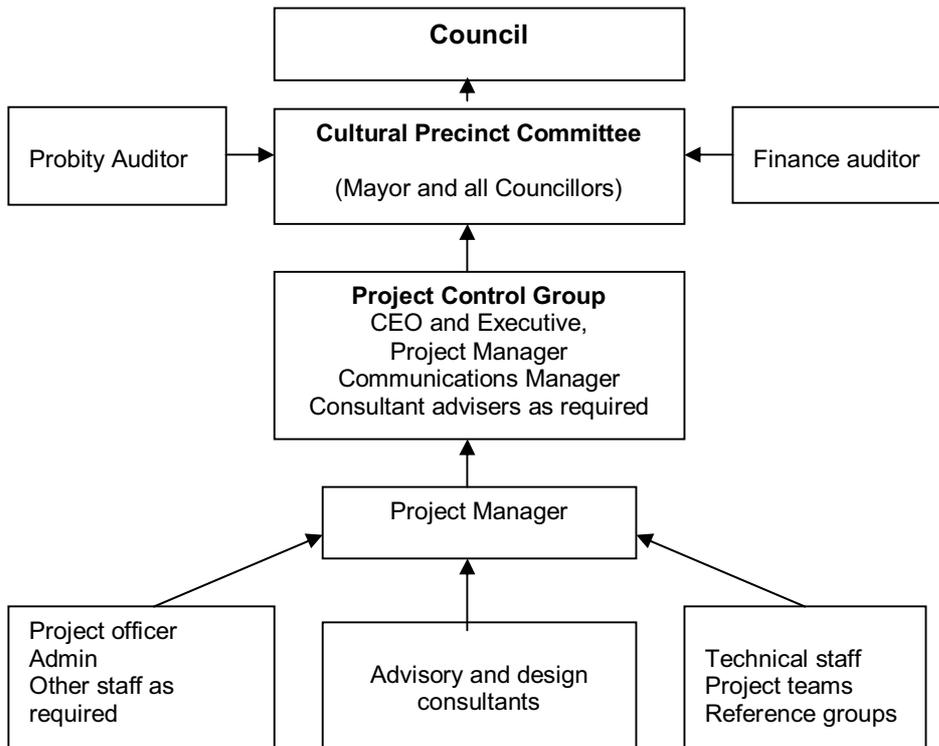
Adherence to Probity Principles also means meeting the requirements of the Local Government Act (Qld) 2009 and the Cairns Regional Council Code of Conduct. All employees will:

- (a) act impartially; and
- (b) act with integrity including avoiding real or apparent conflicts of interest

3. DECISION-MAKING PROCESS

The Cultural Precinct project management and reporting structure was adopted by Council on 28 July 2010. The approved hierarchy of responsibility supports the principles of consistency, transparency and accountability in the delivery of the project.

Cultural Precinct Project - Decision making and reporting structure



Cultural Precinct Committee is the chief client (community) representative, responsible for the direction of the project after receiving advice from the Project Control Group (PCG).

The role of the Cultural Precinct Committee is to review recommendations made by the PCG and to approve recommendations requiring a formal Council resolution, to review communications plans and be responsible for safe-guarding the public interest.

4. PROBITY TASKS AND STEPS

The steps listed in the table on the following page are to be undertaken to ensure the process is conducted with openness and fairness. Records are to be maintained throughout the process to provide sufficient information to enable audit and independent review functions to be carried out. Departure from established procedures may only be for sound and well-documented reasons. Production of documents listed is anticipated to establish that probity was achieved.

