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Unsolicited Proposals Policy

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Unsolicited Proposals Policy		
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Contents

1	Scope.....	4
2	Purpose	4
3	Definition.....	5
4	Guiding Principles.....	5
	4.1 Optimising Outcomes.....	5
	4.2 Uniqueness.....	5
	4.3 Value for Money.....	5
	4.4 Probity and Transparency	5
	4.5 Governance	5
5	Caveats.....	5
6	Assessment Process	6
7	Assessment Criteria.....	7
8	Probity Framework.....	11
9	Responsibilities	11
10	References and Legislation	12
11	Attachments.....	12

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Owner: Department	Accountability:	Endorsed:
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1 Scope

- 1.1 The City of Ryde Council (Council) may be approached by the community, private sector, other Government Agencies and/or individuals presenting specific proposals for Council consideration. The Unsolicited Proposals Policy (Policy) aims to offer guidance to both Council Officials and proponents of proposals not actively sought by the Council through public expressions of interest.
- 1.2 This Policy applies to all unsolicited proposals submitted to the Council by proponents from the private or public sector, which may involve infrastructure construction or financing, service provision, or major commercial transactions, emphasising unique and innovative projects or outcomes.
- 1.3 Any unsolicited proposal is subject to all relevant NSW and Commonwealth legislation, including statutory planning and procurement controls.

2 Purpose

- 2.1 The Unsolicited Proposals Policy streamlines the procedure for private and public sector entities seeking direct interaction with the Council concerning commercial ventures without Council initiating the proposal request.
- 2.2 This Policy establishes a transparent framework with the goal of ensuring uniformity in assessing unsolicited proposals, placing emphasis on broader community advantages, value for money, optimal outcomes, and maintaining the highest standards of integrity in line with public interests. It provides guidance on managing approaches from the private sector and/or individuals presenting proposals to Council regarding land acquisitions, business expansions, joint ventures, and other opportunities.
- 2.3 The main objectives of this policy are as follows:
 - ensuring adherence to principles of good governance by Council in managing unsolicited proposals
 - encouraging the advancement of inventive concepts to support the Council's role, functions, and overarching objectives
 - ensuring an open, consistent, transparent, and fair process that upholds high standards of probity, integrity and public accountability, to steer collaboration between Council and the private sector in devising and delivering innovative solutions for the community
 - optimising the advantage derived from unsolicited proposals for both the Council and the community
 - providing proponents with assurance and consistency in evaluating their unsolicited proposals within a transparent framework
 - ensuring the proper protection of the intellectual property belonging to a party submitting an unsolicited proposal
 - establishing a robust level of probity to be applied to all unsolicited proposals, by maintaining accountability, managing conflict of interests and confidentiality

Unsolicited Proposals Policy		
Owner: Executive Services and Governance	Accountability: Governance	Endorsed:
CM Reference: D25/108738	Last review date:	Next review date:

3 Definition

- 3.1 An Unsolicited Proposal is an approach made to the Council by a private or non-government entity (the Proponent) seeking to deal directly with Council over a commercial proposition where Council has not requested the proposal.
- 3.2 Unsolicited proposals may involve developing or financing infrastructure, providing goods, works, or services, or undertaking a major commercial or property transaction.

4 Guiding Principles

- 4.1 **Optimising Outcomes**
Unsolicited proposals must demonstrate clear community benefit and alignment with Council's strategic plans and policies. Proposals will only be considered if they offer outcomes that justify departure from open competitive procurement.
- 4.2 **Uniqueness**
Both the proposal and the proponent must demonstrate unique attributes that make the proposal not readily replicable through a competitive process.
- 4.3 **Value for Money**
Proposals must deliver demonstrable value for money for Council and the community, including efficiency, cost-effectiveness, and fair risk allocation.
- 4.4 **Probity and Transparency**
Council will maintain integrity, impartiality, and accountability at all stages, complying with legislation and internal probity standards.
- 4.5 **Governance**
Assessment will occur through a structured, staged process with oversight by an internal Unsolicited Proposals Assessment Panel (UPAP), reporting to the Chief Executive Officer and Council.

