

ITEM 2 NEW POLICY: DRAFT UNSOLICITED PROPOSAL POLICY

A draft Unsolicited Proposals Policy (the Policy) has been prepared to provide Council, Executive and key stakeholders with process guidance for unsolicited proposals. The draft Policy sets out the criteria and assessment process for Council to manage and consider proposals external to the organisation. The Policy is modelled on the NSW State Government's Unsolicited Proposal Guide and has been reviewed to allow for the scale and scope applicable to a local government setting.

This report presents the rationale for an Unsolicited Proposal Policy and recommends Council resolve to exhibit a draft Unsolicited Proposal Policy and accompanying Application Form and Checklist for community comment.

The above paragraph was updated after the release of the initial business paper.

RECOMMENDATION

The draft Unsolicited Proposals Policy be exhibited for a minimum period of 28 days for public comment.

REPORT AUTHORISATIONS

Report of: Kerry Hunt, Manager Community Cultural and Economic Development
Authorised by: Renae Elrington, Director Community Services - Creative and Innovative City

ATTACHMENTS

- 1 Draft Unsolicited Proposal Policy

BACKGROUND

The NSW Government has a well-established Unsolicited Proposals process in the form of a Guide, which was updated in August 2017. The process is designed to encourage non-government sector participants to approach government with innovative infrastructure or service delivery solutions, where the government has not requested a proposal and the proponent is uniquely placed to provide a value-for-money solution. Its key objective is to provide consistency and certainty to non-government sector participants seeking to deal directly with the government.

The Guide sets out how unsolicited proposals will be assessed within a transparent framework. The key criteria are uniqueness, value for money and strategic fit with government objectives. It outlines a clear and streamlined process to facilitate the NSW Government and non-government sectors working together to develop and deliver innovative ideas, services and new infrastructure.

The August 2017 update incorporates the recommendations from two Performance Audits conducted by the Audit Office of NSW (Managing Unsolicited Proposals in NSW, 2016 and NorthConnex, 2017) and the most recent periodic review (2016), providing greater clarity and public reporting.

From time to time, Council is presented with unsolicited proposals from the community, business or other government agencies. A draft Council Policy has been prepared to better assist in appropriately managing governance and probity issues that arise in such circumstances, as well as seeking to ensure unsolicited proposals that are of benefit to the City of Wollongong are pursued and realised. Whilst modelled on the NSW State Government's Unsolicited Proposals process, Council's approach has been reviewed and amended to allow for the scale and scope applicable to a local government setting.

An Unsolicited Proposal is an approach to Council from a Proponent with a proposal to deal directly in circumstances where Council has not requested the approach. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction. The approach to assessment of such proposals is set out in this process.

PROPOSAL

The draft Policy be placed on exhibition for 28 days, with a report detailing community feedback and a finalised Policy returning to Council.

CONSULTATION AND COMMUNICATION

An initial draft was circulated for comment and discussion held with the Executive Management Committee in December 2017.

An overview of the proposed approach was presented at a Councillor Briefing in February 2018. In addition, a presentation and facilitated discussion was held with members of Council’s Audit and Corporate Governance Committees.

Key feedback from the Committees included:

- A Probity Advisor should be a given, as unsolicited proposals by their very nature carry high risk.
- A policy should also stimulate (suggest) Council open to investment and innovation.
- Clear timeframes for pre-lodgement and Stage 1 should be included (linked to genuine willingness above).
- Need to understand from a process perspective where Private Public Partnerships and normal tendering requirements apply.
- Recommend looking at other examples.

Subsequent to this feedback, the draft was amended to reflect the appointment of a Probity Advisor, inclusion of wording to reflect interest in business investment and innovation and a twenty one (21) day timeframe for acknowledgement. It is further proposed to prepare a process map taking into account the PPP Legislation, Guidelines and Council Policy as well as the tendering requirements.

Guidelines from a number of States and Territories have been reviewed as well as policies from South Australia and Victorian local government authorities.

The Executive Management Committee endorsed the Draft Policy in March 2018 to proceed to Council for consideration.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 Goal 2: “We have an Innovative and Sustainable Economy”, and Goal 4: “We are a Connected and Engaged Community”. It specifically delivers on the following:

Community Strategic Plan	Delivery Program 2012-2017	Annual Plan 2017-18
Strategy	5 Year Action	Annual Deliverables
2.1.1 Cross-sector initiatives are coordinated and implemented to increase and attract business investment and jobs growth	2.1.1.1 Support regional activities and partnerships that result in increased business investment and jobs growth	Facilitate business and investment enquiries
4.4.4 Policies and procedures are simplified to ensure transparency and efficiency	4.4.4.1 Ensure policies and procedures are regularly reviewed, updated and promoted	Conduct rolling review of Council’s policy register

RISK ASSESSMENT

This draft Policy has been drafted to address a current risk where Council is presented with unsolicited proposals from the community, businesses or other government agencies without a clear policy and process to guide how this is managed. It provides a framework to better assist in appropriately managing governance and probity issues that may arise. Furthermore, risk assessment and management features as a core element of the Policy, including the criteria applied to proposals.

FINANCIAL IMPLICATIONS

Resources required to manage unsolicited proposals will need to be determined and allocated from time to time. It is generally assumed, however, the process will be managed within existing resources.

CONCLUSION

This draft Policy addresses a gap with regard to unsolicited proposals and as such provides the framework to better manage proposals should they arise in future.



