

Policy Reference Number:	1.51
Classification:	General
Last Reviewed:	February 2023 (187/2023)
Next Review Date:	February 2027
Responsible Officer:	Chief Executive Officer
Approved by:	Council Resolution
Applicable Legislation:	Local Government Act 1999 Section 49 and Section 48
Relevant Policies, procedures and Standards:	2.22 Procurement Policy 2.24 Prudential Management Policy 1.51.1 Market Engagement and Activating Opportunities Procedure 1.51.2 Market Led Proposals Procedure

1. PURPOSE

To provide a framework for engaging with the market and/or managing Market Led Proposals for new and innovative ideas while ensuring transparency, consistency, probity, legislative compliance and providing confidence to proponents and our communities.

2. POLICY STATEMENT

Council's role includes being an active facilitator and enabler of economic growth within the Robe district and we recognise the importance of new ideas, innovation, strategic partnerships and entrepreneurialism in delivering on our strategic objectives.

We are open to working with the private sector, government and other not for profit organisations, to pursue opportunities and innovative ideas that will create jobs, facilitate the best use of public assets, provide positive financial outcomes and deliver enhanced, high quality services to our communities.

Council has procurement and related policies that provide a sound framework for the more standard forms of engaging with the market for the procurement of goods or services.

There are instances where the development and realisation of an opportunity would benefit from a non-standard Market engagement process. This can incorporate circumstances where Council is approached due to a market desire to unlock a strategic opportunity for a Market Led Proposal or where Council is seeking to understand and openly investigate opportunity, feasibility and strategic directions for our communities (Market Engagement).

In seeking to activate opportunities, Council may look to undertake direct Market Engagement, to explore the market's appetite and capacity to partner with the Council to conceptualise, develop and potentially unlock a strategic opportunity for our communities. Market sounding and engagement may provide considerable benefits to Council in early formative stages over the traditional and more formal Expression of Interest or Request for Tenders/Quotes processes. Seeking the views and inputs of the market will assist Council in assessing the feasibility of an opportunity and determining its preferred direction on a no obligation, lower cost and lower risk basis.

This Policy and key procedures, provide a management framework for these non-standard approaches both with and from the market to ensure proponents and our communities are confident that it will be considered in a consistent, transparent and lawful manner while seeking to ensure best value for ratepayers and protection of the Intellectual Property of all parties.

This Policy is supported by two key procedures:

- 1.51.1 Market Engagement and Activating Opportunities Procedure; and
- 1.51.2 Market Led Proposals Procedure.

3. OBJECTIVES

The key objectives in facilitating a more comprehensive approach to Market Engagement in accordance with this policy include:

- promoting the development of innovative ideas by the market to support Council's role, functions and broad objectives as outlined in its Community Plan 2019-2039
- ensuring that the processes for engaging with the market occur within a framework that involves high standards of transparency, equity, probity and public accountability
- ensuring that the processes for engaging with the market in this policy meet the Council's legal obligations
- ensuring value for money for Council is achieved from any engagement with the market
- maximising the benefits from engaging with the market for Council and its communities
- ensuring the Intellectual Property of all parties is appropriately protected.

4. FURTHER INFORMATION

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: www.robe.sa.gov.au

Royal Circus, Robe SA 5276

Copies will be provided to interested parties upon request. Email council@robe.sa.gov.au

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

5. POLICY REVIEW

This policy may be amended at any time and must be reviewed at least every four years since its adoption (or latest amendment).

Procedure Reference Number:	1.51.1
Classification:	General
Last Reviewed:	February 2023 (187/2023)
Next Review Date:	February 2027
Responsible Officer:	Chief Executive Officer
Approved By:	Council Resolution
Applicable Legislation:	Local Government Act 1999
Relevant Policies, Procedures and Standards:	1.51 Market Engagement and Innovation Policy 2.22 Procurement Policy 2.24 Prudential Management Policy 1.51.2 Market Led Proposals Procedure

1. INTRODUCTION

Council has adopted the Market Engagement and Innovation Policy to provide a framework for engaging with the market that ensures value for ratepayers while also recognising the innovative capacity and protecting the Intellectual Property of the market.