5 Caveats

- 5.1 The unsolicited proposals process is not a substitute for statutory planning and competitive procurement processes conducted by Council. Given the focus of unsolicited proposals is on unique and innovative projects or services, the unsolicited proposals process is not designed to replace applicable environmental and planning assessment processes.
- 5.2 If Council decides to progress an unsolicited proposal, that should not be interpreted as any form of explicit or tacit support for planning approvals. For example, it may be that the particulars of the unsolicited proposal require consideration of whether a Voluntary Planning Agreement is more appropriate in the circumstances.

Unsolicited Proposals Policy		
Owner: Executive Services and Governance	Accountability: Governance	Endorsed:
CM Reference: D25/108738	Last review date:	Next review date:

- 5.2 Any exclusive negotiation that originates from an unsolicited proposal in accordance with this Policy is conditional upon requisite approvals and compliance with statutory requirements under various legislation such as the *Local Government Act 1993 (NSW)*, *Local Government (General) Regulation 2021 (NSW)* and environmental planning instruments.
- 5.3 Where Council receives a proposal that is better suited for assessment under an existing program or scheme, the proponent will be referred to the relevant program.
- 5.4 This Policy signifies the Council's dedication to allocating resources in accordance with the responsibilities outlined. The Council acknowledges that a proponent should receive a fair rate of return for their participation in a project and that the outcomes should be mutually beneficial for both the proponent and Council.

6 Assessment Process

- 6.1 Unsolicited proposal requests must be directed to Council's Public Officer (General Counsel).
- 6.2 When an unsolicited proposal is received by Council, its assessment will be guided by a four-stage process. This involves:

Stage 0	Pre-submission Concept Review Enables preliminary discussion to determine whether the proposal may meet Council's criteria.
Stage 1	Initial Submission and Preliminary Assessment Assesses whether the proposal qualifies as an Unsolicited Proposal and warrants detailed evaluation.
Stage 2	Detailed Proposal Development Refines and assesses the proposal through collaborative development under a Participation Agreement.
Stage 3	Negotiation of Final Binding Offer Finalises commercial and legal terms for a potential binding agreement between the Council and Proponent.

- 6.3 Proponents must not contact a Councillor and/or the Mayor to discuss the proposal. Doing so may disqualify the proponent from the review process.
- 6.4 Where Council determines that a proposal does not meet the Guiding Principles, Council reserves its usual right to go to market. Should the basis of the proposal be offered to the market, the proponent can participate in the procurement process, in line with the same process afforded to other market participants.

Unsolicited Proposals Policy		
Owner: Executive Services and Governance	Accountability: Governance	Endorsed:
CM Reference: D25/108738	Last review date:	Next review date:

7 Assessment Criteria

7.1 The detailed stages below describe the process Council will undertake to assess unsolicited proposals

Stage 0: Pre-submission Concept Review

The objective of this stage is for the Proponent to meet with Council in order to formally explore whether the proposal is likely to meet the Stage 1 assessment criteria and to guide Proponents in their decision regarding whether to lodge their proposal. A key part of this meeting will be the demonstration of the unique attributes of both the proposal and the Proponent in order to progress through the process. The key attributes, benefits, requirements and assumptions underlying the potential proposal may also be discussed. Council may provide feedback at this stage as to whether it considers that the proposal, as presented, is consistent with this Policy.

Stage 1: Initial Submission and Preliminary Assessment

Stage 1 allows the proponent to submit a brief, high-level overview of the proposal, allowing Council to undertake an initial assessment and determine whether the concept meets the principles detailed below.

Additional criteria relevant to a particular proposal may also be applied at later stages. If so, the proponent will be advised by Council and provided the opportunity to address them.

a) Proposal Overview

The initial submission may be in the form of a brief and concise overview of the proposed idea or concept. There is no prescribed format, however, proponents should present Council with the following information:

- Identify the proponent and type of organisation
- Provide contact details
- Outline the idea/concept and proposed outcomes
- Outline how the proposal addresses each of the principles
- Present estimated investment and/or value of the proposal

b) Assessment Criteria

The proposal should outline how it addresses each of the assessment criteria defined below:

1. Uniqueness	<p>The proposal is unique and presents value for money for Council.</p> <p>The attribute of uniqueness applies to both the proposal and the proponent. This may be demonstrated by showing that:</p>
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Unsolicited Proposals Policy		
Owner: Executive Services and Governance	Accountability: Governance	Endorsed:
CM Reference: D25/108738	Last review date:	Next review date:

	<ul style="list-style-type: none"> the proposal cannot be readily delivered by competitors at all or within the timeframes proposed by the proponent; the proponent owns something that would limit other parties from being able to deliver the proposal (<i>for example, intellectual property, strategic landholdings</i>); or the proponent possesses other attributes which may not necessarily stand alone as unique, however, when combined, create a 'unique' proposal (for example genuinely innovative ideas, including financial arrangements or a unique ability to deliver a strategic outcome). <p>Section 2.2 of the NSW Government Unsolicited Proposals Guide for Submission and Assessment 2022 describes proposals that do not qualify as 'unique'.</p>
2. Value for Money	<p>The proposal should represent value for money for Council.</p> <p>Value for money reflects the propensity of a proposal to achieve objectives and outcomes in an efficient, high quality, innovative and cost-effective way, with appropriate regard to the allocation, management and mitigation of risks.</p> <p>The proponent should provide information that demonstrates how the proposal represents value for money for the Council, such as:</p> <ul style="list-style-type: none"> financial benefits economic benefits efficiencies; quality outcomes competitiveness
3. Strategic Alignment	Consistency with Council's plans and priorities.
4. Return on Investment	Is the proposed Return on Investment to the proponent proportionate to the proponent's risks, and industry standards? Where feasible, the proposed rate of return may be subject to independent review or benchmarking.
5. Capability and Capacity	Does the proponent have the experience, capability and capacity to carry out the proposal? What reliance is there on third parties? Where appropriate, the Proponent should provide referees in relation to working with Government (e.g. NSW or other Australian Governments).
6. Affordability	Does the proposal require Council funding, or for the Council to purchase proposed services? Does the Council have these funds available or budgeted and if not what source would be proposed? Where Council funding is required, Council may undertake or require

Unsolicited Proposals Policy		
Owner: Executive Services and Governance	Accountability: Governance	Endorsed:
CM Reference: D25/108738	Last review date:	Next review date:

	the Proponent to undertake a Business Case The proposal still needs to be affordable in the context of Council's other priorities, and to be considered as part of the Council budget process.
7. Risk Allocation	The proposal must address the allocation of risk among all parties. Proponents should list risks arising from the proposal for the proponent and the Council.
8. Planning Approval	Should the proposal include land use, then it must have the potential to achieve planning approval.

Possible Outcomes

- The proposal is not suitable for further consideration and is now closed.
- The proposal may form the basis for a competitive bidding process.
- The proposal aligns with an alternate Council process.
- The proposal is reported to Council seeking to proceed to Stage 2.

Stage 2: Comprehensive internal review and consultation of proposal

This stage involves undertaking detailed analysis, due diligence and negotiation with the unsolicited proposal proponent.

Proponents progressing to Stage 2 may be invited by Council to present a detailed proposal for Council representatives to undertake a comprehensive assessment in line with the policy principles and probity framework.

The detailed proposal should provide a compelling case to support the unsolicited proposal, including the provision of supporting evidence and documentation to allow a robust evaluation against the Policy and Guidelines, and the overarching regulatory framework as it pertains to the proposal.

Possible Outcomes

- *The detailed proposal is not suitable for further consideration and is now closed.*
- *The proposal may form the basis for a competitive bidding process.*
- *The proposal is considered appropriate to progress to Stage 3.*

Stage 3: Detailed Proposal Development

The purpose of this stage is for the Proponent and Council to work cooperatively in the development and assessment of a Detailed Proposal, which may require a degree of preliminary negotiation on key issues, subject to the nature of the proposal.

Unsolicited Proposals Policy		
Owner: Executive Services and Governance	Accountability: Governance	Endorsed:
CM Reference: D25/108738	Last review date:	Next review date:

Once the terms are mutually agreed, formal project documentation is prepared for consideration and endorsement by Council.

