



Lifestyle and opportunity @ your doorstep

Expression of Interest
for
Catherine Hamlin Park
Public Art Project
COR-EOI-06/20

Closing Time – 2:00 pm
Tuesday 3rd November 2020

Contents

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Section A – Key Information



1.1 Introduction

The Council of the City of Ryde is seeking expressions of interest from suitably qualified and experienced artists/artist led teams to express interest in an exciting public art opportunity. The successful artist/artist led team will work in collaboration with Council's current landscape plan to create a feature artwork/s of Catherine Hamlin Park in Macquarie Park.

Catherine Hamlin Park is envisaged to be an urban park in Macquarie Park approximately 7000m² in size. It will be surrounded by new roads and new commercial buildings that will overlook the park and with a frontage on Waterloo Road.

Catherine Hamlin Park is located approx. 200m from the busy intersection of Lane Cove Road and Waterloo Road. Located at this intersection is the Macquarie Park Metro station. The park is expected to be used by local office workers for informal recreation, by the local community for informal recreation and community events and by commuters.

More information regarding the kind of works that may be required by Council is set out in Section B, Illustrative Project Requirements. Respondents should note that these are illustrative requirements only and that Council's actual requirements would be defined in any future Request for Tender.

The purpose of this EOI process is to enable Council to determine a shortlist of organisations who may then be invited to participate in any subsequent select request for tender (**RFT**) process for the development and implementation of works similar to those set out in Section B.

1.2 EOI Structure

This EOI is issued by Council in accordance with the requirements of the LG Act and LG Regulation, including the *Tendering Guidelines for NSW Local Government* (October 2009).

The EOI comprises the following sections:

Section A	Key Information	Introduction and important attributes of this EOI process.
Section B	Illustrative Project Requirements	Information regarding the kind of works in respect of which EOI



responses are being sought by Council.

Section C	Returnable Schedules	The returnable schedules which are to be completed and submitted to Council for evaluation.
Section D	Not Used	Not Used
Section E	Conditions of EOI	The conditions that apply to this EOI process.

1.3 EOI Key Dates and Process

The key dates for this EOI are:

EOI Briefing:	10:00 Friday, 16 October 2020.to be held at the frontage to 45-61 Waterloo Road Macquarie
Final Date for Addenda:	5 Business Days before the Closing Date
Final Date for Enquiries:	3 Business Days before the Closing Date
Closing Date for lodgement of responses to this EOI:	Tuesday,3 November 2020
Closing Time for lodgement of responses to this EOI:	2:00 PM on the Closing Date

Attendance at the EOI Briefing meeting is not mandatory but encouraged for all Respondents and Respondents must confirm their attendance by email to the Contact Person noted in Section 1.5, below, not less than 2 business days prior.

Council will be utilising the TenderLink e-Tendering portal for this EOI process and all Respondents must create an on-line profile with TenderLink. Any Addenda to this EOI will be provided to Respondents through TenderLink.

Respondents are to submit their Submissions in response to this EOI via TenderLink by the Closing Date and Closing Time.

An EOI Evaluation Panel will be established to evaluate Submissions in accordance with clause 8 of Section E, Conditions of EOI.

The Evaluation Process will include an evaluation of compliant Submissions (using the Evaluation Criteria set out in 1.4 and 1.5, below).

The Evaluation Process may include (in Council's absolute discretion):

- an initial short-listing of Respondents; and/or
- a request for additional information from one, or more, Respondents; and/or
- Council Clarification Meetings with one or more of the Respondents; and/or
- security, probity and/or financial checks of one or more of the Respondents.

Clarifications meetings (if held) are expected to be carried out for up to two hours may be online (due to the recent Government restrictions in response to COVID-19 pandemic) and that any Respondent required to attend will be notified via their nominated contact person.

Following the evaluation process, Council may in its absolute discretion select one or more Respondents, with or without conditions, to participate in an RFT process; decline to select any Respondents; call for public tenders; proceed with any other process; or abandon the procurement process.

Full details of the conditions applying to this EOI process are included in Section E, Conditions of EOI.

Council expects to complete evaluation of EOI Submissions by November 2020.

1.4 Evaluation Criteria

The EOI Evaluation Criteria that will be used to evaluate Submissions include:

- Capability and Previous Relevant Experience
- Key Personnel
- Success Factors
- Concept Statement



1.5 Mandatory Criteria

In addition to the Evaluation Criteria, there are mandatory criteria that Council expects Respondent's to meet in order for their Submissions to be considered. The Mandatory Criteria are specified in clause 8.2 of Section E, Conditions of EOI.

1.6 EOI Contact Details

Where Tenderlink is unavailable, any correspondence and queries regarding this EOI may be forwarded to the City of Ryde contact (**Contact Person**) nominated below:

Name:	Rozana Sabrin
Address:	Level 1, Building 0, 3 Richardson Place, North Ryde, NSW 2113
Telephone:	02 9952 8438
Email:	Tendersandcontracts@ryde.nsw.gov.au

1.7 Probity Contact

Should any Respondent consider that it is not being accorded fairness in the EOI process, the Respondent must give written notice of its complaint to the Probity Contact, who can be contacted using the details set out in the table below:

Name:	John Schanz
Telephone:	02 9952 8022
Email:	JSchanz@ryde.nsw.gov.au

Further information regarding probity is set out in clause 10 of Section E, Conditions of EOI.

1.8 Section E – Conditions of Submission – Additional Terms

The following table identifies whether or not the specific clauses in Section E, Conditions of EOI, identified in the table (referred to as 'Additional Terms') apply to this EOI process.



Item	Clause	Application
1.	3.1 and 3.2 (NSW Code and NSW Guidelines)	Clauses 3.1 and 3.2 apply: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If no option chosen, clauses 3.1 and 3.2 do not apply.
2.	3.3.1 – 3.3.6 (Commonwealth Building Code)	Clause 3.3 (excluding 3.3.7) applies: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If no option chosen, clause 3.3 (excluding 3.3.7) does not apply.
3.	3.3.7 (Workplace Relations Management Plan)	Clause 3.3.7 applies: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If no option chosen, clause 3.3.7 does not apply.



Section B – Illustrative Project Requirements



Artist Brief

Catherine Hamlin Park

Public Art Project

The City of Ryde invites artists/artist led teams to express interest in an exciting public art opportunity. The successful artist/artist led team will work in collaboration with Council's current landscape plan to create a feature artwork/s of Catherine Hamlin Park in Macquarie Park.

Catherine Hamlin Park

Catherine Hamlin Park is envisaged to be an urban park in Macquarie Park approximately 7000m² in size. It will be surrounded by new roads and new commercial buildings that will overlook the park and with a frontage on Waterloo Road.

Catherine Hamlin Park is located approx. 200m from the busy intersection of Lane Cove Road and Waterloo Road. Located at this intersection is the Macquarie Park Metro station. The park is expected to be used by local office workers for informal recreation, by the local community for informal recreation and community events and by commuters.

The City of Ryde has undertaken a design and will shortly commence construction works in Catherine Hamlin Park with the aim of providing a park amenity and strengthening pedestrian activation for the local community and businesses. Council's **Integrated Open Space Plan (IOSP)** identifies passive parkland as important for all residents in the City of Ryde, particularly residents living in areas of high density. Better connectivity to passive



parkland is recommended so that all residents can be within 400m of public open space.

The **Macquarie Park Corridor Master Plan 2004** identified that Waterloo Road will become the main street of the Corridor, linking Macquarie University at one end to the Riverside Corporate Park at the other; and that areas immediately around each of the metro stations, which includes Catherine Hamlin Park, are to become vibrant urban centres, with shops, cafes, restaurants, bars, leisure, recreational facilities and professional, business and personal services.

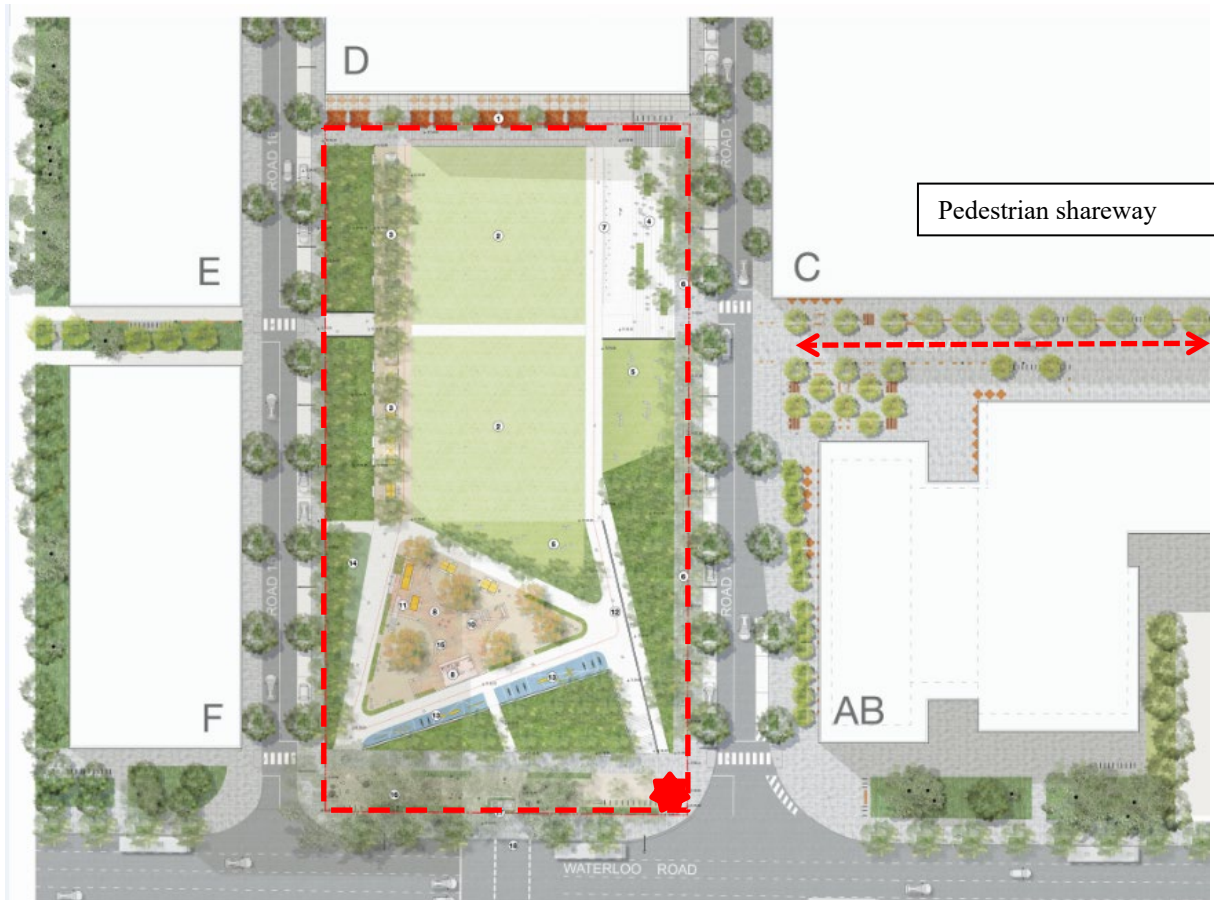
With the **Waterloo Road Master Plan** a major component of Waterloo Road has been planned as a future lineal park. The linear park includes the road reserve and a ten metre (10m) setback on either side of the road reserve to allow for a transformation of Waterloo Road from a car dominated corridor into a 'vibrant street of community, connection and cohesion' (Hassell 2020: 8).



