

UNSOLICITED PROPOSALS POLICY

1. PURPOSE

The purpose of this policy is to:

- Provide a clear definition of what Council considers to be an unsolicited proposal
- Establish a framework of principles relating to Council's consideration of unsolicited proposals.

This policy seeks to give confidence to private entities and the community that unsolicited proposals will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value

2. POLICY

2.1 What is considered to be an Unsolicited Proposal?

Council considers an unsolicited proposal to be:

An innovative commercial proposition from a private entity (either for-profit or not-for-profit), which seeks to assist Council achieve its strategic objectives or satisfy a community need, and which has not been requested by Council through its regular procurement or land disposal processes.

Unsolicited Proposals can be diverse and may include:

- a. Delivery of goods or services
- b. Access to Council's assets, including plant
- c. The purchase, lease or development of Council owned or managed land
- d. Provision of infrastructure for the community
- e. Provision of major capital works projects
- f. Seeking Council's support (financial) regulatory or other support) to undertake specific activity.

2.2 What is considered to be an Unsolicited Proposal?

The following requests are not considered to be unsolicited proposals under this policy. Alternative policies for dealing with such matters (where applicable) are linked in the text below:

- a. Contracts involving goods and services solicited by Council as these are managed through Council's [Procurement Policy](#)
- b. Proposals involving the extension of a current contract or formal arrangement beyond the final expiry date (these are managed through Council's [Procurement Policy](#))
- c. The disposal or acquisition of land where the process was initiated by Council
- d. The transfer of land as part of a development application under the *Planning, Development and Infrastructure Act 2016*
- e. Requests for an alteration to or the use of a road under sections 221 or 222 of the *Local Government Act 1999*
- f. Requests for sponsorship or grant funding
- g. Telecommunication Infrastructure
- h. Proposals determined to be **minor unsolicited proposals**.

2.3 Determining minor Unsolicited Proposals

The CEO, relevant General Manager or department Manager can determine an unsolicited proposal to be 'minor' for the purposes of clause 2.2(h) of this policy. This enables low scale, low impact, low risk proposals to be handled efficiently by the department Manager in accordance with an applicable statute or policy.

To determine whether a proposal is minor, the following criteria must be considered:

- a. The scale of the proposal (eg costs involved, land area required, size of development, whether the proposal covers a site, region or is city-wide)
- b. The level of impact the proposal may have on the community (referring to actors such as environment, economy, amenity, accessibility and participation)
- c. A risk assessment in accordance with Council's Risk Management Policy.

If the proposal does not satisfy all three criterion above to be minor, the proposal must be managed as an unsolicited proposal under this Policy and associated procedure, and considered against the principles in clause 2.5.

2.4 Exclusive negotiations

Council's default position is to invite or request proposals from the open market to ensure the best value for money can be competitively identified, and to provide fair and equal opportunities for private entities to do business with Council.

However, Council recognises that circumstances may arise where it is beneficial to deal exclusively with one party in relation to a particular proposal that has been submitted to Council. Council may therefore, in its absolute discretion, resolve to progress an unsolicited proposal and enter into a period of exclusive negotiation with a proponent after considering the principles contained in clause 2.5 of this Policy.

If Council determines to enter into a period of exclusive negotiations with a proponent, the following broad terms apply:

- a. The exclusivity period will be for a set time period, and may be subject to additional terms and conditions, as advised by Council to the proponent in writing
- b. During the exclusivity period, Council will not enter into negotiations with another party in relation to another proposal that is substantially similar to the subject matter of the proposal
- c. Council may end the exclusivity period at any time and withdraw from exclusive or all negotiations with the proponent at no cost or liability to Council
- d. The CEO will determine whether correspondence between Council and the proponent will be confidential on a case by case basis, subject to any legislative requirements, noting that Council may vary this once a report is submitted to a formal Council meeting.

2.5 Principles of consideration

In determining whether an unsolicited proposal displays sufficient merit to progress and enter into exclusive negotiations, Council and/or the CEO will have regard to the following principles:

- a. **Community need/Council priority**
The proposal should be consistent with the Council's objectives outlined in its Strategic Plan and provide a positive economic, social, cultural or environmental outcome for the Council.
- b. **Value for money**
The proposal should represent value for money for Council and the community when any form of financial contribution or risk sharing with Council is proposed.

c. **Capacity and capability of proponent**

The proponent should demonstrate it has the capacity and capability to deliver the proposal in a timely manner.

d. **Council's Disposal of Land and Assets and Acquisition of Land Policy**

In the case of land and assets, the proposal should be considered against the principles and considerations outlined in Council's [Disposal of Land and Assets and Acquisition of Land Policy](#).

e. **Uniqueness of proposal**

The proposal should exhibit sufficient uniqueness to justify a departure from the competitive bidding process.

f. **No competing proposals**

The subject matter of the proposal should not already be under consideration by Council via an existing or planned procurement process.

