

1. INTRODUCTION

Council may sometimes be approached by the private sector/individuals with specific proposals for it to consider for which it has not formally sought expressions of interest. In the interests of good governance and transparency these unsolicited proposals need to be dealt with within a consistent and transparent framework.

2. PURPOSE

The private sector and individuals sometimes approach Council Officials with specific proposals for it to consider for which Council has not publicly sought expressions of interest. These can cover wide range of proposals for such things as land purchases, business development, participation in a joint venture and other activities.

The NSW *Guide for Submission and Assessment of Unsolicited Proposals* (August 2017) has provided guidance for the Council in developing a policy and procedure to consider these types of proposals and provides a transparent and streamlined approach that will assist the Council and the private sector working together to develop and deliver innovative ideas. The NSW *Guide to Public Private Partnerships* has also been considered.

The purpose of the *Unsolicited Proposals Policy and Procedure* is to provide consistency and certainty to the private sector as to how any unsolicited proposal they submit to Fairfield City Council will be assessed within a consistent and transparent framework.

3. SCOPE

Fairfield City Council Officials may be approached by the private sector and individuals with specific proposals for the Council to consider. This *Unsolicited Proposals Procedure* works in concert with the *Unsolicited Proposals Policy* to provide guidance to both Council Officials and the Proponents of proposals for which the Council has not publicly sought expressions of interest.

4. LEGISLATION AND ASSOCIATED DOCUMENTS

- *Unsolicited Proposals – Guide for Submission & Assessment*, NSW Government, August 2017
- *NSW Public Private Partnerships Guidelines 2017*, NSW Treasury, TPP17-07
- *Infrastructure Decision-making Principles*, Infrastructure Australia, July 2018
- *Environmental Planning & Assessment Act 1979*
- *Local Government Act 1993*
- *Fairfield City Council Unsolicited Proposals Policy*
- *Fairfield City Council Probity Policy*
- *Fairfield City Council Procurement Policy*
- *Fairfield City Council Statement of Business Ethics*

5. DEFINITIONS

Term(s) or Phrase(s)	Definition(s)
Actioning Officer	Council Officer designated as the person responsible for liaising with the Proponent

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Assessment Criteria	<p>The criteria upon which an Unsolicited Proposal will be assessed. This will consist of examining:</p> <ul style="list-style-type: none"> • Uniqueness • Value for Money • Return on Investment • Capability and Capacity • Affordability • Risk Allocation • Community Impact
Infrastructure Australia – Infrastructure Decision-making Principles	<p>Infrastructure Australia (IA) advocates that by establishing clear lines of responsibility and accountability, governments can provide assurance to industry and the community that the projects that are being identified, prioritised, funded and delivered are in the public interest, and will provide value for money on taxpayers’ investments.</p> <p>IA has highlighted the need for a set of principles to guide infrastructure decision-making. These principles should act as a guide for not only those making decisions as part of infrastructure development and delivery, but also for the broader community to use as a clear set of expectations with which to hold decision makers to account. These principles are:</p> <ul style="list-style-type: none"> • Governments should quantify infrastructure problems and opportunities as part of long-term planning processes. • Proponents should identify potential infrastructure needs in response to quantified infrastructure problems. • Proponents should invest in development studies to scope potential responses. • Where an infrastructure need is identified, governments should take steps to ensure potential responses can be delivered efficiently and affordably. • Governments should undertake detailed analysis of a potential project through a full business case and should not announce a preferred option or cost profile before undertaking detailed analysis involving multiple options. • Proponents should assess the viability of alternative funding sources for each potential project. • Project proposals should be independently assessed by an appropriate third party organisation. • Governments and proponents should undertake meaningful stakeholder engagement at each stage, from problem identification and option development to project delivery. • Governments and proponents should publicly release all information supporting their infrastructure decisions. • Governments should commit to, develop and release post-completion reviews.

