CCS5 **STRATHFIELD TOWN CENTRE MASTER PLAN WORKING GROUP - REVIEW**

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APPROVER: **Michael Mamo, General Manager**

RECOMMENDATION

That Council:

1. Endorse Council officers to meet with the Strathfield Town Centre Master Plan Working Group (the Working Group), to present outcomes of the O'Connor Marsden (OCM) review and next steps (including the dissolution of the current Working Group).
2. Approve the dissolution of the current Working Group to enhance Council's adherence to the stipulations of the *Local Government Act 1993* (NSW), and *Local Government Regulations 2021* (NSW), as well as Council's Code of Conduct, in the development of the Strathfield Town Centre Master Plan. This action aims to ensure the implementation of a rigorous governance framework equipped with effective mechanisms to address conflicts of interest, stakeholder engagement, decision-making processes, and the allocation of funding in a comprehensive manner.
3. Endorse the establishment of a new Reference Group which will align with the Reference Group Terms of Reference attached to this report, and:
    a. will have a membership based on a defined skill set relevant to advising on key aspects of master planning.
    b. will have a separate advisory role from the Council planning role by excluding the Director Environment and Planning.
    c. will exclude all Councillors from participation. Councillors will be provided approval opportunities at milestones, will be briefed regularly and on request, and may provide their views to Council through the General Manager in the normal way or as a part of formally managed sessions with the Council Planning staff.
    d. will separate any subset of stakeholders from directly advising Council by excluding direct stakeholders from participation in the Reference Group.
    e. will not be permitted to have unmitigated conflicts of interest regarding the master planning outcome.
    f. will provide advice upon request of the Council Steering Committee.
    g. The Reference Group will not:
        i. direct or influence stakeholder consultations, consultants, or the internal strategic planning function.
        ii. have unfettered access to information or meetings, particularly where that information is of value to any particular member.
4. Endorse the establishment of the Reference Group in accordance with the Terms of Reference including the selection of members through an expression of interest and/or targeted selection where necessary (i.e. if the expression of interest does not provide all relevant expertise) and timeframes aligning with the next steps, actions and timeline provided in section six (6) of this report, and provide delegation to the Council Steering Group to make non-material adjustments to the Terms of Reference as / when required.
5. Endorse the development of a Strathfield Town Centre Master Plan and establish an appropriate Governance Structure, including the establishment of a Council Steering Committee and Project team, in addition to the above Reference Group.
6. Endorse the Governance Structure for the Strathfield Town Centre Master Plan as set out in section six (6) of this report and the Roles and Responsibilities set out in section seven (7) and section eight (8) of this report, including the establishment of a Council Steering Committee, Reference Group and Project team.
7. Endorse the draft Strathfield Town Centre Master Plan Governance and Probity framework and plan to be further developed with an independent Probity Advisor from O'Connor Marsden and in consultation with the Project Team, Reference Group and Council Steering Committee as specified within this report, with the final Governance and Probity framework and plan to be returned to Council

for endorsement.

PURPOSE OF REPORT

1. To provide Council with the outcomes of the Strathfield Town Centre Master Plan Working Group review competed by O'Connor Marsden (OCM).
2. Outline the necessary next steps to ensure that Council is implementing a robust governance and probity framework in relation to the development of and decisions surrounding the Strathfield Town Centre Master Plan.