CATHERINE HAMLIN PARK – SITE LOCATION MAP
NOT TO SCALE



Lifestyle and opportunity @ your doorstep



Catherine Hamlin Park Master Plan Not to Scale



Public Art Location



Public Art Commission

The City of Ryde will commission an artist or artist team to create unique and exciting integrated artwork/s for Catherine Hamlin Park. This commission will encourage artist or artist led teams to work with the current landscape design and public artwork designed for Catherine Hamlin Park to provide an engaging and vibrant artwork that resonates with the proposed park.



Themes

The themes described below are provided to provoke a response rather than as a set of guidelines to be strictly followed.

Technology

Often described as 'Australia's *Silicon Valley*', *Macquarie Park* is the head office location for many of Australia's 'Top 100' companies, in particular large national and international information and communication technology (ICT) firms. The 'high technology theme' is a strong option for creative interpretation.

Biodiversity

The close proximity of *Macquarie Park* to *Lane Cove National Park* supports an opportunity for the *National Park's* biodiversity to be drawn into *Elouera Reserve*, such as flora corridors or green links established.

Cultural diversity

The traditional owners, migration patterns and land usage by various culturally diverse communities, like the Chinese market gardens that had a strong presence in the area, have the potential to assist with creating a sense of place and recording the diverse cultural heritage of the area.

Opportunities

The City of Ryde is committed to enhancing and promoting imaginative, creative and diverse play opportunities which are intrinsically linked to the vibrant community and natural environment, and also enhance health, wellbeing and social connections.

Artwork/s may include (but not be limited to) tactile sculptural features, focal points, interactive and sensory elements or surface treatments. Successful artwork/s will be scaled accordingly, visible from a distance and striking enough to achieve prominence in their own right as well as being integrated into the park. Therefore the artwork/s should be visually bold which may be achieved through colour, design and form. It is envisaged that the artwork/s for the park



will respond to the unique character, qualities and environment of the site and area. Applicants may propose a single artwork or a series of works.

Key Design Considerations

From the early concept stage it will be essential for artists and artist led teams to consider any requirements that relate to the existing landscape design for Catherine Hamlin Park, including the existing public art designs within the proposed park.

Ensure any art elements:

- comply with all other relevant Australia Standards and building codes
- avoid dangerous protrusions and sharp edges
- be placed in such a way that they cannot be removed by force or will not dislodge over time
- be placed in such a way that they do not conflict with circulation and movement pattern of park and street users
- be appropriately treated with appropriate robust coatings
- Artwork to be suitably robust for the public realm
- Intricate and dynamic elements should be minimised to limit damage/lifespan
- The scope of works for the artworks will include a required certification of compliance to the relevant Australian Standards.

Ongoing maintenance is to be a key consideration in the design of the artwork, therefore:

- Elements must be robust, durable and structurally appropriate for their application. All metals to be stainless steel or powder-coated. No timber to be utilised.
- Materials selection must be as specified and where possible be locally sourced.



- Materials must be non-toxic and have no sharp edges or protrusions.
- Materials must be easily cleaned and require minimal ongoing maintenance. All programmed maintenance to require not less than 1 year between servicing
- Materials to have a design life of 25 years
- Transport for New South Wales (TfNSW) may need to be consulted due to the Waterloo Road frontage.
- Sydney metro may need to be consulted due to sections of the Waterloo Road frontage being located within a railway easement.
- Artists are encouraged to consider the environmental impact of their work and the materials and processes they use.



Selection Process

A two stage process will be undertaken to select the artists or artist led teams.

The process will be carried out as follows:

Stage 1 (current stage)

Artists or artist led teams will submit public art proposals according to the identified criteria. A number of applicants will be shortlisted by the Selection Panel made up of Council's Project Team and other public art experts.

Shortlisted applicants will be notified by **November 2020**.

Please note that to be eligible for Stage 2: applicants are encouraged to attend an onsite briefing, to be held at the frontage to **45-61 Waterloo Road Macquarie at 10 am, Friday 16 October 2020**. Applicants should ensure they are registered by the convener on site.

Stage 2

Short listed applicants will be issued with the Stage 2 brief through a Select Tender process, be paid a fee of \$4,000, and given seven (7) weeks to develop their initial public art proposals into concept designs. The concept design proposals will include:

- Concept drawings and / or a model of the proposed work as required to convey the concept, scaled and presented in a professional and artistic manner;
- Indicative site plan showing the proposed locations for the art works (City of Ryde will have a concept plan that should be referred to);
- Proposed indicative budget outlining the design development stage, fabrication stage, materials, project management and other associated expenditure including;
 - Cost of certification (in Stage 4) by a structural engineer for material and structural strength.
 - Any other certification as required to meet Australian standard compliance.



- Indication of materials and fabrication methods
- Details of third parties, contractors, consultants, project managers, supply relationships and fabricators
- Design development, fabrication and installation timeline
- Presentation documents for the Project Panel
- Indication of any known ongoing maintenance requirements associated with the proposal. A comprehensive maintenance schedule will be required from the artist commissioned to fabricate the project.

The deadline for stage 2 submissions is **2pm Friday 29 January 2021**.

Post evaluation by the Selection Panel of the developed concept design, a recommendation will be made on the successful proposal. The evaluation will include a review of the indicative budget to ensure the proposed concept is achievable within the project budget. All parties need to be satisfied that the proposal is achievable within the budget available.

The successful applicant will be notified by the **15 February 2021**. At the completion of Stage 2, the aim is to contract the artist or artist led team to complete the project according to the schedules, terms and conditions identified in the Public Art Commissioning Agreement (Attachment C).

Please note:

- Council may make copies of the EOI submission documents for any purpose related to the EOI, in particular the evaluation of the EOI submissions.
- Intellectual Property contained in the Expression of Interest submissions remains the property of the applicant. Each applicant submitting an Expression of Interest grants to Council a royalty free licence to use, manipulate, describe and discuss such Intellectual Property for the purposes of the Expression of Interest, any invitation to the shortlist process and for any purpose associated with the project.



- There is no guarantee that any shortlisted artist / artist led team will progress to the commissioning stage.
- The City of Ryde reserves the right not to proceed with the project or delay the project at any stage of the implementation.

Submission Requirements

- To successfully participate and complete Stage 1, applicants are required to provide a proposal detailing:
 - a. A Curriculum Vitae (CV) (in the case of a team this must be one CV for each individual on the team);
 - b. A maximum of 10 digital images per artist (PC compatible only) saved as jpegs and provided in PowerPoint presentation;
 - c. Concept statement. The statement should include: conceptual methodology and possible artwork approach; how the approach relates to or expresses local themes; and how the approach relates to the artist's previous experience. Please note the concept statement can be submitted in written, rough sketch or digitally rendered form, or whichever medium is most suitable for the individual artist or artist team to communicate their ideas.
 - d. Examples of work done in collaboration with builders, architects and landscape architects
 - e. A statement confirming the artist's ability to meet the budget and the program.
 - f. Names and contact details of two relevant referees



Selection Criteria

The following criteria will be used by the Evaluation Panel to assess the submissions received in Stage 1:

- a. Artistic merit as evidenced in the visual material provided for previous projects;
- b. Demonstrated previous relevant experience of creating artworks in the public realm (and working within timelines and budgets);
- c. Strength of proposed artistic approach and methodology, innovation in response to the site and context;
- d. Sound ability to communicate artistic approach and methodology
- e. Experience working in interdisciplinary teams and an ability to work in an environment where transparency, inclusively and information sharing is critical to the success of the project.
- f. Capacity to achieve the required project program;
- g. Registered attendance at an onsite briefing held at **10am Friday 16 October 2020**.

A Conforming Expression of Interest is an Expression of Interest which meets all of the requirements set out in these conditions and the Project Brief.

Insurance

The successful applicant will be required to have current public liability insurance to the value of \$20 million.

If the applicant does not currently have the required insurance, if their concept design is selected, they will be required to obtain Public Liability Insurance to the value of \$20 million.



Artist Responsibilities

The successful applicant will:

- a. Manage and support the delivery of the project within the agreed program of the Catherine Hamlin Park upgrade;
- b. Undertake the development and design and documentation where appropriate of public art.
- c. Integrate public artwork into broader landscaping and built features of the site.
- d. Deliver the public art design in accordance with an agreed set of project delivery milestones.
- e. Hold a public liability insurance policy with a (minimum \$20,000,000).

Project Budget

The Catherine Hamlin Public Art Project has a budget of **\$150,000 (excluding GST)** exclusively for the public art which includes the items listed below.

Integration of public art as landscape features means there is potential for the artist concept to influence other upgrade elements which are part of the overall budget. The Public Art Project budget will include:

- Artist Fees
- Design development & documentation (including all engineering services, specifications, certifications and other technical inputs
- Development applications and any associated fees;
- Fabrication (including materials), all insurances, transportation and installation
- Transport/delivery;
- Site and footing preparations;
- Equipment hire



- Security;
- Installation;
- Site clean-up and remediation after installation;
- Travel;
- Launch/plaques/marketing.

Program and Timeframe

The following program and timeframe provides artists with a general outline on the five stages of the public art process for the project. The timeframes for the concept design integration, design development, fabrication and installation of the artwork/s are indicative only.

Step	Description	Date
Stage 1		
Expression of Interest	Artists invited to submit Expression of Interest	8 October
On site briefing	Artists invited to attend on site briefing	10am 16 October
Expression of Interest	Expressions of Interest received	3 November
Expression of Interest assessment	EOI's assessed by the Project Panel. Up to three artists / artist teams shortlisted	November
Stage 2		
Select tender issued	Shortlisted artist/artist led teams requested to develop concept proposals. Shortlisted artists engaged by a Letter of Engagement	TBC November
Site briefings	Shortlisted artist / artist led teams will be briefed on site	TBC
Concept design proposal presentation	The shortlisted artists / artist led teams will present their concept proposals to the Panel.	Week of 18 January 2021
Artwork concept proposals received	Shortlisted artist/artist led teams formally submit proposals.	29 January 2021



Step	Description	Date
Concept evaluation	The Selection Panel will evaluate concept. Quantity surveyor to review budget. Selection Panel nominates a preferred concept artwork.	Week commencing 1 February 2021
Hold Point Administration sign off (concept reported to Executive Team)		
Contract	Successful artists / artist led teams contracted to undertake the project according to the Public Art Commissioning Agreement	TBC
Stage 3		
Concept Design Integration	Artists/artist led teams to work with Council's Design Team to integrate concept proposals into Catherine Hamlin Park design.	TBC
Community consultation		TBC March 2021
Hold Point Administration sign off (integrated concept reported to Council)		
Stage 4		
Detailed design	Artist to produce a detailed design including artwork specifications, scope of works, budgets and timeframes.	TBC April 2021
Stage 5		
Fabrication/installation	Production and installation the works.	TBC July 2021 – February 2022



Step	Description	Date
Completion	The project will be completed by February 2022	



Section C – Returnable Schedules

A response to each schedule in this Section is a mandatory requirement in order for a submission to be considered (refer clause 5, Section E - Conditions of EOI).

