



# Unsolicited Proposals Policy

<b>Reference Number:</b>	2.33
<b>Type:</b>	Council
<b>Category:</b>	Corporate Governance
<b>Relevant Community Plan Outcome:</b>	<ul style="list-style-type: none"><li>The management of our city is progressive, responsive and sustainable to ensure a united and unique place for future generations</li><li>Open and accountable governance</li></ul>
<b>Responsible Officer(s):</b>	Manager Strategic Procurement Services
<b>First Issued/Approved:</b>	6 September 2021
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<b>Last Reviewed:</b>	October 2023
<b>Next Review Due:</b>	October 2025
<b>Applicable Legislation:</b>	Local Government Act 1999
<b>Related Policies:</b>	Disposal of Assets Policy Privately Funded Code Amendments Policy Procurement Policy Prudential Review Policy
<b>Related Procedures:</b>	

## 1. Purpose

- 1.1 As facilitators and enablers of economic growth, it is reasonable for Council to work with the private and not-for-profit sectors to pursue innovative ideas that will create jobs, contribute to the best use of public assets and deliver high quality services. This Policy provides a defined process for new and innovative ideas to be brought to Council. It also gives confidence to investors and their community that unsolicited proposals will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value.
- 1.2 Council has adopted this Policy for the purpose of section 49 of the Local Government Act 1999. The following objectives will guide Council's consideration of unsolicited proposals:
  - 1.2.1 promoting the development of innovative ideas by the private and community sectors to support the Council's role and functions, and broad objectives as outlined in its Strategic Plan;
  - 1.2.2 ensuring that unsolicited proposals are received and assessed through a transparent and fair process that involves high standards of probity and public accountability;
  - 1.2.3 ensuring that the unsolicited proposals process is not used to circumvent the Council's regular procurement processes;

- 1.2.4 ensuring value for money for the Council and the community is achieved from any unsolicited proposal;
- 1.2.5 maximising the benefits from unsolicited proposals for the Council and the community; and
- 1.2.6 ensuring the Intellectual Property of a party submitting an unsolicited proposal is appropriately protected.

## 2. Scope

This Policy applies to all unsolicited proposals submitted to the Council. The City of Charles has the sole discretion as to when and if this Policy applies to a particular proponent, including if and when an exclusive negotiation or a period of exclusivity will apply.

## 3. Policy Statement

### 3.1 Unsolicited Proposals

- 3.1.1 *An unsolicited proposal is a new and innovative proposal from the private and non-government sector that could assist the Council to achieve its strategic objectives or satisfy a community need, which has not been requested by the Council through its regular procurement processes.*
- 3.1.2 An unsolicited proposal may include a proposal for:
  - the purchase, lease or development of Council owned or managed land (see also the Privately Funded Code Amendments Policy);
  - the delivery of goods or services to or on behalf of the Council; or
  - the provision of infrastructure for the community.
- 3.1.3 Where an unsolicited proposal involves more than one council, the relevant councils may resolve to adopt any one of their unsolicited proposals policies, with any required variations, to apply to that proposal in place of their individual policy.

### 3.2 Period of Exclusivity

- 3.2.1 Council may, in its absolute discretion, enter into a period of exclusive negotiation with a proponent. 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. These circumstances include where a party's Intellectual Property should be protected.
- 3.2.2 The criteria that Council will consider determining if a period of exclusivity should be entered into are:
  - No competing proposals
  - Community need/Council priority
  - Uniqueness
  - Value for money
  - Capacity and capability of proponent

### **3.3 Process for Receipt and Consideration of Unsolicited Proposals**

- 3.3.1 Pre-lodgement meeting - Before formally submitting an unsolicited proposal, the proponent may request a pre-lodgement meeting with Council's Manager Strategic Procurement Services.
- 3.3.2 Receipt and assessment process - There is a five-stage process for managing unsolicited proposals:
  - Stage 1 – Initial Proposal
  - Stage 2 – Detailed Proposal
  - Stage 3 – Preliminary Contract Negotiations
  - Stage 4 - Consideration by Council
  - Stage 5 – Final Contract Negotiations
- 3.3.3 Intellectual Property Rights - Council acknowledges unsolicited proposals may contain Intellectual Property of the proponent and/or third parties. If Council declines to consider, or ends its consideration of an unsolicited proposal, and elects to approach the market in relation to the subject matter of the proposal, Council will respect any Intellectual Property rights of the proponent and/or third parties as legally required.

## **4. General Terms**

- 4.1 No legal relationship - Council is under no contractual or other legal obligation to the proponent with respect to the receipt, assessment, consideration, acceptance or rejection of any proposal or the failure to receive, assess, consider or accept any proposal.
- 4.2 Legislative obligations - Council may have legislative obligations that it needs to comply with in relation to a particular proposal and nothing in this policy is intended to override or circumvent those obligations.
- 4.3 No soliciting or outside discussions
  - 4.3.1 All queries or communications in relation to unsolicited proposals must be directed to the Manager Strategic Procurement Services to ensure consistency and transparency in the unsolicited proposals process.
  - 4.3.2 Council reserves the right to discontinue the process if the proponent discusses the proposal with members of Council staff or Elected Members other than as directed by the Manager Strategic Procurement Services.
- 4.4 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 advise Council how it proposes to address this.
- 4.5 Costs of proposal - A proponent bears its own costs of preparing, discussing and negotiating any unsolicited proposal with the Council.
- 4.6 Interaction with other Council policies:

4.6.1 Unless specifically stated in this Policy or determined by Council, this Policy is not intended to override any other policy of Council that may apply to an unsolicited proposal.

4.6.2 Council's Disposal of Asset Policy and Procurement Policy do not apply to an unsolicited proposal that is covered by this policy, to the extent of any inconsistency with this Policy.

4.7 Council's General Rights Council may:

4.7.1 at any stage of the process if it assesses that a proposal does not meet the criteria to be considered or considered further, make an approach to the market in respect of the subject matter of the proposal and end consideration of the proposal and withdraw from any negotiation with the proponent in relation to it;

4.7.2 amend, vary or revoke and replace this Policy at any time;

4.7.3 accept or reject any unsolicited proposal;

4.7.4 subject to any period of exclusivity, negotiate with any person in relation to the subject matter of an unsolicited proposal;

4.7.5 accept all or part of an unsolicited proposal;

4.7.6 discontinue negotiations with any proponent; and

4.7.7 include any proponents name in council reports and, subject to any period of exclusivity and any agreement with a proponent to the contrary, make them public.

4.8 Departure from Policy

4.8.1 The Council may, by resolution, where it is justified in the circumstances, determine that this Policy will not apply to a particular unsolicited proposal.

## **5. Definitions**

Nil