Possible Outcomes

- *Council representatives agree to the terms and conditions of the contract which will then be presented to Council for determination.*
- *Council does not agree to enter into the contract but instead determines to pursue or consider pursuing the unsolicited proposal through another process.*
- *Council does not agree to enter into the contract and that its consideration of the proposal under the Guidelines is terminated.*

Stage 4: Endorsement of final binding offer by Council

Any legally binding contract or exclusive agreement arising from the negotiation of an unsolicited proposal is subject to the review and endorsement of Council.

An offer to engage with a proponent can only be issued by Council resolution. Variations to the contract initiated by the proponent after the fact will require resubmission to Council for review and endorsement.

Possible Outcomes

- *That Council agrees to the terms and conditions of the contract and agrees to issue and accept offer.*
- *That Council agrees to the contract, subject to specified variations or conditions.*
- *That Council does not agree to enter into the contract but instead determines to pursue or consider pursuing the unsolicited proposal through another process.*
- *That Council does not agree to enter into the contract and that its consideration of the proposal is terminated.*

Communication

All communication in relation to unsolicited proposals must be directed to Council's Public Officer (General Counsel) to ensure consistency and transparency in the process.

Any information submitted by a proponent as part of its unsolicited proposal may be subject to disclosure under the *Government Information (Public Access) Act 2009 (NSW)*.

Council acknowledges that unsolicited proposals may contain intellectual property of the proponent and/or third parties and will consult with the proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

Unsolicited Proposals Policy		
Owner: Executive Services and Governance	Accountability: Governance	Endorsed:
CM Reference: D25/108738	Last review date:	Next review date:

8 Probity Framework

8.1 The assessment of unsolicited proposals must be fair, open and demonstrate the highest levels of probity and integrity consistent with the public interest. In line with the NSW Government Unsolicited Proposals Guide for Submission and Assessment 2022, Council is committed to conducting its commercial dealings in line with the following principles:

- maintaining impartiality
- maintaining accountability and transparency
- maintaining confidentiality
- managing conflicts of interest
- managing information.

9 Responsibilities

9.1 The Proponent is required to:

- prepare an outline submission and meet with Council staff to discuss its unique characteristics and other key principles, prior to lodgement of a formal submission that involves the Proponent completing the Submission Form;
- prepare and lodge with Council an initial Submission for Stage 1 Assessment;
- cooperate with requests for information and other undertakings from Council at Stages 2 and 3; and
- provide a final binding offer for consideration by Council

9.2 Council responsibilities are outlined below: .

Position	Responsibility
Chief Executive Officer	<p>Appoint members of the Unsolicited Proposals Assessment Panel</p> <p>Forward all conforming proposals in accordance with this Policy to Council for consideration.</p>
Unsolicited Proposals Assessment Panel	<p>Initial review and assessment of all applications</p> <p>If compliant with the Policy, forward proposal to the appropriate Director for consideration, consultation and engagement with the Proponent and provide oversight.</p> <p>Receive advice from the relevant Director and determine recommendation for the Chief Executive Officer prior to consideration by Council</p>

Unsolicited Proposals Policy		
Owner: Executive Services and Governance	Accountability: Governance	Endorsed:
CM Reference: D25/108738	Last review date:	Next review date:

Position	Responsibility
General Counsel	<p>Receive all unsolicited proposals forwarded to Council</p> <p>Participate in the initial review and assessment of all applications and advise on any probity matters relating to the proposal.</p> <p>Management of the publication of the Unsolicited Proposals Register on Council's website</p>
Relevant Director	<p>Review, investigation and consideration of proposal applications and subsequent submissions.</p> <p>Prepare a report for consideration by the Unsolicited Proposals Panel.</p>

10 References and Legislation

- NSW Government Unsolicited Proposals Guide for Submission and Assessment 2022
- *Local Government Act 1993 (NSW)*
- *Local Government (General) Regulation 2005*
- Procurement Policy
- Statement of Business Ethics
- Code of Conduct
- *Government Information (Public Access) Act 2009 (NSW)*
- *Independent Commission against Corruption Act 1988*

11 Attachments

1. City of Ryde Unsolicited Proposal Submission Form

Unsolicited Proposals Policy		
Owner: Executive Services and Governance	Accountability: Governance	Endorsed:
CM Reference: D25/108738	Last review date:	Next review date: