Unsolicited Proposals to Develop Council Owned Property High Level Procedure

OBJECTIVES:

To provide an open, easily understood and consistent process for Council to assess unsolicited proposals to develop on Council property that:

- Allows Council to respond fairly to ideas.
- Respects community values and future expectations.
- Identifies the highest and best use of the land under consideration.
- Does not advantage one business over any others

SCOPE:

The process discussed in this document:

- Deals only with unsolicited proposals to develop Council owned property. Property includes vacant land or structures owned by Council or leased by Council.
- Provides criteria and steps for Council to fairly and consistently determine if landowner consent to lodge a development application should be given for unsolicited proposals.
- Aims to provide certainty for Council and the developer.
- Does not replace or influence the statutory assessment of a development application.
- Does not replace the statutory obligations associated with the sale or lease of public land.

PROCEDURE:

The underlying values of this high level procedure is:

We are committed to an open, easily understood and consistent process that:

- Allows Council to fairly respond to ideas
- Respects community values and future expectations
- Identifies the highest and best use of the land under consideration
- Does not advantage one business over any others

Figure 1 summarises the steps in the process for considering unsolicited proposals to develop council owned property.

The underlying values supporting this high level procedure are:

We are committed to an open, easily understood and consistent process that:

- Allows Council to fairly respond to ideas.
- Respects community values and future expectations.
- Identifies the highest and best use of the land under consideration.
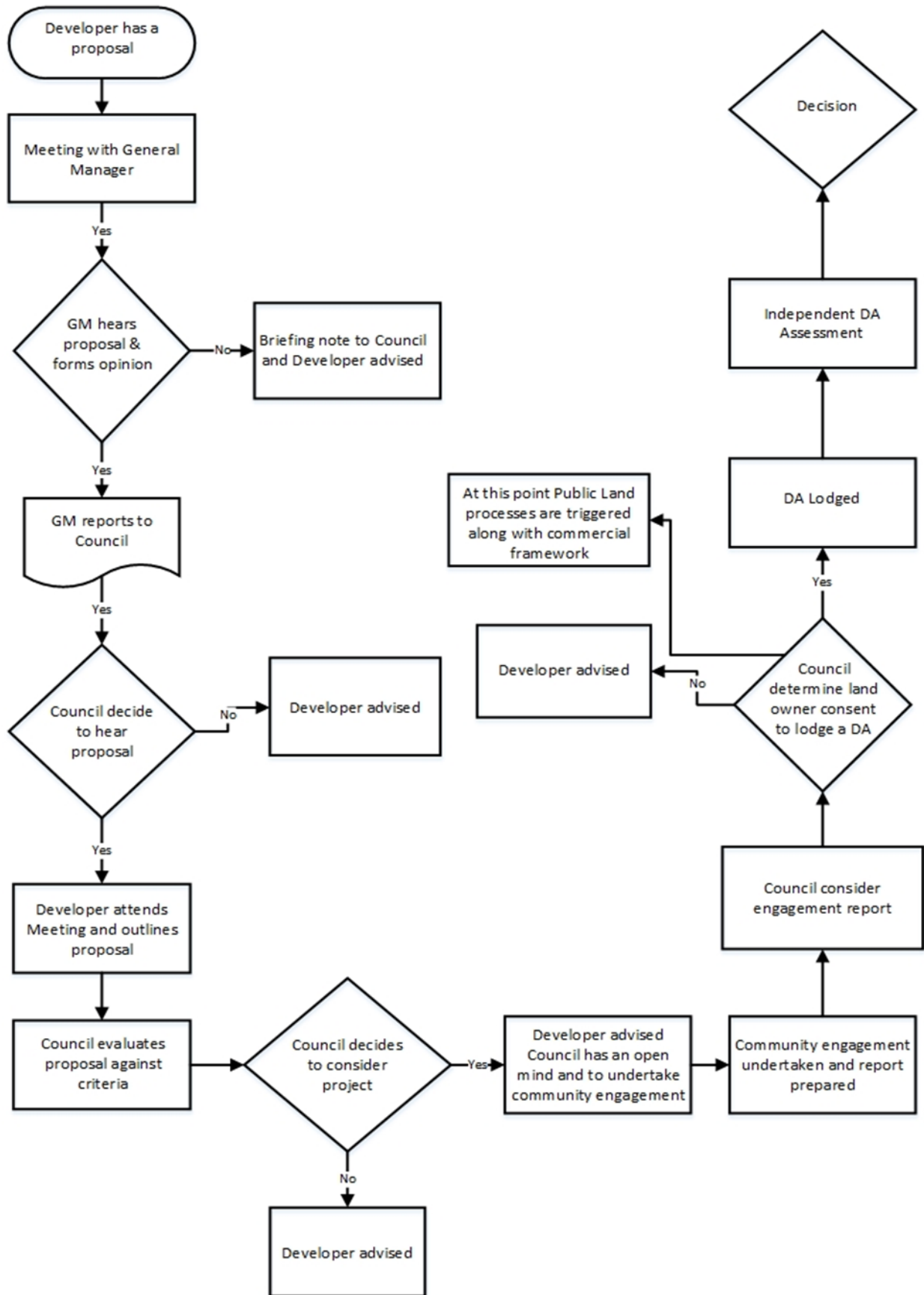- Does not advantage one business over any others.