Probity tasks and steps

The following tasks are generally in chronological order

	Task	Documents	Policy Ref.	Comments	Date Completed
STAGE 1 –PLANNING					
1.	<p>Confirm Evaluation Team members, technical advisers, and Council’s professional staff (if any) to be involved in the tender process. Confirm members’ credentials and appropriateness for the tender process.</p> <p>Members need to be properly authorised to represent stakeholders and be selected on the basis of their expertise. Where necessary, external expertise is to be engaged to ensure a full range of qualifications, skills and experience is available.</p>	<ul style="list-style-type: none"> Approval of Cultural Precinct Committee Independent advisors formally appointed 	<ul style="list-style-type: none"> Governance and Project Management structure endorsed by Council Terms of Reference for the Cultural Precinct Committee are listed in Policy 1:05:08. 		
2.	<p>Ask for conflict of interest declarations</p> <p>At the outset of the tender process a declaration of any conflict of interest is required from all members of the Evaluation Committee, the Cultural Precinct Committee, relevant consultant technical advisers and Council’s professional staff involved in the tender process. All personnel are to be reminded of Council’s Code of Conduct. Members must also disclose any conflicts of interest arising during the procurement process.</p>	<ul style="list-style-type: none"> Conflict declarations minutes of meetings 	<ul style="list-style-type: none"> Cairns Regional Council Code of Conduct Probity plan Terms of Reference for the Cultural Precinct Committee Policy 1:05:08. 		
3.	<p>Obtain confidentiality agreements</p> <p>Required from all external personnel involved in the tender</p>	<ul style="list-style-type: none"> Confidentiality Deed executed 	<ul style="list-style-type: none"> Probity Plan 		
4.	<p>Check budget approval obtained</p> <p>Approval of funds needs to be assured before commencing the tender</p>	<ul style="list-style-type: none"> With regard to disposal of land, Council resolution 	<ul style="list-style-type: none"> Local Government Act 2009 Council Corporate Plan Council Annual Budget Cultural Precinct Budget 		
5.	<p>Brief Council’s probity auditor</p>	<ul style="list-style-type: none"> Memo or minutes Confidentiality 	<ul style="list-style-type: none"> Review pre-qualified list of suppliers 		

	Task	Documents	Policy Ref.	Comments	Date Completed
		<ul style="list-style-type: none"> Agreement executed Letter of appointment 	<ul style="list-style-type: none"> Review Local Buy Probity Plan Cultural Precinct Project Management Structure 		
6.	Determine if it is necessary to go to public tender	<ul style="list-style-type: none"> Minutes of meeting Council resolution re EOI (if applicable) 	<ul style="list-style-type: none"> Local Government Act 2009 		
7.	Draft tender timetable, ensuring compliance with legislative requirements, and obtain approval to proceed from Standing Committee and/or PCG as appropriate	<ul style="list-style-type: none"> Program Cultural Precinct Committee minutes 	<ul style="list-style-type: none"> Cultural Precinct Management Structure 		
8.	Check Evaluation Committee members are familiar with and have access to all relevant legislation and policies	<ul style="list-style-type: none"> Copy of policies 	<ul style="list-style-type: none"> Probity Plan 		
9.	Set up confidentiality procedures Confidential information must be protected and only be available to those who need it.	<ul style="list-style-type: none"> Documented procedures 	<ul style="list-style-type: none"> Council's Code of Conduct Probity Plan Council's Procurement Policy 		
10.	Brief all staff involved Confidentiality and security procedures are to be explained to all staff associated with tender.	<ul style="list-style-type: none"> Briefing note to staff or minutes 	<ul style="list-style-type: none"> Council's Code of Conduct Probity Plan Council's Procurement Policy 		
11.	Ensure that all tenderers have access to the same information Information to be distributed through Council's Procurement Branch All inquiries by email to Council's electronic tender box Significant clarification or further detail is to be provided to all tenderers equally in writing. File notes are to be made of conversations. No	<ul style="list-style-type: none"> Procurement Branch requirements to be listed and followed file notes record of all inquiries, and responses 	<ul style="list-style-type: none"> Local Government Act Probity Plan Council's Procurement Policy 		

	Task	Documents	Policy Ref.	Comments	Date Completed
	information is to be provided for the benefit or detriment, of particular parties.				
12.	Set up proprietary information procedures If tenderers are required to bid on the basis of matters such as innovation, or if the tender allows non-conforming submissions, such proprietary information will not be communicated to other tenderers.	<ul style="list-style-type: none"> • File notes • List of procedures • Conditions of tender 	<ul style="list-style-type: none"> • Local Government Act • Probity Plan 		
13.	Review probity at completion of PLANNING milestone At this point, the Evaluation Committee is to check that it has met all of the requirements of the Probity Plan.	<ul style="list-style-type: none"> • Record in Evaluation Committee minutes 	<ul style="list-style-type: none"> • Probity Plan • Council's Procurement Policy 		
STAGE 2 –TENDERING AND CONTRACT ESTABLISHMENT					
	Task	Documents	Policy Ref.	Comments	Date Completed
14.	Settle Expression of Interest or other invitation documents (Request for Tender) Expression of Interest Documents are to be drafted to elicit the information necessary for proper assessment of each interested party against the selection criteria. Performance measures and targets are to be finalised and must set out how the proponents' response or performance will be evaluated. All legal issues, accountability and intellectual property restrictions are to be clearly set out. Evaluation criteria, weightings and selection processes are to be detailed together with consideration of non-conforming bids. Declarations of any conflicts of interest from proponents or tenderers are to be sought.	<ul style="list-style-type: none"> • Specifications • Conditions of tender • Legal agreements identified • Timetable 	<ul style="list-style-type: none"> • Expression of interest Brief • Tender Process and Tender Documents 		
15.	Review probity at completion of TENDER PREPARATION milestone At this point, the Evaluation Team is to check that it	<ul style="list-style-type: none"> • Record in minutes 	<ul style="list-style-type: none"> • Probity Plan 		

	Task	Documents	Policy Ref.	Comments	Date Completed
	has met all of the requirements of the Probity Plan.				
16.	<p>Set up process for receipt, recording and acknowledging submissions and bids</p> <p>Clarify and confirm all steps conform with Council's Procurement Branch requirements Ensure file number allocated Brief Procurement Branch on purpose of EOI / Tender, staff and evaluation team involved. Understand and ensure compliance with Council's tender opening procedures.</p>	<ul style="list-style-type: none"> tender box register copy letters or mail merge file and address list acknowledging receipt 	<ul style="list-style-type: none"> Local Government Act Probity Plan Council's Receiving and Recording Public Tenders process 		
17.	<p>Check advertising arrangements</p> <p>Ensure advertising booked in accordance with Local Government Act requirements This includes press advertisements, listing of Tender on Council's website</p>	<ul style="list-style-type: none"> Contact details Website information Press 	<ul style="list-style-type: none"> Local Government Act Probity Plan Council's Receiving and Recording Public Tenders process 		
18.	<p>Arrange EOI and /or tender briefing meetings</p> <p>Record who attended. Prepare a summary report for PCG.</p>	<ul style="list-style-type: none"> Summary report Record of attended 	<ul style="list-style-type: none"> Probity Plan 		
19.	<p>Check tenders are received according to Conditions of Tender</p> <p>Procurement Branch is to promptly send acknowledgement letters to all tenders</p>	<ul style="list-style-type: none"> Tenders register 	<ul style="list-style-type: none"> Local Government Act Probity Plan 		
20.	<p>Secure documents</p> <p>Ensure tenderers' information is secure at all times.</p>	<ul style="list-style-type: none"> list of procedures 	<ul style="list-style-type: none"> Probity Plan 		
21.	<p>Review probity at completion of TENDER INVITATION STAGE milestone</p> <p>At this point, the Evaluation Committee should check that it has met all of the requirements of the Probity Plan.</p>	<ul style="list-style-type: none"> Record in minutes 	<ul style="list-style-type: none"> Probity Plan Council's Procurement Policy 		

22.	<p>Notify tenderers of any significant amendments that will occur in the future due to change of circumstances Criteria will not be altered to give advantage to any particular party and all tenderers should have access to the same information. If there are changes, tenderers are to be allowed the same time and opportunity to re-submit amended bids.</p>	<ul style="list-style-type: none"> • Minutes of meeting • Copy letters or mail merge letter and address list • Email distribution list 	<ul style="list-style-type: none"> • Probity Plan 		
23.	<p>Expressions of Interest and Tenders are to be assessed as quickly as possible</p>	<ul style="list-style-type: none"> • Timetable, as amended 	<ul style="list-style-type: none"> • Probity Plan • Project Plan 		
24.	<p>Ensure all bids are compared on the same basis Evaluation criteria are to be followed, and responses assessed against pre-determined criteria. Reasons for the choice of the recommended shortlist and / or preferred tenderer are to be detailed, ensuring that reasons are clear and defensible. Legal advice sought (if any) should be tabled as part of the assessment process.</p>	<ul style="list-style-type: none"> • Evaluation sheets / selection criteria specified • Score sheets/comparative results • minutes of meetings 	<ul style="list-style-type: none"> • Local Government Act 2009 • Probity Plan 		
25.	<p>Notify shortlisted tenderers of interview (if any) Ensure that the same information has been provided to all tenderers except matters specific to an individual tenderer. Ensure that substantially the same time is allocated to each interview.</p>	<ul style="list-style-type: none"> • Letters • agenda 	<ul style="list-style-type: none"> • Probity Plan • Project Plan 		
26.	<p>Notify tenderers not shortlisted It is desirable to notify tenderers not shortlisted as soon as possible and hold any debriefs after the successful tenderer(s) has been informed.</p>	<ul style="list-style-type: none"> • Copy letters or email file and address list 	<ul style="list-style-type: none"> • Probity Plan 		
27.	<p>Document interviews and post tender negotiations Short listed tenderers only</p>	<ul style="list-style-type: none"> • Interview questions • Record of interviews • Meeting agenda • File notes 			

		<ul style="list-style-type: none"> • Tenderers' confirming letters 			
28.	<p>Perform due diligence of short listed tenderers Due diligence is to include corporate information: ownership, past or current litigation, director's profiles, financial security and past history. Referee checking procedures are to be substantially the same and confidentiality assured.</p>	<ul style="list-style-type: none"> • Referee checks • ASIC records • Commercial records • Annual returns etc 	<ul style="list-style-type: none"> • Probity Plan 		
29.	<p>Plan and document site inspections (if conducted) An agenda is to be prepared by the Evaluation Team before any site inspection. The Evaluation Team Chairperson is to lead the inspection and ensure that there is a record of the meeting.</p>	<ul style="list-style-type: none"> • Meeting agenda • Minutes 	<ul style="list-style-type: none"> • Probity Plan • Project Plan 		
30.	<p>Review probity completion of EVALUATION milestone At this point, the Evaluation Committee should check that it has met all of the requirements of the Probity Plan.</p>	<ul style="list-style-type: none"> • Record in minutes 	<ul style="list-style-type: none"> • Probity Plan 		
31.	<p>Prepare evaluation report The Project Manager is to prepare the assessment report, detailing the reasons for selection and non-acceptance of submissions or bids.</p>	<ul style="list-style-type: none"> • File notes • Minutes of meetings • Justification statement • Evaluation matrices • Evaluation report 	<ul style="list-style-type: none"> • Local Government Act • Council's Procurement Policy • Probity Plan 		
32.	<p>Review probity at completion of evaluation report. Review process from a probity perspective. Obtain probity report from probity auditor.</p>	<ul style="list-style-type: none"> • Record in minutes • Procurement Branch statement • Probity auditor report 	<ul style="list-style-type: none"> • Probity Plan 		
33.	<p>Submit the evaluation report for the approval of the PCG and the Cultural Precinct Committee.</p>	<ul style="list-style-type: none"> • Report to PCG • PCG Minutes • Report to Cultural Precinct Committee 	<ul style="list-style-type: none"> • Approved Project Management Structure 		
34.	<p>Notify the successful tenderer. This should be accepted subject to contract.</p>	<ul style="list-style-type: none"> • Letters 	<ul style="list-style-type: none"> • Probity Plan 		

35.	Notify unsuccessful tenderers their offers are not accepted	<ul style="list-style-type: none"> Letters 	<ul style="list-style-type: none"> Probity Plan 		
36.	Debrief unsuccessful tenderers This should be done by the Chair of the Evaluation Committee, with at least one other team member.	<ul style="list-style-type: none"> File notes of feedback sessions 	<ul style="list-style-type: none"> Probity Plan 		
37.	Store all documents Ensure all documents filed with relevant level of security on DM5. Ensure secure management of all hard copy EOIs and Tenders in accordance with Council's record keeping requirements and relevant legislation. Provide a complete and accurate record of how key functions and activities were carried out, in accordance with the <i>Public Records Act 2002</i> .	<ul style="list-style-type: none"> Tender file(s) 	<ul style="list-style-type: none"> Contract Management 		
38.	Role of probity auditor / adviser	<p>The Probity Auditor is not involved in the ranking or assessment of individual EOIs and Tenders. The responsibilities of the Probity Auditor include, but are not limited to:</p> <ul style="list-style-type: none"> ensuring that the Council's evaluation process is followed Council's application of evaluation criteria and weightings (if any stated) are in accordance with the tender documents Confirmation of the independence of EOI evaluation panel members. 			

