

SUBJECT: LMM 23/08/16 - INNOVATIVE PROPOSALS POLICY

PURPOSE

The vision for Newcastle as a smart and innovative city requires all three levels of government, the community, educational and research providers and business and industry sectors to work together to achieve it. The overarching aim relates to improving the livability, sustainability and economic diversity of the City. It works to increase the amenity of the city, and to increase opportunity. The Newcastle 2030 Community Strategic Plan outlines Newcastle's vision to be a vibrant, diverse and resilient green economy built on educational excellence and research; a culture that supports and encourages innovation and creativity at all levels; a thriving city that attracts people to live, work, invest and visit.

MOTION

That Newcastle City Council -

1. Develop a draft Innovative Proposals Policy for public exhibition.
2. Develop a strategy to support local SME's, startups, incubators, accelerators and attracting large international companies to base their headquarters in Newcastle by targeted approaches to the NSW Government Jobs of the Future Fund

BACKGROUND

Innovation is fundamental to enhancing value for money outcomes to Council. Past experience shows that innovative solutions can be developed in the market long before they are identified by Council. Having a mechanism to deal fairly with innovative proposals will encourage those with innovative proposals to engage with Council.

Unique and innovative ideas from the private provide opportunities to deliver improved service for Newcastle ratepayers, reduce Council's delivery costs and align with our Newcastle 2030 Vision. To encourage the best ideas and solutions, Council will deliver a transparent and streamlined approach to cater for innovative proposals, which also protects intellectual property of the private sector.

The development of an Innovative Proposals Policy sends a clear message that Council is willing to embrace outside ideas. One of the key objective of such a Policy is to provide consistency and certainty to the private sector as to how their can be submitted and assessed. In addition, the policy will give guidance to Council officers for how to deal with and assess innovative proposals.

The City of Brisbane (QLD) and City of Darebin (Vic) as well as the Governments of the states of NSW, Victorian, ACT and NT have developed Innovative/Unsolicited Proposal Policies. In both instances these policies have been developed to recognize the legal framework of the entities, and the importance of transparency and accountability in decision making.

The NSW Government's policy includes detailed assessment criteria, including an assessment of the uniqueness of the idea, the value provided to the taxpayer, the return on the State's investment, the capability and capacity of the organization, the affordability and management of risk.



Attachments:

1. City of Darebin Unsolicited Proposals Policy
2. Media Release - NSW Targets the Million New Jobs for the Future



CITY OF DAREBIN
UNSOLICITED PROPOSALS POLICY
APRIL 2013

Defined Terms

LGA means the *Local Government Act 1989* (Vic).

Private Party means the private person or entity responsible for bringing an Unsolicited Proposal to Council.

Procurement Policy means the City of Darebin Procurement Policy dated November 2011.

Unsolicited Proposal means a proposal inviting Council to consider the provision to Council by the Private Party of services or works, not in response to a formal request for proposal or tender in compliance with the LGA.

1. Background

Council officers and Councillors, from time to time, are presented with Unsolicited Proposals from Private Parties seeking to provide Council with an idea, opportunity or benefit.

This policy sets out a number of matters that Council officers and Councillors should take into consideration when an Unsolicited Proposal is received.

2. Application

2.1.1 Council officers and Councillors

This policy applies to all Council officers and Councillors responsible for the management or consideration of an Unsolicited Proposal.

2.1.2 Nature of the project described in the unsolicited proposal

Users of this policy should note that the procurement requirements set out in paragraph 3.1.1. relate to works and services only.

Therefore, where the project described in an unsolicited proposal does not include the carrying out of works or the provision of services compliance with section 186 of the LGA will not be necessary. However, Council should be mindful of any other legislative requirements or restrictions or Council policies that may apply.

3. Policy

3.1 Legislative restrictions and requirements

3.1.1 Section 186 of the Local Government Act 1989 (Vic)

Section 186 of the LGA requires Councils to carry out a competitive tender process prior to entering into any contract for:

- (a) the purchase of goods or services to the value of \$150,000 or above; or
- (b) the carrying out of works to the value of \$200,000 or above.

Therefore where the value of the works or services contemplated in the Unsolicited Proposal are equivalent to or exceed these values, Council will be prevented from entering into a contract with the Private Party in relation to the Unsolicited Proposal without having carried out a competitive tender process.