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ADOPTED BY EXECUTIVE MANAGEMENT COMMITTEE: [TO BE COMPLETED BY CORP SUPPORT]

BACKGROUND

From time to time, Council is presented with unsolicited proposals from the community, businesses or other government agencies. The purpose of this policy is twofold. Firstly to stimulate and encourage business investment and innovation in the City of Wollongong and further, to better assist in appropriately managing governance and probity issues that arise in such circumstances, as well as seeking to ensure that unsolicited proposals that are of benefit to the City of Wollongong are pursued and realised.

OBJECTIVE

The main objectives of this policy are to –

- 1 Provide a clear and identifiable process for parties seeking to put forward investment and innovation proposals to Council;
- 2 Provide Council and the community with assurance around transparency, consistency and reporting for unsolicited proposals; and
- 3 Provide a framework for assessing such proposals with a view to delivering uniqueness, value for money and strategic fit for Council, consistent with Council's strategic direction and existing suite of policies.

POLICY STATEMENT

This policy aims to provide, both for Council and external parties consistency and certainty in seeking to deal directly with Council.

The policy also sets out the assessment criteria for Council in assessing unsolicited proposals.

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STATEMENT OF PROCEDURES

1 INTRODUCTION

1.1 Definition

An Unsolicited Proposal is an approach to Council from a Proponent with a proposal to deal directly with it, in circumstances where Council has not requested the approach. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction. The approach to assessment of such proposals is set out in this Policy. The terms used in this Policy are defined further below.

1.2 Council Procurement

Council operates consistent with its Charter, which is set out within the *Local Government Act 1993* ("the LG Act"). Under the LG Act, it generally procures projects, goods and services via an adopted procurement framework, which includes the statutory tendering process for projects, goods or services above a specified value.

Council's whole approach to procurement (whether via quotation or tendering) is based on competition in order to achieve value for money in a fair and transparent manner.

This form of procurement is not directly covered by this Policy; however, the statutory requirements under the LG Act are still applicable to procurement decisions above a certain value that are captured by this Policy as Unsolicited Proposals.

Those statutory requirements under the LG Act also extend to public-private partnerships (PPP), as further defined in that Act.

Council clearly recognises that the unsolicited proposals process is not a substitute for routine competitive procurement by it. The focus of unsolicited proposals is on unique and innovative projects or services with clear and tangible benefits for the City of Wollongong. Similarly, the unsolicited proposals process is not designed to replace applicable environmental and planning assessment processes. If Council decides to progress an unsolicited proposal, that should not be interpreted as any form of explicit or tacit support for planning consents or approvals.

While direct negotiation with a proponent in response to an Unsolicited Proposal may be pursued in justifying circumstances, Council's usual procurement approach is to test the market. This generally results in the demonstrable achievement of value-for-money outcomes and provides fair and equal opportunities.

Accordingly, Council will generally only consider proposals where both the proposal and its proponent have unique attributes such that others could not deliver a similar proposal with the same value-for-money outcome. Council will consider directly negotiating with an individual or organisation that presents an Unsolicited Proposal where circumstances justify this approach and at its absolute discretion, consistent with its statutory responsibilities under the LG Act.

1.3 Assessment Process and Criteria

This Policy sets out the processes to be followed by both Council and Proponents in developing Unsolicited Proposals. It represents commitment by Council to the allocation of resources to meet its responsibilities as outlined in this Policy. Proposals will be evaluated against the Assessment Criteria outlined in section 2.2. A three stage assessment process has been developed to guide the evaluation of proposals:

- Pre-Submission Concept Review
- Stage 1: Initial Submission and Preliminary Assessment
- Stage 2: Detailed Proposal & Negotiation

Council recognises that a Proponent will be entitled to a fair rate of return for its involvement in a project and that outcomes should be mutually beneficial for the Proponent and Council. Further, Council recognises the right of Proponents to derive benefit from unique ideas. The approach to the identification, recognition and protection of intellectual property rights will be addressed and agreed with the Proponent during Stage 1 of the process as set out below.

Where Council determines a proposal as not meeting the criteria set out below, it reserves its usual right to go to market. The Proponent will be provided with the opportunity to participate in that procurement process should the concept be offered to the market, but will have no additional rights beyond those afforded to other market participants. If Council elects to go to market in such circumstances, it will respect any Intellectual Property (IP) owned by the Proponent.

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The unsolicited proposals assessment process is separate to other Council statutory approvals processes. However, where appropriate, the assessment of unsolicited proposals will give consideration to the potential consistency of the proposal with relevant planning and environmental controls, and approvals processes.

1.4 Contact Details and Lodgement

Enquiries and requests for 'pre-lodgement' meetings to discuss an Unsolicited Proposal should be submitted to:

Office of the General Manager
 Attn: Executive Strategy Manager
 Locked Bag 8821 Wollongong DC NSW 2500
records@wollongong.nsw.gov.au

Submissions should also be forwarded to:

Office of the General Manager
 Attn: Executive Strategy Manager
 Locked Bag 8821 Wollongong DC NSW 2500
records@wollongong.nsw.gov.au

A soft copy should also be submitted to the email address above.

Once a proposal has been submitted, Council will formally acknowledge receipt of the proposal and provide contact details of the Proposal Manager within 21 days (refer section 3.3). Council's intention is this person will be the Proponent's only point of contact in Council regarding the proposal. Once lodged, the proposal is subject to a formal assessment process.

