



# CORPORATE POLICY

<b>Policy title:</b>	<b>Unsolicited Proposals</b>
<b>Policy number:</b>	1.2.26
<b>Objective:</b>	Corporate Governance
<b>Program Area:</b>	Corporate Services
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## 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 firstly to stimulate and encourage business investment and innovation in the Lismore City Council area 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 Lismore City Council 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 for Council, consistent with Council's strategic direction and existing suite of policies.

## 1. INTRODUCTION

### 1.1 Definition of Unsolicited Proposal

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.

## 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 and 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.

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 Lismore City Council. 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 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 recognised 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 the 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.

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  
Private and Confidential  
43 Oliver Avenue, Goonellabah NSW 2480  
[council@lismore.nsw.gov.au](mailto:council@lismore.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. 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 an 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. Failure to abide by this requirement will result in the Proposal Manager for the unsolicited proposal preparing a report to the General Manager justifying why the terms of the proposal should not be made public and directly proceed to an open tender process.

## **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 Lismore City Council.

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.

In order to guide the Proponent, Council will 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 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* - Demonstration of unique benefits of the proposal and the unique ability of the proponent to deliver the proposal.

- *Value for Money*
- *Whole of Council Impact*
- *Return on Investment*
- *Capability and Capacity*
- *Affordability*
- *Risk Allocation*

### 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. 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 and transparency are related concepts. The demonstration of both is crucial to the integrity of the assessment.

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 requires 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.

### *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 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 Council management and co-ordination through an appointed Proposal Manager, a Proposal Specific Steering Committee where required, a staged approach to assessment, negotiation and contracting, and regular reporting to Council's senior staff in management (Senior Leadership Team).

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 the 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 both 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
- Costs 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).

### **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 (See Annexe 1 of Procedure).
- 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 the General Manager's delegated authority 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 55 of the LG Act.

It may be also necessary for any proposal, at the conclusion of Stage 2, to be considered under 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, Senior Leadership Team & Steering Committee(s)**

##### ***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 Senior Leadership Team and the Council, as required.

As set out in the Procedure, progression past Stage 1 requires approval from Senior Leadership Team. Where a Stage 1 Proposal is to be subject of a Senior Leadership Team assessment report, a member of Senior Leadership Team 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, would have the relevant responsibilities as outlined below, be appointed by Senior Leadership Team, and update Senior Leadership Team as required.

A Committee will have at least 3 members, not including the Governance 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 for the Governance 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.
- Provide updates to Senior Leadership Team and Corporate Governance Committee via Council report 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.
- 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 recommendations to Senior Leadership Team
- Agree feedback to be provided to Proponent.

### 3.4 Advisers

Advisers may provide expert advice to the 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 Manager 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 adviser 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 adviser 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 the Steering Committee before the decision to proceed to the next stage (or otherwise). The probity adviser may provide interim reports at key milestones of the assessment or at the behest of the Steering Committee.