

Airport Lease Contracting Plan

Quote or Tender Consideration Plan prepared in accordance with section 179 of the *Local Government (Finance, Plans and Reporting) Regulation 2010*.

<p>CORPORATE PLAN REFERENCE:</p>	<ul style="list-style-type: none"> 1.0 ROBUST ECONOMY 1.2 SUPPORT FOR LOCAL BUSINESS 1.3 INFRASTRUCTURE FOR ECONOMIC GROWTH 1.4 A SUSTAINABLE TOURISM INDUSTRY 1.4.1 IN PARTNERSHIP WITH INDUSTRY REVIEW THE NATURE, PURPOSE AND GOVERNANCE OF SUNSHINE COAST PEAK TOURISM ENTITIES TO BETTER MARKET THE REGION AND ITS DESTINATIONS 2.0 ECOLOGICAL SUSTAINABILITY 2.6 ENVIRONMENTALLY FRIENDLY INFRASTRUCTURE AND URBAN DESIGN 3.0 INNOVATION AND CREATIVITY 3.1 PARTNERSHIPS AND ALLIANCES THAT DRIVE INNOVATION 3.1.1 FOSTER PARTNERSHIPS WITH GOVERNMENTS, BUSINESS AND THE COMMUNITY TO ENCOURAGE INNOVATION AND SUSTAINABILITY 3.2.3 SUPPORT EDUCATION, TRAINING, AND APPRENTICESHIP INITIATIVES THAT HELP BUILD SKILLS WITHIN THE REGION AND RETAIN YOUNG PEOPLE 3.4 COUNCILS WORKING CULTURE IS DYNAMIC, FLEXIBLE AND ENTREPRENEURIAL 6.0 ACCESSIBILITY AND CONECTEDNESS 7.0 MANAGING GROWTH 7.4 TIMELY AND APPROPRIATE INFRASTRUCTURE AND SERVICE PROVISION 7.5 COUNCIL’S SERVICES AND ASSETS MEET THE NEEDS OF OUR GROWING COMMUNITY 8.0 GREAT GOVERNANCE 8.1 ETHICAL, ACCOUNTABLE AND TRANSPARENT DECISION-MAKING 8.2 EFFECTIVE BUSINESS MANAGEMENT 8.3 STRONG FINANCIAL MANAGEMENT
<p>UNITED NATIONS STANDARD PRODUCTS AND SERVICES (UNSPSC) CODE:</p>	<p>80131500 LEASE AND RENTAL OF PROPERTY OR BUILDING</p>
<p>ENDORSED BY COUNCIL ON:</p>	
<p>DOCUMENT OWNER AND DEPARTMENT:</p>	<p>MANAGER COMMERCIAL & PROCUREMENT, FINANCE & BUSINESS DEPARTMENT</p>

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Introduction

The *Local Government Act 2009* ('the Act') the *Local Government (Finance, Plans and Reporting Regulation 2010* ('the regulation') provide the considerations for, and methods by which Council may establish medium and large sized contracts. These regulations require local governments to use a written quote process for medium sized contracts and a written tender process for large sized contracts. The regulations also provide a number of exceptions to those processes. Preparation of a quote or tender consideration plan is one of those exceptions.

Council currently manages the Sunshine Coast Airport and Caloundra Aerodrome, which includes long term leasing (10 years or more) of airport land and premises to interested businesses. Many of these businesses then make significant investments in infrastructure on the land subject to the lease. Significant infrastructure includes but is not limited to aircraft hangars, warehouses and office accommodation which supports a lessees specific business activity.

The quote or tender process provided in the regulation requires an open and advertised quote or tender process for each lease, including when existing leases expire and are up for renewal. This results in those tenants who have made significant infrastructure investments, being exposed to the open market in the quote or tender process, and potentially losing the value of that investment. It also allows for those who have not made significant investment to unduly benefit by acquiring a lease on land with expensive infrastructure, despite having not contributed to it. This situation is not conducive to encouraging business and industry within the airport precinct and is in fact known to discourage businesses from seeking leases on airport land and in particularly from making necessary infrastructure investment.

Council seeks the ability to negotiate with existing long term tenants who have contributed to significant infrastructure, prior to the expiration of an existing lease, or enter into commercial negotiations with prospective tenants who propose to enter into a long term lease arrangement and make significant infrastructure improvements on leased land.

Negotiating directly with existing or proposed tenants is supported by the Sunshine Coast Airport and Caloundra Aerodrome model for engagement. This model defines the criteria for lessee selection as that which best suits an advantageous negotiated outcome for both parties.