Once a unsolicited proposal has been submitted, Proponents must not contact Councillors or Council officers, in regard to the submitted proposal, outside of the formal assessment process. This includes organisations authorised to act on the Proponent's behalf.

2 GUIDING PRINCIPLES

2.1 Optimise Outcomes

By their nature, Unsolicited Proposals are unlikely to be the current focus of Council's strategic planning. Proposals must therefore be considered in light of the wider benefits and strategic outcomes that may be derived. In order to proceed however, proposals must be broadly consistent with Council's objectives and plans, and offer some unique attributes that justify departing from a competitive tender process. Outcomes must always be in the best interest of the City of Wollongong.

In order to demonstrate that optimal Value for Money will be achieved, an "open book" approach to negotiations is to be adopted once the proposal has progressed to Stage 2 assessment. Council will also consider whole-of-council impact and cost. The approach to demonstrating Value for Money is outlined in Section 2.2.

In order to guide the Proponent, Council will look to provide an early indication of an acceptable return on investment and other requirements to be achieved by the Proponent in the delivery of its proposal.

Set out below is the full set of assessment criteria (Uniqueness, Value for Money, Whole of Council Impact, Return on Investment, Capability and Capacity, Affordability and Risk Allocation).

2.2 Assessment Criteria

Proposals will be initially assessed against the Assessment Criteria in the table below. Assessment will be based on the proposal satisfactorily meeting each of the criteria. Additional Criteria relevant to a particular proposal may also be applied at later stages. If so, the Proponent will be informed of the criteria in order for these to be addressed in its Detailed Proposal during Stage 2.

Uniqueness	<p>Demonstration of unique benefits of the proposal and the unique ability of the proponent to deliver the proposal. In particular, the following are to be demonstrated:</p> <ul style="list-style-type: none"> • Can this proposal be readily delivered by competitors? If the answer is yes, then what, if any justification would Council have to the public for not seeking best value through a competitive tender process? What benefit(s) would Council gain? Are the benefits and outcomes of the proposal unlikely to be obtained via a standard competitive procurement process? • Does the proponent own something that would limit Council from contracting with other parties if Council went to quotation or tender? This would include intellectual property, real property
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	<p>and other unique assets.</p> <ul style="list-style-type: none"> • Are there other attributes which may not necessarily stand alone as unique but, when combined, create a “unique” proposal? This may include genuinely innovative ideas, including financial arrangements or a unique ability to deliver a strategic outcome. It is possible that Council might agree to initiate market testing of a new proposal that has merit, but is not unique. • Note that while a proposal may contain unique characteristics such as design or technology, this may represent one option among a range of technologies or solutions available to Council. <p>Types of proposals that are NOT considered unique and/or proposals that are unlikely to be progressed</p> <ul style="list-style-type: none"> • Proponents seeking to directly purchase or acquire a Council-owned entity or property. Unless the proposal presents a unique opportunity to it, Council is unlikely to enter into such an arrangement without an open tender process. Standard land transaction proposals will be referred to Council’s Property & Recreation Division for consideration. • Proponents with an existing Council licence or agreement to provide goods or services seeking to bypass a future tender process. • Proposals for significant extensions/variations to existing contracts/leases, or the next stage of a staged project on the basis that the contractor is already “on-site“, or has some other claimed advantages, absent of other “uniqueness” criteria. Proposals seeking to develop land that is not owned by Council or the proponent. • Proposals that do not contain a commercial proposition for Council. Proposals that identify the proponent’s skills or workforce capability as the only unique characteristic are unlikely to progress to Stage 2. • Proposals to provide widely available goods or services to Council. • Proposals seeking only to change Council policy that have no associated project. • Proposals for consultancy services. • Proposals for projects where the tender process has formally commenced, whether published or not. • Proposals that are early concepts or lack detail. • Proposals seeking grants (e.g. scientific research), loans or bank guarantees etc. • Proposals whose claim to uniqueness is trivial e.g. a ‘unique’ view from particular site. • Proposals seeking Council support for a ‘pilot’ program. • Proposals seeking to stop or suspend another Council process (e.g. compulsory acquisition). • Proposals seeking an exclusive mandate, or exclusive rights over a Council asset, for a period of time so the Proponent can develop a feasibility study.
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<p>Value for Money</p>	<p>Does the proposal deliver value for money to Council? What are the <i>net</i> economic benefits of the proposal (the status quo should be defined)? Is the proposal seeking to purchase a Council asset at less than its value in exchange for other services? Does the proposal provide time and/or financial benefits/savings that would not otherwise be achieved? A proposal is Value for Money if it achieves the required project outcomes and objectives in an efficient, high quality, innovative and cost- effective way with appropriate regard to the allocation, management and mitigation of risks. While Value for Money will be tested appropriately in the context of each specific proposal, factors that will be given consideration are likely to include:</p> <ul style="list-style-type: none"> • Quality of all aspects of the proposal, including: achievable timetable, clearly stated proposal objectives and outcomes, design, community impacts, detailed proposal documentation and appropriate commercial and/or contractual agreements (including any key performance targets), and a clearly set-out process for obtaining any planning or other required approvals. • Innovation in service delivery, infrastructure design, construction methodologies, and maintenance. • Competitively tendering aspects of the proposal where feasible or likely to yield value for money. • Cost efficient delivery of Council policy targets. • Optimal risk allocation (refer to criterion below). <p>Evaluation of Value for Money may also include, but not be limited to the following quantitative analysis:</p> <ul style="list-style-type: none"> • Interrogation of the Proponent’s financial models to determine the reasonableness of any capital, land acquisition, service and maintenance cost estimates and, if relevant, revenue estimates (including the appropriateness of any user fees or prices and estimates of quantity levels). • This evaluation may include the use of independent experts or valuers, benchmarking analysis or sensitivity testing. • Return on Investment (refer to criterion below). <p>Note: A high level indicative Value for Money assessment will occur at Stage 1. A more detailed assessment of Value for Money will occur at Stage 2 and beyond.</p>
<p>Whole of Council Impact</p>	<p>Does the proposal meet a project or service need? What is the overall strategic merit of the proposal? What is the opportunity cost for Council if it were to proceed with the proposal? Is the proposal consistent with the Council’s plans and priorities? Does the proposal have the potential to achieve planning approval, taking into account relevant planning and environmental controls? Consideration will be given to whether the proposal would require Council to re-prioritise and re-allocate funding.</p>
<p>Return on Investment</p>	<p>Is the proposed Return on Investment to the proponent proportionate to the proponent’s risks, and industry standards? Where feasible, the proposed rate of return may be subject to independent review or benchmarking.</p>