3.1.2 Other legislative requirements and related guidelines

Depending on the nature of the Unsolicited Proposal, there may be additional legislative requirements under the LGA or best practice guidelines that Council should take into consideration when deciding whether to proceed with some or all of the ideas set out in an Unsolicited Proposal.

For example, where the Unsolicited Proposal:

- (a) contemplates the sale of land – it will be necessary for Council to comply with section 189 of the LGA and The Local Government Best Practice Guideline for the Sale, Exchange & Transfer of Land; or
- (b) includes an entrepreneurial element that recommends or requires Council's participation in a company, trust, partnership or other body – Council must consider the application of section 193 of the LGA.

3.2 Communications with the Private Party

3.2.1 Misleading representations

Whilst it is acceptable for Council to engage in discussions with the Private Party following receipt of an Unsolicited Proposal, if section 186 of the LGA applies, at no time should Council represent that it has the ability to proceed with an Unsolicited Proposal. Such discussions are considered to be inappropriate and may be misleading.

3.2.2 Written acknowledgment of receipt of the Unsolicited Proposal

Within a reasonable time of Council receiving an Unsolicited Proposal (e.g. within 2 weeks), Council should provide a written acknowledgement of receipt of the Unsolicited Proposal to the Private Party.

Where the value of the works or services contemplated in the Unsolicited Proposal is equivalent to or exceeds the threshold values of section 186 of the LGA, the written acknowledgement should include a similar statement (having regard to the Unsolicited Proposal) to the example statement set out in Annexure 1.

3.2.3 Informing the Private Party of Council's decision to tender

For reasons of fairness, Council should notify the Private Party if it decides to tender the works or services (or any part of) contemplated in the Unsolicited Proposal.

In this notification, Council should also provide the details for such tender and provide the Private Party with the opportunity to tender.

3.3 Intellectual property rights

3.3.1 Intellectual property rights and moral rights of the Private Party

If Council receives an Unsolicited Proposal, that proposal may contain intellectual property of the Private Party and possibly third parties. Where Council decides to act on the Unsolicited Proposal but does not engage the Private Party to supply the goods or services or perform the works (such as where the value of the Unsolicited Proposal exceeds the procurement thresholds described at paragraph 3.1.1 above), Council must ensure that any tender documentation does not infringe the intellectual property rights of the Private Party or third parties, or infringe any person's moral rights.

3.3.2 Identifying intellectual property and moral rights

An Unsolicited Proposal may well comprise a number of documents, ranging from a summary of the idea or proposal, the proposed project or services or works to be delivered, to diagrams, images and plans relating to the proposal. Although the idea or concept underpinning an Unsolicited Proposal is not intellectual property owned by the Private Party (or its consultants) (though it may be protected confidential information, as described in paragraph 3.4 below), any designs with the documentation and associated diagrams and plans may well be.

Intellectual property includes:

- any patents, utility models, copyright (including future copyrights), trade marks, trade names, brand names, registered or unregistered designs, drawings, specifications or technology or commercial names or designations;
- any invention, discovery, computer software or and any developments or improvements to equipment, products, technology processes, methods or techniques; and
- any other rights which result from intellectual activity in the industrial, scientific, literary or artistic fields.

Moral rights are an individual's personal and non-transferrable right to be identified as the author of a work, not to have authorship falsely attributed and to not have the work subjected to derogatory treatment.

Unless Council is sure that it has the right to use any intellectual property comprised in an Unsolicited Proposal and that doing so will not infringe any person's moral rights, Council should consider seeking legal advice before proceeding with an expression of interest or tender in relation to the subject matter of an Unsolicited Proposal.

3.3.3 **Tendering and the Private Party's intellectual property**

When tendering for works or services to implement an idea or concept described in an Unsolicited Proposal, Council must ensure that the tender documentation does not infringe any intellectual property rights arising from the Unsolicited Proposal. To help avoid this potential risk, Council's tender should describe its requirements in general terms and avoid relying on the Unsolicited Proposal and its associated documentation when preparing the tender specifications.

Council may have an implied licence or wish to request from the Private Party (or the author of relevant designs) to licence Council to use the relevant intellectual property in the tender. However, if the Private Party is likely to rely on the Unsolicited Proposal as the basis of its tender response, the Private Party may not be prepared to grant a licence and if the Unsolicited Proposal contains intellectual property of third parties, the licence is unlikely to apply.

Unless there are strong grounds for believing that Council has an implied licence to use the intellectual property in an Unsolicited Proposal, any licence granted should be properly documented in a legal contract ordered and executed by both parties. Written consents should also be sought from any person who has moral rights in an Unsolicited Proposal.