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	<ul style="list-style-type: none"> Where projects are funded as part of a broader program, the corresponding decision-making processes should be robust, transparent and prioritise value for money. <p>(Source: <i>Infrastructure Decision-making Principles</i>, Infrastructure Australia, July 2018)</p>
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.
Optimise Outcomes	Unsolicited Proposals must be considered in light of the wider benefits and strategic outcomes that may be derived to optimise outcomes . To achieve this proposals must be broadly consistent with Council objectives and plans and offer some attributes that would justify departing from a competitive tender process. Outcomes must always be in the best interest of the Council.
Proponent	The person or organisation that submits an Unsolicited Proposal
Uniqueness	<p>For Unsolicited Proposals to progress through the assessment process, the element of uniqueness needs to apply to both the proposal and the Proponent. The essential elements of uniqueness to be addressed in any Unsolicited Proposal are:</p> <ul style="list-style-type: none"> Can this proposal be readily delivered by competitors? If so what, if any, justification would the Council have to the public for not seeking best value through a competitive tender process? What benefit(s) would the Council gain? Does the Proponent own something that would limit Council from contracting with other parties if Council went to tender? This would include intellectual property, real property and other unique assets. 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 solutions that are otherwise unlikely to be defined and put to market (e.g. alternatives to providing a Council service or substantive processes, products or methods for delivering a service that is not offered by other service providers and constitute a significant departure from traditional service delivery). <p>Proposals that are NOT considered unique are unlikely to be progressed. Examples of this are (but not limited to):</p> <ul style="list-style-type: none"> Proponents seeking to directly purchase or acquire a Council-owned entity or land parcel. Unless the proposal presents a unique opportunity to Council, the Council is unlikely to enter into such an arrangement without a competitive tender process. Proponents with an existing Council contract to provide goods or services seeking to bypass a future tender process. Proposals for significant extensions to existing contracts, or the next stage of a staged project on the basis that the contractor is

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	<p>already ‘on-site’ or has some other claimed advantages, absent of other ‘uniqueness’ criteria.</p> <ul style="list-style-type: none"> • 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 for consultancy services. • Proposals for projects where the tender process has formally commenced. • Proposals that are early concepts or lack detail. • Proposals seeking grants e.g. scientific research. • Proposals that claim uniqueness that is trivial.
Unsolicited Proposal	An approach to the Council from a Proponent with a proposal to deal directly with the Council over a commercial proposition, where the Council has not requested such a proposal via a publicly advertised Expression of Interest. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.

6. ROLES AND RESPONSIBILITIES

Roles	Responsibilities
Executive Leadership Team (ELT)	<ul style="list-style-type: none"> • Responsible for adopting the Policy and Procedure • Assessing validity of proposal that it meets the criteria before giving assent to seek Council approval
Group Manager and/or Service Area Manager	<ul style="list-style-type: none"> • Responsible for liaising with Proponent and implementing <i>Three Stage Assessment Process</i> for an unsolicited proposal • Responsible for reporting progress on the assessment process to ELT and preparing the required reports to Council
Actioning Officer	<ul style="list-style-type: none"> • The Council staff member who is designated as the sole point of contact with the Proponent who will be responsible for liaison in respect of assessing and managing the proposal
Manager Governance & Legal	<ul style="list-style-type: none"> • Is the owner of the Unsolicited Proposals Policy and Unsolicited Proposals Procedure. • Is responsible for updating the policy and procedure within the review period as stipulated in the policy and procedure or as required
Governance Coordinator	<ul style="list-style-type: none"> • Coordinates reviews of the Policy and Procedure within the timeframes set out within both documents

7. RISK

The risks associated with not having an open transparent process to deal with unsolicited proposals are:

- Council being seen as lacking transparency and consistency on how it reaches its decisions relating to unsolicited proposals
- Proponents not having a clear process to follow leading to ad hoc approaches to Council and councillors
- Council being seen as inconsistent in how it deals with proposals leading to reputational damage
- Council not adequately optimising outcomes for the Fairfield community in the delivery of projects

8. PROCEDURE

8.1. Objective and Goals

Council may be approached by the private sector and individuals with specific proposals for it to consider including, land purchases, business development, participation in a joint venture and other proposals. These proposals tend to be private sector generated and are outside of the formal *expression of interest* (EOI) framework where Council is the initiator. To assist with this process Council has developed a policy and this procedure to provide a framework for considering these unsolicited proposals. Its aim is to ensure a transparent and streamlined approach as well as assist the Council and the private sector working together to develop and deliver innovative ideas and proposals.

The aim of this procedure and accompanying policy is to provide consistency and certainty to the both Council Officials and the private sector Proponent as to how their unsolicited proposal to the Council will be assessed within a transparent framework.