In seeking to activate opportunities, Council may look to undertake direct Market Engagement, to explore the market's appetite and capacity to partner with Council to conceptualise, develop and potentially unlock a strategic opportunity for our communities.

Market sounding and engagement may provide considerable benefits to Council in early formative stages over the traditional and more formal Expression of Interest or Request for Tenders/Quotes processes. Seeking the views and inputs of the market will assist Council in assessing feasibility and viability of an opportunity and determining its preferred direction which could include:

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

In such circumstances, Council will directly approach a party or parties (each a Relevant Party), on a no commitment / no obligation basis, as set out in this Procedure.

2. APPLICATION OF THIS PROCEDURE

This Procedure applies to a concept or opportunity that Council has identified that should be further developed to assist Council in achieving its strategic objectives and/or satisfying a community need or expectation.

This may include items such as:

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

3. MARKET ENGAGEMENT AND ACTIVATING OPPORTUNITIES

The process by which Council will undertake Market Engagement is a four-stage process:

- Stage 1 – Identify an opportunity
- Stage 2 – Identify Relevant Party/ Parties
- Stage 3 – Identify an Engage Relevant Party/ Parties
- Stage 4 – Recommended direction and reporting.

All opportunities must be presented to Council within a six month period, commencing from when the opportunity is identified.

3.1 STAGE 1 – IDENTIFY AN OPPORTUNITY

There are situations where Council is aware of the market'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.

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

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

- the market is not aware; or
- Council is unsure of the market's appetite to respond to costly and lengthy Procurement.

In situations where it is deemed beneficial, Council may engage directly with the market, on a preliminary basis, to conceptualise, develop and potentially unlock an opportunity.

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

Once an opportunity has been established, Council must document the opportunity and the reasons for why it considers it suitable for a non-standard Market Engagement process and not one that could be achieved through its standard Procurement Processes.

3.2 STAGE 2 – IDENTIFY RELEVANT PARTIES

When determining if a party is a Relevant Party, Council should have consideration to a Relevant Party's:

- previous experience in delivering similar opportunities
- past performance on similar opportunities
- experience in prior dealings with Council
- known expertise in the relevant field or industry.

After considering the above, Council may proceed to engage with one or more Relevant Parties in Stage 3.

3.3 STAGE 3 – ENGAGE RELEVANT PARTIES

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.

The Engagement Letter will provide the Relevant Party with:

- an overview of the strategic opportunity that Council has identified in Stage 1 and how if developed, would create a benefit to the community
- a copy of this Procedure, the Policy and Council's Procurement Policy
- 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
- whether, depending on the nature of the information requested by Council, the nature of the opportunity or any other consideration, the opportunity will be undertaken confidentially
- an outline of how Council intends to use any information provided by the Relevant Party
- any other information or questions in which the Chief Executive Officer considers may add value to the opportunity and Market Engagement with the Relevant Party.

The intention for meeting with the Relevant Party is to obtain the Relevant Party's insights, information, feedback and comments to guide and inform Council in its Procurement Processes, should it decide to proceed with the identified opportunity.

3.4 STAGE 4: RECOMMENDED DIRECTION AND REPORTING

At the end of Stage 3, a report and recommendation will be prepared by the Chief Executive Officer for Council's consideration of one of the following:

- that all or part of the identified opportunity will proceed to a Procurement Process; or
- that all or part of the opportunity provides no value to Council and should not be progressed or be the subject of a Procurement Process or
- other information, recommendations or considerations the Chief Executive considers relevant.