REPORT

1. Background

a. The Strathfield Town Centre Project (the Project) has been on foot for several years.
b. The project is an important aspect in our Community Strategic Plan and current Delivery Program and Operational plan, as follows:
    i. Our Vision reflects the community's expressed aspirations for the future of the Strathfield Local Government Area to 2035. It incorporates the stated community values and priorities and has been developed from community engagement.
    i. Council's Delivery Program 2022-2026 and Operational Plan 2023-2024 outlines that our community values our areas of housing density and population growth be supported by access to transport, infrastructure, open space and services.
    ii. The principles on which Council's Strategic and Operational plan outcomes and directions are based are the principles of social justice. Social justice means a commitment to ensuring:
        a. Equity
        b. Rights
        c. Access
        d. Participation.
c. A Probity Plan was initially development in 2013 by O'Connor Marsden (OCM) based on the proposed structure of the Project at that point in time and aligned to the guidance from the Office of Local Government on Public Private Partnerships.
d. OCM developed the 2013 Probity Plan *(attachment 1)* in conjunction with Council and the property advisors who were also engaged on the Project, IPG (John Elvy), and legal advice (HWL Ebsworth). The 2013 Probity Plan included feedback from Council, reference to a Project Taskforce and consultation with the community.
e. In 2018 Council was approached by Lendlease with a proposal for the development of the site. During the period 2018 to 2020 there were several meetings undertaken between Lendlease and Council (which OCM observed) to discuss the proposed Planning Proposal to be submitted for the site. OCM prepared a Probity Plan to guide the consideration of this unsolicited proposal and discussions with Lendlease.
f. On 30 January 2021 Lendlease presented to the then elected Councillors the proposed development and to our knowledge nothing further came of these discussions.
g. On 2 March 2021, Council resolved the following:
    i. That Council establish a Council working group to discuss an updated Town Centre Master Plan Design.
    ii. That Council liaise with the Strathfield Community, Burwood Council, Canada Bay

Council, Transport NSW, RMS, Taxi Council NSW, and all key landholders in Strathfield Town Centre to produce an updated Town Centre Master Plan Design.

iii. That Council discuss possible composition of the working group at a next available Workshop.

h. On 6 December 2022, Council resolved the following:

i. Endorse and appoint the Councillors and Representatives listed to the Strathfield Town Centre Master Plan Working Group until the end of Council Term September 2024.

ii. Amend the Terms of Reference clauses to the following for the Strathfield Town Centre Master Plan Working Group until the end of Council Term September 2024 to the following: a) "b. Strathfield Director of Planning with the option of 1 rep from Strathfield Council b) "c. One (1) representative with option of one (1) listed alternate representative of Burwood Council" c) "g. Representatives that made applications following an Expression of Interest selection process" d) "h. The Mayor of Burwood and Mayor of Canada Bay can participate in the working group as non-voting observers" and that they be sent the Minutes of each meeting. e) That all interested Councillors be allowed to attend as observers.

i. The above resolutions effectively established what became known as the Working Group from December 2022 (which has similar composition to the Taskforce which is referred to in the 2013 Probity Plan) and, as outlined above, includes representation from members of the community and stakeholders. This is in the context of the Council decision to proceed with the development of a Master Plan for the Town Centre. Concerns around the organisation of the working group were raised in relation to their interaction with Council and Councillors, the composition of the Working Group and the way in which the most recent Working Group had come together. The initial Terms of Refence for the Working Group is provided at *attachment 2* of this report.

j. The original Taskforce was established to provide high level oversight of the Master Planning process and was largely a mix of senior Council staff and elected Councillors. It included the Mayor, General Manager, a co-opted Council Executive, and the option of up to two (2) prominent community members. In effect, it appears that it acted as a project sponsor with the following Terms of Reference (ToR):

i. Provide community guidance on strategic direction and priorities;

ii. To effectively communicate with the community, the benefits and progress of the project;

iii. To act as ambassadors for the project within the community;

iv. To appoint membership of the Council Steering Group, subject to Council resolution;

v. To promote the project with the Government.

k. The makeup of the current working group is as follows:

i. Mayor and multiple Councillors as non-voting members.

ii. Property developers. The following property firms are members:

- Esperia Court, a Strathfield centric apartment block developer.
- Richardson and Wrench, a real estate agent.
- Windtech, a property wind modelling consultancy.
- Memocorp, a property development company that has a relevant landholding that could be impacted by the Master Plan outcome.
- The Strathfield Chamber of Commerce.

- Strathfield Council's Director Planning and Environment.

