

Summary of probity review of HDA EOI application 229650

February 2026

1. Background to Probity Review

- 1.1 On 7 February 2025, the Housing Delivery Authority (**HDA**):
 - 1.1.1 evaluated an expression of interest (**EOI**) from Billbergia regarding a mixed-use commercial and residential development at Averill Street and Leeds Street, Rhodes, application 229650 (**Subject EOI**); and
 - 1.1.2 recommended, in accordance with s 2.11(4) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**), that the Minister for Planning and Public Spaces (**Minister**) declare the Subject EOI to be State significant development (**SSD**).
- 1.2 On 17 February 2025, the Minister declared the Subject EOI as State significant development in accordance with s 4.36(3) of the EP&A Act (**SSD Order**).
- 1.3 Between approximately 30 June 2025 and 18 July 2025, the Department became aware that the land identified in the SSD Order did not match the land identified in the Subject EOI. This issue was brought to the Department's attention by landholders whose land, adjacent to the land identified in the Subject EOI, was included in the SSD Order without those landholders' consent.
- 1.4 On 23 July 2025, the Minister amended the SSD Order (**Amendment Order**) by removing certain parcels of land from the SSD Order, so that the land identified in the Amendment Order applied only to land over which Billbergia had actual tenure at that time. The Amendment Order did not include land that was under the control of a private third-party or the City of Canada Bay Council, regardless of whether any of that land was the subject of negotiations at that time.
- 1.5 On 24 October 2025 Maddocks provided a probity review on the decision-making that affected the SSD Order and Amendment Order to the Department (**Probity Review**). The scope of the Probity Review was not limited to the land ownership issue described at paragraph 1.3 above.
- 1.6 On 23 and 24 December 2025 the Department instructed Maddocks to prepare this summary of the Probity Review (**Summary**).

2. Process framework regarding the HDA's consideration of EOIs and SSD declarations

- 2.1 The HDA outlines its process on its website as an 8-step process.¹ The relevant steps in the process can be summarised as follows:
 - 2.1.1 **Step 1:** the developer submits an EOI to the Department;
 - 2.1.2 **Step 2:** the Department undertakes a high level review of the EOI against information it already holds, to determine whether there are any critical issues or information gaps in the EOI. Once critical issues or information gaps (if any) have been addressed by the applicant, the Department prepares a briefing report for the HDA;
 - 2.1.3 **Step 3:** the HDA evaluates the EOI against relevant criteria, assisted by the Department's briefing report. The HDA then provides advice and recommends to the Minister that the EOI be, or not be, declared State significant development; and

¹ <https://www.planning.nsw.gov.au/policy-and-legislation/housing/housing-delivery-authority>

- 2.1.4 **Step 4:** the Minister reviews the HDA advice and declares, or does not declare, the EOI as SSD.
- 2.2 At the time of the Subject EOI, the HDA evaluated EOIs in accordance with, relevantly:
- 2.2.1 the publicly available *Housing Delivery Authority Operational Procedures* (December 2024) (**Operational Procedures**), which contained additional information regarding the objectives, powers and authorities of the HDA; and
- 2.2.2 the publicly available *Housing Delivery Authority SSD criteria* (December 2024) (**Assessment Criteria**), which was intended to assist HDA members to make clear, objective and consistent decisions informed by relevant facts.² The Assessment Criteria were arranged under four objectives (**Objectives**).
- 3. Issues raised in the Probity Review**
- 3.1 The Probity Review identified four issues that, in our view, warrant consideration from a probity perspective, being:
- 3.1.1 with regards to the HDA's recommendation that the Subject EOI be declared SSD:
- (a) the floor space ratio (**FSR**) for the land would need to be revised via concurrent rezoning before the development could be approved (**FSR Issue**);
 - (b) a dwelling cap imposed on the Rhodes precinct³ due to capacity constraints at Rhodes Train Station would affect the development and would need to be revised in consultation with Transport for NSW before the development could be approved (**Dwelling Cap Issue**); and
 - (c) Billbergia did not own, or have an option over, all land identified in the SSD Order (**Land Tenure Issue**); and
- 3.1.2 with regards to the amendment of the SSD Order, the Minister issued the Amendment Order without seeking further advice from the HDA (**Amendment Issue**).
- 3.2 Like the Probity Review, this Summary considers the process steps in the sequence they occurred.
- 4. The Department's preparation of the Briefing Report**
- 4.1 The Department's general process for the preparation of briefing materials for the HDA was beyond the scope of the Probity Review.
- 4.2 In the briefing report relevant to the Subject EOI (**Briefing Report**), the Department appropriately identified the FSR Issue and the Dwelling Cap Issue for the HDA's consideration, each in the context of whether the Subject EOI, if declared SSD, could have its development application assessed quickly.
- 4.3 Regarding the Land Tenure Issue, the Department:

² The Assessment Criteria document is dated, in the footer of the first page, October 2024. However, we understand that the document was not finalised or issued until December 2024. In addition, the Assessment Criteria document was amended on 10 July 2025, after the HDA assessed the Subject EOI and the Minister made the SSD Declaration but before the Minister made the Amendment Order.

³ See clause 7.7 of the *Canada Bay Local Environmental Plan 2013* (**CBLEP**).

- We recommend the Department prepare its comments in briefing materials with greater detail. In particular, we recommend the Department note whether an applicant has provided a meaningful commitment to each Assessment Criterion under Objective 2.*

- ## 6. The HDA's consideration of the FSR Issue

- ## 7. The HDA's consideration of the Dwelling Cap Issue

- page 5

- ## Recommendation 2

7.6 *We make no recommendation with regards to the Subject SSD. We do not consider the Second Recommendation to have affected the Subject SSD, favourably or negatively, and indeed it does not appear to have been formalised or imposed beyond the ordinary SSD planning requirements.*

8. The HDA's consideration of the Land Tenure Issue

- page 6

8.5 *We make no recommendations regarding the HDA's consideration of the Land Tenure Issue or use of the EOI Map in making its recommendation.*

9.1 Clause 12.1 of the Operational Procedures states that the HDA decisions must include reasons. Although cl 12.1 is not prescriptive as to the minimum content of those reasons, from a probity perspective it is important that reasons be set out in sufficient detail so that the basis for the HDA's decision can be readily understood with reference to the Assessment Criteria.

9.3 However, we acknowledge that the HDA's function is, at least partly, to expedite planning processes and so detailed reasons may be neither feasible nor appropriate. Moreover, we acknowledge that the HDA has limited resources and the additional administrative burden placed on the Department to prepare more detailed reasons is likely to be considerable. To that end, whether the HDA chooses to increase the detail of its reasons is ultimately a policy decision, informed by consideration of the risk we have outlined above. That is, balancing the HDA's function to facilitate quick development while avoiding rushed decisions and maintaining proper process.

We recommend the HDA and the Department consider whether it would be feasible to include more detail in the reasons for the HDA's decisions.

10.1 There were, to our knowledge, no public documents at the time of the SSD Order setting out the process by which the Minister receives or considers an HDA recommendation and makes an SSD declaration. We do not consider this lack of formalised briefing process to be problematic, as on our understanding it is generally consistent with the manner in which the government conducts its business.

10.3 *We make no probity recommendations regarding the Minister's receipt or consideration of HDA recommendations, or the making of SSD declarations.*