8.2. Guiding Principles

The Guiding Principles for dealing with and assessing unsolicited proposals will be:

- **Optimising Outcomes** - Proposals must be considered in light of the wider benefits and strategic outcomes that may be derived.
- **Uniqueness** - The uniqueness needs to apply to both the proposal and the proponent by clearly demonstrating the unique benefits of the proposal and the unique ability of the proponent to deliver the proposal.

Proposals that are **NOT considered unique** are unlikely to be progressed. Also, if Council decides to progress an unsolicited proposal it should not be interpreted as any form of explicit or tacit support for the required planning approvals. All proposals will still be required to meet the required planning approvals as set out in the relevant legislation.

8.3. Procedure

- 8.3.1 This Procedure has been developed to provide a framework to enable an unsolicited proposal to be considered.
- 8.3.2 While direct negotiation with a Proponent in response to an Unsolicited Proposal may be pursued in justifying circumstances, it is important to note that 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 for private sector participants to do business with Council.
- 8.3.3 Council has absolute discretion in considering an unsolicited proposal and will decide whether the proposal meets the required unique attributes

such that others could not deliver a similar proposal with the same outcome. Council may directly negotiate with an individual or organisation that presents an Unsolicited Proposal where circumstances justify this approach.

8.3.4 This Procedure sets out the processes to be followed by both the 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 Procedure.

8.3.5 It is 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.

8.3.6 It is recognised that there may be numerous discussions at a Pre-Submission – Concept Review Stage between the Proponent and Council in order to ascertain Council needs and better understand the business environment. These are informal discussions and do not form part of this Procedure.

8.3.7 A **Three Stage Assessment Process** will be applied to guide the evaluation of unsolicited proposals. The stages consist of the following:

Stage 1	Initial Submission and Preliminary Assessment
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Stage 1A Preliminary Assessment
 Proponent to forward proposal to Relevant Staff for Preliminary Assessment. Relevant staff will undertake a Preliminary Assessment of the proposal to determine if the submission constitutes an Unsolicited Proposal and if it contains sufficient potential grounds to justify direct dealing and a Stage 1 assessment.

Council reserves the right to further consider, or not consider, Unsolicited Proposals beyond this stage at its absolute discretion. All discussions are held in confidence. Relevant Staff are to be identified with whom the Proponent is to liaise. To ensure probity the Proponent should liaise only with the Relevant Council staff and not undertake canvassing of councillors during this stage.

Proponent Responsibilities
 During Stage 1A the Proponent is responsible for:

- Preparing an Initial Submission in accordance with the Schedule of Information
- Requirements listed on the Council Website
- Identification of unique elements of the proposal
- Forwarding the Initial Submission to the Council
- Responding to requests for further information. The information to be provided will depend on the size and complexity of the proposed project.
- The primary point of contact will be the nominated Council Actioning Officer(s).
- Councillors are not to be canvassed.

Council Responsibilities
 During Stage 1A Council is responsible for:

- Promptly acknowledging receipt of the Initial Submission
- Appointing an ‘Actioning Officer’ who will be Council’s point of contact with the Proponent
- 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

Council Responsibilities (contd)

- Council approval to progress to Stage 1B, if warranted
- Notification of the Preliminary Assessment outcome to the Proponent and if to be progressed
- Maintaining appropriate numbers of staff at meetings, meeting records and correspondence.
- Preventing the canvassing of councillors

Stage 1B Strategic Assessment

This stage includes a comprehensive initial assessment of the proposal to identify the potential benefit to Council of further consideration and development with the Proponent. The outcome is advice to the Proponent of progression to Stage 2, or that the proposal will not be progressed.

Proponent Responsibilities

During Stage 1B the Proponent is responsible for:

- 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 1B Council is responsible for:

- Commitment by Council Executive
- 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 formal Assessment. The Assessment will be based on the potential of a subsequent Detailed Proposal to satisfactorily meet each of the Assessment Criteria if progressed to Stage 2.
- Preparing an Assessment Report for review and approval.
- Preparing a draft Participation Agreement for all proposals deemed appropriate to progress to Stage 2.
- Notification of the initial assessment outcome to the Proponent.
- Seeking Council approval to progress to Stage 2, if warranted.

Stage 2

Detailed Proposal

Stage 2A Detailed Proposal

The Proponent and Council to work cooperatively in the development and assessment of a Detailed Proposal. The outcome of this stage is advice to the Proponent of progression to Stage 3, or that the Council does not wish to proceed.