Schedule 1	EOI Form
Schedule 2	Product, Organisational and Resource Capability



Schedule 1 EOI Form

Please note that if the Respondent comprises of more than one entity (not including subcontractors and consultants to be engaged by the Respondent for the Works), this Deed Poll must be executed by each such entity.

DATE:

THIS DEED POLL IS GIVEN BY:

.....ACN.....of.....
(Respondent)

FOR THE BENEFIT OF:

City of Ryde Council (Council)

Background

The Submission which accompanies this Deed Poll is submitted to Council by the Respondent in response to the Request for Expressions of Interest COR-EOI-06/20 – Catherine Hamlin Park Public Art (EOI).

Interpretation

Terms used in this Deed Poll, where those terms are defined in the EOI, have the same meaning as set out in the EOI.

Warranties and representations

In submitting its Submission, the Respondent:

- (a) hereby expressly repeats, ratifies and confirms the warranties, acknowledgements, representations, agreements, acceptances, releases and indemnities set out in Section E of the EOI;
- (b) acknowledges and agrees to be bound by the terms and conditions set out in Section E of the EOI, including in connection with the Disclosed Information;
- (c) confirms that it has complied with, that its Submission complies with, and that its Submission is submitted in accordance with, Section E of the EOI;
- (d) warrants that no conflict of interest exists or is likely to arise in connection with the subject matter of the Submission, or the participation of the Respondent or the Respondent's Associates in the EOI process other than those specified in **Schedule 1** to this Deed Poll;
- (e) confirms that it has fully completed the table in **Schedule 2** to this Submission Form, and that the information contained in that table is accurate and complete in all respects; and
- (f) agrees that Council may use the information in the Submission in accordance with Sections E of the EOI.



Addenda

The Respondent acknowledges that it has received all of the Addenda issued by Council and detailed in the table below (Respondent to complete) and that it has had regard to those Addenda in preparing its Submission:

Addendum Number	Subject

Notwithstanding any failure by the Respondent to list any Addenda in the above table, the Respondent is deemed to have received and made itself aware of, and is bound by, all Addenda issued in accordance with the EOI.

Searches

The Respondent:

- (g) hereby consents to and authorises Council and each Council's Associate to:
 - (i) undertake probity and security credit checks referred to in the EOI; and
 - (ii) seek any financial information required for the purpose of establishing the financial viability of the Respondent; and
- (h) agrees to provide, at the Respondent's expense, reasonable assistance to Council to assist Council in any checking Council wishes to have undertaken under or in respect of the EOI.

This Deed Poll is governed by the laws in force in New South Wales.

EXECUTED as a deed poll.

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



Schedule 1 Conflicts of Interest

Respondents must describe any potential or actual conflicts of interest they or any of the Respondent's Associates may have in the conduct of the EOI process, participation in any subsequent RFT process or performance of the obligations under the Contract.



Schedule 2 Respondent’s Legal Identity

Please note that if the Respondent comprises more than one entity (not including subcontractors and consultants that would be engaged by the Respondent to carry out the Works), the following table must be completed for each entity.

Registered name of Respondent	
Trading name (if applicable)	
ABN	
ACN	
Business Address	
Postal Address (if different)	
Website address	
Type of legal entity (tick one):	<input type="checkbox"/> Public Company <input type="checkbox"/> Private Company <input type="checkbox"/> Sole Trader <input type="checkbox"/> Partnership <input type="checkbox"/> Other (specify)
Names and ABNs of related, associated, parent or subsidiary business entities: (if applicable)	
Respondent Coordinator (if Respondent comprises a team, group or consortium)	<input type="checkbox"/> yes <input type="checkbox"/> no

Respondent’s Representative

All correspondence to the Respondent, in connection with the EOI process, will be directed to the Respondent’s representative.

Name of Respondent’s representative	
Position	
Telephone number	
Email address	
Street Address	



Schedule 2 Organisational and Resource Capability

Capability and Previous Relevant Experience

1.	Provide a brief overview of your organisation and its capabilities.
	<i>Your response must not exceed 2 A4 single sided pages. Submission includes maximum of 10 digital images per artist (PC compatible only) saved as jpegs and provided in PowerPoint presentation.</i>
2.	Provide a list of at least 5 projects similar to the Illustrative Project Requirements included at Section B over \$150,000 in value (including the project value, brief description of scope, client, contract duration for each) that your organisation has completed in the last 5 years.
	<i>If possible, include examples of projects that were completed for Local Government clients. In each example, your organisation must be responsible for the design, fabrication and installation of public art.</i>
3.	Provide up to 3 case studies (including the project value, brief description of scope, client, contract duration, a description of the works, images of the works, together with the key challenges encountered and how these were resolved) of a project similar to the Illustrative Project Requirements included at Section B that your organisation has completed in the last 5 years.
	<i>Each case study must not exceed 3 A4 single sided pages In each case study, your organisation must be responsible for the design, fabrication and installation of public art.</i>

Key Personnel

4.	Provide the CV's of up to 3 people in your organisation who have undertaken projects similar (including Experience in designing and delivering public art) to the Illustrative Project Requirements included at Section B.
	<i>Each CV provided must not exceed 4 A4 single side pages.</i>



Success Factors

5.	What does your organisation consider to be the key factors that promote successful outcomes for delivering projects similar to the Illustrative Project Requirements included in Section B?
	<i>Your response must not exceed 2 A4 single sided pages.</i>

Concept Statement

6.	Provide an outline concept statement for how your organisation would approach the design of public art that is similar to the Illustrative Project Requirements set out in Section B. The statement should include (1) conceptual methodology and possible artwork approach; (2) how the approach relates to the nominated design themes; and (3) how the approach relates to the artist's previous experience.
	<i>Please note the concept statement is requested in outline form only and can be submitted in written, rough sketch or digitally rendered form, or whichever medium is most suitable for the individual artist or artist team to communicate their ideas.</i>





Section E – Conditions of EOI

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1. Introduction

1.1 Introduction to EOI process

- 1.1.1 Through this EOI, Council is seeking expressions of interest from suitably qualified and experienced Respondents to enter the Contract with a private sector entity (the **Contractor**) who will become responsible for carrying out and delivering the Works in accordance with the Contract.
- 1.1.2 It is currently expected that the proposed scope of the Works will be those described in the Illustrative Project Requirements.
- 1.1.3 Council has formulated this EOI to assist all Respondents in the formulation of their Submissions and to govern the terms and conditions under which Submissions will be prepared, submitted and evaluated, and communications (if any, including negotiations) between Council and Respondents will be carried out.

1.2 Management of EOI process

- 1.2.1 Responsibility for day to day management of the EOI process has been assigned to the Contact Person, who is the sole point of contact for Respondent communications with Council in relation to the EOI.
- 1.2.2 Any correspondence and queries regarding the EOI or the EOI process can be directed to the Contact Person, in the manner described in clause 4.7.

1.3 Use of TenderLink

- 1.3.1 Council will be utilising the e-tendering portal provided through TenderLink for this EOI process. EOI documents can be obtained by registering on the e-tender portal at <http://www.Tenderlink.com/ryde>. If you experience difficulties accessing this website please contact the TenderLink helpdesk on 1800 233 533.
- 1.3.2 All Respondents are required to create an on-line profile with TenderLink. Addenda may be provided to Respondents through TenderLink.
- 1.3.3 All queries and requests for technical or operational support in respect of TenderLink must be directed to:

TenderLink Help Desk
Telephone: 1800 233 533 (business hours)
Email: support@tenderlink.com
- 1.3.4 The TenderLink Help Desk is available between 9am and 5pm, Monday to Friday (excluding NSW and national public holidays).
- 1.3.5 If Respondents have any problem in accessing the TenderLink website or uploading a Submission they must contact the TenderLink Help Desk prior to Closing Time.
- 1.3.6 The Contact Person is not able to assist with TenderLink technical or operational issues.

1.4 Contract

- 1.4.1 The contract between Council and the successful Respondent (if any) in respect of the Works will be composed entirely of the Contract, including any Schedules, Annexures or Exhibits to the Contract.

- 1.4.2 The Contractor will be required to carry out the Works in accordance with the Contract.
- 1.4.3 There is no binding agreement, express or implied, between Council and any Respondent in relation to the Works until a Contract is executed by both Council and a Respondent.

1.5 EOI Submission

- 1.5.1 Submissions must be submitted in compliance with Section C – Returnable Schedules and this Section E – EOI Conditions.
- 1.5.2 Submissions must be received no later than the Closing Time.

1.6 Conditions

- 1.6.1 This EOI is issued subject to the conditions set out in this EOI document, and in submitting a Submission, the Respondent agrees to be bound by, and will be deemed to have accepted, the terms and conditions of this EOI, including the EOI Conditions.
- 1.6.2 Council may require a Respondent to complete additional disclosures or agreements when provided with access to information systems and/or records as part of this EOI process.
- 1.6.3 Each of the Additional Terms shall only apply if they are expressly identified as being applicable to this EOI process in Section A to this EOI.

1.7 TenderLink – General conditions of use

- 1.7.1 Access to, and use of, TenderLink is subject to terms and conditions. Respondents must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on TenderLink.
- 1.7.2 It is the responsibility of Respondents to ensure that their infrastructure, including operating system and browser revision levels, meet the minimum standards defined on TenderLink. Council takes no responsibility for any problems arising from Respondents' infrastructure and/or internet connectivity.
- 1.7.3 The Respondent acknowledges that, although Council has implemented the security measures described on TenderLink, Council does not warrant or represent that unauthorised access to information and data transmitted via the Internet will not occur.
- 1.7.4 Respondents should inform themselves concerning all security measures and other aspects of the TenderLink technical environment. Respondents should make their own assessment of the TenderLink system prior to using it for any matter related to this EOI and neither Council nor any other person will accept any responsibility in connection with any use, or attempted use, by any party of TenderLink.
- 1.7.5 Where there is any inconsistency between the lodgement procedures set out on TenderLink and those set out in this EOI, this EOI will prevail.