2.6 General terms and conditions

a. **Probity**

The principles of probity and fair and equitable procurement activities will be observed when considering an unsolicited proposal under the Policy. These principles are listed in Council's [Procurement Policy](#).

b. **No legal relationship**

The act of receiving and assessing unsolicited proposals cannot in any way compromise the performance of Council's statutory or regulatory functions.

Any exclusive negotiation that originates from an unsolicited proposal in accordance with this Policy is conditional upon requisite approvals and compliance with relevant legislation such as the *Local Government Act 1999*, the *Planning, Development and Infrastructure Act 2016*, the *South Australian Public Health Act 2011* and other legislation that the Council is responsible for administering.

c. **Conflict of interest**

Proponents must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the proponent is successful in negotiating a contract. If any conflict or potential conflict exists, the proponent must provide Council with a proposal that addresses the conflict or potential conflict.

d. **Recovery of costs**

All costs associated with the preparation, lodgement, developing and negotiating an unsolicited proposal are to be borne by the proponent. These costs are non-refundable unless otherwise resolved by Council. There is no recourse against Council in relation to a decision to not proceed with a proposal under this Policy.

e. **Disclosure**

Council's practice is to consider commercially sensitive information and documents in confidence under the *Local Government Act 1999* where appropriate, however it is not compelled to do so in all circumstances. Further, if any documents are ordered to remain confidential, such orders may expire or be revoked and become publicly available, once the conditions of the confidentiality order have been met or as a result of a decision of Council (or the relevant delegated authority or delegate).

The *Freedom of Information Act 1991* also applies to an unsolicited proposal submission, which sets out the circumstances under which members of the public may access documents of the Council.

Proponents should identify the part or parts of their submission (if any) that they do not wish to be made public if their bid was to be successful and the grounds for exclusion. Council will consider this when determining the limits of confidentiality as part of the assessment of the unsolicited proposal.

3. **DEFINITIONS**

For the purposes of this policy the following definitions apply:

CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

Council

Refers to elected body of the Council or employees acting under delegation or authorization.

Minor unsolicited proposal

An unsolicited proposal that is determined by the CEO, relevant General Manager or department Manager to be of a low scale, low impact and low risk, and which can be managed efficiently by the department Manager in accordance with an applicable statute or policy.

Private entities

A private entity that has submitted an unsolicited proposal to Council.

Proponent

A private entity that has submitted an unsolicited proposal to Council.

Unsolicited Proposal

An innovative commercial proposition from a private entity (either for-profit or not-for-profit), which seeks to assist Council achieve its strategic objectives or satisfy a community need, and which has not been requested by Council through its regular procurement or land disposal processes.

4. LEGISLATIVE FRAMEWORK

Council has adopted this policy for the purpose of section 49 of the *Local Government Act 1999*.

4.1 Other references

Council's document including:

- a. [Caretaker Policy](#)
- b. [Fees and Charges Register](#)
- c. [Fraud and Corruption Policy](#)
- d. [Disposal of Land and Assets and Acquisition of Land Policy](#)
- e. [Procurement Policy](#)
- f. [Prudential Management Policy](#)
- g. [Register of Interests Policy](#)
- h. [Risk Management Policy](#)

5. STRATEGIC PLAN/POLICY

5.1 Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

| Objective | Comments |
|---|--|
| Economy | |
| <i>A local economy that is resilient and thrives, where businesses are supported to grow and prosper, provide local jobs and sustain our community and visitors and utilize technology to improve the liveability of our city</i> | Unsolicited proposals provide an opportunity to explore innovative ideas that support local economic growth, contribute to the best use of public assets and deliver a high quality of service to the community. |

| | |
|---|--|
| <i>People are supported to develop their leadership and employment capabilities</i> | |
| Leadership | |
| <i>Leadership and advocacy is focused on the long term interests of the community</i> | Unsolicited proposals provide an opportunity to explore innovative ideas that contribute to the best use of public assets. |
| <i>Planning considers current and future community needs</i> | |
| <i>Delivery of services is sustainable and adaptable</i> | Unsolicited proposals provide an opportunity to explore innovative ideas that delivery a high quality of service to the community. |
| <i>Decision making is informed, based on evidence and is consistent</i> | The principles listed in this Policy will be considered when an unsolicited proposal is received by Council. |

5.2 Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of customer care, learning & growth, future capability and sustainable operations. The key theme most relevant to this policy is sustainable operations, in ensuring that we make consistent, informed decisions which are evidence based.

6. POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant General Manager and managed in accordance with Council's scheme of delegations. It is also supported by a procedure and guideline for proponents.

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| Record number | D24/1386 |
| Responsible Manager | Manager City Strategy |
| Other key internal stakeholders | General Manager Strategy & Finance General Manager Community Connections General Manager City Operations General Manager Corporate Services Manager People & Capability Manager Finance and Rating Services |
| Last reviewed | 6 March 2024 |
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