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Date / / 20

Invitation for Expression of Interest

For the purchase or development of Wodonga Saleyards, Whytes Road, Bandiana, Victoria

Prepared for:
Wodonga City Council

Expressions of Interest close at 3.00pm (Australian Eastern Standard Time) on 12 August 2016

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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.

Council means Wodonga City Council.

Invitation means this invitation for expressions of interest.

Proponent 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 located at Whytes Road, Bandiana, Victoria, being the land contained in certificates of title:

- (a) volume 10114 folio 425; and
- (b) volume 11053 folio 624,

being the areas shown shaded in orange and labelled 'Site 1' and 'Site 2' respectively on the plan attached in Schedule 2, but excluding an area of approximately 5 hectares which will be retained by Council for use as a depot.

2. Overview and Purposes

2.1 Overview

Council is seeking Proposals from Proponents to either:

- 2.1.1 purchase all or part of the Site (**Sale Model**); or
- 2.1.2 develop all or part of the Site in partnership with Council (**Development Model**).

2.2 Purposes

Council's purposes in undertaking this Invitation are:

- 2.2.1 to provide sufficient details to enable each Proponent to make an assessment of the Site and prepare an informed Proposal;
- 2.2.2 to enable Council to identify Proposals which meet Council's objectives; and
- 2.2.3 to permit Council to consider and assess all relevant issues in relation to the sale or development of the Site.

3. Council's Objectives for the Site

The principal objectives of Council are to:

- 3.1 maximise the financial return to Council and achieve an acceptable risk profile; and
- 3.2 select a Proponent with the financial capacity to purchase the Site, or the financial capacity, skills and experience to develop the Site.

4. The Expression of Interest Process

4.1 Timetable

This Invitation is issued on 31 May 2016 and all Proposals must be submitted by 3.00 pm (Australian Eastern Standard Time) on 12 August 2016 in accordance with clause 4.6.

4.2 Inspection

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:

Kerrienne Bradbery
Wodonga City Council
Address: 104 Hovell Street, Wodonga, Victoria 3690
Phone: 02 6022 9220
Email: kbradbery@wodonga.vic.gov.au

4.3 Key Terms of Transaction

- 4.3.1 Council will consider offers to purchase or develop:
 - (a) the whole Site;
 - (b) one of the lots comprising the Site (**Lots**); or
 - (c) any part of either of the Lots.
- 4.3.2 Council will retain an area of approximately 5 hectares for use as a depot (**Council Area**). An indicative location for the Council Area is shown on the plan attached in Schedule 2. Council will consider proposals to alter the location of the Council Area, however the Council Area must have direct road access.
- 4.3.3 The Proponent will be required to complete all works to provide electricity, water and sewerage services to the road boundary of the Council Area.

4.3.4 Sale Model

- (a) The contract of sale will be conditional upon Council procuring the subdivision of the Site to create the Council Area and any other required subdivision of the Site.
- (b) 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(s) to the land being purchased, which will require the purchaser to agree to:
 - (i) not use the Site as a saleyard;
 - (ii) not use (or permit to be used) any of the existing infrastructure within the Site for the purposes of a saleyard operation within 400 km of the Site; and
 - (iii) complete all works to provide electricity, water and sewerage services to the road boundary of the Council Area.
- (c) The contract of sale will contain any other terms required by Council.

4.3.5 Development Model

The development agreement will contain terms dealing with the issues in paragraphs 4.3.4(a) and 4.3.4(b), and any other relevant issues.

4.4 Expression of interest – registration form

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

4.5 Proposals

Each Proposal must include the following:

4.5.1 *Proposed model*

Confirmation of whether a Sale Model or a Development Model is proposed.

4.5.2 *Council Area*

Confirmation of whether any change is proposed to the location of the Council Area, and if so, details of the proposed new location.

4.5.3 *Area to be purchased or developed*

Confirmation of which part of the Site the Proponent proposes to purchase or develop.

4.5.4 *Financial return to Council*

A statement setting out the proposed commercial terms of the Proposal, including:

- (a) if a Sale Model is proposed:
 - (i) the proposed purchase price, plus GST; and

- (ii) payment terms (including the amount of the deposit, settlement period and any conditions precedent); and
- (b) if a Development Model is proposed:
 - (i) the required contribution by Council;
 - (ii) the required contribution by the Proponent;
 - (iii) projected financial return to Council;
 - (iv) an analysis of the likely risks to Council of the Proposal; and
 - (v) proposed key terms of the development agreement.