2. Interpretation

2.1 Glossary

A term or expression used in this EOI has the meaning given to it in this Glossary, unless the context otherwise requires.

ACL	<i>Australian Consumer Law</i> , found in Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth).
Addenda or Addendum	A notice given by Council under clause 4.5.
Additional Terms	Each of clauses 3.1, 3.2, 3.3.1 to 3.3.6, and 3.3.7.
Business Day	A business day, that is not Saturday or Sunday or a public holiday for the Council's employees
Claim	Includes any claim (including for any payment of money (including damages)): <ul style="list-style-type: none"> (a) under, arising out of, or in any way in connection with, this EOI or the EOI process; or (b) otherwise at law or in equity, including: <ul style="list-style-type: none"> (i) by statute; (ii) in tort for negligence or otherwise, including negligent misrepresentation; or (iii) for restitution.
Closing Date	The date that is described as such in Section A of this EOI, as may be updated by an Addendum in accordance with this EOI.
Closing Time	The deadline for the submission of Submissions on the Closing Date, as described in Section A of this EOI, and as may be updated by an Addendum in accordance with this EOI.
Contact Person	The person specified as such in Section A of this EOI.
Contract	The contract to be entered into between Council and the Contractor, in a form that is expected to be similar to the Illustrative Contract (contained in Section D), and including a scope of works that is expected to be similar to the Illustrative Project Requirements (contained in Section B), or as otherwise agreed between Council and the party it proposes to appoint as Contractor for the carrying out of the Works.
Contractor	The person (if any) with whom Council enters into a contract for the carrying out of the Works.
Council	The City of Ryde, and where the context permits, includes its authorised delegates.
Council's Associate	Council's councillors, officers, employees, consultants, nominees, agents, contractors and advisors (other than the Contractor).
Defect	Any discrepancy, error, ambiguity, inconsistency or omission.
Disclosed Information	Information, data and documents provided through TenderLink, set out in this EOI or otherwise disclosed to Respondents as part of the processes contemplated by this EOI, including as expressly described as Disclosed Information in Section A.
EOI	This request for expressions of interest, comprising each of the Sections.
EOI Conditions	This Section E of this EOI.
EOI Form	The document so named provided in Section C of the EOI.
EOI process	The process for inviting, receiving and evaluating Submissions, and determining and notifying Respondents of the outcome of the process in accordance with this EOI.
Evaluation Criteria	The evaluation criteria for evaluating Submissions, set out in Section A of this EOI.
Evaluation Panel	The EOI evaluation panel established by Council as described in clause 8.1.
Evaluation Process	The evaluation process described in clause 7.
Final Date for Addenda	The date that is described as such in Section A of this EOI, as may be updated by an Addendum in accordance with this EOI.
Final Date for Enquiries	The date that is described as such in Section A of this EOI, as may be updated by an Addendum in accordance with this EOI.

GIPA Act	<i>Government Information (Public Access) Act 2009 (NSW).</i>
Illustrative Contract	The form of contract included in Section D, which is illustrative of the form that is proposed to be entered into between Council and the party it proposes to appoint as Contractor for the carrying out of the Works.
Illustrative Project Requirements	The documents included or referred to in Section B of this EOI, including drawings, specifications and other technical documents, which documents are illustrative of the Works that Council currently expects will be required to be delivered by the Contractor under the Contract.
Intellectual Property Rights	All and any patents, patent applications, trademarks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.
Late Submission	Has the meaning given to that term in clause 6.2.
LG Act	<i>The Local Government Act 1993 (NSW).</i>
LG Regulation	<i>The Local Government (General) Regulation 2005 (NSW).</i>
Mandatory Criteria	Each of the criteria specified in clause 8.2.
NSW Code	The NSW Government's Code of Practice for Procurement.
NSW Guidelines	The NSW Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction Industry.
Probity Contact	The person or persons identified as such in Section A.
Procurement Process	The procurement process for the Works comprising the EOI process and RFT process.
RFT	Request for tenders for the Works.
RFT process	The request for tender process that Council intends to conduct following the conclusion of the EOI process in order to select a Contractor, as described in further detail in Section A.
Required Insurance	The insurances required under the Illustrative Contract.
Returnable Schedules	Each of the schedules contained in Section C, including the EOI Form, that are each required to be completed and submitted as part of a Submission.
Section	A section of this EOI being: <ul style="list-style-type: none"> (a) Section A – Key Information (b) Section B – Illustrative Project Requirements (c) Section C – Returnable Schedules (d) Section D – Illustrative Contract (e) Section E – EOI Conditions (this Section).
Statement of Departures	The document so named forming part of the Returnable Schedules.
Submission	An expression of interest lodged in response to this EOI.
Respondent	A bidder for the Works who has been issued with the EOI.
Respondent's Associate	Each of the Respondent's related bodies corporate, and the directors, officers, employees, consultants, nominees, agents, contractors and advisors of the Respondent or a related body corporate of the Respondent.
TenderLink	The e-tendering portal used by Council to electronically distribute EOI documentation, manage communications between Council and Respondents and act as a secure electronic tender box.

WHS Act	<i>Work Health and Safety Act 2011 (NSW).</i>
WHS Regulation	<i>Work Health and Safety Regulation 2017 (NSW).</i>
Works	The services, works or goods that will be required under the Contract, and which are expected to be similar to the works described in the Illustrative Project Requirements (contained in Section B of this EOI).

2.2 Interpretation

In this EOI, unless the context otherwise requires:

- 2.2.1 words denoting the singular include the plural and vice versa;
- 2.2.2 the word 'includes' in any form is not a word of limitation;
- 2.2.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 2.2.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of the EOI;
- 2.2.5 no rule of construction applies to the disadvantage of the party preparing the EOI on the basis that it prepared or put forward this EOI or any part of it;
- 2.2.6 any covenant, term, condition or provision to be performed or warranty or guarantee or indemnity given by two or more persons shall bind those persons jointly and each of them severally;
- 2.2.7 where this EOI provides that Council 'may' do a thing, it may do so in its absolute discretion; and
- 2.2.8 a reference to:
 - (a) a gender includes all other genders;
 - (b) any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
 - (c) any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
 - (d) writing includes writing in digital form;
 - (e) 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
 - (f) a person includes a firm, partnership, joint venture, association, corporation or other body corporate; and
 - (g) a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee.

3. Construction guidelines and codes

3.1 Submissions to include matters required by NSW Code and NSW Guidelines

- 3.1.1 The NSW Code and NSW Guidelines must be complied with by each Respondent. In particular:
- (a) for projects where the NSW Government or public sector body contribution is \$10 million or more or is at least \$5 million and represents at least 50 percent of the total construction project value, a Workplace Relations Management Plan and any other documents and information necessary to meet the requirements of section 6.1 of the NSW Guidelines must be provided;
 - (b) a Work Health Safety Management Plan or Site Specific Safety Management Plan and any other documents and information necessary to meet the requirements of section 9 of the NSW Guidelines; and
 - (c) the Schedule of Compliance with NSW Code and NSW Guidelines must be signed and submitted on behalf of the Respondent.
- 3.1.2 By submitting a Submission, the Respondent agrees to Council and the Construction Compliance Unit taking any steps to investigate claims, statements and assertions made by the Respondent in any of the documents referred to above of this clause before any contract is awarded to that Respondent.
- 3.1.3 The Respondent must cooperate with Council and the Construction Compliance Unit in respect of the investigation of compliance with the NSW Guidelines, and by submitting a Submission agrees that that compliance is a mandatory requirement of the EOI process.
- 3.1.4 The Respondent will allow authorised personnel of Council and the Construction Compliance Unit to:
- (a) access premises and sites controlled by the Respondent or its related entities;
 - (b) inspect and copy relevant records and documents;
 - (c) inspect any work, material, machinery, appliance article or facility; and
 - (d) interview any person,
- as is necessary to investigate the claims, statements and assertions made by the Respondent in the response or to demonstrate the Respondent's current or, where relevant, past compliance with the NSW Code and NSW Guidelines during the EOI process.

3.2 Compliance with NSW Code and NSW Guidelines

- 3.2.1 Nothing in this clause 3.2 limits or otherwise affects clause 3.1.
- 3.2.2 The NSW Code and NSW Guidelines apply to the Works. Terms used in this clause 3.2 have the same meaning as is attributed to them in the NSW Guidelines.

Primary Obligation

- 3.2.3 By submitting a Submission, the Respondent acknowledges and agrees that it:

- (a) is aware that the NSW Code and NSW Guidelines apply to the Works, including the requirements to give access to authorised personnel to inspect any work, material, or machinery, inspect and copy any record relevant to the Works, and interview any person;
- (b) is taken to have read and understood the NSW Code and NSW Guidelines and the obligations they impose;
- (c) will comply with, and ensure all of its related entities (as defined in the NSW Guidelines) comply with, the NSW Code and the NSW Guidelines on the Works;
- (d) will agree, if successful in this EOI process, to contractual terms that give effect to the NSW Code and NSW Guidelines and mechanisms to ensure their compliance and enforcement; and
- (e) will comply with, and ensure all of its related entities (as defined in the NSW Guidelines) comply with, the NSW Code and NSW Guidelines in respect of any of their building and construction work (including any subsequent privately funded work), on and from the date of submitting a Submission.

Disclosure of Information

3.2.4 Notwithstanding any other provision of the EOI process, the Respondent agrees and consents to the disclosure of information concerning the Respondent's, and the Respondent's Associates, compliance with the NSW Code and NSW Guidelines, including the disclosure of details of past and present compliance to the NSW Code and NSW Guidelines, the National Code of Practice for the Construction Industry, and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry as varied from time to time, including whether or not sanctions have been imposed on a Respondent or any of its related entities by the Commonwealth or any State or government agency.

3.2.5 The consent in clause 3.2.4 is given to the State of New South Wales, including its agencies (including Council), Ministers and the CCU (and its authorised personnel) for purposes including monitoring and investigating compliance and ensuring, facilitating and promoting compliance with the NSW Code and NSW Guidelines.

Subcontractors etc

3.2.6 Where the Respondent proposes to subcontract any part of the Works, the Respondent agrees that it will ensure, through contract, that each subcontractor or consultant agrees to:

- (a) the contractual promises and obligations under the headings "Primary Obligation" and "Disclosure of Information" of this clause 3.2;
- (b) comply with the applicable plans and policies on the Works referred to under the heading "Submissions to include certain matters required by NSW Procurement Guidelines and Code" of clause 3.1; and
- (c) where a subcontractor or consultant is nominated in EOI process documents, that the nominated party co-operates with authorised personnel during the EOI process for the purposes outlined in clause 3.1.3 and 3.1.4.

3.3 Compliance with the Commonwealth Building Code

3.3.1 In this clause 3.3:

ABCC means the body referred to in subsection 29(2) of the Act.

