



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Date / / 2020

Invitation for Expression of Interest

**For the sale of corner Kiewa Valley Highway and Mcgeochs Road, Bandiana,
Victoria 3691**

Prepared for:
Wodonga City Council

**Expressions of Interest close at 3:00pm (Australian Eastern Standard Time) on
Tuesday, 21 July 2020**

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Invitation for Expression Of Interest

1. Definitions

In this Invitation:

Business Day means Monday to Friday excluding public holidays in Victoria.

Closing Date means the date specified in clause 4.1.

Council means Wodonga City Council ABN 63 277 160 265.

Development means the Proponent's proposed development of the Site.

Invitation means this invitation for expression of interest.

Project means the purchase of the Site as set out in this Invitation and the completion of the Development.

Proponent means a means a person or corporate body who lodges a Proposal in accordance with this Invitation.

Proposal means the Proponent's response to this Invitation.

Registration Form means the registration form attached in Schedule 1.

Site means the land known as corner Kiewa Valley Highway and Mcgeochs Road, Bandiana, Victoria 3691, being the land contained in certificate of title volume 11053 folio 624, and the improvements (if any) thereon.

2. Overview and Purposes

2.1 Overview

Council is seeking Proposals from Proponents to purchase the Site.

2.2 Purposes

Council's purposes in undertaking this Invitation are to:

- 2.2.1 provide sufficient details to enable each Proponent to make an assessment of the Site and prepare an informed Proposal;
- 2.2.2 enable Council to identify Proponents which meet Council's objectives; and
- 2.2.3 permit Council to consider and assess any other pertinent issues in relation to the proposed sale of the Site.

3. Council's Objectives for this Expression of Interest

The principal objectives of Council for this expression of interest are to:

- 3.1 secure the timely development of the Site;

- 3.2 maximise financial return to Council and secure an acceptable contractual risk profile for Council; and
- 3.3 ensure that the selected Proponent has the financial capacity to purchase the Site, and the financial capacity, experience and skills to carry out the Development.

4. The Expression of Interest Process

4.1 Timetable

This Invitation is issued on Wednesday, 1 July 2020 and all Proposals must be submitted by 3:00pm (Australian Eastern Standard Time) on Tuesday, 21 July 2020 (**Closing Date**), in accordance with clause 4.7.

4.2 Inspection

Prospective Proponents are entitled to inspect the Site prior to the Closing Date. All queries regarding inspections should in the first instance be directed to:

Adam Wiseman
Wodonga City Council
Address: 104 Hovell Street, Wodonga, Victoria 3690
Phone: 02 6022 9205
Email: awiseman@wodonga.vic.gov.au

or to:

April Lampe
Wodonga City Council
Address: 104 Hovell Street, Wodonga, Victoria 3690
Phone: 02 6022 9363
Email: alampe@wodonga.vic.gov.au

4.3 Zoning

The Site is within the Industrial Zone – Schedule 1.

4.4 Contract documentation

- 4.4.1 The contract of sale will be conditional upon the purchaser procuring the grant of a planning permit for the Development within an agreed timeframe.
- 4.4.2 As a condition of sale, the Proponent will be required to enter into an agreement pursuant to section 173 of the *Planning and Environment Act 1987* (Vic), prior to settlement, to be registered on the title to the Site, which will:
 - (a) require the purchaser to commence and complete the Development within specified timeframes; and
 - (b) impose an obligation for the purchaser to re-transfer the Site to Council if the purchaser breaches its obligations under the agreement.
- 4.4.3 The contract of sale will contain any other terms reasonably required by Council.

4.5 Expression of interest – registration form

Each Proponent must submit a Proposal in the form attached in Schedule 1 of this Invitation.

4.6 Proposals

Each Proposal must include the following information:

4.6.1 *Timely development of the Site*

A high level development program including any staging of the Development and clear timeframes for commencement and completion of the Development.

4.6.2 *Financial return to Council and contractual risk profile for Council*

- (a) The proposed purchase price, plus GST.
- (b) Payment terms (including the amount of the deposit (e.g. 10% of price), settlement period and any conditions precedent).

4.6.3 *Capacity to purchase the Site and carry out the Development*

- (a) Names and addresses of directors and shareholders of the Proponent.
- (b) Evidence of the Proponent's capacity to purchase the Site, including but not limited to:
 - (i) the ratio of debt to equity funding for the acquisition of the Site;
 - (ii) the proposed equity participants in the acquisition of the Site; and
 - (iii) the proposed debt provider (if applicable) for the acquisition of the Site, including a statement of intent from the debt provider.
- (c) Evidence of the Proponent's financial capacity to carry out the Development including but not limited to:
 - (i) the ratio of debt to equity funding for the Development;
 - (ii) the proposed equity participants in the Development; and
 - (iii) the proposed debt provider (if applicable) for the Development, including a statement of intent from the debt provider.
- (d) Statement setting out the Proponent's experience and skills in delivering the Development.