5. CONFLICT OF INTEREST

All persons involved in the assessment process are required to make a full declaration of their financial or political interest in any organisation that has the potential to be a tenderer.

A form of disclosure is to be signed by all those involved in the evaluation and selection processes. A pro-forma disclosure document is at **ATTACHMENT 1**.

A conflict of interest that is identified, but classified as non-material by the Evaluation Team, should be recorded by the Chair of the Evaluation Team with detail of any management action required to prevent any later perception that the conflict was material and influenced any relevant decision.

In this regard the Local Government Act 2009 and Cairns Regional Council's Code of Conduct for Councillors and Cairns Regional Council's Code of Conduct for Staff set out the requirements for dealing with a conflict of interest.

6. CONFIDENTIALITY

Councillors and staff of Cairns Regional Council are bound by the requirements of the Local Government Act (Qld) 2009 and Cairns Regional Council's Code of Conduct with regard to confidentiality.

All consultant technical advisers and others with access to tender-related and other confidential information are required to sign a Deed of Confidentiality and Security.

A sample Deed used by consultants to Council is at **ATTACHMENT 2**.

7. SECURITY OF INFORMATION

7.1 General

At all times throughout the selection and tender processes, Councillors, Executive and project staff, and expert consultants engaged by Council to support the assessment process, are to take all steps to ensure that the information provided by proponents and tenderers is not disclosed to third parties, or to the public in general.

In particular,

- Documents which contain tender-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 apprised of tender-related commercially sensitive information
- Limited numbers of copies of tender-related documents are to be produced, and each copy should be numbered. In the case of emailed documents, records of the circulation arrangements need to be maintained.
- No tender information is to be physically removed from the Project Office without written approval of the Project Manager, unless the security of the documents can be guaranteed.
- Should any tenderer request a copy of any document, approval must be obtained from the Project Manager prior to delivery. To ensure that no tenderer receives an advantage, all other tenderers should be advised of the availability of this document.
- No person unless specifically authorised by the Project Manager will communicate any information contained in an Expression of Interest (EOI) or Request for Tender (RFT), or relating to any evaluation process, in whatever form, to any other person.
- Under no circumstances will any person answer any questions or provide any information to the media in regard to the Expression of Interest or Request for Tender without the express permission of Council’s Chief Executive Officer.

All tender information, both paper and electronic, is to be secure at all times.

7.2 Receiving and recording tenders

The process for receiving and recording offers is detailed in Council’s Procurement Policy and Procedures Manual.

7.3 Paper information

Paper information is to be kept in a secure place, which can be locked and is only accessible by Evaluation Committee members and nominated Project staff. Extra copies are not to be produced unless absolutely necessary. A Movement Control Register (see **ATTACHMENT 3**) is to be maintained, if the documents are circulated outside the Project Manager’s office or secure storage room.

7.4 Electronic Information

Electronic and e-mail information is to be kept secure at all times. All electronic records are to be registered in Council's Document Management System (DM5), with secure access only to accredited staff.

CD-ROM copies are to be kept locked and only accessible by a key kept by a nominated team member.

Draft tender assessment reports are to be secured by limited access given to authorised users.

Any e-mail messages of significance, and particularly messages providing information on the distribution of tender information are to be registered on the tender file.

7.5 Completion of the Evaluation

After the evaluation and contract process is completed, all electronic files containing commercial-in-confidence information are to be recorded as confidential on the Council's DM5 system and paper copies returned to Council's Records Department.

8. STORAGE OF PROJECT AND TENDER INFORMATION

All Records are to be maintained in accordance with the Public Records Act 2002.

All Expressions of Interest, tenders and supporting documentation submitted as part of a tender process must be electronically recorded on Council's Document Management System as soon as practical after the tender opening in accordance with Council's Procurement Policy.

All tender records are to be kept in secure (locked) storage at the Project Office, and this storage is not to be accessed by general or unauthorised staff. In particular:

- Access to the data storage is restricted to authorised persons (Senior Coordinator Procurement, Project Manager, Cultural Precinct Project Officer). Access by other, qualified persons may be authorised by the Project Manager, provided such authorisation and access is documented.
- No tenderers may access the data storage.
- Original documents must not be removed from the data storage.
- Non commercial-in-confidence information may be photocopied if so requested or may be provided to all tenderers in electronic form if required for the proper management of the process, after approval by the Project Manager.
- Any requests for further information should be documented along with the response provided. If appropriate, if additional information is provided to any tenderer, the same information will be provided to other tenderers by way of a formal Addendum.