Act means the *Building and Construction Industry (Improving Productivity) Act 2016*.

Building Code means the *Code for the Tendering and Performance of Building Work 2016*, which is available at <https://www.legislation.gov.au/Details/F2017C00668>.

Building Work has the same meaning as in subsection 3(4) of the Building Code.

Commonwealth Funded Building Work means Building Work in items 1-8 of Schedule 1 of the Building Code.

Enterprise Agreement has the same meaning as in the *Fair Work Act 2009*.

Exclusion Sanction has the same meaning as in subsection 3(3) of the Building Code.

Related Entity has the same meaning as in subsection 3(2) of the Building Code.

Works means Commonwealth Funded Building Work that is the subject of this EOI.

- 3.3.2 The Building Code applies to the Works.
- 3.3.3 By submitting a Submission to undertake the Works, Respondents will be deemed to have read and agreed that they must comply with the Building Code.
- 3.3.4 All tender processes and calls for expressions of interest (howsoever described) in respect of the Works will be conducted in a manner that is consistent with the Building Code.
- 3.3.5 The Respondent is only permitted to participate in the EOI process where the Respondent is not subject to an Exclusion Sanction.
- 3.3.6 As part of its Submission, Respondents must submit:
 - (a) a signed “Declaration of Compliance with Commonwealth Building Code” which is attached as a Returnable Schedule; and
 - (b) the further information outlined in Attachment A to the “Declaration of Compliance with Commonwealth Building Code”.
- 3.3.7 Where Council issues a Request for Tender in relation to the Works, Tenderers will be required to submit a Workplace Relations Management Plan with their tenders for approval by the ABCC in accordance with Part 6 of the Building Code.

4. EOI information and communications

4.1 Meetings for information

- 4.1.1 The Contact Person may, from time to time prior to the Closing Time, convene meetings with any or all Respondents to discuss issues arising from the EOI.
- 4.1.2 Respondents may also request that the Contact Person convene a meeting to seek clarification of an aspect of the EOI. When making any such request the Respondent must forward to the Contact Person, as a notice under clause 4.7, the questions or issues requiring clarification. The Contact Person may consider such request and may, in its absolute discretion, convene a meeting following such a request.

4.2 Conditions for meetings

The following conditions will apply to all meetings convened under clause 4.1 unless otherwise notified by the Contact Person prior to the meeting:

- 4.2.1 prior to the meeting the Contact Person will circulate an agenda and meeting protocol;
- 4.2.2 the Respondent must provide to the Contact Person a list of its attendees no later than one Business Day prior to each meeting (or by such earlier date as is notified by the Contact Person to Respondents);
- 4.2.3 if minutes of the meetings are taken and issued by Council, then those minutes must be confirmed by the Respondent no later than two Business Days after receipt by the Respondent. If within this period there is no written response by a Respondent notifying disagreement with the minutes, the minutes will be considered to have been accepted by the Respondent;
- 4.2.4 Council is not under any obligation to discuss or clarify any matter with, or answer any question of, any Respondent at a meeting; and
- 4.2.5 subject to clause 4.7.4, the Contact Person may, in its absolute discretion, inform all other Respondents of any matter discussed, clarified, questioned or answered at any meeting, including the substance of that discussion.

4.3 Respondents not to rely on information from meetings

- 4.3.1 Without limiting any other provision of the EOI, nothing which occurs during a meeting held prior to or during the EOI process, including in a meeting under clause 4.1 or as a part of the process for such a meeting or inspection (including the issue of any minutes of such a meeting or inspection):
 - (a) may be relied upon by the Respondent;
 - (b) will be construed as a direction, instruction or notice by Council or the Contact Person to do or not do anything; or
 - (c) alters, amends, waives or varies any of the terms of the EOI,unless:
 - (d) in the case of clause 4.3.1(a) or 4.3.1(b), subsequently confirmed in writing by the Contact Person and endorsed with a written statement by the Contact Person expressly stating that it may be relied upon; or
 - (e) in the case of clause 4.3.1(c), subsequently confirmed in an Addendum, and then only to the extent provided in that Addendum.

4.4 Additional Investigations

In consultation with Respondents, Council may agree to arrange or conduct additional investigations (e.g. geotechnical investigations, public utility services location, survey, etc.) at Council's cost. Information resulting from any such investigations will be provided to each Respondent.

4.5 Changes to the EOI

- 4.5.1 Council may change, amend, vary, update or supplement the EOI in any manner Council requires in its absolute discretion by issuing Addenda in accordance with the procedure specified in this clause 4.5 and clause 4.6.

- 4.5.2 Without limiting clause 4.5.1, the Addendum may include changes to the EOI, including additional documents to be included as Disclosed Information or changes to terms or dates, including at any time before the Final Date for Addenda, a change to the Closing Date, Closing Time, Final Date for Addenda or any other date or time relating to the EOI process.
- 4.5.3 If Council changes the Closing Date or Closing Time, any Respondent that has (as at the date of issue of the relevant Addendum changing the Closing Date or Closing Time) lodged a Submission may within three Business Days after the issue of the relevant Addendum, request in writing that Council returns its Submission and Council must promptly return the Submission. Unless a Respondent has made such a request within the required time period referred to above, that Respondent is regarded as having lodged its Submission on the basis of the changed Closing Date.
- 4.5.4 Council may only give Addenda on or before the Final Date for Addenda.
- 4.5.5 It is currently proposed that Addenda will be notified by being placed on the TenderLink website (refer to clause 4.6 below).
- 4.5.6 If Council issues an Addendum, then the relevant document is amended accordingly.
- 4.5.7 All conditions of this EOI will apply to any Addendum and any change, amendment, variation, update or supplement to this EOI.

4.6 Registered Respondents and notices via TenderLink

- 4.6.1 In the event that Council elects to change, amend, vary, update or supplement this EOI, it will make reasonable efforts to inform Respondents in accordance with the following procedure:
- (a) Respondents may be informed by notices and other information issued as Addenda posted on TenderLink;
 - (b) Respondents who have registered and downloaded the EOI should be notified by TenderLink via email of the issue of any Addenda;
 - (c) TenderLink requires Respondents to log in to their system to collect Addenda when notified;
 - (d) Council accepts no responsibility if a Respondent fails to become aware of any Addendum which would have been apparent from a visit to the TenderLink page for this EOI; and
 - (e) if a Respondent has obtained the EOI other than from TenderLink, they must visit TenderLink, register as a user and download the EOI.
- 4.6.2 It is in the interest of Respondents to ensure they have correctly recorded their contact details prior to downloading the EOI. If Respondents have not recorded their details correctly, they should amend their details and download the EOI again.

4.7 Respondent enquiries and notices

- 4.7.1 For the purpose of this clause 4.7, **notice** means a notice, consent, approval or other communication under this EOI or in connection with a Submission.
- 4.7.2 A notice from a Respondent to Council must be signed by or on behalf of the person giving it, addressed to Council care of the Contact Person and delivered via the TenderLink online forum, which can be accessed at www.Tenderlink.com/ryde.

- 4.7.3 Respondents may issue a notice to Council to make an enquiry or request clarification in connection with this EOI up to the Final Date for Enquiries.
- 4.7.4 Council reserves the right to provide the details of any enquiries or requests for clarification and Council's responses to such enquiries or requests, to all Respondents on a non-attributed basis. If a Respondent submits an enquiry or request for clarification on a commercial in confidence basis, the Contact Person will either not circulate the response or will allow the enquiry or request for clarification to be withdrawn without it being answered.
- 4.7.5 Any response to a Respondent enquiry will be provided in writing.
- 4.7.6 Unless explicitly stated otherwise in this EOI or otherwise with prior written approval from the Contact Person, Respondents must not directly or indirectly contact or direct any enquiries to:
- (a) any government agencies or their representatives or personnel; or
 - (b) Council, Council's Associates or any involved State or Commonwealth officers in relation to any aspect of the Works or this EOI, other than the Contact Person.
- 4.7.7 All communications regarding the Works must be via the processes set out in this EOI.

4.8 Respondent receipt of Addenda or responses to notices

- 4.8.1 If Council:
- (a) issues an Addendum under clause 4.5; or
 - (b) provides a response to an enquiry or clarification request under clause 4.7,
- via the TenderLink website or email, Council is not responsible if a Respondent cannot or does not:
- (c) receive the email sent on behalf of Council; or
 - (d) open or read the response on the TenderLink website or email or any attachment to the email,
- due to any reason, including as a result of or in connection with any computer viruses, computer defects or system failure.
- 4.8.2 The Respondent must:
- (a) acknowledge receipt of each Addendum that it receives; and
 - (b) otherwise, if requested by Council acknowledge receipt of any response to a Respondent enquiry or clarification request.

4.9 Disclosed Information

- 4.9.1 Information on, or in connection with the Works is provided to Respondents:
- (a) in Disclosed Information provided to the Respondents in writing (including in any Section named 'Disclosed Information' included in this EOI);
 - (b) in Disclosed Information arising from enquiries, meetings and briefings (as described in clause 4.1); and

(c) through independent due diligence inquiries by Respondents.

4.9.2 A review of publicly available information, or information available from the making of reasonable inquiries, should also be undertaken by Respondents.

4.9.3 All information made available to Respondents by or on behalf of Council (or the Council's Associates), is provided for the information of Respondents and on the basis of the disclaimers, conditions, qualifications and releases set out in this EOI.

4.10 Acknowledgements by the Respondent regarding Disclosed Information

The Respondent acknowledges and agrees that the Disclosed Information is made available to Respondents on the following conditions:

4.10.1 the Disclosed Information may be issued to Respondents from time to time prior to the Final Date for Addenda for the information only of the Respondents;

4.10.2 the Disclosed Information does not purport to comprehensively describe the scope of the Works or contain all of the information that the Respondent requires for the purposes of preparing and lodging a Submission or making a decision to enter into a contract;

4.10.3 the Disclosed Information may contain errors or omissions and may be incomplete, inaccurate or inadequate for the needs of the Respondent and Council shall have no liability, duty or obligation whatsoever in that regard;

4.10.4 no representation or warranty express or implied is, has been or will be made by Council or any Council's Associate in relation to:

(a) the EOI or the Works;

(b) the Disclosed Information;

(c) the conditions of or at the site at which the Works will be carried out, or any structure, building, improvement or other thing on, above or adjacent to or under the surface of the site;

(d) any transaction or arrangement contemplated by the EOI; or

(e) any other matter relevant to the Respondent's decision to lodge a Submission in response to this EOI or to enter into any contractual documents following this EOI process;

4.10.5 neither Council nor any Council's Associate has verified or has any obligation to verify the currency, reliability, adequacy, accuracy, correctness, suitability, comprehensiveness or completeness of the Disclosed Information;

4.10.6 Disclosed Information may not have been prepared for the purpose of this EOI or with the Respondent or any person in the position of the Respondent in mind or for the purpose of the Works and may not have been prepared for the purpose of the Respondent's particular Submission;

4.10.7 there may be other information or documents in the knowledge or possession of Council or any Council's Associate, other government departments or agencies or their respective officers, employees, consultants, contractors or agents, which are relevant to the Works, the EOI process or the preparation or lodging of a Submission, which have not been provided to the Respondent or to which reference has not been made; and

4.10.8 notwithstanding the information provided to the Respondent through the Disclosed Information, the Respondent must rely only upon its own investigations, evaluations,

enquiries, interpretations and sources and its own assessments of the Works and as to all matters and things relevant to the Respondent's Submission.