Figure 1: Flow chart for unsolicited proposals to develop Council owned property.

The following provides additional information for each step in the flow chart.

Step 1. Developer raises a proposal
Unsolicited proposals usually come through a variety of channels like:
- Meeting with Mayor.
- Discussions with individual Councillors.
- Announcing the idea in the media.
- Direct approach to management or planning staff.

Once a proposal is raised, it is referred to the General Manager as the entry point for the process.

Step 2. Meeting with General Manager
An appointment is made between the developer and General Manager to discuss the proposal.

Step 3. General Manager hears proposal and forms opinion
This is the first opportunity for the developer to outline the proposal and the General Manager to form a view.

Factors to take into consideration include:
- The level of detail.
- Alignment with strategies and plans.
- Proposed funding arrangements.
- Probable alignment with the assessment criteria.

If the General Manager determines there is insufficient reason to take the proposal further, then the developer should be informed, with confirmation in writing, that the proposal is not acceptable with the reasons for the decision.

The General Manager is to provide a briefing note to the Mayor about the proposal and reasons for the decision.

If the General Manager determines the proposal warrants further consideration, then the developer is to be advised that a discussion paper will be prepared for consideration by Councillors. No further commitment should be made to the developer.

In either case, a copy of the assessment criteria is to be provided to the developer.

Step 4. General Manager reports to Council
A discussion paper about the proposal is to be prepared by the General Manager setting out the issues for and against. The report is to be discussed at a workshop or in closed council. Councillors can use the assessment criteria to form an initial opinion.

Should Council decide not to proceed then the developer is to be advised in writing.

If there is interest in finding out more about the proposal, the developer is to be given the opportunity to attend a meeting with Councillors.

Step 5. Developer attends meeting and outlines proposal
The purpose of this meeting is for Council to get sufficient information to form a judgement. No commitment is to be made to the developer. For commercial reasons the initial meeting should be at a workshop or in closed Council.

Step 6. Council evaluates the proposal against the assessment criteria
After hearing about the proposal, Councillors are to evaluate it against the weighted assessment criteria for unsolicited proposals (Table 1). Using weighting and scoring assists with the evaluation process.

The process is as follows:
- Each participant in the assessment works alone and allocates their rating (1-10) with for each of the weighted criteria.
- The weight is multiplied by the rating to calculate a score. At the completion of the evaluation a total score for each criteria will be generated that can be expressed as a percentage of the possible maximum score if the development was fully compliant. If the proposed development scored 10 for all the ten recommended criteria, the maximum score would be 740. The minimum score would be 74.
- The total score and % of the possible maximum score are compared for each participant.
- Differing assessments are explained.
- A consensus score is negotiated that is then expressed as a % of the possible total maximum score.
- If the proposal achieves 69% or less the Council is under no obligation to advance the project at this point and the developer is advised in writing.
- If the proposal achieves 70% or more the proposal progresses to the next step.

Table 1 Assessment criteria for evaluating unsolicited proposals
Rating from 1-10 with 1 being extremely poor, 2 very low, 3 low, 4 below average, 5 fair, 6 medium, 7 good, 8 high, 9 very high and 10 outstanding.
** Score is calculated by multiplying weight by rating.*

Criteria How well does the proposed development:	Considerations	Weight	Rating* (1-10)	Score**
1. Recognise and respond to Aboriginal cultural values, heritage and natural environment significance?	Some land will have higher heritage values that need to be taken into account when considering future development. Is the land in question on any heritage register? How well does the proposed development plan to manage heritage issues?	10		
2. Align with existing community vision, values and sentiment?	Not all land is equal in the eyes of the community. Some sites are more valued than others and have higher community ownership. Is the community likely to be protective about the site in question?	9		
3. Provide tangible community benefit, not just private commercial benefit?	The Community must be able to recognise a clear and fair benefit versus the private sector profiting from a public asset.	9		
4. Align with existing strategy, planning and direction for the site, or demonstrate an innovative new idea or approach?	Alignment is preferable but planning may not always be right. There could be an idea not previously thought of that justifies a change in direction.	8		

