



Policy Title	Unsolicited Proposal Policy
Related Documentation	Unsolicited Proposal Procedure Schedule of Information Requirements Pre-lodgement checklist
Relevant Legislation	Local Government Act 1993 Government Information (Public Access) Act 2009 Local Government Amendment (Public Private Partnerships) Act 2004 Local Government (General) Regulation 2005
Responsible Officer	Director City Futures

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**Objective**

The following objectives will guide Council in its consideration of unsolicited proposals:

1. Ensuring consistency and certainty for non-government parties seeking to deal directly with Council;
2. Promoting the development of innovative ideas to support Council’s role, functions and broad objectives as outlined in its Community Strategic Plan and Reimagining Campbelltown City Centre Master Plan;
3. Ensuring an open, transparent and fair process that involves a high standard of probity and public accountability;
4. Providing 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;
5. Maximising the benefit from unsolicited proposals for Council and the community; and
6. Ensuring the intellectual property of a party submitting an unsolicited proposal is appropriately protected.

**Policy Statement**

This Policy provides confidence to our community and potential proponents that all unsolicited proposals presented to Council will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value.

**Scope**

It is anticipated that Council may be presented with unsolicited proposals from the community, businesses or other government agencies. The purpose of this Policy is to not only stimulate and encourage business investment and innovation in the Campbelltown Local Government Area (CLGA) but also to better assist in appropriately managing governance and probity issues that arise through

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<b>Directorate:</b> City Futures <b>Section:</b> Strategic property <b>Record No:</b> CDO-24/731	<b>Adopted Date:</b> 13/07/2021 <b>Revised Date:</b> 14/05/2024 <b>Minute Number:</b> 127 <b>Review Date:</b> 30/06/2028	<b>Page:</b> 1 of 6
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## Campbelltown City Council

the provision of a transparent assessment process. It seeks to ensure that unsolicited proposals that are of benefit to the CLGA are pursued and realised.

This Policy applies to all unsolicited proposals submitted by a proponent to Council.

### Definitions

Term	Meaning
Assessment Criteria	The criteria upon which unsolicited proposals will be assessed
Detailed Proposal	A submission by a proponent to Council
Executive Group	Council's Directors and General Manager who provide formal recommendations to Council at its meetings.
Final Binding Offer	A formal proposal submitted by the proponent at the conclusion of Stage 3, which meets the minimum requirements for acceptance by Council.
CLGA	Campbelltown City Council Local Government Area
Council	Campbelltown City Council - this includes the elected Council and the administrative organization.
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-ldgment meeting with Council.
Intellectual Property	Inventions, original designs and practical applications of 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.
LG Act	<i>Local Government Act 1993</i>
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. This could be an appropriate Council staff member or an appointed 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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Steering Committee	A committee of senior Council representatives with responsibility for oversight and preparation of recommendations to the Executive Group 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 Council as outlined in the section criteria below.

### Legislative Context

Council operates consistent with 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, as further defined in that Act.

The unsolicited proposals process is not a substitute for routine competitive procurement by Council. The focus of unsolicited proposals is on unique and innovative projects or services with clear and tangible benefits for the CLGA. 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 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.

This policy has been drafted in line with the NSW Government's 'Unsolicited Proposals: Guide for Submission and Assessment' dated August 2017.

### Principles

This Policy represents commitment by Council to the allocation of resources to meet its responsibilities as outlined in this Policy. Through a four step process, proposals will be evaluated against the Assessment Criteria outlined below:

1. Initial Submission and Preliminary Assessment

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2. Detailed Proposal
3. Negotiation of Final Binding Offer
4. Formal Council Resolution on Final Binding Offer

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 (IP) rights will be addressed and agreed with the proponent, 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 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.

### **Assessment Criteria**

Proposals will be initially assessed against Council's assessment criteria. 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. The criteria are as follows:

- 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:
  - 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.
  - Other demonstrably unique elements.
- Value for money.
- Whole of Council impact – ability to support or deliver on strategic objectives, plans, visions and goals.
- Return on investment.
- Capability and capacity.
- Affordability.
- Risk allocation.

**Once an unsolicited proposal has been submitted, proponents must not contact Councillors or Council officers regarding the submitted proposal, outside of the formal assessment process.**

This includes organisations authorised to act on the proponent's behalf.

### **Optimise Outcomes**

By their nature, unsolicited proposals are unlikely to be the current focus of Council's strategic

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planning. Proposals must therefore be considered in light of the wider benefits and strategic outcomes that may be derived. In order to proceed, 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 CLGA.

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 assessment. Council will also consider whole-of-council impact and cost.

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.

### **Consultative Process**

Council will manage a consultative process with the proponent at all formal stages of assessment. During the Stage 1 assessment this interaction will be limited to clarification of the proposal by Council 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.

### **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.

### **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.

### **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

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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.

### **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.

### **Governance Arrangements**

Council's Executive Group will appoint a steering committee to manage the staged approach to assessment of unsolicited proposals, the membership of which will be based upon the nature of the proposal.

Unsolicited proposals must take into account relevant processes and approval requirements in the LG Act in relation to procurement, and where relevant any other related procurement policy document (E.g. NSW Public Private Partnerships Guidelines).

### **Memorandum of Understanding**

An 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 outline whether the proposal will be subject to an approval process per Council's procurement policy and/or a project assurance mechanism.

### **Council**

Prior to entering into a formal agreement with the proponent, all unsolicited proposals must be reported to Council for resolution, even where it is recommended 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 3, to be considered under the PPP provisions of the *Local Government Amendment (Public Private Partnerships) Act 2004* and the *Local Government (General) Regulation 2005*.

### **Effectiveness of this Policy**

This Policy will be reviewed every three years.

## **END OF POLICY STATEMENT**

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