9. COMMUNICATION WITH PROPONENTS AND TENDERERS

9.1 General

Any information that is not general public knowledge will only be communicated to a bidder if it is communicated to all tenderers. Communication of such information will be in writing and forwarded from the Project Manager to Council's Procurement Branch who will forward the information to the tenderer.

No discussion will be held with any known tenderer about an Expression of Interest or a request for Tender, in relation to any aspect of a proposal, or the selection process, without the prior approval or at the direction of the Project Manager.

Project staff must provide consistent information if making presentations to tenderers. This information will be supplied uniformly to ensure that no tenderer receives any advantage over another tenderer. The information presented will be based upon information approved by the members of the Evaluation Committee.

No tenderer will receive, or be perceived to have received, additional information to that which is available to all tenderers in respect of the proposed tender, unless this information is expressly released by an appropriate authority as nominated by Evaluation Committee.

Tenderers will be advised to deal directly Council's Procurement Branch or its nominee in all matters in relation to any proposed tender or its current status. Staff and relevant consultants must refuse to enter discussions of this nature.

Details of any discussions with those who are actual or potential tenderers are to be minuted, and copies of all correspondence should be copied to the Chair of the Evaluation Team, even where meetings and correspondence relating to a tender are of a non specific nature.

If any project staff are asked a specific question during a presentation or interview only a factual answer should be provided. Under no circumstances should personal opinions be provided. If the information provided in an answer is relevant to all tenderers and could be perceived as providing an unfair advantage to that tenderer, the information should be promptly distributed through Council's Procurement Branch to all tenderers.

Where inappropriately persistent inquiries or comments are made, the meeting or phone call is to be terminated. A file note is to be prepared detailing the conversation. A copy of this file note should be forwarded immediately to the Project Manager.

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

In all routine business meetings and social activities Evaluation Committee members, advisers and relevant Council employees must exercise caution, and must not discuss the evaluation, selection procedures, or contents of any tender.

Where any party in an unrelated business meeting or social situation seeks to raise issues in respect of the evaluation and selection procedures or contents of any tender, the member of the Evaluation Committee, adviser or employee should indicate that it is not

appropriate to discuss such matters. Such incidents should be reported to the Project Manager.

If a tenderer requests a meeting with the Evaluation Committee, Project Manager or its advisers during the tender selection process, the matters to be addressed in the meeting must be clearly identified and submitted in writing to the Chair of the Evaluation Committee at least 2 working days prior to the meeting.

9.2 Tenderers' Briefing Sessions

Tenderers are to be provided with the opportunity to raise questions before the session to be answered during the briefing – anonymity will be respected.

The briefing session will provide an opportunity for interested parties to learn more about the proposed arrangements, to decide whether to submit an offer and provide feedback on the proposed content and format of the tender.

The briefing will also provide an opportunity for Council to explain the purpose of the Call for Expressions of Interest or Tender, the evaluation criteria, likely timetable, major milestones, contractual or administrative issues and relevant Council policies, objectives and program.

9.3 Interviews with shortlisted tenderer

Interviews with tenderers will be of the same duration and will comprise core questions and discussion points. Questions of clarification specific to a tender are expected. Timing of interviews will be scheduled. Invitations are to be confirmed, and names of all representatives attending are to be recorded.

Records of interviews are to be made.

10. STAFF GUIDELINES

Outside parties with whom Council has a business relationship may contact staff (who do not have a direct involvement in the tender) as part of their normal day to day relationship. Council staff are required to adhere to Council's Code of Conduct, and in particular to follow the guidelines below throughout the entire process:

- No discussion is to be held with any tenderer about the selection process in relation to any aspect of any Expression of Interest, a Request for Tender or the selection process without the prior approval or at the direction of the Project Manager or his or her nominee.
- No tenderer is to receive or be perceived to have received additional information to that which is publicly available or which has been provided to all tenderers in of respect the Tender process.
- Tenderers are to be advised to deal directly with Council's Procurement Branch in all matters in relation to the Tender process, their EOI, RFT, or its current status. Staff must refuse to enter discussions of this nature.
- Should any tenderer request a copy of any document, he/she is to be referred to Council's Procurement Branch. No documents are to be provided by staff.
- Unusual or exceptional invitations from any party with a declared interest in the project should not be accepted.
- Where any party in an unrelated business meeting or social situation seeks to raise issues in respect of the evaluation and selection procedures or contents of any tender, Council staff or relevant consultants are to indicate that it is not appropriate to discuss such matters.