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Criteria How well does the proposed development:	Considerations	Weight	Rating* (1-10)	Score**
5. Provide a commercial market return to Council and community via sale or lease proceeds, or other financial benefit?	There needs to be a market valuation of any land sale price or rental and possibly market testing for alternative proposals.	8		
6. Justify any funding contribution from any level of government?	Any government funding support or subsidy (community service obligation) must be for a justifiable and tangible community benefit. As a principle government funds should only be directed to public or mixed goods.	7		
7. Satisfy an existing community need?	Community engagement and planning may have identified a need that could be satisfied by the development.	6		
8. Assist in the disposal of land that is surplus to requirements?	The land may no longer be suitable for its original purpose as a result of other developments or Council ceasing to provide a service.	6		
9. Comply with the planning scheme under existing provisions or an appropriate amendment?	Is it appropriate to proceed and incur costs if compliance with the planning scheme is not possible even with a scheme amendment?	6		
10. Demonstrate practical and commercial feasibility?	A reality check on the planning for technical and economic issues. What evidence is there that the plans supporting the proposal are adequate and well considered? Is more thought needed?	5		
			Score out of 740	
			Percentage %	

Step 7. Council decides to advance the project
If Council decides to advance the project, then the developer is to be advised that Council has an open mind but is interested in the views of the community.

Council may also decide at this point to test the market by seeking other proposals for the land in question. This could potentially maximise the commercial return to Council as landowner.

Step 8. Developer is advised Council has an open mind and to undertake community engagement
Council is to specify and control the community engagement process. Management of the process should be undertaken by independent facilitators because of the potential conflict of interest raised by Council owning the land. The developer is to meet any costs associated with the community engagement.

Step 9. Community engagement is undertaken and report prepared
As the engagement proceeds themes will become evident. These themes should be addressed in the report.

Step 10. Council consider engagement report
Council should consider the results of the engagement report using the assessment criteria.

Step 11. Council decide to allow owner consent to lodge a development application

At this point in the process, the proposal potentially becomes a development. Council is under no obligation to provide owner consent if they have good reason not to. The developer is to be advised in writing if owner consent is not going to be given. There is no appeal available to the developer. Giving owner consent indicates a reasonable level of interest in the project and commits the developer to incur costs. It is an encouragement to proceed. However, it does not guarantee approval. That occurs when the development application is assessed through normal planning processes.

Step 11. At this point Public Land processes are triggered along with commercial framework

Once the decision to allow a development application to be lodged is made then two areas of uncertainty need to be addressed.

If the proposal is on Public Land, then the requirements the *Local Government Act 1993* need to be implemented to determine if Council can dispose of the land. If this cannot be achieved, there is little point processing the development application.

The commercial arrangements, subject to the planning approval, also need to be agreed. The arrangements could include sale price, costs and substantial commencement provisions. Substantial commencement provisions should be demanding, and address time taken to start and commencement of construction to first level. This protects Council's land ownership if the development does not proceed.

There should be no settlement of the land sale until all doubt about the development commencing has gone.

Step 12. Development application lodged and independent development assessment undertaken

At this point the impacts of the proposal will be assessed against the planning scheme requirements. This a statutory process under the *Land Use Planning and Approvals Act 1993*.

As Council is the landowner and a planning authority there is potential conflict of interest, which could be mitigated by engaging an independent planner to undertake the assessment.

Step 13. Decision

Council in its capacity as a planning authority makes a decision based on the planning issues considered in the independent assessment.

The usual appeal processes apply.

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RELATED POLICIES & PROCEDURES:

30-SD-005 Greater Launceston Plan (GLP)
30-SDx-001 City of Launceston Corporate Strategic Plan 2014-2024: 2019…
08-SD-001 Horizon 2021 - Economic Development Strategy
14-Plx-032 Code of Conduct for Councillors
24-PI-002 Disposal or Alienation of Council Assets Policy
24-PI-003 Council Property Management Policy
DRAFT 24-Plx-006 Lease and Licencing Policy
26-PI-006 Parks, Reserves, Bridges and Structures Management Policy
26-SD-007 Bushfire Management Strategy for Council Owned and Managed L…

RELATED LEGISLATION:

Aboriginal Heritage Act 1975
Electricity Wayleaves and Easements Act 2000
Environment Protection and Biodiversity Conservation Act 1999
Fire Services Act 1995
Forest Practices Act 1985
Historic Cultural Heritage Act 1995
Local Government Act 1993
Local Government (Highways) Act 1982
Land Use Planning and Approvals Act 1993
Nature Conservation Act 2002
Threatened Species Protection Act 1995
Water Management Act 1999
Water and Sewerage Industry Act 2008
Weed Management Act 1999
Urban Drainage Act 2015

REFERENCES:

Campbell, B 2019 Briefing paper on unsolicited proposals to develop Council owned property.

Cataract Gorge Reserve & Trevallyn Nature Recreation Area 2030 Re-Imagining the Cataract Gorge Final Plan 26 October 2015

DEFINITIONS:

Not applicable

REVIEW:

This procedure will be reviewed no more than 2 years after the date of approval (version) or more frequently, if dictated by operational demands.