

Activating Opportunities Procedure

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1. ACTIVATING OPPORTUNITIES

The Council has adopted the Public Private Partnerships Policy (**Policy**) to provide a framework for non-traditional market engagement that ensures value for ratepayers while also recognising and protecting the innovative capacity of the private sector.

There are occasions where the Council may benefit from engaging directly with the private sector, on a preliminary basis, to explore the private sector's appetite and capacity to partner with the Council to frame, develop and potentially unlock a strategic opportunity for the Council's community. In such circumstances – where an opportunity is at a very conceptual stage the Council could benefit from a 'market sounding' exercise to better inform the Council regarding the viability and/or other matters (**Activation** or **Activating Opportunities**) which could result in the Council:

- pursuing a strategic opportunity concept in accordance with its Procurement Policy; or
- abandoning a strategic opportunity concept thereby saving the Council cost, time and effort.

In such circumstances the Council will directly approach a party or parties (each a **Relevant Party**) - on a no commitment, no obligation basis – in the manner and on the terms set out in this procedure (**Procedure**).

2. APPLICATION OF THIS PROCEDURE

2.1 This Procedure applies to a concept opportunity that the Council has recognised should be developed to assist the Council in achieving its strategic objectives or satisfying a community need.

2.2 An opportunity may include:

- 2.2.1 the purchase, lease or development of Council owned or managed land;
- 2.2.2 strategic land purchases by the Council;
- 2.2.3 the delivery of goods or services to or on behalf of the Council;
- 2.2.4 the provision of infrastructure for the community; or
- 2.2.5 any other innovative concept determined by the Council.

3. PROCESS FOR ACTIVATING OPPORTUNITIES

3.1 The process by which the Council will undertake Activation is a four-stage process:

Stage 1 – Identify an opportunity

Stage 2 – Identify Relevant Party/ Parties

Stage 3 – Approach Relevant Party/ Parties

Stage 4 – Abandonment or development and reporting

3.2 Stage 1 – Identify an Opportunity

3.2.1 There are situations where the Council is aware of the private sector's appetite to activate a strategic opportunity however it may lack the technical or industry knowledge to understand the full potential of the opportunity or how to implement it into a Procurement Process.

3.2.2 Such an instance may lead to circumstances where the Council is aware of this appetite and community need, however is unsure to what Council's requirements and/or minimum expectations would be, should it engage the market through its Procurement Processes.

3.2.3 Alternatively, the Council may be in a position in which the Council is aware of the opportunity which it would like to activate but in which:

3.2.3.1 the private sector is not aware of; or

3.2.3.2 the Council is unsure of the private sector's appetite to respond to costly and lengthy Procurement Processes.

3.2.4 In these situations, Council may benefit from engaging directly with the private sector, on a preliminary basis, to frame, develop and potentially unlock an opportunity.

3.2.5 To assist in identifying an opportunity, the Chief Executive Officer may convene a meeting or meetings with representatives of the relevant departments of the Council or external experts depending on the subject matter of the opportunity.

3.2.6 Once an Activation opportunity has been established, the Council must clearly document the opportunity and the reasons for why it considers it an opportunity suitable for Activation and not a project that could be procured through its Procurement Processes.

3.3 Stage 2 – Identify Relevant Parties

- 3.3.1 When determining if a party is a Relevant Party, the Council should have consideration to a Relevant Party's:
- 3.3.1.1 previous experience in delivering similar opportunities;
 - 3.3.1.2 past performance on similar opportunities;
 - 3.3.1.3 experience in prior dealings with the Council; and
 - 3.3.1.4 known expertise in the relevant field or industry.
- 3.3.2 After considering the above the Council may proceed to engage with one or more Relevant Parties in Stage 3.

3.4 Stage 3 – Approaching Relevant Parties

- 3.4.1 If after completing Stage 2 the Chief Executive Officer considers that engaging with a Relevant Party will be valuable in informing the direction of Council's Procurement Processes for the recognised opportunity, the Chief Executive Officer may write an engagement letter (**Engagement Letter**) to the Relevant Party.
- 3.4.2 The Engagement Letter will provide the Relevant Party with:
- 3.4.2.1 an overview of the strategic opportunity that the Council has identified in Stage 1 and how if developed, would create a benefit to the community;
 - 3.4.2.2 a copy of this Procedure, the Policy and Council's Procurement Policy;
 - 3.4.2.3 inviting the Relevant Party to meet with the Chief Executive Officer and other Council representatives to discuss their views of the opportunity and risks associated with the identified opportunity;
 - 3.4.2.4 whether, depending on the nature of the information requested by the Council, the nature of the Activation or any other consideration, the Activation will be undertaken confidentially;
 - 3.4.2.5 an outline of how the Council intends to use any information provided by the Relevant Party; and
 - 3.4.2.6 any other information or questions in which the Chief Executive Officer considers may add value to the Activation with the Relevant Party.
- 3.4.3 The intention for meeting with the Relevant Party is to obtain the Relevant Party's insights, information, feedback and comments to guide and inform the Council in its Procurement Processes, should it decide to proceed with the identified opportunity.

3.5 Stage 4: Abandonment or development and reporting

At the end of Stage 3, a report and recommendation will be prepared for the Council Elected Members' consideration of one of the following:

- 3.5.1 that all or part of the identified opportunity will proceed to a Procurement Process; or
- 3.5.2 that all or part of the opportunity provides no value to the Council and should not be progressed or be the subject of a Procurement Process.

4. CONDITIONS OF THE PRIVATE SECTOR ENGAGING IN ACTIVATION

In any circumstance that the Council engages with a Relevant Party under this Procedure, the Relevant Party does so on the following conditions:

- participation by any Relevant Party in Activation is not intended to give rise to any commitment by the Council or its representatives, if any, to consult or engage with the Relevant Party who may participate in a future Procurement Process for the same or a similar subject matter;
- information provided by a Relevant Party during the Activation may be treated as confidential as outlined in the Engagement Letter, depending on the nature of the information;
- Relevant Parties who agree to engage with the Council in Activation do so at their own cost in all things;
- the Council may, at any stage and at no cost to the Council, end the Activation and or amend or vary this Procedure;
- any decision by the Council how best to utilise the information, insights, knowledge or opinions provided by Relevant Parties during Activation is entirely at Council's discretion.

5. PROBITY FRAMEWORK

5.1 It is a primary objective of this Procedure to ensure the probity of the processes employed by the Council to conduct Activation. As such, in addition to any specific requirement outlined in this Procedure, probity principles and protocols will be established when engaging with Relevant Parties to ensure that:

- 5.1.1 decisions are made through a robust framework and so that they will deliver the best outcomes for the Council and the community;
- 5.1.2 confidential information is protected; and
- 5.1.3 any perceived conflict of interest, bias or misconduct is eliminated.

5.2 The Council may, during any stage of Activation, engage a probity adviser or auditor.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Council acknowledges that information provided during Activation may contain Intellectual Property of a Relevant Party.
- 6.2 If the Council does not progress with or terminates Activation, the Council will respect any Intellectual Property rights of a Relevant Party.

7. GENERAL TERMS

7.1 Definitions

- 7.1.1 **Intellectual Property** means inventions, original designs and practical applications of good ideas protected by law through copyright, patents, registered designs, circuit layout rights and trademarks and it also includes trade secrets, proprietary know-how and other confidential information protected against unlawful use and disclosure by common law and contractual obligations.
- 7.1.2 **LG Act** means the *Local Government Act 1999(SA)*.
- 7.1.3 **Chief Executive Officer** is the person occupying the position of Chief Executive Officer at the Council from time to time.
- 7.1.4 **Procurement Process** means the processes and methods outlined in the Council's Procurement Policy.
- 7.1.5 **Procurement Policy** means Council's Procurement Process as amended from time to time.

7.2 Conflict of interest

A Relevant Party must inform the Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest in engaging with Activation. If any conflict or potential conflict exists, a Relevant Party must advise the Council.

7.3 Use of documents

Any documents provided by the Council during Activation must only be used for the purpose of progressing the Market Engagement process in accordance with this policy and must be returned to the Council at the end of the process on request.

7.4 Ombudsman

A Relevant Party should be aware that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest.

7.5 ICAC

A Relevant Party should also be aware that the *Independent Commissioner Against Corruption Act 2012* establishes the Independent Commissioner Against Corruption and the Office for Public Integrity. The Act empowers the Commissioner to investigate corruption, misconduct and maladministration in public administration. A Relevant Party must ensure compliance with all obligations arising under that Act.

7.6 Freedom of information

The *Freedom of Information Act 1991* (SA) (**FOI Act**) gives members of the public rights to access documents of the Council. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by the Council subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by the Council and other public authorities.

8. REFERENCES

Local Government Act 1999

Light Regional Council Procurement Policy

Treasury Management Policy

Prudential Management Policy

Risk Management Policy

History of Procedure Amendment

Procedure adopted by Council on date, 22 October 2019. Minute Reference Item 13.5.1 New Public-Private Partnerships Policy and Procedures, Page 2019/336.

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