5. Submission requirements

5.1 General

Respondents are required to submit their Submissions in accordance with the provisions of this EOI. It is also expected that Respondents will provide additional material sufficient to fully describe their Submission, including any information that the Respondent considers relevant to Council's consideration of its Submission.

5.2 Minimum content and format requirements

All Submissions must, as a mandatory requirement in order to be considered:

- 5.2.1 include Returnable Schedules completed to the extent relevant to the EOI, and in accordance with the requirements of this EOI (including as required by each Returnable Schedule);
- 5.2.2 substantially comply with all applicable requirements of this EOI.
- 5.2.3 if containing computer files, not have viruses, worms or other disabling features;
- 5.2.4 be presented in the English language;
- 5.2.5 contain information which is clear and legible; and
- 5.2.6 unless otherwise specified, express all measurements in Australian legal units of measurement.

5.3 Completed Returnable Schedules

Respondents must provide the information required by the Returnable Schedules clearly and in a manner that demonstrates an understanding of Council's specific performance requirements, together with such information, and in such detail, as the Respondents consider will enable an objective assessment to be made in relation to each of the Evaluation Criteria. Detailed requirements for the completion of Returnable Schedules are provided within each Returnable Schedule.

6. Submission Process

6.1 Lodgement and Closing Date

- 6.1.1 Respondents must submit Submissions to Council at any time prior to the Closing Time by electronic submission in the Electronic Tender Box at www.Tenderlink.com/ryde (which is Council's preferred submission option), in accordance with the lodgement procedures set out in this clause and on the TenderLink website.
- 6.1.2 Each Submission must be signed by or on behalf of the Respondent with scanned signatures, and original copies of executed documents must be provided to the Contact Person upon request.
- 6.1.3 A Respondent may submit more than one Submission in response to this EOI.

- 6.1.4 Submissions lodged by any other means, including by post, facsimile or email, will not be considered.
- 6.1.5 Failure to comply with the conditions in this clause 6 may lead to the Submission not being considered in Council's absolute discretion.
- 6.1.6 Submissions lodged through TenderLink will be deemed to be authorised by the Respondent.

6.2 Late Submissions, incomplete Submissions and corrupted files

- 6.2.1 A Submission lodged after the Closing Time is a late Submission (**Late Submission**).
- 6.2.2 The judgment of Council as to the actual time that a Submission is lodged is final.
- 6.2.3 Respondents assume the risk that their Submissions may not be received.
- 6.2.4 Any Submission lodged:
 - (a) after the Closing Time; or
 - (b) electronically prior the Closing Time but where the submission is not complete by the Closing Time (refer to clause 6.2.5),

will be deemed to be a Late Submission, and will be opened and registered separately from Submissions that are lodged at or before the Closing Time.

- 6.2.5 Electronic lodgement on TenderLink must be fully complete by the Closing Time. The electronic link will cut off right on Closing Time and if submission of the Submission has commenced prior to Closing Time but is not complete, it will be deemed to be a Late Submission. Where a Submission lodgement consists of multiple uploads, due to the number and/or size of the files, Respondents must ensure that transmission of all files is completed and receipted before the Closing Time.
- 6.2.6 Council may, in its absolute discretion, not consider or consider:
 - (a) a Late Submission;
 - (b) an incomplete Submission (including those with electronic files which cannot be read or decrypted); or
 - (c) a Submission which Council believes to potentially contain any virus, malicious code or anything else which might compromise the integrity or security of TenderLink or Council's computing environment.

6.3 Proof of Lodgement

- 6.3.1 When a Submission lodgement has successfully completed via TenderLink, an official receipt should be provided on screen. Subject to clause 6.2.2, the TenderLink record of the time and date the Submission was received will be conclusive evidence of successful lodgement of a Submission. It is essential that Respondents save and print this receipt as proof of lodgement. A separate email confirming receipt of the Submission should also be automatically dispatched to the email address of the registered user whose details were recorded at login.
- 6.3.2 Failure to receive a receipt indicates that lodgement has not completed successfully.

6.4 Responsibility for lodgement

Respondents acknowledge that:

- 6.4.1 lodgement of their Submission on time and in accordance with this clause 6 is entirely their responsibility; and
- 6.4.2 Council will not be liable for any loss, damage, costs or expenses suffered or incurred by Respondents or any other person if, for any reason, a Submission or any other material or communication relevant to this EOI, is not received on time, is corrupted or altered or otherwise is not received as sent, or as saved to physical media, cannot be read or decrypted, or has its security or integrity compromised.

7. Procedure following Closing Time

7.1 Opening of Submissions

Council will only open the Submissions after the Closing Time. The Submissions will be opened by a minimum of two designated Council officers.

7.2 Proposed procedure after the Closing Time

7.2.1 Following the Closing Time, Council:

- (a) will consider Submissions in accordance with the EOI and the LG Regulation;
- (b) may use any other relevant information obtained in relation to a Submission, including through this EOI process or by independent inquiry, in the evaluation of a Submission;
- (c) may seek further information from a Respondent, or consent to a request by a Respondent to provide further information, subject to the requirements of the LG Regulation; and
- (d) subject to the requirements of the LG Regulation, may meet with representatives of the Respondent to discuss and clarify any aspect of the Respondent's Submission.

7.2.2 For the purposes of clause 7.2.1(c), any further information that Council may, in its absolute discretion, request from a Respondent following the Closing Time in accordance with the LG Regulation may include information to enable the Submission of that Respondent to conform with the requirements of this EOI specified in clause 5.2. Where the Respondent does not provide that further information within the time nominated by Council, Council may elect in its absolute discretion to disregard the Submission of that Respondent.

7.2.3 Respondents acknowledge and agree that Council makes no warranty, guarantee or representation that a Respondent may be invited to make presentations or to provide further submissions, information or clarifications prior to Council's decision to select or reject a Submission.

7.3 Submission presentation

7.3.1 Without limiting clause 7.2.1(c), following the Closing Time Council may (but may determine not to do so, in its absolute discretion) require the Respondent to give a presentation to the Evaluation Panel or other representatives of Council regarding its Submission, or attend an interview.

7.3.2 If Council requires a Respondent to attend and participate in a presentation session:

- (a) the purpose of the presentation sessions will be to enable Council and the Evaluation Panel to gain a full understanding of the Respondent's Submission and seek clarification of a Submission if necessary;
- (b) the Respondent must attend and participate in all presentation sessions at its own expense; and
- (c) any presentation session will be conducted in accordance with protocols issued by Council to the Respondent prior to the presentation session.

8. Evaluation Process

8.1 Evaluation of Submissions

- 8.1.1 The Evaluation Process will be carried out by an Evaluation Panel, selected by Council. The Evaluation Panel is likely to comprise representatives from Council and its consultants, and will be supported by specialist consultants as required.
- 8.1.2 The evaluation of Submissions will be based primarily on the information provided in the Submission submitted to Council. Any information subsequently provided by a Respondent in interviews, presentations and in response to requests for clarification or additional information pursuant to this EOI may also be evaluated by Council as supplementary information to a Respondent's Submission.
- 8.1.3 Council may treat any required detail in the Submission that is left out, illegible or unintelligible as failing to fulfil the relevant requirement.
- 8.1.4 The evaluation and shortlisting of Submissions are confidential and will not be disclosed at any time during or after the Evaluation Process.

8.2 Mandatory Criteria

The following criteria (**Mandatory Criteria**) are minimum requirements that Council expects Respondents to meet for their Submissions to be considered:

- 8.2.1 the Respondent must be solvent at all times during the EOI process;
- 8.2.2 the Respondent must demonstrate to Council's satisfaction that the Respondent's financial viability is sufficient to meet its obligations under the Contract for the term of the Contract (refer to clause 11.12 below); and
- 8.2.3 any other Mandatory Criteria specified in Section A to this EOI, if any.

Council reserves the right to exclude from the EOI process any Respondent or Submission that fails to meet any of the Mandatory Criteria.

8.3 Evaluation Criteria

Submissions that meet the Mandatory Criteria to the satisfaction of The Evaluation Panel will then be considered using the Evaluation Criteria set out in Section A to this EOI. The Evaluation Criteria might not be accorded equal weight and are not necessarily set out in any order of priority.

8.4 Facilitated interviews

- 8.4.1 Without limiting clause 7.2.1(c), following the Closing Time and as part of the Evaluation Process, Council may (but may determine not to do so, in its absolute discretion) select a short-list of Respondents to participate in a facilitated interview or provide a presentation as outlined in this clause 8.4.

- 8.4.2 Each short-listed Respondent may be invited to separately attend an interview with the Evaluation Panel and other Council representatives.
- 8.4.3 If Council invites a Respondent to attend and participate in an interview:
- (a) the purpose of the presentation sessions will be to enable Council and the Evaluation Panel to gain a full understanding of the Respondent's Submission and seek clarification of a Submission if necessary;
 - (b) the Respondent must attend and participate in all interview sessions at its own expense;
 - (c) any interview will be conducted in accordance with protocols issued by Council to the Respondent prior to the interview session; and
 - (d) there is no requirement for a pre-prepared presentation from the Respondent nor will additional information from the Respondent that was not part of the Submission be accepted.
- 8.4.4 It will be at the absolute discretion of Council to hold the interviews and Council may elect to interview all, some or none of the Respondents.

8.5 Security, probity and financial assessment

- 8.5.1 Council may, in its discretion, carry out security, probity and/or financial checks of one or more short-listed Respondents as part of the Evaluation Process.
- 8.5.2 By lodging a Submission the Respondent agrees that the Council may do one or both of:
- (a) conduct or procure independent research regarding the Respondent, the Respondent's Associates and/or the Respondent's joint venturers, partners, guarantors or shareholders and the information contained in the Submission. Council reserves the right to take into account any matters revealed as a result of its probity investigations in evaluating Submissions; and
 - (b) perform or procure such security, probity and/or financial checks and procedures as Council, in its absolute discretion, may determine are necessary in relation to the Respondent, or any of the Respondent's Associates. The Respondent agrees to provide all reasonable assistance, at the Respondent's cost, to Council in this regard.

8.6 Recommendation

- 8.6.1 At the conclusion of the Evaluation Process the Evaluation Panel will provide a report and recommendation to the General Manager.