4.7 Procedure for Lodgement

All Proposals must be completed in accordance with clause 4 and Schedule 1, and must be lodged by being placed in a sealed envelope marked '*Expression of Interest – corner Kiewa Valley Highway and Mcgeochs Road, Bandiana*' and lodged in the tender box at **Wodonga City Council, 104 Hovell Street, Wodonga, Victoria 3690**.

No electronic, facsimile or e-mail transmissions will be accepted.

4.8 Variations

The Council is under no obligation to provide a Proponent with a further opportunity to respond to this Invitation or allow a Proponent to vary its Proposal, once that Proposal has been lodged.

4.9 More than one Proposal

Proponents may submit more than one Proposal in response to this Invitation.

4.10 Non-conforming Proposals

Council may consider Proposals which do not conform to this Invitation.

4.11 Local Government Act 1989

Proponents acknowledge that Council must comply with sections 189 and 223 of the *Local Government Act 1989* (Vic) before being able to enter into a contract of sale for the Site.

4.12 Late Proposals

Late Proposals may be accepted and will only be admitted to evaluation if Council (in its sole and absolute discretion) makes a decision to do so.

5. Evaluation Process

5.1 In assessing each Proposal received, Council will use the following evaluation criteria (not listed in any order of importance):

- 5.1.1 timeliness of proposed development of the Site;
- 5.1.2 financial return to Council and contractual risk profile for Council; and
- 5.1.3 Proponent's financial capacity to purchase the Site, and its financial capacity, experience and skills to carry out the Development.

5.2 On completion of assessment of Proposals, Council may decide to:

- 5.2.1 proceed to a request for proposals process with short-listed Proponents;
- 5.2.2 appoint a Proponent as preferred Proponent;
- 5.2.3 negotiate with any or several of the Proponents; or
- 5.2.4 terminate this Invitation.

5.3 Council will not be bound to engage any Proponent or review any Proposal that does not conform with the requirements set out in this Invitation.

5.4 The Proponent acknowledges that Council is not bound to accept the Proposal with the highest price or any Proposal submitted in respect of this Invitation and may terminate the expression of interest process at any time.

5.5 The submission of a Proposal does not give rise to any contract governing, or in any way concerning, the expression of interest process, or any aspect of the expression of interest process. Council expressly disclaims any intention to enter into such a contract.

6. No Fettering of Council's Powers

Nothing in this Invitation shall fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with any use or development of the Site, or the granting of any planning approval or building permit, the approval or certification of any plans of subdivision or consolidation applicable to Site or the issue of a statement of compliance in connection with any such plans.

7. Costs and Expenses

Proponents will be responsible for all costs associated with making and submitting their Proposal in response to this Invitation.

8. Agency

If Proponents are responding through agents, then they must:

- 8.1 note that the agent is acting for, and will be remunerated by, the Proponent; and
- 8.2 provide formal written confirmation of authority from the Proponent with their response.

Neither Council nor any of its consultants will deal with or recognise any party other than those who have submitted the requested formal authority.

9. Nomination

Where a Proponent proposes forming a company specifically to be the purchaser pursuant to any contract of sale, Council may permit that contract of sale to be executed in the name of the Proponent or nominee (or both of them), where the nominee will be the company to be formed, provided that:

- 9.1 such a proposal is clearly identified in the Proposal; and
- 9.2 the proposed principals of such company are clearly identified in the Proposal.

10. Confidentiality

Until a Proponent's offer is accepted by entry into of a contract of sale for the Site, the Proponent may not disclose the terms of any Proposal, unless:

- 10.1 the Proponent obtains the consent of Council; or
- 10.2 such disclosure is required for the purpose of the implementation of this expression of interest process.

11. Canvassing

- 11.1 The Proponent, its employees and consultants, must not approach, or request any other person to approach, any member, employee, officer or consultant of Council or councillor of Council:
- 11.1.1 to solicit support for its Proposal; or
 - 11.1.2 otherwise seek to influence the outcome of this Invitation.
- 11.2 The Proponent will, to the extent practicable and reasonable, avoid socialising with members, employees, officers or consultants of Council and councillors of Council, and, where such socialising occurs, refrain from discussing its Proposal or the Invitation.
- 11.3 The Proponent will direct all communications during this expression of interest process to Council's nominated representative, in written form, either by post or by email.
- 11.4 If the Proponent breaches this clause 11, Council may, in its sole discretion, disqualify the Proponent from participating in this expression of interest process.