11. Preparation of the Amendment Order

- 11.1 In the present circumstance, it was appropriate and consistent with the principles of probity for the Minister to amend the SSD Order without sending the Subject EOI back to the HDA for reconsideration. However, we only consider this approach to be appropriate in the present circumstance because:
- 11.1.1 the size of the Subject EOI (in terms of number of buildings and dwellings) was not affected by the reduced land envelope attached to the Subject EOI;
 - 11.1.2 in making its recommendations the HDA already had information provided to it, based on the Subject EOI Form, that indicated that:
 - (a) Billbergia did not, in fact, have tenure over all of the land; and
 - (b) although the proposed development would exceed certain development standards by greater than 20%, Billbergia had indicated that it would submit a concurrent rezoning proposal to proceed with the proposed development.
- 11.2 Were any of these not the case, our conclusion would be different. This is because the amendment to the SSD Order may have materially changed the basis upon which the HDA's recommendations were originally made in which case the FSR Issue should then have been revisited by the HDA.
- 11.3 In the circumstances, the Briefing Report correctly noted that the Subject EOI would seek to vary the floor space ratio and building height development standards by greater than 20%, and that Billbergia had indicated that it intended to submit a concurrent rezoning proposal to amend the applicable LEP development standards. Assessment Criterion 2.1, at that time, required that the EOI 'not exceed applicable development standards by more than 20%'. We understand Assessment Criterion 2.1 at that time to indicate that EOIs that exceed a development standard by more than 20% are to be considered by the HDA as posing a risk of delay. Although not expressly clear, it appears that Assessment Criterion 2.1 at that time was *not* a qualitative assessment undertaken by the HDA (unlike the other Assessment Criteria), though it would be considered as part of the broader weighting exercise undertaken by the HDA.
- 11.4 However, the EOI form has since been modified to request applicants specify the percentage by which the application will exceed the applicable development standards. The public should now expect that the exceedance percentage *is* assessed qualitatively given that the HDA asks applicants to provide a particular percentage value. The new fields on the EOI form imply that the percentage value will impact the degree of risk of delay in the context of the HDA's consideration of Assessment Criterion 2.1.
- 11.5 If the Subject EOI was to be reverted for reconsideration, in the interest of fairness the HDA would need to reconsider the Subject EOI based on the Assessment Criteria as they existed at the time the Subject EOI was submitted. Because the HDA was undertaking non-qualitative assessments of concurrent rezoning percentage values at that time, it was likely appropriate that the Minister amended the SSD Order without reverting the Subject EOI to the HDA for reconsideration.

Recommendation 4

We recommend that the Department and the Minister exercise caution when amending an SSD declaration by Ministerial order without consulting the HDA. In many circumstances, the public would have a legitimate expectation that if a modification to an SSD declaration may be perceived as having altered the basis upon which the HDA's initial recommendation was made, then there should be a consistent process that determines whether or not that modification should be approved unilaterally by the

12. Acknowledgement of neighbouring landowners' interests

12.2 *We make no recommendation regarding the Department's interactions with the neighbouring landowners.*

13.5 Our concerns are that:

13.5.2 The Policy Decision was made concurrently with the HDA's decisions regarding the Later EOIs – that is, after the Later EOIs were submitted. On review of the transcript from the 23 June 2025 meeting, it is likely that the Policy Decision impacted the HDA's decisions regarding the Later EOIs. This is not to say that the Policy Decision necessarily determined those decisions – such a conclusion is not possible based solely on the written record of that meeting – but it is most likely

that the Policy Decision was a consideration in the HDA's weighting exercise. Accordingly, our concern is not that the Subject EOI and Later EOIs were assessed differently with respect to the Dwelling Cap Issue, but that the Later EOIs were assessed having regard to a policy that was made after the Later EOIs were submitted. That is, that the HDA relied upon the Policy Decision to justify the differential treatment experienced by the Later EOIs, despite the fact that the Policy Decision was announced at the same time as the decision was made to not recommend the Later EOIs, and after those Later EOIs had been submitted.

Recommendation 5

We recommend the Department consider contacting the applicants for EOIs 238532, 249654 and 251603 and inquire whether those applicants would like their EOI to be reconsidered by the HDA.

If an applicant accepts that offer, we recommend the HDA reconsider the relevant EOI and, in doing so, consider whether the problem posed by the dwelling cap can be ameliorated in those EOIs in the same way it was with regards to the Subject EOI, specifically with a 'condition' that the dwelling cap be revised before development consent is granted. In fairness to Billbergia, if the HDA reconsiders the EOIs and decides to recommend any of the EOIs be declared SSD, it may be appropriate to require those applicants to confer with Transport for NSW and the Department, in the same way that Billbergia is required to, with regards to the dwelling cap – to do otherwise may, but would not necessarily, unfairly burden Billbergia. If the HDA decides to recommend EOIs 238532, 249654 or 251603 be declared SSD, it would of course remain open to the Minister to accept or reject that recommendation.

Recommendation 6

We recommend that any new HDA policy decisions that affect the assessment of EOIs be implemented only when assessing EOIs received after the policy decision in question has been publicised. Further, we recommend the HDA draws greater attention to policy decisions affecting its consideration of EOIs on its website. The most appropriate form of such a notice will vary depending on the nature of the policy decision.