9. Outcomes following Evaluation Process

- 9.1 Following the Evaluation Process, Council may in its absolute discretion:
- 9.1.1 select one or more Respondents, with or without conditions, to participate in the RFT process;
 - 9.1.2 decline to select any Respondents;
 - 9.1.3 call for public tenders;
 - 9.1.4 proceed with any other process; or abandon the Procurement Process.

- 9.2 Council will not be liable for any costs or damages incurred by Respondent through exercising this discretion.
- 9.3 Respondents may be selected for participation in the RFT process even if their Submissions do not conform strictly to all requirements of the EOI.
- 9.4 Respondents will be advised in writing whether they are to be selected or were unsuccessful.
-

10. Notification of probity breach

- 10.1.1 Council is committed to promoting ethical behaviour. Should any Respondent consider that it is not being accorded fairness in the Evaluation Process, immediate notice of its complaint must be given in writing to the Probity Contact.
- 10.1.2 The Probity Contact can be contacted using the details set out in Section A of this EOI.
- 10.1.3 The notification must set out the alleged failure, the impact upon the Respondent's interests, any relevant background information and the outcome desired.
- 10.1.4 In lodging its Submission, the Respondent agrees that delay in notification of an alleged probity breach, or notification after the announcement of one or more selected Respondents for participation in the RFT process, will operate as a waiver of any such breach, and will preclude a Respondent from relying upon or taking action based upon such breach.
- 10.1.5 Each Respondent must comply with the requirements of the Probity Contact in relation to the EOI process.
-

11. General EOI Conditions

11.1 General

- 11.1.1 The information and intentions set out in this EOI may change at any time with limited or no notice. Respondents proceed with Submissions and participate in the EOI process at their own risk.
- 11.1.2 The decision of Council in relation to a Submission will be final and not subject to challenge, dispute, explanation or further correspondence.
- 11.1.3 Council is under no obligation to give reasons for any decision made or not made in relation to this EOI, including those relating to any of the Submissions received and the Evaluation Process.

11.2 Invitations for Submissions

- 11.2.1 This EOI Invitation is not a legal offer or a contract and the process it provides for is not a tender process.
- 11.2.2 The EOI and any conduct or statement whether prior to or subsequent to the issue of this document is not and must not be deemed to be: an offer to contract; or a binding undertaking of any kind by Council (including, without limitation, quasi-contractual rights, promissory estoppel, or rights with a similar legal basis).
- 11.2.3 In calling for Submissions, Council is issuing an invitation for expressions of interest from Respondents and does not intend to create any agreement between Council and any Respondent in relation to the Submission or the EOI process by which it will be

conducted. Council has no contractual or other legal obligation to the Respondent with respect to the review, consideration or evaluation of a Submission, the failure to review, consider or evaluate a Submission, or the selection or rejection of any Respondent. The issue of this EOI in no way commits Council to award any contract pursuant to the EOI process or otherwise.

- 11.2.4 This EOI (whether in whole or in part) and the EOI process do not constitute or otherwise give rise to a tender process contract.

11.3 Warranties by Respondent

In submitting its Submission, the Respondent:

11.3.1 warrants that:

- (a) it has the expertise, experience and resources necessary to perform the obligations of the Respondent as set out in the EOI;
- (b) if selected to participate in the RFT process, it fully intends to participate in that process with a view to being appointed as the Contractor and carrying out the Works;
- (c) all information provided in its Submission will be true, complete and accurate;

11.3.2 warrants that:

- (a) it has not breached the ACL in any way in the preparation of its Submission and will not do so in its participation in the EOI process;
- (b) it has complied with the requirements of the *Privacy Act 1988* (Cth) and the *Privacy and Personal Information Protection Act 1998* (NSW) in giving any personal information in the Submission and that the individuals whose personal information is disclosed in the Submission have agreed to the use and disclosure of that information by Council for the purposes of its Submission; and
- (c) it does not have any actual or potential conflict of interest in lodging its Submission, participating in the RFT process if it is invited to do so, or in carrying out the Works if it is successful in becoming the Contractor;

11.3.3 warrants that:

- (a) it is not insolvent and there is no unfilled or unsatisfied judgment or court order outstanding against it or the Respondent's Associates;
- (b) it will inform the Contact Person promptly in writing of a material change to the information provided in its Submission and of any change in its circumstances which may affect the truth, completeness or accuracy of that information; and
- (c) it will not change its proposed consortium members or major subcontractors without the prior written consent of Council (which may be given or withheld in its absolute discretion);

11.3.4 without limiting clause 11.3.3, warrants that:

- (a) it has the financial capacity to enter into the Contract with Council;
- (b) it will remain financially solvent throughout the Procurement Process; and

- (c) it will inform Council of any event that may have an impact on its financial capacity to participate in the Procurement Process or undertake the Works; and

11.3.5 acknowledges and agrees to all of the conditions, requirements, qualifications, releases and disclaimers in this EOI.

11.4 Respondent release

11.4.1 Respondents will have no Claim against Council or any Council's Associate with respect to this EOI, or anything contemplated by this EOI, including:

- (a) the exercise of or failure to exercise Council's rights under this EOI or otherwise in the Procurement Process;
- (b) any action taken or not taken;
- (c) any decision made or not made;
- (d) the costs of making or not making a Submission; or
- (e) the costs of participating in the EOI process,

and the Respondent on behalf of itself and the Respondent's Associates hereby releases Council and the Council's Associates from any obligation, duty, liability, proceedings, suits or Claims arising out of or in connection with this EOI.

11.4.2 The Respondent releases Council and the Council's Associates from, and indemnifies Council and the Council's Associate against:

- (a) any Claim by the Respondent or a Respondent's Associate; or
- (b) any liability to the Respondent or a Respondent's Associate in respect of any damages, losses (including loss of profits), expenses (including legal expenses) or liability whatsoever suffered or incurred by the Respondent or a Respondent's Associate,

arising out of or in any way in connection with the Disclosed Information, or the content of, mistakes in or completeness or incompleteness of the Disclosed Information.

11.5 Reservations

To the extent permissible by law, and without limiting or otherwise affecting its other rights (including under this EOI), Council may at any time, in its absolute discretion, do any one or more of the following:

- 11.5.1 alter the EOI, including the Evaluation Criteria;
- 11.5.2 provide additional information or clarification to any or all Respondents;
- 11.5.3 amend, alter, suspend or cancel any aspect of the Works, abandon or terminate the Works, or alter the form of the Works, at any stage prior to signing the Contract;
- 11.5.4 discontinue the EOI Process, the Procurement Process or any subsequent process at any time;
- 11.5.5 communicate in any way with one or any number of Respondents after the Closing Time, in relation to features of the Submissions;

- 11.5.6 respond or not respond to any questions submitted by any Respondent in relation to the EOI process and disclose the contents of Council's response (if any) to any such question to other Respondents;
- 11.5.7 adopt different approaches with different Respondents;
- 11.5.8 treat a Submission as having been duly lodged in its absolute discretion;
- 11.5.9 waive any irregularity in a Submission or non-conformance of a Submission (including the late submission of a Submission);
- 11.5.10 accept a Submission which does not conform to the requirements of this EOI (including the requirements of clause 5.2);
- 11.5.11 refuse to review, evaluate or consider any Submission, or refuse to select any Respondent to participate in any subsequent process, including:
 - (a) where Council is not satisfied that a Respondent has acknowledged receipt of an Addendum;
 - (b) where Council is not satisfied that the Submission conforms to the requirements of this EOI; or
 - (c) where the Respondent has not provided information by way of clarification or in response to a request for information;
- 11.5.12 allow any Respondent to change its Submission;
- 11.5.13 vary, amend or add to the Disclosed Information;
- 11.5.14 publish the names of some particular or all Respondents;
- 11.5.15 disqualify a Respondent or terminate its further participation in the EOI process;
- 11.5.16 not give any reasons for any decision it makes in respect of the EOI process or the Works;
- 11.5.17 make any decisions arising out of this EOI or any or all subsequent processes in its absolute discretion; or
- 11.5.18 formulate any decisions without being required to assign or provide any reason, and Council will not be liable to any Respondent if it does any one or more of the above.

11.6 Fairness Requirements

- 11.6.1 The Respondent acknowledges by submitting its Submission that:
 - (a) it must not attempt to obtain any advantage for itself by seeking information other than through the means set out in this EOI or by attempting to influence any representative or employee of Council (or any advisor of, or consultant to, Council) in relation to the Works through any means other than enquiries in accordance with this EOI or the presentation of information at the request of the Contact Person;
 - (b) it must not engage in any collusive practices, anti-competitive conduct or other similar conduct with any other Respondent or any other person in relation to the preparation and lodgement of any Submission;

- (c) the Respondent and each Respondent's Associate must not have violated and must not violate any applicable laws or the policies of Council regarding the offering of inducements in connection with the preparation of its Submission; and
 - (d) if it breaches any of these requirements of this clause 11.6, its Submission (and those of any Respondent with whom it colludes) may not be considered, or status as a selected Respondent for the RFT process (if applicable) may be withdrawn.
- 11.6.2 If a Respondent is found to have made false or misleading claims or statements, to have received improper assistance from employees, ex-employees of Council and/or contractors or ex-contractors of Council, or to have used information unlawfully obtained from Council in the preparation of its Submission, Council reserves the right in its absolute discretion to cease further consideration of any Submission lodged by or on behalf of that Respondent, to withdraw any status as a selected Respondent for the RFT process (if applicable), and to exercise any or all legal remedies that are available to Council.

11.7 Canvassing officials

Any Respondent who improperly solicits support for its Submission or otherwise seeks to improperly influence the outcome of the EOI process, including by:

- 11.7.1 offering any inducement, fee or reward to any member or officer of Council or to any Council's Associate;
- 11.7.2 canvassing any of the persons referred to in clause 11.7.1; or
- 11.7.3 contacting any member or officer of Council about the EOI or any process relating thereto, except as authorised by this EOI, including for the purposes of discussing the possible transfer to the employment of the Respondent of such member or officer,

may, in Council's absolute discretion, be disqualified from any further involvement in the EOI process (without prejudice to any other remedies available to Council and without prejudice to any criminal liability which such conduct by a Respondent may attract) and may have status as a selected Respondent for the RFT process (if applicable) withdrawn.

11.8 Confidentiality

- 11.8.1 Respondents identified for participation or involved in the EOI process or subsequent processes must not advertise, promote or publish their participation or involvement, in any form, without the written consent of Council through the Contact Person.
- 11.8.2 The Respondent acknowledges that it will be given access to information in the EOI and throughout the EOI process in connection with the Works, the EOI and/or in connection with Council's consideration of Submissions submitted in response to the EOI (**Confidential Information**).
- 11.8.3 The Respondent acknowledges and agrees that the Confidential Information includes:
 - (a) the EOI and any Disclosed Information; and
 - (b) information provided by or on behalf of Council, accessed from Council, or given by or on behalf of Council in response to a request for information.
- 11.8.4 The Respondent must, subject to clause 11.8.5:
 - (a) not use the Confidential Information for any purpose other than for the purpose of considering, formulating or submitting a Submission pursuant to the EOI (**Permitted Purpose**);

- (b) keep the Confidential Information confidential and secure from unauthorised access, modification and disclosure; and
- (c) limit the disclosure of the Confidential Information to any of the Respondent's Associates for the Permitted Purpose only.