2. Assessment from OCM
    a. Based on the information reviewed by OCM, it appears that the Working Group has drifted:
        i. From a high level Project Sponsor to a key actor in delivery while retaining Councillors as members.
        ii. From a body of internal senior Council officials and internal planning personnel to a body that includes multiple property development firms and a key adjoining Council stakeholder.
    b. The Working Group as now constituted appears to be highly conflicted, with a significant membership of property developers or related firms having perceived and actual pecuniary interests.
    c. It is understood that the intention of the current Working Group was to facilitate a discussion amongst key stakeholders with regard to the future direction of the Strathfield Town Centre. It was not envisaged at the time of establishing the working group that the conflicts (actual or perceived) would exist as the Working Group was expected to only be a means of bringing stakeholders together for a collaborative discussion, not to influence decision making. However, since the establishment of the Working Group, there has been concerns that stakeholders could use the Working Group to direct staff and affect the outcome of the Master Plan. This does not align to the requirements of the Local Government Act or Council Policy and therefore has the potential to create significant issues of conflict (actual or perceived) which would be difficult to defend in the case of Council's position in relation to any decision making.
    d. The inclusion of Council's Director Planning and Environment as part of this Working Group may also create perception risks in relation to separation of roles for the Master Plan process noting that this area of Council is also likely to be driving the Master plan process, which should receive advice but be separate to the Working Group as an advisory committee.
    e. The Working Group may be perceived as biased with select stakeholders (Burwood Council and Memocorp at least) having Working Group membership, while also being stakeholders that Council would engage with as part of the Master Plan process. If the Working Group is involved in providing advice to Council on the Master Plan process, which may include identification of stakeholders that should be consulted, then OCM suggest that the key stakeholders are not members of the Working Group but part of a separate stakeholder group who may only be consulted during the process. This stakeholder group could then include other bordering Councils and other relevant parties to ensure the stakeholder consultation process is more balanced and not limited to the current members on the Working Group.
    f. Councillor roles (even if non-voting) as part of a working or stakeholder group creates a conflict of duty where the same Councillors may be required to vote as part of the Council elect on and decisions regarding the Master Plan, LEP impacts of the Plan and activities and determinations under the Plan. In this scenario, the Councillors would need to decide on whether their input is better considered as part of the Working Group membership or as a decision maker on the Master Plan process and then choose a role. This is the same principle as adopted in the Code of Conduct for Regional Planning Panels which may have Councillor representation on them.
    g. As the Working Group appears to have drifted from Project Sponsor to delivery role, the involvement of Councillors appears to be inconsistent with the segregation between Council

staff roles (as Plan drafters) and Councillor oversight and approval roles.

3. **Conflicts of interest on the current working group**

The current composition of the Working Group presents the following issues in relation to conflicts of interest and decision making:

- **Mayor and multiple Councillors as non-voting members:**

We have noted that elected Councillors may have downstream voting rights on the acceptance of the Master Plan, matters related to the LEP raised by the Plan, and final approvals for acquisitions or developments under the Plan. This situation raises potential conflicts of interest, as the relevant Councillors may find themselves in the position of making decisions on matters, they have been directly involved in, leading to conflicting duties.

- **Burwood Council Manager of City Planning and Director City Strategy:**

Burwood Council, alongside Canada Bay Council, various State agencies, and significant landowners, were identified as one of several stakeholder groups to participate in the working group. However, a clear balance in the participation of these groups has not been established, potentially creating bias and conflicts of interest. Moreover, the overrepresentation of planning staff from another Council in comparison to the participation of Council's own staff may also lead to similar conflicts.

- **Property developers and Land Holders:**

The inclusion of several property developers and landholders in the Working Group raises concerns about pecuniary conflicts of interest, which may not align with the Local Government Act or Council's Code of Conduct. This situation could lead to perceived bias and inadvertent disadvantages for other developers and landowners, given the influential position held within the group.

- **Council's Director Planning and Environment:**

The current inclusion of Strathfield Council's Director Planning and Environment in the working group raises perception conflicts and presents decision making issues, as this role holds senior responsibility within the Council for fair and equitable consultation outcomes to the entire community and all stakeholders. This situation may create perceptions of preferential treatment or biased decision-making.

- **Strathfield Chamber of Commerce:**

Any typical business chamber would present with several business-related conflicts which may lead to bias decision making.