The benefits of the direct offer procurement process for Sunshine Coast Airport and Caloundra Aerodrome long term lease arrangements include:

- Allowing for a commercial arrangement to be structured and negotiated based on current market rental research results and financial analysis;
- Allowing Council and lessees to confidently plan for future growth and development in providing a contribution to achieving a positive strategic impact at the Sunshine Coast and Caloundra Airport; and
- Enabling procurement decisions to be made with lessees more efficiently and effectively than would otherwise be possible.

As a result, Council intends to depart from the standard tendering process when negotiating with existing long term tenants or tenants proposing to inject major infrastructure. Council intends to undertake procurement and contracting by way of a quote or tender consideration plan.

The regulations provide that a quote or tender consideration plan will contain the following information:

1. the objectives of the plan;
2. how the objectives are to be achieved;
3. how the achievement of the objectives will be measured;
4. any alternative ways of achieving the objectives, and why the alternative ways were not adopted;

5. the proposed terms of the contract; and
6. a risk analysis of the market.

This plan will provide the information required to comply with the regulations and justify the use of the plan as an effective and appropriate alternative to the open tender process.

1. OBJECTIVES OF THE PLAN

Plan scope

This plan has been prepared to assist Council to conduct sustainable and effective procurement processes and establish best practice contracts with commercial lessees. This plan covers all procurement and contracting activities conducted by Council officers in negotiating with existing tenants who have injected major infrastructure, prior to the expiration of a lease, or entering into commercial negotiations with prospective tenants who proposes to inject major infrastructure upon the leased land.

This plan will provide guidance on the process of engagement, including:

1. site specification and risk analysis;
2. assessing the site(s) for the most advantageous commercial outcome,
3. governance and delegated authorisation;
4. negotiating lease agreements; and
5. the final lease agreement (contract).

Plan objective

This Sunshine Coast Airport and Caloundra Aerodrome Quote or Tender Consideration plan is intended to fulfil the following objectives:

1. Support Council's objectives in promoting the Sunshine Coast to become Australia's most sustainable region - vibrant, green and diverse;
2. Provide an approach for evaluating the lessees to enable strategic decision making; and
3. Guide Council officers in contracting in accordance with probity requirements and having regard for the sound contracting principles:
 - (a) value for money;
 - (b) open and effective competition;
 - (c) the development of competitive local business and industry;
 - (d) environmental protection; and
 - (e) ethical behaviour and fair dealing.

While this plan provides an exemption for Council officers sourcing lessees from the invitation to offer process for procurement, all other areas of the process will proceed in accordance with the strategic procurement framework and Council's procurement policy when carrying out procurement and contracting activities.

2. HOW THE OBJECTIVES ARE TO BE ACHIEVED

Process for lessee selection, procurement and contracting

1. A business plan is to be developed which outlines the future growth and development of the specific site or precinct, and the contribution to achieving a positive strategic impact at the Sunshine Coast Airport and/or Caloundra Aerodrome, which can best be achieved by negotiating with a specific party.
2. Negotiation will only commence once Council has obtained current market valuations for the proposed lease area, from one (1) independent registered valuer.
3. A current market valuation must isolate the specific site and not be older than 18 months.
4. Council's legal branch to draft a proposed lease agreement.
5. A nominated Council officer may negotiate the agreement subject to approval of an officer with appropriate delegation (as per delegation No. 2 and No. 37) to approve a proposed lease arrangement.
6. The nominated Council officer may negotiate a proposed lease agreement, which must align with the business plan and current market value of the lease area, with existing tenants who have injected major infrastructure upon the leased land by:
 - (a) establishing with the existing tenant their interest in entering into a further lease arrangement at least three (3) months prior to expiration of the current lease.
 - (b) negotiating an agreeable outcome, and entering into a formal lease agreement, signed by both parties prior to expirations of the current lease.
7. The nominated Council officer may negotiate a proposed lease agreement, which must align with the business plan and current market value of the site, with a prospective tenant who proposes to inject major infrastructure upon the lease area by, negotiating an agreeable outcome, and entering into a formal lease agreement signed by both parties.
8. In the circumstances where the site is trust land under the trusteeship of Council, the signed lease is to include annexure, Written Authority No. 1 – Section 64 of the *Land Act* 1994, and be lodged with the Department of Environment and Resource Management for noting on the title deed.
9. It is the responsibility of the Council officer to ensure that negotiations and communications are fair, equitable and any conflicts of interest are declared and dealt with under probity in accordance with Council's policies.