3.4 **Confidentiality**

Where Council receives an Unsolicited Proposal, the documentation may be marked 'Confidential' or 'Commercial-in-Confidence', or otherwise contain confidential information. Confidential information may include, for example, trade secrets, know-how or other scientific, technical or product information, such as the idea or concept underlying the Unsolicited Proposal.

Even if not marked 'Confidential', if confidential information from an Unsolicited Proposal is included in an expression of interest or tender which relates to the proposal, there is a risk that such a disclosure may be a breach of confidentiality by Council, for which Council may be legally liable to the Private Party. In addition, a disclosure of the Unsolicited Proposal under the *Freedom of Information Act 1983 (Vic)* may also breach an obligation on Council to keep the Unsolicited Proposal confidential.

Unless Council is sure that the Unsolicited Proposal is not confidential and does not contain any confidential information, Council should consider seeking advice before proceeding to use any ideas or concepts contained in an Unsolicited Proposal in an expression of interest or tender.

Until such advice has been received and to the extent permitted by law, Council should ensure that it maintains any confidentiality requirements that the Private Party may have in relation to the Unsolicited Proposal.

3.5 **Probity issues**

The consideration of Unsolicited Proposals must be carried out in accordance with probity principles. This will involve Council ensuring it:

- (a) maintains impartiality;
- (b) maintains accountability and transparency;
- (c) manages any conflicts of interest that may arise; and
- (d) maintains confidentiality.

3.6 Strategic Assessment of Proposals

An initial strategic assessment will be undertaken on each unsolicited proposal to determine the community needs and benefits, and potential risks associated with proceeding. The assessment aims to ensure that:

- clear desirable benefits are identified that directly address a clearly defined problem
- a range of strategic options in response to the problem have been explored
- the proposal reflects the current strategic and policy direction of the Council
- the proposal reflects the values and has the support of the wider community
- the proposed way forward is achievable given the resources required, potential risks and the capacity of key stakeholders.

The assessment team will comprise officers from Leisure & Public Realm, Major Projects, Engineering and Transport, Finance and Contracts departments or others as required.

The strategic assessment team will consider the assessment criteria and key assessment questions as shown in the table below in gauging the merit of each proposal. A range of supporting evidence would be expected as part of a proposal document, the extent of which will depend on the size and complexity of the proposed development.

Strategic Assessment Matrix

Assessment criteria	Key questions	Evidence to support	Score
Problem Identification (as to need/demand)	<ul style="list-style-type: none"> - Is it clear what problem or need the project addresses? - Does the problem need to be addressed now? - Is there sufficient evidence to validate the extent of the problem? 	<ul style="list-style-type: none"> - Research statistics - Demographic analysis - Trend analysis - Community petition - Market research 	/15
Community benefit	<ul style="list-style-type: none"> - Have benefits been adequately defined? - Are benefits of high value to Council? - Are benefits equitably targeted? 	<ul style="list-style-type: none"> - Impact on social inclusion - Environmental sustainability - Impact on mental/physical health - Targets significant % of residents - Targets appropriate demographic segments 	/20
Strategic Fit	<ul style="list-style-type: none"> - Is the proposed development the most effective way to address problem? - Is the development consistent with Council plans and strategies? 	<ul style="list-style-type: none"> - Consistency with Leisure Strategy - Consistency with Council Plan - Consistency with Community Health & Wellbeing Plan 	/20

	<ul style="list-style-type: none"> - Is the development consistent with relevant peak body strategies and plans and have their support? 	<ul style="list-style-type: none"> - Consistency with peak body strategies and plans 	
Resource implications	<ul style="list-style-type: none"> - Is the development value for money in delivering community benefits? - Has the development been adequately scoped? - Are cost assumptions realistic? - Are funding sources clearly identified and expectations realistic? - What return is the external party expecting for their investment? - What are the arrangements/responsibilities at the end of the agreement or when the asset reaches the end of its useful life? - Have on-going resourcing needs been identified? 	<ul style="list-style-type: none"> - Detailed project scoping - Independently verified costings - Operational costings including maintenance - Project financing - Capital replacement costs 	/20
Risk assessment	<ul style="list-style-type: none"> - Have key risks been identified together with strategies for managing them? - Is there broad community support? 	<ul style="list-style-type: none"> - Risk analysis - Community feedback data - Environmental impact analysis 	/20
Private party capacity & experience	<ul style="list-style-type: none"> - Are the key private party stakeholders experienced in developing similar projects? - Has private party the capacity to assume risk in accordance to the project's size and complexity? 	<ul style="list-style-type: none"> - Private party business profile - Independent business check 	/5
			TOTAL SCORE/100

A scoring system has been created to provide an indication of project priority and allow comparison between proposals.