4. CONDITIONS FOR RELEVANT PARTY(IES)

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

- participation by any Relevant Party in this Market Engagement is not intended to give rise to any commitment by 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 Market Engagement 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 Council in Market Engagement do so at their own cost in all things
- Council may, at any stage and at no cost to Council, end the Market Engagement and or amend or vary this Procedure; and
- any decision by Council how best to utilise the information, insights, knowledge or opinions provided by Relevant Parties during Market Engagement is entirely at Council's discretion.

5. PROBITY FRAMEWORK

It is a primary objective of this Procedure to ensure the probity of the processes employed by Council to conduct Market Engagement. 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:

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

Council may, during any stage of Market Engagement, engage a probity adviser or auditor.

6. INTELLECTUAL PROPERTY

Council acknowledges that information provided during Market Engagement may contain Intellectual Property of a Relevant Party.

If Council does not progress beyond or terminates Market Engagement, Council will respect any Intellectual Property rights of a Relevant Party.

7. CONFLICT OF INTEREST

A Relevant Party must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest in participating in Market Engagement. If any conflict or potential conflict exists, a Relevant Party must advise Council.

8. USE OF DOCUMENTS

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

9. OMBUDSMAN

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

10. INDEPENDENT COMMISSIONER AGAINST CORRUPTION

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.

11. FREEDOM OF INFORMATION

The Freedom of Information Act 1991 (SA) (FOI Act) gives members of the public rights to access documents of 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 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 Council and other public authorities.

12. FURTHER INFORMATION

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: www.robe.sa.gov.au

Royal Circus, Robe SA 5276

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Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

13. PROCEDURE REVIEW

This procedure may be amended at any time and must be reviewed at least every four years since its adoption (or latest amendment).

Procedure Reference Number:	1.51.2
Classification:	General
Last Reviewed:	February 2023 (187/2023)
Next Review Date:	February 2027
Responsible Officer:	Chief Executive Officer
Approved By:	Council Resolution
Applicable Legislation:	Local Government Act 1999
Relevant Policies, Related Procedures, Procedures and Standards:	1.51 Market Engagement and Innovation Policy 2.22 Procurement Policy 2.24 Prudential Management Policy 1.51.1 Market Engagement and Activating Opportunities Procedure

1. INTRODUCTION

Council has adopted the *Market Engagement and Innovation Policy* to provide a framework for the processes for engaging with market that ensures value for ratepayers while also recognising the innovative capacity and protecting the Intellectual Property of the market.

The Policy and associated procedures provide a management framework for new and innovative ideas to be brought forward by the market and gives confidence to proponents and the community that Market Led Proposals will be considered in a consistent, transparent and lawful manner while seeking to ensure best value for ratepayers and protection of the Intellectual Property of all parties.

2. DEFINITION OF A MARKET LED PROPOSAL AND APPLICATION OF THIS PROCEDURE

This Procedure applies to any Market Led Proposal with an estimated value of over \$20,000.

A Market Led Proposal is an innovative proposal from the private sector, which has not been requested by Council through its regular procurement processes, and which could assist Council in achieving its strategic objectives or satisfying a community need or expectation.

A Market Led Proposal may include a proposal for:

- the purchase, lease or development of Council owned or managed land;
- the delivery of goods or services to or on behalf of the Council;
- the provision of infrastructure for the community; and
- an innovation or entrepreneurial project with benefits to Council.

Where a Market Led Proposal involves more than one council, the relevant councils may resolve to adopt any one of their Market Led Proposal procedures, with any required variations, to apply to that proposal in place of their individual policy, guidelines or procedures.

3. PROCESS FOR RECEIPT AND CONSIDERATION OF MARKET LED PROPOSALS

3.1. PRE-LODGEMENT MEETING

Before formally submitting a Market Led Proposal via the process detailed below, the proponent may request a pre-lodgement meeting with the Chief Executive Officer. This meeting is not mandatory, but

it may assist the proponent to determine if their proposal is one that may be considered under this Procedure.

Proponents are encouraged to bring a draft completed Market Led Proposals Application Form with them to this meeting.