11.8.5 Notwithstanding clause 11.8.4:

- (a) the Respondent is not obliged to keep confidential any information which is otherwise in the public domain through no fault of the Respondent or a Respondent's Associate; and
- (b) the disclosure of Confidential Information is permitted where the Respondent is compelled by a requirement of law to disclose the information to a government agency, provided that the Respondent has first genuinely sought to avail themselves of any relevant exception to or defence against the requirement.

11.9 Acceptable legal entities

- 11.9.1 Council contracts only with recognised and acceptable legal entities having appropriate financial assets. All Respondents must identify the legal entity, which proposes to enter the Contract.
- 11.9.2 The Council does not contract with companies under any form of external administration.
- 11.9.3 The Respondent may be required to provide evidence of its legal entity either by a copy of an official document such as company registration and names of office bearers issued by the Australian Securities and Investment Commission or a statement confirming the legal entity signed by a practicing Solicitor. If so requested, the Respondent must submit the information within three working days after receipt of such request.
- 11.9.4 The Council reserves the right in its absolute discretion to reject or disregard any Submission submitted by a trust or company trading under trust arrangements having less than five years' experience trading under those arrangements.
- 11.9.5 Before accepting or considering a Submission submitted by a trust or company trading under trust arrangements, the Council may require that trust or company to give an undertaking that it will not change its financial structure without the knowledge of the Council.
- 11.9.6 If the Respondent is a Trust or a Trustee of a Trust, then a full copy of the trust deed must be submitted with the Submission.
- 11.9.7 It is also Council's practice to deal with entities that have an Australian Business Number and are registered for GST.

11.10 Offer and Submission validity

- 11.10.1 By submitting a Submission (whether or not it complies in all respects with this EOI), a Respondent will be taken to have agreed, not to withdraw or amend its Submission within 120 days after the Closing Time (except with the prior written consent of Council in its absolute discretion). Nothing in this paragraph is to be taken as imposing any obligation (contractual or otherwise) on Council to receive or to consider any Submission from any Respondent.
- 11.10.2 Respondents may withdraw their Submission at any time after the expiration of the 120 day period referred to in clause 11.10.1, provided the Respondent has not prior to withdrawing the Submission been invited to participate in the RFT process.

11.11 Cost of participating

The Respondent acknowledges and agrees that:

- 11.11.1 participation in any stage of the EOI process or any subsequent stage of the Procurement Process, or in relation to any matter concerning this EOI, will be at the Respondent's sole risk, cost and expense;
- 11.11.2 Council has no liability for any costs or expenses of or associated with the preparation of a Submission or its submission to Council;
- 11.11.3 all costs and expenses incurred in connection with or in any way associated with the EOI process or any subsequent process by a Respondent or any person or organisation associated with the Respondent (including each Respondent's Associate) will be borne solely by the Respondent or that person or organisation. Council will not be liable for or reimburse any such costs or expenses, or for any costs or losses flowing from that Respondent's or such person's or organisation's acts or omissions in any way associated with this EOI, or from the Respondent not progressing further in any subsequent process following this EOI;
- 11.11.4 this clause 11.11 applies whether or not the Respondent is successful in being invited to participate in the RFT process, whether or not the RFT process proceeds or proceeds with a different process in respect of the Works, whether or not Council terminates, varies or suspends the EOI process and whether or not Council takes any other action available to it; and
- 11.11.5 Council will not be liable for any costs, losses, expenses or damages suffered or incurred by Respondents arising out of or in any way in connection with the EOI process generally or any subsequent process, including in connection with changes to the timing of the EOI process and any subsequent processes.

11.12 Ecologically Sustainable Development

- 11.12.1 As required under the LG Act, Council is committed to Ecologically Sustainable Development (**ESD**) which aims at purchasing goods and services with the most beneficial environmental impact and through the use of Respondents and suppliers who have a demonstrable commitment to ESD.
- 11.12.2 A Submission may be rejected or disregarded if a Respondent is involved, or was at any time in the preceding 12 months involved in an activity in such a manner which is contrary to the principles of ESD and the potential cost of rejecting or disregarding the Submission is considered by Council to be acceptable having regard to the wider public interest in balancing value for money against promoting the principles of ESD.

11.13 Council's Statement of Business Ethics for Contractors and Consultants

Each Submission acknowledges and agrees that:

- 11.13.1 it has read and familiarised itself with Council's Statement of Business Ethics for Contractors and Consultants (which is accessible on Council's website);
- 11.13.2 it will comply with Council's Statement of Business Ethics for Contractors and Consultants in connection with this EOI process; and
- 11.13.3 without limiting any other remedy that Council may have, Council may disqualify a Respondent or terminate its further participation in the EOI process if Council considers in its absolute discretion that the Respondent has failed to comply with any part of Council's Code of Conduct for Suppliers.

11.14 Public access to information

- 11.14.1 Each Respondent should note that Council is subject to statutory and governmental reporting obligations.
- 11.14.2 The attention of Respondents is drawn to the GIPA Act, which gives to members of the public rights of access to official documents in the possession of Council. The GIPA Act extends as far as possible the right of the Australian community to access information (generally documents) in the possession of Council, limited only by exceptions and exemptions necessary for the protection of essential public interests and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
- 11.14.3 In its Submission, a Respondent may indicate which information, if any, contained in its Submission or any supporting information it considers should not be disclosed without its prior consent. Any information that is commercially sensitive or confidential must be marked 'commercial and confidential'. This special notation must not be used unless the information is genuinely confidential. Marking information as 'commercial and confidential' will not necessarily prevent disclosure of the information in accordance with the GIPA Act.
- 11.14.4 Council does not give any commitment as to whether or not the information in a Submission will or will not be released.
- 11.14.5 Respondents should obtain, and will be deemed to have obtained, their own advice on the impact of the GIPA Act and all other relevant legislation, and on Council's statutory and governmental reporting obligations, on their participation in the EOI process.
- 11.14.6 Respondents should note that the name of each Respondent will be presented in Council records and may be made public.

11.15 Intellectual Property Rights and use of EOI and Submission information

- 11.15.1 Title in all documents comprising a Submission becomes the property of Council on lodgement.
- 11.15.2 As between Council and each Respondent, all Intellectual Property Rights as may exist in the information contained in this EOI, the Disclosed Information or any related material are, and will remain, the property of Council but the Respondent is permitted to use that information and material for the purpose only of compiling its Submission.
- 11.15.3 The Respondent grants to Council and each Council's Associate a licence to:
 - (a) use the documents, concepts, ideas, designs, information and materials included in a Submission, including for all Intellectual Property Rights in the Submission; and
 - (b) copy, adapt, modify, amend, disclose or do anything else necessary (in Council's absolute discretion) to the documents, concepts, designs, ideas, information and materials included in a Submission, including all Intellectual Property Rights in the Submission,for the purpose of:
 - (c) Council's evaluation and assessment of the Submission;
 - (d) seeking clarification of the Submission or any other Submission;
 - (e) reconfiguring, reconsidering, changing or redesigning the Works or the RFT process, including any document issued in relation to the RFT process;

- (f) other matters relating to the evaluation and assessment of Submissions, including audit or governmental or statutory reporting requirements; and
- (g) the delivery and performance of the Works (whether by the Respondent or otherwise).

11.15.4 The Respondent warrants that it has secured all requisite consents, licences and authorisations that are required to grant the foregoing licence to Council and each Council's Associate, including any licences and consents from contractors or consultants that have assisted in preparing the Submission or responding to the EOI.

11.15.5 Without limitation, the Respondent must obtain from each Respondent's Associate all necessary unconditional and irrevocable:

- (a) consents permitted by applicable laws to any act or omission that would otherwise infringe any of their respective moral rights in the Submission whether occurring before or after a consent is given; and
- (b) waivers of their respective moral rights in the Submission that are permitted by applicable laws,

for the benefit of Council and each Council's Associate and anyone authorised by any of them, including consents and waivers permitting:

- (c) any non-attribution or false attribution of artistic work; and
- (d) any repairs to, maintenance and servicing of, additions, refurbishment or alterations to, relocation, destruction or replacement of the whole or any part of the artistic work or the Works.

In this clause 11.16.5, the term 'artistic work' has the meaning given in the *Copyright Act 1968* (Cth).

11.16 Defects

Should a Respondent find or reasonably believe it has found any Defect in this EOI or any other information given or made available by Council (including the Disclosed Information), the Respondent must notify the Contact Person promptly, setting out in sufficient detail the Defect so that Council may take whatever corrective action, if any, it deems appropriate. If Council (in its absolute discretion) decides to correct an alleged Defect or issue different or additional information in response to such notice, any correction of a Defect will be notified (or the proper information will be made available) to all Respondents, on a non-attributed basis in the form of an Addendum.

11.17 Jurisdiction

This EOI is governed by the laws of New South Wales and any disputes arising in relation to it shall be conducted in the non-exclusive jurisdiction of the courts of New South Wales, and any courts that may hear appeals from those courts.

11.18 Change in material circumstances

11.18.1 Each Respondent must promptly inform Council in writing of any material change to their financial capacity, technical capacity or corporate status or to any other information contained in the Respondent's Submission following lodgement, and of any other material change in circumstances which may affect the truth, completeness, correctness or accuracy of any information provided in, or in connection with, a Submission.

11.18.2 Council may also require Respondents to confirm in writing that no such material changes have occurred.

11.18.3 Without limiting clause 11.19.1, a Respondent must (as a minimum) promptly notify Council in writing of any change to any of the following entities or individuals occurring after the Closing Date and Closing Time:

- (a) any entity that proposes to take a direct equity interest in the Respondent if the Respondent is short-listed or enters into the Contract or other agreement in relation to the Works;
- (b) the ultimate parent entity of any entity that proposes to take a direct equity interest of the type described in paragraph (a);
- (c) any other entity that is likely to be in a position to exercise control or influence (direct or indirect) over the future management and operation of the Respondent;
- (d) any director, secretary or chief executive of any entity described in paragraphs (a), (b) or (c) and any proposed new directors, secretary or chief executive officer; and
- (e) any key resources identified by the Respondent as providing a core capability to the Respondent in relation to the Works.

11.18.4 If a Respondent changes its corporate structure after the Closing Date and Closing Time that Respondent must immediately notify Council of this change in writing. If Council, in its absolute discretion, determines that this change is material, it may re-evaluate the Submission or eliminate the Respondent from further participation in the EOI process.