A Council report will be prepared following the strategic assessment process detailing how the proposal meets each of the assessment criteria and recommendations as to whether the project should proceed or not.

Should Council elect to proceed with a project, officers will work with the external party to determine a more involved submission process. As there will be significant variables among proposals, it is likely that the further development of each submission will require an adaptable approach.

4. Related Council Policies

In addition to the requirements set out in this policy, the following Council policies must be adhered to in so far as they are applicable to Unsolicited Proposals:

- (a) Council's Procurement Policy
- (b) Equity and Inclusion Policy
- (c) Open Space Strategy
- (d) Environment Policy and related strategies
- (e) Darebin Leisure Strategy
- (f) Darebin Electronic Gaming Machine Policy and Strategic Action Plan

5. Review Process

The Council endeavours to continually improve its procurement performance such that all relevant policies, guidance and training are continually reviewed and updated to ensure there is continuity in meeting Council's wider strategic objectives.

Annexure 1 Example statement for Council's acknowledgement

(paragraph 3.2.2)

Council acknowledges receipt of your unsolicited proposal relating to **## insert details of the proposal** ('Proposal').

As you may be aware, in accordance with section 186 of the *Local Government Act 1989* (Vic) local government authorities are required to undertake a competitive tender process prior to entering into a contract for:

- (a) the purchase of goods or services to the value of \$150,000 or above; or
- (b) the carrying out of works to the value of \$200,000 or above.

If the Proposal is of a nature that falls under section 186 of the *Local Government Act 1989* and would be likely to require Council entering into a contract for the **##provision of goods or services to the value of \$150,000 or above****##the carrying out of works to the value of \$200,000 or above**, Council is unable to deal with you exclusively in relation to your Proposal.

Your Proposal will be strategically assessed and you will be informed if Council proceeds to tender the works or services outlined in your Proposal. In which case, you will be provided with the opportunity to tender.

##Note: If Council includes a reference to Unsolicited Proposals in its procurement guidelines, this letter of acknowledgement should refer to those guidelines and how Council will treat the Proposal



Mike Baird
Premier of NSW
Minister for Western Sydney

MEDIA RELEASE

Friday, 19 August 2016

NSW TARGETS ONE MILLION NEW JOBS FOR THE FUTURE

New and innovative financial support programs will be available for small, fast-growing companies as part of a long-term plan to accelerate jobs growth in NSW.

Premier Mike Baird today released the Jobs for the Future report, outlining how NSW can reach its target of creating one million new, rewarding jobs by 2036.

"NSW leads the nation when it comes to job creation, but we know the world is changing and we must keep adapting with it," Mr Baird said.

"Our small, fastest growing companies create the most new jobs in NSW – supporting these ambitious and innovative firms is essential to grow resilient jobs for the future."

Mr Baird announced financial support programs from the \$190 million Jobs for NSW Fund, based on priorities identified in the report, that will:

- Help fast-growing, small-to-medium size companies - known as gazelles - to access the funds they need to grow jobs through a \$50 million loan guarantee program and a \$3.5 million direct loan pilot program;
- Assist start-up companies to flourish into the gazelles of tomorrow by setting aside \$10 million to grow the State's network of incubators and accelerators, and \$3 million in 2016-17 for direct grants to start-ups;
- Grow regional companies with a dedicated \$30 million program; and
- Attract large and international companies to base their headquarters in NSW through use of a \$30 million fund.

Industry Minister Anthony Roberts said the Government had engaged some of the best business minds in the country to grow jobs now and over the next 20 years.

"The innovative financial support programs we're announcing today have been specifically developed to have maximum job creation impact for NSW," Mr Roberts said.

Jobs for NSW Chair David Thodey said Jobs for NSW would now focus on the execution of Jobs for the Future, with the measure of success being job creation.

"In particular, we now understand the vital role of gazelle companies when it comes to creating jobs, but also their existing funding challenges. As a result, a large proportion of our funds will be targeted towards these companies," Mr Thodey said.

The Jobs for the Future report and further information can be viewed at: www.jobsfornsw.com.au

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