Nothing that is discussed at the pre-lodgement meeting binds Council or the proponent and the proponent may continue with lodgement of its proposal notwithstanding any feedback that it may receive at or following the pre-lodgement meeting.

3.2. RECEIPT AND ASSESSMENT PROCESS

The process by which Council will receive and consider Market Led Proposals is a three stage process. The three stages are:

- Stage 1 – Initial Proposal submission and Assessment
- Stage 2 – Detailed Proposal development and Assessment
- Stage 3 – Contract Negotiation.

3.3. EXCLUSIVITY PERIOD

Council may, in its absolute discretion, enter into a period of exclusive negotiation with a person in relation to a proposed or submitted Market Led Proposal. Exclusivity between the parties is not assumed simply by submission of a Market Led Proposal to Council.

Exclusive negotiations may be justified in circumstances, for example, where a proponent's Intellectual Property should be protected or where, on a balancing of the Stage 1 assessment criteria, there is a clear benefit to Council in doing so.

If Council determines to enter a period of exclusive negotiation with a proponent, the following broad terms will apply:

- during the exclusivity period, Council will not enter into negotiations with another party in relation to another proposal that is substantially similar to the subject matter of the proposal
- the exclusivity period will be limited to the development of the specific proposal
- the exclusivity period will be for a set period as advised by Council to the proponent in writing
- Council may set specific terms and conditions for the exclusivity period which it will advise the proponent of in writing
- Council may end the exclusivity period at any time and withdraw from exclusive or all negotiations with the proponent at no cost or liability to Council
- all correspondence between Council and the proponent will be kept confidential, subject to any legislative requirements.

3.4. STAGE 1: INITIAL PROPOSAL

The objective of Stage 1 is to enable a proponent to provide Council with a high level overview of its proposal which enables Council to form a preliminary view as to whether:

- the proposal may be considered under this Procedure
- the proposal should be considered further.

A proposal should comprise a completed Market Led Proposals Application Form (which can be downloaded from Council's website) and may also include further information that the proponent wishes to provide for Stage 1.

A proposal must be lodged electronically to: tenders@robe.sa.gov.au and marked to the attention of the Chief Executive Officer.

A proposal will not involve negotiation at this stage. This opportunity will arise in later stages if Council determines that the proposal should proceed.

Once a proposal has been submitted in accordance with this Procedure and the Chief Executive Officer determines that it has sufficient information about the proposal, then the Chief Executive Officer will convene a meeting with Council officers, any of Council's Elected Members or external experts depending on the subject matter of the proposal (Steering Committee).

The Steering Committee will operate in accordance with a standard operating procedure as determined from time to time depending on the nature of the Market Led Proposal.

The Steering Committee will determine whether the proposal meets the criteria for it to be considered under this Procedure. To make its decision, the Steering Committee may consult with other Council departments and further professional advisers as it deems necessary.

If the Steering Committee determines that the proposal should proceed to Stage 2, a recommendation and report on this basis will be prepared for consideration of Council's Elected Members.

If the Steering Committee recommends that the proposal not be accepted or Council Elected Members do not endorse the proposal, the proponent will be notified in writing of this outcome by the Chief Executive Officer. This notice may also notify the proponent that the subject matter of the proposal may form the basis of a competitive bidding process pursuant to Council's Procurement Policy.

Where Council Elected Members endorse the proposal the proposal will proceed to Stage 2 and the proponent will be provided with the following:

- notification that the proposal has been approved by Council to proceed to Stage 2
- a copy of Council's resolution (subject to any confidentiality)
- the broad terms and timeframes for Stage 2 consideration of the proposal
- information on any other matters relevant to the proposal and Council's further consideration of it that Council considers to be appropriate.

The anticipated timeframe for the completion of Stage 1, commencing from when the Chief Executive Officer determines that it has all of the information it needs to consider the proposal, is a maximum of 90 days.