11. RECORD KEEPING

11.1 Documentation

All Records are to be maintained in accordance with the Public Records Act 2002.

A database of all contact with potential tenderers is to be maintained by the Project Managers for provision to the Chair of the Evaluation Committee.

The notes attached to the database are to include details of all discussions with tenderers and matters such as their interest in particular businesses (if applicable) or political matters.

Minutes of any meetings with potential tenderers are to be retained recording the substantive issues of the discussion, with a copy provided to potential tenderers.

The database should be continually updated throughout the process and all issues identified by parties addressed by the PCG on a timely basis (if applicable).

Key documents to be retained are:

- PCG Report (where applicable)
- Council report for EOI
- Tender history
- Strategic planning documents
- Call for Expressions of Interest
- Request for Tender
- Notice of meetings
- Probity Plan
- Tender Briefing Meeting
- Lodgement of tender list
- Conflict of interest declarations
- Evaluation summary
- Minutes of meetings
- Non-shortlisted tenderers
- Shortlisted tenderers
- Unsuccessful tender notifications
- Shortlisted tenderer information
- Successful notification(s)
- Post tender negotiation documents
- Recommendation
- Agreement/Contract
- Other legal Deeds / Agreements
- Insurance details
- Guidelines
- Tender Addenda
- Clarification/question log
- Minutes of presentations
- Evaluation Report
- Council Report
- Council Resolution

ATTACHMENT 1.1 – Conflict of Interest – Evaluation Team Member

*[CONFLICT OF INTEREST DECLARATION
]*

[Date]

*[Name of Evaluation Team Chairperson]
[Title of Evaluation Chairperson]
[Address of Evaluation Team Chairperson]*

Dear

[Title of Tender etc]

As a member of the Evaluation Team for the *[nature of panel]*, I am writing with regard to my obligations in relation to conflict of interest.

I am fully aware of my obligations under Cairns Regional Council's Code of Conduct [and my executive contract / terms of appointment] to avoid all conflicts of interest in carrying out my duties, and to disclose any potential conflict of interests if they emerge in the course of my professional duties.

I currently have no such conflicts.

Yours sincerely

*[Name of Evaluation Team Member / adviser]
[Title of Evaluation Team Member adviser]*

ATTACHMENT 1.2 – Conflict of Interest – Council staff

*[CONFLICT OF INTEREST DECLARATION
]*

[Date]

[Name of CEO or Project Manager]

Dear

[Title of Project / Tender etc]

As a member of the Project Team for the Cultural Precinct project, I am writing with regard to my obligations in relation to conflict of interest.

I am fully aware of my obligations under Cairns Regional Council's Code of Conduct [and my executive contract / terms of appointment] to avoid all conflicts of interest in carrying out my duties, and to disclose any potential conflict of interests if they emerge in the course of my professional duties.

I currently have no such conflicts.

Yours sincerely

[Name of Project Team Member]

[Title of Project Team Member]

ATTACHMENT 1.3 – Conflict of Interest – Councillors

*[CONFLICT OF INTEREST DECLARATION
]*

[Date]

[Name of CEO or Project Manager]

Dear

[Title of Project / Tender etc]

As a Councillor of Cairns Regional Council I am writing with regard to my obligations in relation to conflict of interest under the Cultural Precinct project.

I am fully aware of my obligations under Cairns Regional Council's Code of Conduct [and my terms of appointment] to avoid all conflicts of interest in carrying out my duties, and to disclose any potential conflict of interests if they emerge in the course of my professional duties.

I currently have no such conflicts.

Yours sincerely

[Name of Councillor]

ATTACHMENT 1.4 – Conflict of Interest – Consultant to Project

[CONFLICT OF INTEREST DECLARATION]

[Date]

[Name of Project Manager]

Dear

[Title of Project / Tender etc]

As a consultant providing advisory services to Cairns Regional Council for the Cultural Precinct project, I am writing with regard to my obligations in relation to conflict of interest.

I am fully aware of my obligations under the terms of engagement by Cairns Regional Council's to avoid all conflicts of interest in the provision of advisory services, and to disclose any potential conflicts of interest if they emerge in the course of my professional duties and engagement.

I currently have no such conflicts.

Yours sincerely

[Name of Consultant]

[Name of Company/ consultancy]

ATTACHMENT 2 – DEED OF CONFIDENTIALITY AND SECURITY

**CAIRNS REGIONAL COUNCIL
DEED OF CONFIDENTIALITY AND SECURITY**

THIS DEED is made on _____

BY: _____ (the "Consultant")

ADDRESS: _____

RECITALS:

- A. The Consultant wishes to develop a close working relationship with Cairns Regional Council.
- B. To further that relationship, the Consultant requires access to details of confidential information.
- C. The Consultant has undertaken to keep all information or material confidential and to take security precautions to prevent unauthorised disclosure.

BY THIS DEED:

- 1. The Consultant shall keep confidential and shall not disclose or make available directly or indirectly to any third party (except for a contractor as provided for in this Deed) all information and material of whatever nature and in whatever medium which is communicated, or becomes available to, or accessible by the Consultant in the course of its business or other relations with Cairns Regional Council (the "**Confidential Information**").
- 2. All Confidential Information shall remain strictly confidential until such time as it becomes known to the Consultant without restriction through a legally available public source.
- 3. The Consultant hereby acknowledges that the Confidential Information is the valuable property of Cairns Regional Council and that any disclosure of it could give rise to considerable damage to Council.

4. The Consultant shall not use or access the Confidential Information for any reason except as is necessary to further business discussions with Council or in the performance of supplying goods or services resulting from those discussions.
5. The Consultant shall not permit any employee or contractor of the Consultant to have access to the Confidential Information until such time as that employee or contractor shall have entered into a confidentiality agreement with the Consultant in a form approved by Council.
6. The Consultant shall immediately notify Council of any information which comes to its attention regarding any actual or potential breach of confidentiality, disclosure or unauthorised use of the Confidential Information. The Consultant shall make every effort to co-operate with Council in any investigation, prosecution, litigation or other action taken by Council regarding the subject of any such information.
7. In the event of any actual or alleged breach of confidentiality, disclosure or unauthorised use of Confidential Information by any future, existing or former employee, agent, or contractor of the Consultant, the Consultant shall enforce its rights to injunctive or other relief to the fullest extent possible, or, if requested by Council assign such rights to Council. The Consultant shall assist Council in every way in enforcing those rights and indemnifies Council for all costs and expenses which Council may incur in doing so.
8. Upon termination or completion of discussions on any specific project, the Consultant shall deliver to Council any Confidential Information in the Consultant's possession which relates to that project and which is capable of being delivered. The Consultant shall delete, erase, or otherwise destroy any Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which relates to the project and is not capable of delivery to Council.
9. Upon termination of the business relationship, or at any other time on Council's request, the Consultant shall deliver to Council all Confidential Information in the Consultant's possession which is capable of being delivered. The Consultant shall delete, erase, or otherwise destroy all Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to Council.

10. The Consultant shall make every effort to maintain the confidentiality of the Confidential Information and to protect it from unauthorised access or use.
11. The Consultant shall comply with all Council's security and safety procedures and will permit and co-operate with any additional security or safety precautions which Council may wish to implement in respect of the relationship with the Consultant.
12. The Consultant shall not publicise its business relationship with Council or disclose any matter related to it without Council's specific prior written consent.
13. The terms of this Deed are in addition to all other obligations of the Consultant and where any inconsistency occurs, the provisions of this Deed shall prevail.
14. If for any reason a provision of this Deed or part of one is illegal, invalid or unenforceable in any jurisdiction it shall be read down or severed to the extent necessary so that it may not be so construed. The illegality, invalidity or unenforceability of any provision, or part of one, in any jurisdiction shall not affect the legality, validity or enforceability of any other provision, or of that provision in any other jurisdiction.
15. This Deed is governed by the laws of the State of Queensland.

EXECUTED AS A DEED.

.....

(Name) _____