Stage 2B Governance Arrangements

Once a proposal reaches Stage 2 of the assessment process, Council will establish appropriate governance arrangements including assessment/technical panels, management of confidentiality and conflict of interest, and provide details of the appointed Proposal Manager and Probity Advisor.

Stage 2C Development of a Participation Agreement

Councillors are briefed on the proposal via Workshop/Briefing and their concurrence to proceed to Stage 2 development of a **Participation Agreement** is sought via a report in Closed Session.

A Participation Agreement will be developed to provide an agreed framework for Stage 2 to be entered into by both Council and the Proponent in order to ensure the alignment of expectations regarding participation in the process. The Participation Agreement 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
- Agreement regarding cost arrangements
- Resource commitments
- Conflict of interest management arrangements
- Confidentiality requirements
- Commitment to following an open book approach to discussions
- Commitment to providing a local benefit
- Structuring of milestones, value capture and payments (where applicable).
- Timeframe
- Approval requirements.

Proponent Responsibilities

During Stage 2, the Proponent will:

- Enter into a Participation Agreement
- Attend the Establishment Meeting
- 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 draft commercial terms for Council's consideration, if appropriate.

Council Responsibilities

During Stage 2 Council will:

- Enter into a Participation Agreement
- Facilitate an Establishment Meeting in order to:
 - ✓ Provide feedback to the Proponent regarding risks and concerns with the Initial Submission
 - ✓ Provide guidance to the Proponent regarding Council requirements
 - ✓ Agree the approach to managing Proposal Development Workshops
 - ✓ Advise of the relevant Assessment Criteria
 - ✓ Agree the format for the Detailed Proposal, including the information and level of detail required
 - ✓ 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).

Council Responsibilities (contd)

- Commit appropriately experienced and qualified staff resources to participate in the Stage 2 process (including Proposal Manager and Probity Advisor).
- Prepare a Governance and Probity Plan
- Define a Reference Project which accurately reflects the scope of the proposal.
- Participate in Proposal Development workshops.
- Provide further information to the Proponent to assist with proposal development.
- Receive the Detailed Proposal.
- Undertake assessment of the Detailed Proposal (by the Assessment Panel) against each of the Assessment Criteria.
- Request further information from the Proponent as required.
- Prepare an Assessment Report (by the Assessment Panel) and make recommendations.
- Make recommendations to Council.

Stage 3

Negotiation of Final Binding Offer

Stage 3A Stage 3 Agreement

A Stage 3 Agreement will be developed to provide an agreed framework for participation in Stage 3 which will be entered into by both Council and the Proponent in order to ensure alignment of expectations. The Stage 3 Agreement will contain (but not be limited to):

- Communication channels, including a prohibition on lobbying.
- Agreement regarding cost arrangements.
- Resource commitments.
- Conflict of interest management arrangements
- Confidentiality requirements
- Timeframe
- Approval requirements
- Schedule of items, broad contractual terms and issues to be negotiated.

Council to be advised of the proposal proceeding to Stage 3 and their concurrence sought to proceed to a Stage 3 agreement via a report in Closed Session.

Proponent Responsibilities

During Stage 3, the Proponent will:

- Enter into a 'Stage 3 Agreement'
- Participate in the negotiation process
- Submit a Binding Offer, including appropriate legal and commercial terms.

Council Responsibilities

During Stage 3, Council will:

- Enter into a 'Stage 3 Agreement'
- Inform the Proponent of the process and protocols for negotiation
- Provide the Proponent with a schedule of items for negotiation
- Prepare an internal Governance Plan
- Commit appropriately qualified resources to complete negotiations, including legal, financial and technical advice where appropriate
- Undertake a comprehensive assessment of the Binding Offer

Council Responsibilities (contd)

- Define the appropriate Contract Management arrangements to monitor and ensure contracted outcomes are delivered
- Make recommendations in report to Council, with commercially sensitive information reported in Closed Session and decisions placed in Open session where appropriate with contract arrangements.

8.3.8 Council’s strong preference is for these discussions to occur before any formal lodging of a proposal. It is important to note that Stage 1 (Initial Submission and Preliminary Assessment) does not constitute the formal lodging of a proposal. All Council is doing at this Stage (Stages 1A and 1B) is assessing whether the proposal constitutes an Unsolicited Proposal and whether it should progress to the submission of a formal Detailed Proposal as per Stage 2

8.3.9 Council may procure advisors with specialist expertise to assist in project scoping and assessment. These may cover:

- Legal
- Financial
- Property
- Technical
- Environmental
- Probity

Other advisers may be appointed where specialist input is required. All Advisers are to follow all project governance and probity requirements.