Any endorsement of a proposal at Stage 1 is "in principle" endorsement only so that the proposal may proceed to Stage 2 consideration.

3.5. STAGE 1 ASSESSMENT CRITERIA

In determining whether a proposed will proceed to Stage 2, with or without a period of exclusivity, the Steering Committee will assess the proposal against the following criteria:

No competing proposals

Whether the subject matter of the Market Led Proposal is already the subject of an existing or proposed Procurement Process or processes. If the subject matter of a Market Led Proposal is already being considered or proposed to be considered by Council in this way, then it is unlikely that a Market Led Proposal will pass Stage 1 unless the proponent can demonstrate that their proposal has a distinct advantage.

Community need/Council priority

Whether the Market Led Proposal:

- promotes Council's role and functions
- is broadly consistent with Council's objectives outlined in its Community Plan, other strategic plans and other relevant documents
- provides a clear economic, social and/or environmental beneficial outcome for Council.

Innovative

Whether the Market Led Proposal is innovative, and how and why it is innovative such that it justifies Council considering it under this Procedure rather than via its usual Procurement Processes.

A proponent may be able to establish their proposal is innovative by demonstrating that:

- it 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 (for example, Intellectual Property or strategic landholdings)
- the proponent has innovative financial arrangements that enable it to deliver the proposal where other parties would not be able to
- an opportunity not thought of or considered by Council that fits with Council's vision and strategic objectives
- a combination of factors which may not stand alone as being unique but which together create an innovative proposal in the circumstances.

Value for money

Whether the proposal represents value for money for Council. Council should consider factors such as (but not limited to) how the proposal delivers:

- financial benefits
- economic benefits
- community benefits.

Capacity and capability of proponent

Whether the proponent has the skills, experience, reputation, credibility and resources required to enable it to deliver the proposal.

3.6. STAGE 2: DETAILED PROPOSAL

Stage 2 involves further consideration of the feasibility of the proposal, how it will be delivered, whether it represents value for money for Council and what outcomes it will deliver for Council and the community.

Stage 2 will be an interactive process between the Steering Committee and the proponent within a framework established by the Steering Committee.

The Steering Committee will establish a framework for Stage 2 which may include:

- confidentiality, conflict of interest, communication and probity protocols
- Stage 2 participation terms and conditions
- Stage 2 assessment criteria
- timeframes
- information to be provided and/or shared
- governance requirements
- any other matters that Council considers necessary or desirable.

The matters that the Steering Committee may consider during Stage 2 are:

- the value for money proposition for Council
- if the proposal is legally, technically and financially feasible
- how the proposal would best be structured to deliver the best outcome for Council and the community
- a cost/benefit analysis of the proposal
- the appropriate allocation of risk
- government, strategic and community priority
- how innovative the proposal is
- the proposed delivery method.

During Stage 2 the Steering Committee may:

- convene meetings with any other subject matter experts, professional advisers and other persons that the Steering Committee sees fit
- convene meetings with the proponent
- request further information from the proponent as required
- obtain reports and further information for the Steering Committee's consideration of the proposal
- arrange the preparation of a detailed report on the proposal for Council Elected Members' consideration.

During Stage 2, a proponent must:

- develop a detailed proposal, consistent with the requirements outlined by Council at the end of Stage 1
- provide any additional information as required
- make themselves available to participate in meetings requested by, and respond to communications from, the Steering Committee.

At the end of Stage 2, a report and recommendation will be prepared for Council Elected Members' consideration and the proponent will be advised in writing of Council's resolution and one of the following:

- that all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis
- that all or part of proposal will not continue to be considered on an exclusive basis but that all or part of the proposal warrants a competitive bidding process; or
- that all or part of the proposal is not suitable for further consideration and its consideration under this Procedure is now at an end.

3.7. STAGE 3: CONTRACT NEGOTIATION

Stage 3 allows Council and the proponent to negotiate a suitable contract or contracts for the implementation of the Market Led Proposal.

At the commencement of Stage 3, the Chief Executive Officer will advise the proponent of the process and protocols for the development of a contract.

Once a contract has been agreed in principle between Council and the proponent (the Steering Committee may be utilised throughout the contract process), the contract will be submitted to Council Elected Members to seek their approval for the Contract to be executed. The Chief Executive Officer will then advise the proponent in writing of one of the following:

- that Council agrees to the terms and conditions of the contract and will proceed to execute it;
- that Council agrees to the contract, subject however to specified variations or conditions;
- that Council does not agree to enter into the contract but instead determined to pursue or consider pursuing the Market Led Proposal through another process, possibly including a competitive bidding process; or
- that Council does not agree to enter into the contract and that its consideration of the proposal under this Procedure is now at an end.

4. PROBITY FRAMEWORK

It is a primary objective of this Procedure to ensure the probity of the processes employed by Council to consider Market Led Proposals. As such, in addition to any specific requirement outlined in this Procedure, probity principles and protocols will be established when dealing with proponents in relation to their Market Led Proposals to ensure that:

- proposals are received, assessed and negotiated, and decisions are made, through an approved and transparent framework
- decisions are made through a robust framework and so that they will deliver the best outcomes for Council and its communities
- confidential information is protected
- any perceived conflict of interest, bias or misconduct is eliminated.

Council may, at any Stage outlined in this Procedure, engage a probity adviser or auditor.

5. INTELLECTUAL PROPERTY RIGHTS

Council acknowledges the Market Led Proposals may contain Intellectual Property of the proponent and/or third parties.

If Council declines to consider, or ends its consideration of, a Market Led Proposal submitted in accordance with this Procedure, and Council elects to engage in a competitive bidding process or other approach to the market in relation to the subject matter of the proposal, Council will respect any Intellectual Property rights of the proponent and/or third parties.

6. SUPPLEMENTARY INFORMATION

Council may from time to time at its discretion publish supplementary information to assist proponents with the interpretation and application of this Procedure.

7. CONFIDENTIALITY

Any report provided to Council's Elected Members will generally be considered confidentially depending on the subject matter of the report and the Market Led Proposal in general.

8. GENERAL TERMS

8.1. NO LEGAL RELATIONSHIP

By making a Market Led Proposal the proponent acknowledges:

- without confirmation in writing, that no discussions in relation to a proposed Market Led Proposal or the submission of a Market Led Proposal assumes exclusivity between the parties
- that no legally binding contract exists or is to be implied between Council and the proponent unless and until a formal contract document is signed by both parties
- that Council is under no contractual or other legal obligation to the proponent with respect to the receipt, assessment, consideration, acceptance or rejection of any proposal or the failure to receive, assess, consider or accept any proposal.

8.2. LEGISLATIVE OBLIGATIONS

In submitting a proposal proponents acknowledge that:

- Council may have legislative obligations that it will need to comply with in relation to a particular proposal and nothing in this Procedure is intended to override or circumvent those obligations
- the processes established by this Procedure are separate from, and do not override other legislative approval processes that a proponent may need to participate in in order to progress its proposal (for example, planning approval processes).

8.3. NO SOLICITING OR OUTSIDE DISCUSSIONS

All queries or communications in relation to Market Led Proposals must be directed to the Chief Executive Officer in the first instance, with each proponent advised of any subsequent delegation, to ensure consistency and transparency in the Market Led Proposals process. Council reserves the right to discontinue assessment of, or negotiations on, a proposal if the proponent discusses the proposal with members of Council staff or Elected Members otherwise than as directed by the Chief Executive Officer.

A proponent must not offer any incentive to, or otherwise attempt to, influence any person who is either directly or indirectly involved in an assessment or negotiation process. Council reserves the right to end any consideration of a proposal if a proponent fails to comply with this requirement.

8.4. CONFLICT OF INTEREST

Proponents must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the proponent is successful in negotiating a contract for its Market Led Proposal. If any conflict or potential conflict exists, the proponent must advise Council how it proposes to address this.

