

Unsolicited Proposals

Strategic Alignment - Enabling Priorities

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The Committee - Pre-Council
Discussion Forum

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EXECUTIVE SUMMARY

In early 2020, Council had a number of discussions regarding development of significant sites in the Adelaide Parklands. During this process there were several questions regarding unsolicited proposals. At its meeting on 14 April 2020, Council resolved to suspend these Guidelines. In February 2021, a workshop was subsequently held with Council Members on the Unsolicited Proposals Guideline (the Guidelines). In order to promote good governance and manage the risks and opportunities for future unsolicited proposals submitted, we recommend that the current Guidelines are revoked, and propose a new approach for the consideration of such proposals.

It is proposed that the Strategic Risk and Internal Audit group (SRIA) is used to assess the risks and opportunities from any unsolicited proposals submitted. Given that the consideration of an unsolicited proposal is directly related to an assessment of risk, it is appropriate to utilise SRIA to ensure that unsolicited proposals are assessed from a risk management perspective. This will ensure fairness and equity in the consideration of proposals, taking into account Council's strategic priorities, its policy framework and other approved guiding documents, as well as dealing with legal risk, reputational and political implications, in accordance with the Strategic Risk Register.

The following recommendation will be presented to Council on 8 March 2022 for consideration

That Council

1. Approves the revocation of the Unsolicited Proposals Guidelines.
 2. Notes that the receipt of external unsolicited proposals will be managed by SRIA and assessed using the City of Adelaide's risk framework.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities Removal of guidelines that have been suspended due to their effectiveness, enables the Council to fairly and equitably consider all proposals within its existing governance and risk framework.
Policy	Revocation of the Unsolicited Proposals Guideline will remove the perception of uncertainty with regards to whether Council will consider unsolicited proposals and enable fair and equitable consideration based on risk and merit.
Consultation	Not as a result of this report
Resource	Not as a result of this report
Risk / Legal / Legislative	Utilising SRIA to ensure that consideration of unsolicited proposals are managed in accordance with the corporate risk appetite. Ensures consideration of all strategic risks and appropriate governance ensues.
Opportunities	With the suspension of guidelines, it increases the risk of perception that Council may not want to consider unsolicited proposals. Revocation of these suspended guidelines will enable Council to liaise with organisations that approach Council with these types of proposals.
21/22 Budget Allocation	Not as a result of this report
Proposed 22/23 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
21/22 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

Background

1. In early 2020, Council engaged in multiple discussions regarding development of significant sites in the Adelaide Parklands. Throughout the process there were numerous questions regarding the process for consideration of unsolicited proposals.
2. Following discussions on the Guidelines and their application, Council decided to suspend the Guidelines for further consideration in the future.
3. In February 2021, Governance led a workshop with Council regarding the revision of the Unsolicited Proposals Guideline (the Guidelines).

Review

4. As a result of this, an internal review of the purpose of the guidelines was undertaken. The intent of the review was to assess the need for a policy or guideline to manage consideration of unsolicited proposals. The review looked at previous cases in this regard, including the review of the ICAC report dealing with an unsolicited approach to State Government for the sale of land at Gilman which was deemed to be maladministration.
5. Further, a review of the structures and approaches in other capital cities was also undertaken. Market comparisons support the view that such policies offer little or no value in managing proposals and any associated risks and opportunities.
6. The table below illustrates that other capital cities do not use a standalone policy or guideline. Research indicates that this is due to instances where policy has created additional red tape or application of policy has resulted in misleading advice in the consideration of such proposals.

Capital City	Stand Alone Policy/Guideline	Other Instrument
Brisbane	No	Better Brisbane Proposals
Melbourne	No	No
Sydney	No	Guide to Doing Business with Sydney
Perth	No	Investment Performance and Disposal policy enables unsolicited bids

7. For the purpose of assessing the Guidelines, unsolicited proposals were defined as any offering(s) coming from external parties that have not been received via an approved procurement method, such as open market tender or expression of interest.
8. Proposals are received at all levels from a range of interested parties including ICT companies, suppliers, property owners, developers etc. Principle area where these types of offers are received is in the property asset acquisition and disposal area. Given the recent review of the Land and Other Assets Acquisition and Disposal Policy by Council in January 2022, there is greater clarity about Council's ability to consider certain proposals.
9. *The Local Government Act 1999 (SA)* addresses a concept of uniqueness to decide whether an unsolicited proposal should be considered or whether it is deferred to open market. The complexity with this is that uniqueness is subjective and difficult to address in a comprehensive manner.
10. In addition, should a proposal not be perceived as being evaluated through a robust process or in accordance with established policy or guidelines, conflicts can arise, and legal risk is increased as was illustrated by the Gilman land proposal.

Proposed approach

11. The receipt of an unsolicited proposal should be reviewed as an exploration of both opportunity and risk for the Council. Proposals ought to be reviewed constructively with a comprehensive review of the opportunity presented to Council, balanced with a risk-based approach which examines how risk can be managed.
12. The Strategic Risk and Internal Audit Group (SRIA) is a well established group that oversees and guides Council's risk management processes. SRIA's membership consists of the Executive Group and key senior leaders in the administration and as part of its role considers significant and strategic risk items, as well as developing a positive risk management culture in the organisation. Matters considered by SRIA are reported to the Audit and Risk Committee.

13. Given that the consideration of an unsolicited proposal is directly related to an assessment of risk, it is appropriate to utilise SRIA to ensure that unsolicited proposals are assessed from a risk management perspective. This will ensure fairness and equity in the consideration of proposals, taking into account Council's strategic priorities, its policy framework and other approved guiding documents, as well as dealing with legal risk, reputational and political implications, in accordance with the Strategic Risk Register.
14. SRIA's considerations will inform the best way that a proposal can be progressed so that Council receives appropriate advice to inform its considerations as a responsible and informed decision maker.
15. Proposal assessment processes will also include involvement, where appropriate, of Council's Committees to ensure relevant input is received. For instance, where a proposal involves the Park Lands then input would be sought from APLA as Council's advisory body for matters relating to the Park Lands.
16. Importantly, utilisation of SRIA also ensures that Council's Audit and Risk Committee are involved in the advisory process, providing added assurance about the robustness of the evaluation process. The SRIA Term of Reference are in the process of being reviewed to reflect the approach proposed in this report, to ensure that the evaluation process includes consideration of key elements such as:
 - 16.1. Strategic plan alignment,
 - 16.2. Relevance to existing policies
 - 16.3. Legislative compliance
 - 16.4. Providing transparency in the decision-making process
 - 16.5. Respecting, when appropriate, any confidentiality requirements to protect the interests of the City of Adelaide on behalf of ratepayers.

DATA AND SUPPORTING INFORMATION

Nil

ATTACHMENTS

Nil

- END OF REPORT -