4. **Dissolution of the current Working Group**

Whilst there is no evidence of wrongdoing by the Working Group or its members, considering the OCM assessment the current composition of the group creates the potential for undue influence which may potentially place the Working Group in a position where it could influence a decision for the personal benefit of members of the group. If this issue is not addressed now, it has the potential to undermine the Master Plan itself. For the avoidance of doubt, there is no accusation of wrongdoing on behalf of the Working Group or its members.

Given the above, the composition of the current Working Group and the proposal for its dissolution is a matter of utmost importance. Maintaining the existing arrangement poses significant risks, which could potentially bring our Council into disrepute and erode community engagement and trust. If Council's practices in the development of the Strathfield Town Centre Master Plan and related processes are questioned, the present arrangement lacks defensibility, and it is likely that substantial legal costs may be incurred to justify actions that could have been addressed more proactively from

the outset. This would further result in the use of Council funds to defend a process which we have now identified does not enable Council to fulfil its legal and ethical obligations as well as those obligations set out in the *Local Government Act 1993* as follows:

8A Guiding principles for councils *Exercise of functions generally*

The following general principles apply to the exercise of functions by councils:

(a) Councils should provide strong and effective representation, leadership, planning and decision-making.

(b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

(c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.

(d) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.

(e) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.

(g) Councils should work with others to secure appropriate services for local community needs.

(h) Councils should act fairly, ethically and without bias in the interests of the local community.

*(2) **Decision-making** The following principles apply to decision-making by councils (subject to any other applicable law):*

(a) Councils should recognise diverse local community needs and interests.

(e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

*(3) **Community participation** Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.*

And Council's Code of Conduct:

General conduct

3.1 You must not conduct yourself in a manner that:

a) is likely to bring the council or other council officials into disrepute

b) is contrary to statutory requirements or the council's administrative requirements or policies

c) is improper or unethical

d) is an abuse of power

e) causes, comprises or involves intimidation or verbal abuse

f) involves the misuse of your position to obtain a private benefit

g) constitutes harassment or bullying behaviour under this code or is unlawfully discriminatory.

3.2 You must act lawfully and honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act. (section 439).

Given these potential consequences, it is imperative for Council to take prompt and decisive action to dissolve the current Working Group and initiate necessary measures to mitigate any adverse repercussions.

The new governance framework and probity advice provided in this paper will enable Council to establish a new, more transparent, and ethically sound framework for engaging stakeholders and

making decisions related to the Strathfield Town Centre Master Plan. This will not only safeguard the reputation of our Council but also foster a higher level of public confidence and participation.

5. Recommendation provided by OCM following their review

Based on the above, OCM has provided the following recommendations for consideration by Council in relation to the governance structure and specifically the role of the Working Group:

OCM recommended that the role of any type of Working Group would not:

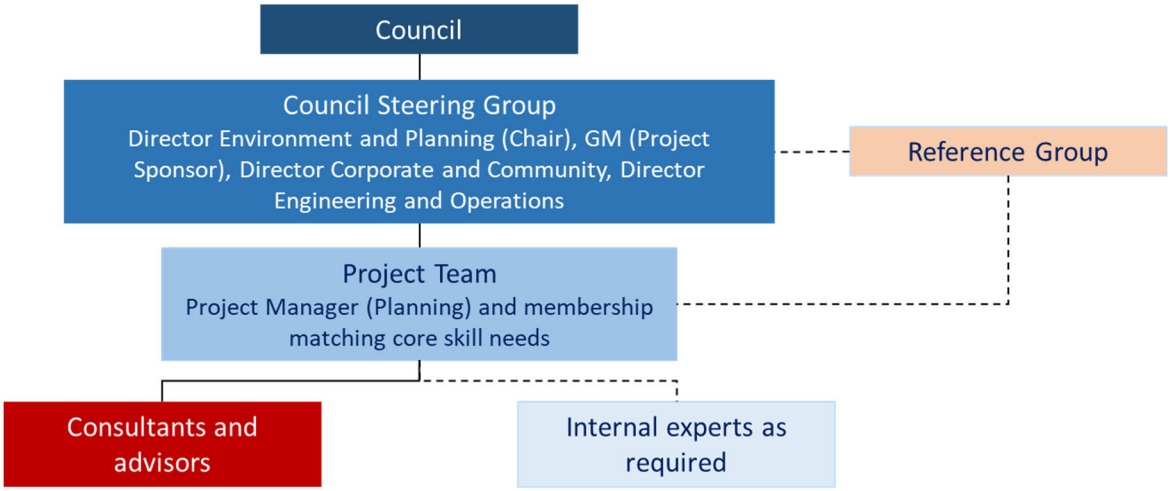
- Direct or influence the stakeholder consultations, consultants, or internal strategic planning function.
- Have unfettered access to information or meetings, particularly where that information is of value to any particular member.
- Councillors may consider withdrawing from the Working Group or the like and providing their views to Council through the General Manager in the normal way or as a part of formally managed sessions with the Council Planning staff.
- The Strathfield Council's Director Planning and Environment should withdraw from the Working Group in order to lead the master planning work and to put distance between the Reference Group property developers and the Council Planning function.
- The Reference Group membership be aligned with a master planning skill matrix rather than a subset of interested stakeholders.
- As a reference body, the Reference Group may provide expert opinion as requested by the Strategic Planning function or Council itself but has no formal or informal management role.

6. Governance

With any Master Planning we can expect scrutiny from stakeholders, political rivals, media and others. Processes and decisions are more likely to be subject to allegations of wrongdoing and to come under scrutiny where:

- There are high value benefits and losses likely to flow to external parties
- The decision makers have relationships with potential beneficiaries
- The matter is high profile with strong community feelings
- There is political interest or opportunity or media interest
- There is a high level of discretion exercised in producing a bespoke outcome.

The following governance structure has been developed to address the issues that have been identified through OCM's review and to reduce the risk in relation to any future decision making. This is the same structure which was presented to Councillors as part of the Councillor Workshop on 18 July 2023.



The above model ensures the following:

a. **Impartiality:** demonstrable through reconstitution of the working group as a Reference Group with members to be unconflicted and to have master planning skills rather than stakeholder interests.
b. **Accountability:** through a Council Steering Committee made up of the Executive team, providing project oversight and with the General Manager accountable to Council for project performance, with Council's Director Planning and Environment to be the Chair of this Committee.
c. **Transparency:** of the process through public conduct of the stakeholder engagement process.
d. **Clearer roles in relation to advice and expertise:** The dashed lines in the governance structure presented above signify that the Reference Group and Internal Experts serve in an advisory capacity only. Their expertise will be utilised to enhance the project's outcomes, ensuring the avoidance of any potential conflicts, whether perceived or actual.

7. **Overview of roles and responsibilities**
   a. Key roles and responsibilities for each of these groups has been developed to support the above governance structure.
   b. The roles and responsibilities of each group are segregated to provide for a transparent and defensible process and protection against perceptions of bias conduct by individuals involved in the process. At the same time, the roles and responsibilities set out below permit relevant parties to be informed and to contribute to the process.

8. **Draft Governance and Probity Framework and Plan**
   a. A draft Governance and Probity Framework and plan, which aims to establish a comprehensive and structured approach for effective management of Council processes has been provided at *attachment 3*. This drafted Framework and Plan will undergo a formalization phase through a well-structured consultation process. The consultation process will be led by an independent probity advisor in collaboration with the defined groups (outlined below), to finalise the approach.

   b. The primary objective of consultation is to ensure active engagement from all relevant parties with the Framework and Plan. This inclusivity will enable Council to address any potential mitigating factors that may not be apparent at the outset, thereby refining the final Framework and Plan to reflect the best possible outcome for Council.

   c. Our commitment to transparency and accountability necessitates a thorough and consultative approach to the development of this Framework and Plan. Through the expertise and guidance of the independent probity advisor, we seek to instil a high level of confidence in the process' integrity. During the consultation process, we will encourage constructive input, and this process will also provide the opportunity to train all involved in the importance of the Framework and Plan, and how this interjects with their views and roles.

   d. Once the consultation process concludes, the independent probity advisor and the designated groups will review all inputs and finalise the Governance and Probity Framework and Plan. The outcome will be a robust and comprehensive document that will serve as a benchmark for promoting transparency, adherence to best practices, and responsible decision-making. All parties will be required to sign onto the finalised Governance Framework and Plan.

Position / Group	Roles & Responsibilities	Composition	Selection process

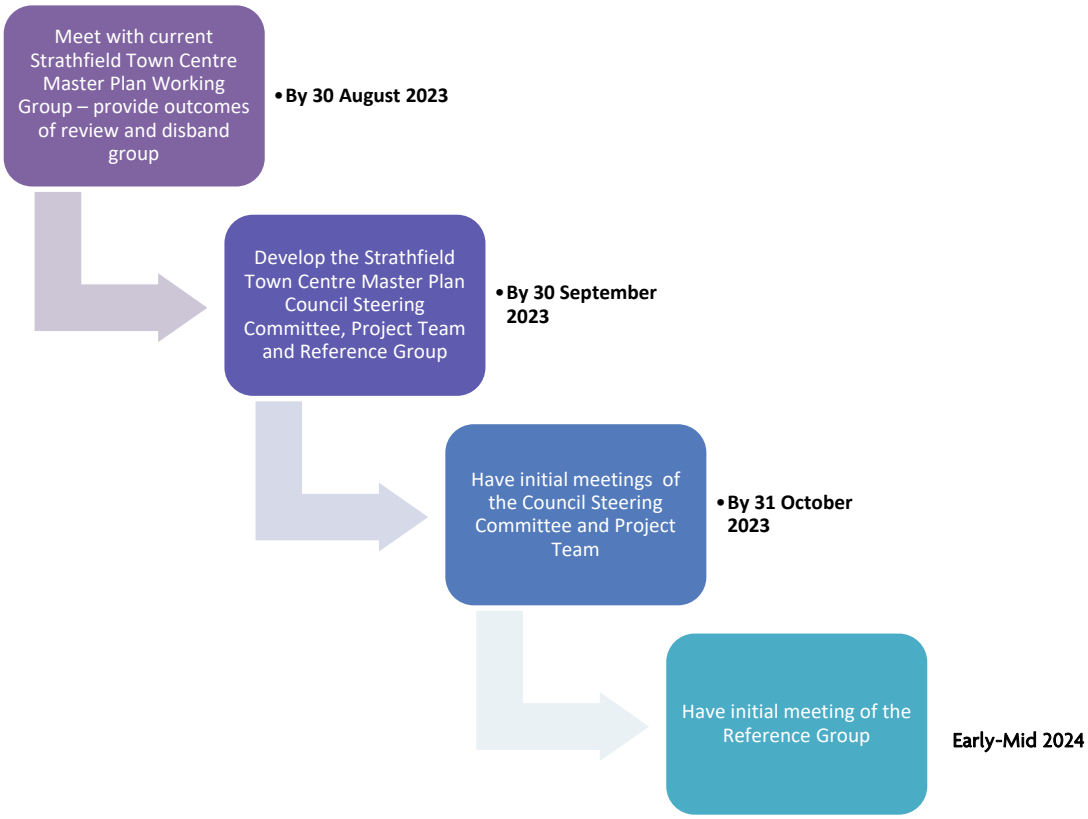
Position / Group	Roles & Responsibilities	Composition	Selection process
Elected Council	Approve the Strategic Plan for delivery of the Master Plan, which will set out Council's involvement in the process, including: • Governance arrangements • Project timelines and milestones • Council approval points throughout the process at milestones and gateways • Council review, briefing and consultation points and information to be provided to Council. Provide overall strategic oversight of the project: • Approve as appropriate recommendations from the Council Steering Committee • Receive regular updates and progress reports from the Council Steering Committee • Provide feedback and direction to the Council Steering Committee through the GM • Approve funding and appointment of consultants if required.	Elected Councillors	Council elections
General Manager (GM)	• Is the Project Sponsor • Is a full member of the Council Steering Committee • May direct the secondment or other similar mechanism of providing relevant internal support to the Project Team.	General Manager	Council resolution
Council Steering Committee	• Chaired by Director of Planning and Environment • Receive regular updates and progress reports from the Project Team • Seek advice or opinions from the Reference Group • Ensure the information provided to the Reference Group is on a need-to-know basis and that members of the Reference Group do not have access to information that provides a benefit to any member • Ensure adequate segregations are maintained between stakeholder engagements, lobbying activities, or other external relationships and the drafting of the Master Plan • Endorse key decisions such as stakeholder engagement plans, consultant scope and membership of the Project Team • Ensure relevant policy, project and assurance	GM and Directors, with Council's General Counsel to support	Council resolution

Position / Group	Roles & Responsibilities	Composition	Selection process
	processes are adhered to including risk assessment and mitigation • Provide guidance to the Project Team.		
Reference Group	The Reference Group acts as a 'sounding board' and reference group of experts for the Council Steering Committee, as and when required. Members will: • attend Reference Group meetings where appropriate and be an active contributor to the Group and its functions • undertake consultation or research prior to meetings to input into the discussion of agenda items • undertaking consultation or research after meetings consistent with actions agreed to during meetings and documented in meeting minutes • identify gaps in knowledge – including relevant policy, data, or research developments that may be able to inform the Project • review drafts of documents as requested • maintain confidentiality of the work • disclose conflicts as and when required. The Reference Group will not: • direct or influence the stakeholder consultations, consultants, or internal strategic planning function, or • have unfettered access to information or meetings, particularly where that information is of value to a member. The terms of reference for the Reference Group is provided at *Attachment 4* of this report.	Independent experts with skills relevant to the Council Skills and Diversity Matrix *(Attachment 5)*	The Council Steering Committee will exercise its authority to finalise the selection process after the public release of an Expression of Interest, inviting applications from eligible candidates. The Reference Group will undergo yearly reviews, with a new Expression of Interest initiated biennially. During this process, both existing and new members will be considered based on the applications received during that specific period.
Project Team	The Project Team will be led by a Project Manager, responsible for overseeing and progressing the Project, and for ensuring all Project governance and reporting obligations are met. The Project Manager provides reporting to the Council Steering Committee. Key tasks include: • provide secretariat support for the Reference Group • identify and address actual or potential conflicts between the duties of Project Team members in	Council to confirm membership which will consist of Council Officers only	The Council Steering Committee will exercise its authority to finalise the selection process which will be determined through the access to Council staff expertise as suited to this project.

Position / Group	Roles & Responsibilities	Composition	Selection process
	respect to the Project and Council business as usual activities. Separate the personnel drafting the Master Plan from the personnel involved in stakeholder consultations • manage the Project's business aspects, including budget strategy, ongoing financial feasibility, oversight of contractor performance, achievement of milestones and benefits realisation • ensure the timely preparation of quality reporting and other documentation as required by the Council Steering Committee • manage the effective and efficient deployment of Council resources to the Project • ensure that the Project is undertaken in accordance with Council's resolutions and policies • identify and address substantive Project issues and risks in a timely manner, including by maintenance of a formal risk register • identify and address other risks which have major implications for the Project • liaise with key stakeholders such as property developers, landowners etc. (noting this will be necessary as these types of roles will not be included on the reference group) • reconcile differences in opinion and approach and resolve disputes arising from them.		

9. Next steps, actions, and timeline

The below diagram outlines the next steps, actions, and timelines in relation to progressing ahead with the recommendations of OCM.



FINANCIAL IMPLICATIONS

Expenditure regarding the review will be included as part of the next quarterly budget process, and further updates and endorsement for funding will be provided to Council regarding any ongoing funding requirements as the project progresses.

ATTACHMENTS

1. 2013 Governance and Probity Framework (initial) Strathfield Town Centre Master Plan Working Group
2. Initial Town Centre Master Plan Working Group Terms of Reference 2022
3. Strathfield Town Centre Master Plan DRAFT Governance and Probity Framework and Plan
4. Terms of Reference - Strathfield Town Centre Master Plan Reference Group
5. Reference Group skills and diversity matrix