

## Item 16 Review of Procurement Policy

<b>Division:</b>	Corporate and Community Services
<b>Management Area:</b>	Finance
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<b>CSP Key Focus Area:</b>	Local Governance and Finance
<b>Priority</b>	GF4 Council Governance and organisational structure reflects the vision, directions and priorities outlined in the Community Strategic Plan

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### Reason for Report

Council's existing strategic Procurement Policy (including Local Support Policy) is due for review and revision. Additionally, the Office of Local Government, Section 430 Final Investigation Report has expressed concerns that should be addressed around Council's Procurement processes.

### Background

Council has in place policies for a wide range of subjects to ensure consistency in Council's decision-making adherence to legislation, and the efficient running of Council operations.

All Council policies fit into one (1) of two (2) broad categories:

- Strategic Policies – these are policies that set the strategic direction of Council and are endorsed by Council. These include a number of recommended and legislated policies which are required to be approved by the NSW Office of Local Government (OLG).
- Operational Policies – these policies deal purely with operational matters and do not require Council endorsement. These policies include staff policies that deal with staffing, WHS and other human resources issues, auspiced policies which relate to auspiced programs and general operational policies that deal with all other operational matters.

To ensure that Council's Strategic Policies remain fit for purpose, Council reviews all its Strategic Policies within 12 months of each Local Government election.

### Issues

Following are extracted notes taken from the Office of Local Government (OLG) S430 Final Investigation Report on Warrumbungle Shire Council in relation to Procurement, specifically from pages 6, 12, 14, 15, 22, 51 and 59 and suggested actions:

Page 6: from Executive Summary

*“Procurement processes must be open, transparent and able to withstand scrutiny. While no adverse findings have been made regarding the waste services contract, given Council's response to the draft report, it is vitally important that councillors fully understand their role in dealing with procurement issues. For that reason, the report recommends that training be provided to the councillors, that Council reviews its procurement processes to strengthen its probity processes and to provide greater transparency, particularly in relation to contracts that are subject to tendering.”*

**Suggestion 1:** The attached reviewed Procurement Policy draft incorporates strengthened responsibilities for training of staff.

Suggestion 2: The attached reviewed Procurement Policy draft incorporates strengthened responsibilities for training of Councillors ie. *“(at least two yearly and/or within a year of taking up a role of Councilor ...”*.

In regard to *“procurement processes to strengthen its probity processes”* refer suggestion 3.

Suggestion 3: Reports on tenders, as much as possible, are to be presented to open part of Council Meetings with clear and extensive recommendations and as little as possible referred to closed meetings (refer Procurement Policy Clause 6.1.3 Consideration of Tender Information in Closed Council) and the incorporation of clear definitions of Probity and the responsibility of Tender Evaluation Committee Chair to ensure Probity considerations and *“... the demonstration of strong moral principles and ethical behaviour in all the dealings with suppliers.”*

Page 12: from 2.1 Waste services tender section

*“28. Some councillors failed to fully understand their role when dealing with the waste services contract. Those failures extended to both the procurement process and the resolution of the issues that arose following the awarding of the contract.”*

Suggestion 4: See Suggestion 2 above:

Page 14 and 15: from 3 Recommendations section

*“3.8 Council undertake a further review of its procurement processes to strengthen its probity processes and to provide greater transparency, particularly in relation to contracts that are subject to tendering. In doing so, the limited role of councillors should be clearly defined.*

*3.9 Council amends the form of its tenders to ensure that the terms are clear and precise.*

*3.10 Further training be provided to councillors and relevant staff in how to undertake their respective roles in the revised procurement process”*

Suggestion 5: Refer to above mentioned suggestions 1-4 and in the case of 3.9 above Table 2a (Minimum List of Performance Criteria for Assessment of Tenders and Relevant Quotations), the attached reviewed Procurement Policy draft has been modified to make the form of the tender and tender documents clear and precise and link to the sections of the Tender under 6.1.1. Additionally, a ‘Purchase Orders – Standard Terms and Conditions’ has been compiled to ensure clarity around Council’s day to day Procurement.

Page 22: from 4.1.8 Conclusions

*“94. Ultimately, the evidence supports the view that some councillors failed to fully understand their role when dealing with the waste services contract. Those failures extended to both the procurement process and the resolution of the issues that arose following the award of the contract.*

*95. Review of the RFT raises concerns that some clauses were equivocal in their nature (including clauses 4.4, 4.52 and 6.2). Council should consider reviewing the form of its tenders to ensure that the terms are clear and precise.”*

Suggestion 6: Refer to above mentioned suggestions 1-5.

Page 51: from 4.4.2 Record-keeping

*“296. Council was unable to provide all of the information that was sought. In particular, Council was unable to provide information relating to some procurement processes, including matters relating to certain tenders called by Council and building work supervised by Council. These are matters where thorough records should have been made and retained.”*

Suggestion 7: Refer to above mentioned suggestions 1 and 2 and, in particular, ensuring the record's keeping parts of the attached reviewed Procurement Policy draft, Guidelines and Procedures are strong and are closely followed by staff to ensure correct and timely capture of all Tender and Quotation documentation, as the case may be.

Page 59: from 5.5 Provisions relating to procurement

*“Councils’ procurement and disposal activities are governed by strict considerations of probity, transparency and accountability, as they involve expenditure of public funds for public purposes.*

*Section 55 of the Act relevantly stipulates that councils must invite tenders before entering into certain types of contracts including “a contract for the provision of services to the council”.*

*The tender process is further prescribed by the provisions of Part 7 of the Regulation which sets out the procedures to be adopted.*

*Councils are also required, pursuant to section 23A of the Act, to have regard to the OLG’s Tendering Guidelines prior to undertaking tendering.”*

Suggestion 8: Agreed in full. The attached reviewed Procurement Policy draft has a focus on achieving ‘value for money’ on behalf of Council for the supply of products and services whether by tenders or quotations. Local suppliers are supported, as per Table 2, with the addition of local support criterion detailed in the policy, ie. the emphasis within the Procurement Policy has been moved to one of ‘Local Support’ rather than a focus on ‘Local Preference’.

This move away from Local Preference is supported by comments within the Tendering Guidelines for NSW Local Government as follows *“... the use of local preference in the evaluation of tenders and awarding of contracts possesses inherent risks in terms of anti-competitiveness and the maintenance of defensibility, accountability and probity.”*

### **Financial Considerations**

The structure of the Procurement Policy will directly influence the achievement of ‘value for money’ on behalf of Council and the community and therefore the Procurement Policy and associated processes, procedures and guidelines should align to the achievement of this aim.

### **Attachments**

1. Council’s existing Procurement Policy (including Local Preference Policy)
2. Reviewed Procurement Policy draft (including Local Support Policy)
3. Draft Purchase Orders – Standard Terms and Conditions

### **RECOMMENDATION**

That Council:

1. Endorses the reviewed Procurement Policy draft (including Local Support Policy),

2. Places the reviewed Procurement Policy draft (including Local Support Policy) on public exhibition for a minimum of 28 days and invites public submissions; and
3. Considers any submissions received prior to formal adoption of the reviewed Procurement Policy draft (including Local Support Policy).