4.5.5 *Proponent's capacity*

- (a) Evidence of the Proponent's financial capacity, including but not limited to:
 - (i) details of the officers and shareholders of the Proponent (if it is a company);
 - (ii) evidence of the Proponent's financial position, including:
 - A. balance sheet;
 - B. profit and loss statement;
 - C. its ratio of debt to equity for the Proposal; and
 - D. evidence of the Proponent's access to finance for the Proposal; and
 - (iii) details of any other relevant matters concerning the Proponent, including insolvency events, breaches of law, offences and other litigation;
- (b) if a Development Model is proposed, evidence of the Proponent's capacity to develop the Site, including but not limited to:
 - (i) evidence of the Proponent's capacity to deliver the development;
 - (ii) details of the proponent's current development projects and experience with undertaking similar development projects; and
 - (iii) details of the Proponent's project team.

4.6 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 – Purchase or Development of Wodonga Saleyards, Whytes Road, Bandiana, Victoria*' and lodged in the tender box at Wodonga City Council, 104 Hovell Street, Wodonga, Victoria 3690 or via TenderLink at <https://www.tenderlink.com/wodonga/>

4.7 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.

4.8 More than one Proposal

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

4.9 Non-conforming Proposals

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

4.10 Local Government Act 1989

Proponents acknowledge that Council must comply with sections 189 and 223 of the *Local Government Act 1989 (Vic) (Act)* before being able to enter into a contract of sale for any part of the Site, or section 193 of the Act before being able to enter into a development agreement for any part of the Site.

4.11 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 financial return to Council and associated risk profile; and

5.1.2 the Proponent's capacity to deliver on contract of sale or development agreement.

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 or the developer pursuant to any development agreement (as the case may be), Council may permit that contract of sale or development agreement 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;
- 9.2 the proposed principals of such company are clearly identified in the Proposal; and
- 9.3 both the Proponent and the principals of that company guarantee the performance of that company pursuant to the provisions of the contract of sale.

10. Confidentiality

Until a Proponent's offer is accepted by entry into of a contract of sale or a development agreement, neither the Proponent, nor Council, may disclose the terms of any Proposal, unless:

- 10.1 in the case of proposed disclosure by the Proponent, the Proponent obtains the consent of Council;
- 10.2 in the case of proposed disclosure by Council, Council obtains the consent of the Proponent; or

- 10.3 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:
- 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, 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 regarding this Invitation 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:

Kerriane Bradbery
Wodonga City Council
Address: 104 Hovell Street, Wodonga, Victoria 3690
Phone: 02 6022 9220
Email: kbradbery@wodonga.vic.gov.au

All questions raised before 5.00pm on 28 July, 2016 will be responded to within five business days.

- 15.2 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.
- 15.3 Council, in its absolute discretion, reserves the right not to respond to questions or requests for further information or clarification.
- 15.4 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:
- 15.4.1 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;
- 15.4.2 requests for clarification will be presented in writing to the Proponent's nominated contact person via the email address stated in Schedule 1;
- 15.4.3 Proponents may be invited to an interview to provide responses to requests for clarification; and



15.4.4 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

Expression of Interest – Registration Form

A. PROPONENTS MUST COMPLETE THE FOLLOWING DETAILS:

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

B. PROPONENTS MUST PROVIDE THE INFORMATION SPECIFIED IN CLAUSE 4.5 OF THE INVITATION FOR EXPRESSION OF INTEREST

- 1. **Proposed model**
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- 2. **Proposed Council Area**
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3. Area to be purchased or developed

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3. Financial return to Council

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4. Proponent's capacity

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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 contract of sale or development agreement outlined in the Invitation for expressions of interest.



DATED:

20

If Proponent is a company:

SIGNED for and on behalf of :

)
)
)

.....

Name:
Title:

If Proponent is an individual:

SIGNED by _____
in the presence of:

)
)
)

.....

Proponent:

.....
Witness

Schedule 2

Plan