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<p>Capability and Capacity</p>	<p>Does the proponent have the experience, capability and capacity to carry out the proposal? What reliance is there on third parties?</p> <p>Where appropriate, the Proponent should provide referees in relation to working with government (e.g. local, state or Commonwealth governments).</p>
<p>Affordability</p>	<p>Does the proposal require other Government or Council funding, or for Council to purchase proposed services? Does Council have these funds available or budgeted and if not what source would be proposed?</p> <p>Where Council funding is required, Council may undertake or require the Proponent to undertake a (Preliminary) Business Case and/or an economic appraisal at Stage 2 (where appropriate). Regardless of the outcome of the Business Case/economic appraisal, the proposal still needs to be affordable in the context of Council's other priorities, and to be considered as part of its budget process.</p>
<p>Risk Allocation</p>	<p>What risks are to be borne by the proponent and by Council? Does the proposal require Environmental and Planning consents or approvals? If so, has the process been appropriately considered, including whether Council or Proponent bears the risks associated in obtaining the approvals.</p>

2.3 Interactive Process

Council will manage an interactive process with the proponent at all formal stages of assessment, commencing with the formal pre-lodgement meeting set out in Section 4. During both the pre-lodgement meeting and the Stage 1 Assessment this interaction will be limited to clarification of the proposal by Council in order to effectively carry out the assessment. It will not be an opportunity to negotiate the details of the proposal. This opportunity will arise in later stages if the proposal proceeds past the Stage 1 Assessment.

2.4 Probity

Council seeks to conduct its commercial dealings with integrity. The assessment of Unsolicited Proposals must be fair, open and demonstrate the highest levels of probity consistent with the public interest. The assessment of Unsolicited Proposals will be conducted through the application of established probity principles that aim to assure all parties of the integrity of the decision making processes. These principles are outlined in this section.

Maintaining impartiality

Fair and impartial treatment will be a feature of each stage of the assessment process. The process will feature a clearly defined separation of duties and personnel between the assessment and approval functions.

Maintaining accountability and transparency

Accountability requires that all participants be held accountable for their actions. The assessment process will identify responsibilities, provide feedback mechanisms and require that all activities and decision making be appropriately documented.

Transparency refers to the preparedness to open a project and its processes to scrutiny, debate and possible criticism. This also involves providing reasons for all decisions taken and the provision of appropriate information to relevant stakeholders. Relevant summary information regarding proposals under consideration at Stage 2 will be made publicly available. Further information may be published as appropriate.

Managing conflicts of interest

In support of the public interest, transparency and accountability, Council will require the identification, management and monitoring of conflicts of interest.

Participants will be required to disclose any current or past relationships or connections that may unfairly influence or be seen to unfairly influence the integrity of the assessment process.

Maintaining confidentiality

In the assessment of Unsolicited Proposals there is need for high levels of accountability and transparency. However, there is also a need for some information to be kept confidential, at least for a specified period of time. This is important to provide participants with confidence in the integrity of the process. All proposals submitted will be kept confidential at Stage 1 of the assessment process.

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Obtaining value for money

Obtaining optimal value for money is a fundamental principle for Council (and the public sector in general). This is achieved by fostering an environment in which proponents can make attractive, innovative proposals with the confidence that they will be assessed on their merits and where Council appropriately considers value. At Stage 2 of the assessment process, the approach to assessing Value for Money will be confirmed. At this stage a Probity Advisor is appointed and their role is to monitor the evaluation process and ensure that Value for Money has been optimally considered. It is not the role of the Probity Advisor to determine whether the proposal meets the required Value for Money criterion.

2.5 Resource Commitments

In order for an Unsolicited Proposal to progress, Council and the Proponent will be required to commit resources. The staged approach to assessment as detailed in section 4 of this Policy seeks to balance resource input at each stage in order to reduce the potential for unnecessary expenditure.

While this Policy sets out information and processes to minimise costs for Proponents, Council will not reimburse costs associated with Unsolicited Proposals.

2.6 Governance Arrangements

In the spirit of collaboration and efficiency, Governance arrangements will include whole of Government management and co-ordination through an appointed Proposal Manager (where a proposal relates to State and or Federal jurisdictions), a Proposal Specific Steering Committee where required, a staged approach to assessment, negotiation and contracting, and regular reporting to Council's Executive Management Committee (EMC) and Corporate Governance Committee.

