

SECTION 1 – INTRODUCTION

BACKGROUND

The private sector and/or individuals with specific proposals may approach Council directly for it to consider a proposal for which Council has not formally sought expressions of interest. Where a proposal is of sufficient merit and uniqueness, it may result in a direct negotiation process in lieu of an open or selective process.

In the interests of good governance and transparency these unsolicited proposals need to be dealt with within a consistent framework.

PURPOSE

This policy provides guidance on dealing with approaches by the private sector and/or individuals with proposals for the Council dealing with land purchases, business development, participation in a joint venture and other proposals.

The purpose of the policy is to:

- Ensure good governance is followed by Council in dealing with these unsolicited proposals
- Provide a clear and transparent process to be followed to assist the Council and private sector working together to develop and deliver innovative outcomes for the community, and
- Provide consistency and certainty for proponents as to how their unsolicited proposals will be assessed within a transparent framework.

SCOPE

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

DEFINITIONS

Assessment Criteria - The criteria upon which an Unsolicited Proposal will be assessed consisting of examining:

- Uniqueness
- Value for money
- Return on investment
- Capability and capacity
- Affordability
- Risk allocation
- Community impact

Infrastructure Australia – Infrastructure Decision-making Principles

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.

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:

1. Governments should quantify infrastructure problems and opportunities as part of long-term planning processes.
2. Proponents should identify potential infrastructure needs in response to quantified infrastructure problems.
3. Proponents should invest in development studies to scope potential responses.
4. Where an infrastructure need is identified, governments should take steps to ensure potential responses can be delivered efficiently and affordably.
5. 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.
6. Proponents should assess the viability of alternative funding sources for each potential project.
7. Project proposals should be independently assessed by an appropriate third party organisation.
8. Governments and proponents should undertake meaningful stakeholder engagement at each stage, from problem identification and option development to project delivery.

9. Governments and proponents should publicly release all information supporting their infrastructure decisions.
10. Governments should commit to, develop and release post-completion reviews.
11. Where projects are funded as part of a broader program, the corresponding decision-making processes should be robust, transparent and prioritise value for money.
(Source: *Infrastructure Decision-making Principles*, Infrastructure Australia, July 2018)

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.

Proponent - The person or organisation that submits an Unsolicited Proposal.

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. This may include proposals to build and/or finance infrastructure, provide goods or services or undertake a major commercial transaction. These proposals must have unique attributes such that others could not deliver a similar proposal with the same value-for-money outcome.

LEGISLATIVE CONTEXT

- Environmental Planning & Assessment Act 1979
- Local Government Act 1993

STAKEHOLDERS

The Mayor, Councillors, Council Officials, Proponents and the general public.

SECTION 2 - POLICY

OBJECTIVE AND GOALS

Council is sometimes 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 framework where Council is the initiator.

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To assist with this process Council has developed this policy and an accompanying procedure to consider these unsolicited proposals to ensure a transparent and streamlined approach to assist the Council and the private sector working together to develop and deliver innovative ideas and proposals.

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

The focus of unsolicited proposals is on unique and innovative projects or services and is not designed to replace applicable environmental and planning assessment processes.

In the interests of ensuring and maintaining probity and transparency for their proposal Proponents must not undertake canvassing of Councillors. It is recognised that a Proponent may initially approach the Mayor or General Manager. These parties should then pass the proposal on to a relevant Council staff member to deal with. Once this occurs, the Proponent must only liaise with this relevant Council staff member. This will be their primary point of contact with the Council as their proposal is examined and developed.

POLICY STATEMENT

Guiding Principles

The Guiding Principles for dealing with and assessing unsolicited proposals will be to *Optimise Outcomes* and the *Uniqueness* of the proposal.

Optimise Outcomes

Proposals must 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 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.

In order to demonstrate that ‘*Value for Money*’ will be achieved, Council will develop an independent project cost estimate that will be used to assess Value for Money. This approach to demonstrating Value for Money will be generally consistent with Infrastructure Australia guidelines. (See Infrastructure Australia – *Infrastructure Decision-making Principles* in **Definitions**)

Uniqueness

For unsolicited proposals to progress through the assessment process, the *uniqueness* needs to apply to both the proposal and the Proponent. The essential elements of *uniqueness* to be addressed in any Unsolicited Proposal are:

- 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).

Proposals that are NOT considered unique are unlikely to be progressed. Examples of this are (but not limited to):

- 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 already ‘on-site’ or has some other claimed advantages, absent of other ‘uniqueness’ criteria.
- 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.

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 be required to meet the required approvals as set out in the relevant legislation.

APPLICATION & IMPLEMENTATION

Council will apply a **three-stage assessment process** as advocated by the *Unsolicited Proposals – Guide for Submission & Assessment, NSW Government, August 2017* to assist with guiding the evaluation of any unsolicited proposal. This will consist of:

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Stage 1

Initial Submission and Preliminary Assessment

Council 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.

Strategic Assessment of Initial Submission which includes a comprehensive initial assessment of the proposal to identify the potential benefit to Council of further consideration and development with the Proponent.

Stage 2

Detailed Proposal

The Proponent and Council to work cooperatively in the development and assessment of a **Detailed Proposal**.

Stage 3

Negotiation and Final Binding Offer

The finalisation of all outstanding issues with a view to entering into a **binding agreement**, should the Council accept the final offer.

The following assessment criteria will be applied to any proposal consisting of:

- Uniqueness
- Value for Money
- Return on Investment
- Capability and Capacity
- Affordability
- Risk Allocation
- Community Impact

Where the Council assesses a proposal as not meeting the criteria, including uniqueness, Fairfield City Council 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.

Council will take all the necessary steps to conduct its commercial dealings with integrity through the application of established probity principles which will ensure it:

- Maintains impartiality
- Maintains accountability and transparency
- Manages conflicts of interest
- Maintains confidentiality, particularly in respect of commercial confidentiality and the protection of intellectual property, and
- Obtains value for money

Council's *Unsolicited Proposals Procedure* will set out the detailed steps and processes to be followed to ensure it addresses the guiding principles, assessment criteria and probity requirements for dealing with any such proposal.

SECTION 3 – GOVERNANCE

RELATED POLICIES/PROCEDURES/GUIDELINES

- *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
- Fairfield City Council *Unsolicited Proposals Procedure*

RISK

Failure to provide for an open and transparent framework to deal with unsolicited proposals creates the following risks for Council:

- 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 the Mayor and Councillors
- Council being seen as inconsistent in how it deals with proposals leading to reputational damage, and
- Council not adequately optimising outcomes for the Fairfield community in the delivery of projects

VERSION CONTROL AND CHANGE HISTORY

Version No.	Approval Date	Approved by	Amendment
01	02 September 2022	Executive Leadership Team	New draft policy and procedure developed for use in pilot study
02	15 February 2023	Executive Leadership Team	Revised policy adopted



Council reserves the right to cease, modify or vary this Policy and will do so in accordance with Council’s established consultation processes.

REVIEW DATE

This Policy will be reviewed within 5 years of its authorisation, as required by legislation or when a change to governing legislation and/or guidelines occurs, whichever is sooner.

The Manager Governance and Legal has responsibility for review of this Policy.

AUTHORISATION

This Policy was approved by the Executive Leadership Team on 15 February 2023.

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