8.3.10 An independent Probity Adviser may be appointed in line with Council’s Probity Policy for large-scale projects or where probity risk is considered sufficient to warrant appointment. The role of the Probity Adviser is to monitor and report on the application of the probity fundamentals during the assessment process. Probity advisers are usually appointed at Stages 2 and 3 of the assessment process.

8.3.11 The Probity Adviser (if appointed externally to Council) will report to the General Manager (or his/her nominee) and will be available to the Proponent to discuss probity related matters.

8.3.12 In the absence of a Probity Adviser, this role will be undertaken by the General Manager’s nominee. Proponents are able to request the appointment of a Probity Adviser.

8.3.13 Where Council assesses a proposal as not meeting the criteria, including its uniqueness, Council reserves its right to ‘go to market’ if it so decides.

8.3.14 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.

8.3.15 If the Council elects to go to market in such circumstances it will respect any Intellectual Property (IP) owned by the Proponent.

8.3.16 The unsolicited proposals assessment process is separate to other Council statutory approvals processes (e.g. planning, development assessment etc.).

8.4 Assessment Criteria

8.4.1 Proposals will be initially assessed against the **Assessment Criteria** in the table below. Assessment will be based on 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? • Does the Proponent own something that would limit the Council from contracting with other parties if the Council went to tender? • Are there other attributes which may not necessarily stand alone as unique but, when combined, create a ‘unique’ proposal?
Value for Money	<p>Does the proposal deliver value for money to the Council? What are the <i>net</i> economic benefits of the proposal (<i>the status quo should be defined</i>)?</p> <ul style="list-style-type: none"> • Consideration will be given to factors such as: <ul style="list-style-type: none"> - whole of life costs and revenue, quality, - risk borne by Council, - benefits gained, - qualitative and whole of Council outcomes including timely achievement of local benefit. <p>This approach to demonstrating <i>Value for Money</i> will be generally consistent with Infrastructure Australia guidelines. (See Infrastructure Australia – <i>Infrastructure Decision-making Principles</i> in Definitions)</p>
Return on Investment	<p>Is the proposed Return on Investment to the Proponent proportionate to the Proponent's risks, and industry standards?</p> <p>Returns may be financial, environmental or infrastructure based.</p>
Capability and Capacity	<p>Does the Proponent have the experience, capability and capacity to carry out the proposal?</p> <p>What reliance is there on third parties?</p>
Affordability	<p>Does the proposal require Council funding, or for the Council to purchase proposed services?</p> <p>Does the Council have funds available or budgeted and if not, what source of funds would be proposed?</p>
Risk Allocation	<p>What risks are to be borne by the Proponent and by the Council?</p>
Community Impact	<p>What impacts would the proposal have on the community. Will it deliver measurable benefits (social, economic, environmental) or be detrimental to the community?</p>

8.5 Probity

8.5.1 Council will take all necessary steps 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 of:

- Honesty and impartiality
- Identification and management of conflicts of interest
- Appropriate security and confidentiality arrangements
- Consistency, fairness and due diligence
- Use of open and competitive processes, as required and
- Compliance with legal and policy framework,

8.5.2 The *Unsolicited Proposals Policy and Procedure* will also work in conjunction with the Council's Code of Conduct, Statement of Business Ethics, Procurement Policy, Probity Policy and other relevant Council policies as well as relevant NSW Government guidelines.

9 REVIEW AND EVALUATION

This procedure shall be reviewed and updated up to **every 5 years** or more often as necessary to ensure relevance and compliance to Council's QMS requirements.

9.1 Review may be carried out at any stage following integration with the core business activities, and can take many forms such as:

- During the audit of a particular service group or branch;
- As a feedback mechanism from workers, contractors, customers or any other stakeholders;
- Following Corrective action;
- Change in legislative requirements; and
- Task or process has changed due to enhancements.

9.2 Following completion of any review, the document will be reviewed and updated in order to correct any deficiencies and non-conformances.

9.3 Any changes to this procedure shall be conducted in consultation with workers as appropriate and with the Governance & Legal Division.