Once a proposal reaches Stage 2 of the assessment process, Council will establish appropriate governance arrangements that will detail the make-up and responsibilities of the Steering Committee and assessment/technical panels, management of confidentiality and conflict of interest, and provide details of any appointed Probity Advisor.

Unsolicited Proposals must take into account relevant processes and approval requirements in the LG Act in relation to procurement and PPP's (where relevant).

The Stage 2 Participation Agreement will outline whether the proposal will be subject to an approval process outlined in another procurement policy document and/or a project assurance mechanism.

2.7 Memorandum of Understanding

A Memorandum of Understanding (MOU) provides an agreed (but not legally binding) framework for Stage 2 which will be entered into by Council and the proponent in order to ensure the alignment of expectations regarding participation in the process.

The MOU will contain:

- Acknowledgement that a Value for Money outcome is a requirement for the proposal to proceed
- Assessment Criteria and other relevant Council requirements
- Communication channels, including a prohibition on lobbying
- Cost arrangements
- Resource commitments
- Conflict of interest management arrangements
- Confidentiality requirements
- Commitment to following an open book approach to discussions
- Timeframe
- Identification of approval requirements, including planning and environmental approvals (note at all times Council's separate planning and approval functions).

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3 ROLES AND RESPONSIBILITIES

3.1 Proponent

The Proponent is required to:

- Prepare an outline Submission and meet with the Proposal Manager to discuss its unique characteristics and other key principles, prior to lodgement of a formal submission. This involves the Proponent completing an initial Schedule of Information Requirements (generally in the form attached to this Policy).
- Prepare and lodge with Council an Initial Submission for Preliminary or Stage 1 Assessment. This involves the Proponent completing the Schedule of Information Requirements and attaching any other relevant information. It must also involve demonstrating a clear alignment with Council's published strategic direction and values.
- Enter into a MOU if recommended to proceed to Stage 2.
- Provide a Detailed Proposal at the conclusion of Stage 2.

3.2 Council

Section 55 of the LG Act makes it plain that all identified contracts above \$150,000 must go to Council for approval via resolution, prior to the execution of any such contract.

Where a proposal has been provided to Council at the conclusion of Stage 2, it will generally be necessary for that proposal to be put to Council, even where the report before Council recommends that, due to extenuating circumstances, Council not proceed to tender for the project, goods or services under contemplation as per Section 55A of the LG Act.

It may also be necessary for any proposal, at the conclusion of Stage 2, be considered under the PPP provisions of the Local Government Amendment (Public Private Partnerships) Act 2004 (the Act) and the Local Government (General) Regulation 2005.

3.3 Proposal Manager, Executive Management Committee (EMC) & Steering Committees

Proposal Manager

The Proposal Manager acts as the contact-point for Unsolicited Proposals, and is charged with evaluating the information supplied by the Proponent in conjunction with the meeting of Council representatives. The Proposal Manager also reports to EMC and the Corporate Governance Committee, as required.

As set out further below at 4.3, progression past Stage 1 requires approval from EMC. Where a Stage 1 Proposal is to be the subject of an EMC assessment report, a member of EMC will coordinate that report and presentation.

Proposal Specific Steering Committees

A Proposal Specific Steering Committee will be established to oversee assessment of that proposal. Such a Committee, typically represented by Council's Finance, Property & Recreation, Community, Cultural & Economic Development Divisions and Infrastructure & Works Departments, would have the relevant responsibilities as outlined below, be appointed by EMC, and update EMC as required.

A Committee will have at least 3 members (not including the Governance + Legal representative).

Responsibilities

Proposal Manager
Act as the initial point of contact for an Unsolicited Proposal.
Meet with a proponent for the purpose of a pre-submission concept review.
After confirming a completed Schedule of Information Requirements has been lodged, convene a meeting with a representative of Council Divisions likely to be involved in any review (including, at all times, a representative from the Governance + Legal Unit).
In conjunction with the meeting group above, prepare a preliminary assessment report with a recommendation that a Proposal should proceed to Stage 2, or be declined.

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Provide updates to EMC and Corporate Governance Committee via Council reporting lines, as required.
Provide the result of Council assessment to Proponent at the end of Stage 1.
Proposal Specific Steering Committee
Review the Schedule of Information Requirements and assessment undertaken to date.
Finalise the MOU.
Approve the Governance Plan to be applied to Stage 2, including appointment of Probity Adviser (if warranted).
Review and determine the further reporting, information, modelling and analysis to be undertaken, as well as likely budget to be utilised.
Seek further information from the Proponent, as required, via the Proposal Manager.
Ensure relevant policy and project assurance processes are adhered to, where appropriate.
Seek advice from other areas of Council, as required.
Finalise assessment of the proposal, and provide recommendation to EMC.
Agree feedback to be provided to Proponent.

3.4 Advisers

Advisers may provide expert advice to a Proposal Specific Steering Committee (as appropriate). The following key advisers may be appointed to provide specialist expertise to assist in project scoping and assessment:

- Legal
- Financial
- Technical
- Environmental.

Other advisers may be appointed where specialist input is required.

A specialist Project Director may be appointed from Stage 2, particularly for large and/or complex projects.

Advisers are to follow all project governance and probity requirements.

3.5 Probity Adviser

At Stage 2, a probity advisor will be appointed.

The role of the probity adviser is to monitor and report on the application of the probity fundamentals during the assessment process. The Probity Advisor will:

Assist in the development of a Governance Plan (where applicable).

- Provide a probity report at the end of each step to be considered by a Steering Committee before the decision to proceed to the next step (or otherwise). The Probity Advisor may provide interim reports at key milestones of the assessment or at the behest of a Steering Committee.
- Report to the chair of a Steering Committee and will be available to Proponents to discuss probity related matters. If the probity adviser has identified probity concerns for the proposal, this may be escalated to the Manager Governance + Information as Public Officer or to the 'escalation contact point', where one has been provided. An escalation contact point can be determined by a Steering Committee, as needed.

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4 THE PROCESS

4.1 Introduction

This section outlines a three stage assessment process for the consideration of Unsolicited Proposals. It is recognised that the nominated stages may be refined in order to most effectively manage the assessment of any particular proposal.

For example, each stage may include a number of milestones to be achieved in order to prevent unnecessary expenditure and to provide confidence for the Proponent to continue. Any milestones or changes to the stages will be discussed and agreed with the Proponent.

4.2 Pre-submission concept review stage

Objective

For the Proponent to meet with the Proposal Manager (and any other identified officers) which may at its discretion include relevant agencies, and/or advisers), in order to formally explore whether the proposal is likely to meet the Stage 1 assessment criteria and to guide Proponents in their decision regarding whether to lodge their proposal. A key part of this meeting will be the demonstration of the unique attributes of both the proposal and the Proponent in order to progress through the process. The key attributes, benefits, requirements and assumptions underlying the potential proposal may also be discussed. Council may provide feedback at this stage as to whether it considers that the proposal, as presented, is consistent with this Policy.

Notwithstanding this feedback, it is the Proponent's decision as to whether it proceeds with making a formal Stage 1 submission.

This is not a compulsory stage, but Proponents planning to formally submit an Unsolicited Proposal are strongly advised to arrange such a meeting with the Proposal Manager, prior to committing substantial resources for the development of the proposal.

Timing

This initial meeting represents the first formal step in assessing the merits of each Unsolicited Proposal and may be before or after lodgement of the full proposal.

Council's preference is that this occurs before formal lodging of any proposal and commencement of Stage 1.

Proponent responsibilities

In order for this meeting to be helpful, the proposal needs to be developed to a stage where the key inputs and outcomes have been identified, key assumptions and requirements of Council are clear, and other key elements have been identified. In particular, the unique ability of the proponent to deliver the proposal should be demonstrated and documented. The initial Schedule of Information Requirements at Section 6 should be completed, as well as the Pre-Lodgement Meeting Checklist at Section 7. Irrespective of the outcomes of this meeting, proponents may lodge their proposal formally.

Council responsibilities

Where Council is of the view that there is little prospect of the uniqueness criteria being met, it will communicate this to the proponent. In such circumstances, Council reserves the right not to advance assessment of the proposals to Stage 1 assessment as set out below.

4.3 Stage 1

Objective

For Council, in the form of the Proposal Manager and convened staff, to undertake a preliminary assessment of the proposal to determine if the submission constitutes an Unsolicited Proposal and if sufficient justification exists to undertake a Stage 1 assessment. Council reserves the right to further consider, or not consider, Unsolicited Proposals beyond this stage at its absolute discretion. EMC approves progression to Stage 2.

Proponent responsibilities

During Stage 1, the Proponent is responsible for:

- Preparing an Initial Submission in accordance with the Schedule of Information Requirements listed in this Policy
- Identification of unique elements of the proposal

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- Forwarding the Initial Submission to the Proposal Manager
- Responding to requests for further information. The information to be provided will depend on the size and complexity of the proposed project.

Council responsibilities

During Stage 1, Council is responsible for:

- Promptly acknowledging receipt of the Initial Submission.
- Undertaking an initial compliance check to ensure the required information has been provided.
- Requesting further information from the Proponent if required. This may involve clarification meetings with the Proponent in order to promote clarity of Council requirements.
- Undertaking a preliminary assessment that will be based on the potential for the proposal to satisfactorily meet the Assessment Criteria.
- Preparing a preliminary assessment report for review and approval by EMC.
- EMC approval to progress to Stage 2, if warranted.
- Notification of the preliminary assessment outcome to the Proponent.

Outcomes

The following outcomes may result from this stage:

- The Submission is considered suitable for progression to Stage 2 as determined by EMC.
- The Submission is not considered suitable for further consideration. In this case, the Proposal Manager will recommend a course of action, for example:
 - Inform Proponent that the submission will not be considered further.
 - Refer Proponent to another procurement process (e.g. Pre- Qualification Scheme).
 - Refer submission for consideration under an alternative framework or scheme (e.g. Voluntary Planning Agreement).
 - Refer proponents seeking financial support to the relevant application scheme, if any.

Feedback

Proponents will be provided with written feedback on whether their Submission has progressed to Stage 2 or reasons for a decision not to proceed with a proposal. In the event that the proposal is referred to an alternative process, as described above, details will be provided.