8.5. COSTS OF PROPOSAL

A proponent bears its own costs of preparing, discussing and negotiating any Market Led Proposal with Council.

8.6. USE OF DOCUMENTS

Any documents provided by Council to a proponent during any of the Stages outlined in this Procedure must only be used for the purpose of progressing a proposal in accordance with this Procedure and must be returned to Council at the end of the process on request.

8.7. CHANGE IN CIRCUMSTANCES

A proponent must inform Council promptly in writing of any material change to any of the information contained in the proponent's submission.

8.8. INTERACTION WITH OTHER COUNCIL POLICIES

Unless specifically stated in this Procedure or determined by Council, this Procedure is not intended to override any other policy of Council that may apply to a Market Led Proposal.

Any policy on the sale and disposal of Council assets and procurement policies that Council has adopted for the purposes of section 49 of the Local Government Act 1999 does not apply to a Market Led Proposal that is covered by this Procedure.

8.9. GENERAL ACKNOWLEDGEMENTS

Proponents acknowledge when discussing, negotiating, considering, preparing or submitting a Market Led Proposal to Council in accordance with this Procedure, that Council:

- makes no representations or undertakings that it will enter into a contract with any proponent in respect of the subject matter of any Market Led Proposal
- may undertake 'due diligence' checks on any proponents
- will not be responsible for any costs or expenses incurred by a proponent arising in any way from the preparation, submission or negotiation of its proposal
- accepts no responsibility for any proponents failing to undertake any investigations or understanding any matters that may impact on its proposal
- will not be liable for or pay any expenses or losses incurred by a proponent, whether in the preparation of a proposal or prior to the signing of any agreement relating to a proposal or otherwise
- will not be bound by any verbal advice given or information furnished by any member, officer or agent of Council except written advice or information furnished by the Chief Executive Officer.

8.10. COUNCIL'S GENERAL RIGHTS

Council may, at any stage of the process of discussing, receiving, considering and/or negotiating a Market Led Proposal, at no cost to itself or acceptance of liability to the proponent in any way:

- end consideration of the Market Led Proposal and withdraw from any negotiation with the proponent in relation to it if it considers or assesses that a proposal may not or does not meet the criteria to be considered or considered further under this Procedure, and make an approach to the market in respect of the subject matter of the proposal
- amend, vary or revoke and replace this Procedure at any time
- accept or reject any Market Led Proposal on any basis
- subject to any period of exclusivity determined in accordance with this Procedure, negotiate with any person or organisation in relation to the subject matter of a Market Led Proposal
- accept all or part of a Market Led Proposal
- discontinue negotiations with any proponent at any time
- include any proponents name in Council reports and, subject to any period of exclusivity determined in accordance with this Procedure and any agreement with a proponent to the contrary, make them public.

8.11. OMBUDSMAN

Proponents should be aware that the Ombudsman Act 1972 (SA) empowers the Ombudsman to investigate matters in the public interest. Proponents must ensure compliance with all obligations arising under that Act.

8.12. INDEPENDENT COMMISSIONER AGAINST CORRUPTION

Proponents 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. Proponents must ensure compliance with all obligations arising under that Act.

8.13. FREEDOM OF INFORMATION

The Freedom of Information Act 1991 (SA) (FOI Act) gives members of the public rights to access documents of 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 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 Council and other public authorities.

8.14. DEPARTURE FROM PROCEDURE

Council may, by resolution, where it is justified in the circumstances, determine that this Procedure will not apply to a particular Market Led Proposal.

9. FURTHER INFORMATION

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: www.robe.sa.gov.au

Royal Circus, Robe SA 5276

Copies will be provided to interested parties upon request. Email council@robe.sa.gov.au

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

10. POLICY REVIEW

This policy may be amended at any time and must be reviewed at least every four years since its adoption (or latest amendment).