12. Conflicts of interest

Proponents must declare to Council any direct or indirect conflict of interest of:

- 12.1 the Proponent;
 - 12.2 any agent acting for the Proponent; and
 - 12.3 any other consultant acting for the Proponent,
- in respect of Council or this expression of interest process.

13. Public statements

A Proponent must not make any public statement, including doing any media releases, in relation to this expression of interest process and must refer all enquiries from the media to Council.

14. Disclaimer

- 14.1 Neither Council nor any of its consultants accept any responsibility to any Proponent or other third parties under the law of contract, tort or otherwise for any loss or damage which may arise from anything contained in this Invitation, any matter deemed to form part of this Invitation, the supporting information or documents referred to in this Invitation, or any other information supplied to any Proponent on behalf of Council.
- 14.2 All information given to a Proponent and ultimately the preferred Proponent by Council or its respective officers or agents will be given on an "all care and no responsibility" basis.
- 14.3 By receiving delivery of this Invitation, each organisation and ultimately the Proponent shall, without qualifications, be deemed to have acknowledged acceptance of and shall be bound by the provisions of this clause 14.

- 14.4 Council reserves the right not to proceed with the Invitation and to decline to discuss the Invitation further with any parties. No reimbursement of costs will be paid to persons or organisations preparing Proposals in relation to this Invitation.
- 14.5 No unsuccessful organisation will be entitled to any redress against Council or in the event that Council permits any amendments or additions to any Proposals or enters into any agreement in relation to the sale of the Site with any other person whether an organisation or not.

15. Further Information

- 15.1 All requests for further information or clarification regarding this Invitation should be directed to:

Adam Wiseman
 Wodonga City Council
 Address: 104 Hovell Street, Wodonga, Victoria 3690
 Phone: 02 6022 9205
 Email: awiseman@wodonga.vic.gov.au

or to:

April Lampe
 Wodonga City Council
 Address: 104 Hovell Street, Wodonga, Victoria 3690
 Phone: 02 6022 9363
 Email: alampe@wodonga.vic.gov.au

- 15.2 All requests for further information or clarification must be made no later than **5 business days** before the Closing Date. Any requests made later than 5 business days before the Closing Date may not be responded to by Council.
- 15.3 Unless Council is of the opinion that questions or requests for further information or clarification are specific to a particular Proponent, answers provided to questions or requests for further information or clarification will be made available to all Proponents. Council will not disclose the identity of the Proponent that submitted the question or request for further information or clarification.
- 15.4 Council, in its absolute discretion, reserves the right not to respond to questions or requests for further information or clarification.
- 15.5 After the Closing Date, Council may seek to clarify any aspect of a Proposal that it considers to be unclear, ambiguous or contain contradictory statements on the following basis:
- 15.5.1 requests for clarification may be issued to Proponents with response time constraints. If the Proponent fails to respond within the requisite timeframe, the answer, once received, may not be admissible;
 - 15.5.2 requests for clarification will be presented in writing to the Proponent's nominated contact person via the email address stated in Schedule 1;
 - 15.5.3 Proponents may be invited to an interview to provide responses to requests for clarification; and
 - 15.5.4 responses to a request for clarification must not change a Proposal and any response attempting to change a Proposal will be withheld from consideration.

Schedule 1 Registration Form

A. PROPONENTS MUST COMPLETE THE FOLLOWING DETAILS:

1. **Name:**
2. **ACN:**
3. **Registered Office:**
.....
4. **Postal Address:**
.....
5. **Nominated
Contact Person:**
6. **Telephone:**
7. **Facsimile:**
8. **Email Address:**

**B. PROPONENTS MUST PROVIDE THE INFORMATION SPECIFIED IN CLAUSE
4.6 OF THE INVITATION FOR EXPRESSION OF INTEREST**

(Add schedule if insufficient space)

1. **Proposed timeframe for development of the Site**

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C. Acknowledgment and Declaration

We acknowledge that, by submitting this proposal, we accept, and acknowledge that we are bound by, the terms and conditions stated in the Invitation for expressions of interest.

We declare that we have no direct or indirect conflict of interest in participating in the Project outlined in the Invitation for expressions of interest.

DATED: of 2020

If Proponent is a multi-director company:

Executed by _____)
_____)

ACN _____ in accordance
with s 127(1) of the *Corporations Act 2001*:

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Print full name

.....
Print full name

If Proponent is a sole-director company:

Executed by _____)
_____)

ACN _____ in accordance
with s 127(1) of the *Corporations Act 2001*:

.....

Signature of Sole Director and Sole
Company Secretary

.....

Print full name

If Proponent is an individual:

SIGNED by _____)
in the presence of: _____)
_____)

.....
Proponent:

.....
Witness