Disclosure

Information on all Unsolicited Proposals that progress to Stage 2 will be reported in Council's Annual Report as Unsolicited Proposals. This may include details of the proponent and proposal, the governance structure for Stage 2, the Probity Advisor appointed and reasons why the proposal has progressed to Stage 2. Further information may be published as appropriate. Council will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

Generally, Council would seek to disclose all proposals in this stage. In some cases, Proponents may request that proposals are not listed, if this would pose significant risks to commercial negotiations or IP. Council will consider each request and may agree not to disclose a proposal. The ability to undertake an assessment in confidence is considered essential to creating a receptive environment to elicit innovative private sector proposals.

4.4 Stage 2 – Detailed proposal

Objective

For the Proponent and Council to work cooperatively in the development and assessment of a Detailed Proposal, which may require a degree of preliminary negotiation on key issues, subject to the nature of the proposal.

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Proponent responsibilities

During Stage 2, the Proponent will:

- Enter into a MOU
- Participate in Proposal Development Workshops
- Prepare and submit a Detailed Proposal in a form previously agreed with Council that addresses each of the Council's Assessment Criteria. This may include (where appropriate):
 - Draft commercial terms for Council's consideration
 - A (Preliminary) Business Case and/or economic appraisal.
- Negotiate commercial and legal terms with a view to entering into a binding agreement
- Submit a binding offer, as required.

Council responsibilities

During Stage 2, Council will:

- Establish a Proposal Specific Steering Committee and associated governance framework
- Appoint a Probity Advisor
- Prepare an internal Governance Plan (may be updated as appropriate throughout the process)
- Consider the engagement of a specialist Project Director
- Enter into a MOU
- Commence discussions concerning the acceptable commercial and legal terms (with a view to developing draft *commercial and legal* terms that will form the basis of a final binding offer).
- Commit appropriately experienced and qualified resources to participate in the Stage 2 process, including legal, financial and technical advice where appropriate.
- Confirm the approach to assessing Value for Money (which may include investigating benchmarking).
- Where appropriate, undertake (or require the Proponent to undertake) a business case.
- Ensure relevant policy (e.g. NSW PPP Guidelines) and project assurance processes are considered and applied, where appropriate.
- Participate in Proposal Development Workshops. Where appropriate, Council may establish commercial/technical teams to guide and liaise with the proponent. These teams will provide information to the Proposal Specific Steering Committee.
- Provide further information to the Proponent to assist with proposal development.
- Receive the Detailed Proposal.
- Undertake assessment of the Detailed Proposal against each of the Assessment Criteria.
- Request further information from the Proponent as required.
- Negotiate commercial and legal terms, and prepare a binding agreement.
- Prepare an Assessment Report and make recommendations to EMC.
- Council approval to progress to Council report for resolution under Section 55 of the LG Act, or other approval, if warranted.

Outcomes

The following outcomes may result from this stage:

- The Detailed Proposal is considered acceptable to progress to agreement. Ideally, commercial terms should be agreed by Council and the Proponent, and will form the basis of a Final Binding Offer.
- The Detailed Proposal not considered suitable for further consideration.

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Feedback

- Proponents progressing to agreement will be provided with a draft Agreement and a schedule of items and issues to be negotiated.
- Written feedback providing reasons for a decision by Council to not proceed will be provided.

Disclosure

Where a Council resolution is required pursuant to Section 55 of the LG Act, that will be published as part of Council's publicly available minutes.

Any agreement with the Proponent will be available in accordance with the *Government Information (Public Access) Act 2009*.

Further information may be published as appropriate. The Government will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

5 GLOSSARY OF TERMS

Term	Meaning
Assessment Criteria	The criteria upon which Unsolicited Proposals will be assessed
Detailed Proposal	A submission by a Proponent to Council at the conclusion of Stage 2
Final Binding Offer	A formal proposal submitted by the Proponent at the conclusion of Stage 2 which is capable of acceptance by Government
Council	Council - this includes the elected Council and Council Divisions. Where possible, specific reference to relevant Council Divisions is made throughout the Policy.
Initial Submission	A submission by the Proponent during Stage 1 which briefly describes the Unsolicited Proposal (in accordance with the Schedule of Information Requirements)
Initial Schedule of Information Requirements	Information to be prepared by Proponent in preparation for pre-lodgement meeting with Council
Intellectual Property	Inventions, original designs and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks; also trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by common law and through additional contractual obligations such as Confidentiality Agreements.
MOU	A Memorandum of Understanding (not legally binding) signed by Council and the Proponent at the commencement of Stage 2
Probity Advisor	An advisor with specialist governance or legal qualifications and experience, including, where appointed, an external contractor.
Project Director	A Council staff member, specifically appointed for the purpose of ensuring Council's responsibilities at Stage 2 are met. Where appointed, replaces the Proposal Manager as first contact for the Unsolicited Proposal.
Proponent	The person or organisation that submits an Unsolicited Proposal
Proposal Development Workshop	Interactive meetings held between Council and Proponent representatives with the aim of progressing proposal development
Proposal Manager	The person with responsibility for coordinating Council input for the receipt and assessment of an Unsolicited Proposal

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Term	Meaning
Proposal Specific Steering Committee	A committee of senior Council representatives with responsibility for oversight of any specific Unsolicited Proposal
Unsolicited Proposal	An approach to Council from a Proponent with a proposal to deal directly with Council over a commercial proposition, where Council has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.
Value for Money	The overall value of a proposal to Government (refer to section 2.2 for further details).

6 SCHEDULE OF INFORMATION REQUIREMENTS

This form is to be completed by organisations in presenting an Unsolicited Proposal to Council. Please ensure all sections of this form are adequately addressed. Information may be presented in the form of cross referenced addenda if preferred.

An initial version of this schedule should be prepared prior to the formal "Pre-Lodgement" meeting with the Proposal Manager.

Organisation Name:		Address:	
Identity:	[Individual, sole trader, company, etc.]	Type of organisation:	[Profit / non-profit, educational, small business, etc.]
Contact person(s) details for evaluation purposes:		Date of submission	
Concise title and abstract of proposal (approx. 200 words)			
Short Title Abstract			
Proposal details			
<ul style="list-style-type: none"> i. Objectives of the proposal ii. Method of approach iii. Nature and extent of anticipated outcomes iv. Benefits the proposal will bring to Council v. Consideration of the proposal in the light of Council's strategic direction. 			

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<p>Assessment Criteria</p> <p>Please provide a brief description of how the proposal would meet each of the assessment criteria. <u>Refer to section 2.2 of the Policy for detailed description of each criteria and items to be addressed.</u></p> <ol style="list-style-type: none"> 1 Uniqueness i.e. what are the unique elements of the proposal that would provide justification for Government entering into direct negotiations with the Proponent? Unique elements may include characteristics such as: <ul style="list-style-type: none"> - Intellectual property or genuinely innovative ideas - Ownership of real property - Ownership of software or technology offering a unique benefit - Unique financial arrangements - Unique ability to deliver strategic outcome <ul style="list-style-type: none"> - Other demonstrably unique elements. 2 Value for money 3 Whole of Council impact 4 Return on investment 5 Capability and capacity 6 Affordability 7 Risk allocation
<p>Financial and commercial details</p> <p>Please provide a brief description of the financial and commercial details of the proposal and the proponent's financial capacity to deliver the proposal. Clearly explain what the proposed commercial proposition is.</p>
<p>Costs and Requirements of Council</p> <p>Please provide details of costs to Council.</p> <p><u>Clearly explain the requirements of Council emerging from the proposal (what are you seeking from Council? This may include legislative/regulatory amendments, finance or the use of Council assets, facilities, equipment, materials, personnel, resources and land. What would be the cost of Council providing this? (eg what would be the value of the Council land?)</u></p>
<p>Risks</p> <p>Please provide a list of proponent and Council risks.</p>
<p>Organisation</p> <p>Please provide a brief description of:</p> <ol style="list-style-type: none"> 1 Your organisation 2 Previous experience in delivery of similar project 3 Past performance operating similar project 4 Facilities to be used (e.g. land owned by proponent or Council land)

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Intellectual property			
If applicable please provide a description of the following:			
<ol style="list-style-type: none"> 1 Inventory of each item of intellectual property 2 Nature of the intellectual property claimed (e.g. copyright, patent, etc.) 3 The owner(s) of the intellectual property claimed 4 Registration details (where applicable) 5 Details of any items for which confidentiality is wholly or partly claimed. 			
Other statements			
For example, please detail any applicable organisational conflict of interest and environmental impacts.			
Preferred contractual arrangements			
Agency points of contact			
If applicable, please provide <u>names and contact information</u> of any other agency and Government points of contact already contacted regarding this proposal.			
Period of time for which the proposal is valid	Minimum six months	Proposed duration of the arrangement	

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This proposal is to be signed by a representative of the proponent authorised to represent and contractually bind the proponent.

Name: _____

Position: _____

Signature: _____

Date: _____

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7 PRE-LODGEEMENT MEETING CHECKLIST

The following checklist should be completed prior to the formal “Pre-Lodgement” meeting with the Proposal Manager.

		YES	NO
1	Have you completed the initial Schedule of Information Requirements?	<input type="checkbox"/>	<input type="checkbox"/>
2	Are you the only party that could deliver your proposal?	<input type="checkbox"/>	<input type="checkbox"/>
3	Have you documented why the product/service you are proposing (or similar) cannot be delivered by a competitor?	<input type="checkbox"/>	<input type="checkbox"/>
4	Do you own any intellectual or real property required for your proposal?	<input type="checkbox"/>	<input type="checkbox"/>
5	Have you documented your ownership of any intellectual or real property required for your proposal?	<input type="checkbox"/>	<input type="checkbox"/>
6	Does your proposal contain unique elements that could not be replicated by others, other than related intellectual or real property?	<input type="checkbox"/>	<input type="checkbox"/>
7	Does your proposal contain unique elements that would require Council to contract with your company if Council went to tender?	<input type="checkbox"/>	<input type="checkbox"/>
8	Have you documented the unique elements (other than related intellectual or real property) of your proposal that could not be replicated by others, and which provide tangible benefits to Council?	<input type="checkbox"/>	<input type="checkbox"/>
9	<p>If you answered “NO” to any questions, have you documented in the (initial) Schedule of Information Requirements the basis you believe Council should consider your proposal, given that it is likely it does not meet basic “uniqueness” criteria as set out in the Policy.</p> <p>Note – in some cases Council may recognise merit in your proposal, but want to ask the market to confirm value for money. Please discuss this with the Proposal Manager in the pre-lodgement meeting.</p>	<input type="checkbox"/>	<input type="checkbox"/>

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SUMMARY SHEET	
Responsible Division	Governance and Information
Date adopted by Council	[To be inserted by Corporate Governance]
Date of previous adoptions	[List previous adoption dates]
Date of next review	12 months from the time of adoption
Responsible Manager	General Counsel
Authorised by	Manager Community Cultural & Economic Development

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