3. HOW THE OBJECTIVES WILL BE MEASURED

Indicators for measuring the delivery of outcomes and success of use of this quote or tender consideration plan include:

1. Evidence of the procurement process utilised, through the retention of all documentation and approval which support the application of the sound contracting principles and measurement of success factors as per the Procurement Policy;
2. The Council officer responsible for the negotiations is to make every possible effort to confirm and verify that the proposed tenant will contribute to achieving a positive strategic impact at the Sunshine Coast Airport or Caloundra Aerodrome.

4. ALTERNATIVE WAYS OF ACHIEVING THE OBJECTIVES

There are no known efficient or effective methods of achieving the objectives, outside of this contracting plan.

5. PROPOSED TERMS OF THE CONTRACT

Developing a lease agreement requires the inclusion of commercial aspects such as the permitted use of the premises, term of arrangement, rental amounts and any special conditions which are unique to the lease area, such as the infrastructure improvements to be made during the term of the lease.

6. RISK ANALYSIS OF THE RELEVANT MARKET

The following risk analysis and mitigation strategies have been identified for Council’s procurement and contracting activities relevant to, the long term leasing negotiations with lessees who have injected major infrastructure upon the leased land, or when entering into commercial negotiations with prospective tenants, who proposes to inject major infrastructure upon the leased land, at the Sunshine Coast Airport and Caloundra Aerodrome. This analysis was performed using the Council Risk/Opportunity Assessment calculator; refer to the link below for further information regarding risk assessment and how the following risk levels were calculated:

http://scrcintranet/govpol/management_systems/ent_risk_mgt/Reference%20Documents/Risk%20Opportunity%20Assessment%20Calculators.xps

This analysis should be used as high level guidance only, each proposed lease negotiation should be assessed for specific and detailed risk, as an ongoing process throughout the term of the lease arrangement.

Financial Risk		Risk Level
Likelihood	Possible	Medium
Consequence	Minor	

Financial risk exists in the event of sub-optimal rentals being negotiated under this procurement method.

Mitigation

This risk is minimised through obtaining aviation market valuations for the subject sites. All lease agreements must be approved by the General Manager Airports, while agreements are negotiated by delegated staff. This separation of responsibilities will assist in process transparency. Budgets will be set based on valuation information when sourced in an appropriate timeframe.

Legislative Risk		Risk Level
Likelihood	Unlikely	Low
Consequence	Insignificant	

Legislative risk exists in the event of contractual and/or legislative obligations specific to the site and the airport precinct not being adhered to by the lessee.

Changes to the Local Government Act 2009 and the Local Government (Finance, Plans and Reporting Regulation 2010 being amended and withdraw the direct offer method from use.

Mitigation

This risk is minimised through entering into a formal lease agreement which clearly stipulates all lessee and lessor obligations, which can be relied upon in the event of legal proceedings issuing. Ensuring adherence requirements to the current legislation.

Political Risk		Risk Level
Likelihood	Unlikely	Medium
Consequence	Moderate	

Political risk exists in the likelihood of a tenancy not meeting the business activity requirements and obligations existing for airport activity, resulting in neighbouring tenant’s dissatisfaction and complaint.

Mitigation

This risk is minimised through the lease agreements permitted use aligning with the established business plan.

Business Activities Risk		Risk Level
Likelihood	Unlikely	Medium
Consequence	Moderate	

Business activity risk exists in the likelihood of a tenancy not meeting the business activity requirements and obligations existing for airport activity

Mitigation

This risk is minimised through the lease agreements permitted use aligning with the established business plan.

Asset Risk		Risk Level
Likelihood	Unlikely	High
Consequence	Major	

Asset risk exists in the likelihood of a tenancy erecting infrastructure on the site which does not meet the business activity requirements and obligations existing for airport activity.

Mitigation

This risk is minimised through lengthy negotiation with lessees regarding the infrastructure which is permitted to be erected on the site. Council input into proposed infrastructure prior to entering into any lease agreement.

Reputation/Public Image Risk		Risk Level
Likelihood	Possible	Medium
Consequence	Moderate	

Reputation/Public Image risk – Council reputation may be damaged if Council officers were thought to be circumventing Council’s procurement policy.

Mitigation

This risk is minimised through delegated Council officers clearly articulating the instrument of authority for the alternative procurement method and adhering to relevant procedures

Contract Risk		Risk Level
Likelihood	Unlikely	High
Consequence	Major	

Contract risk exists in the event that the lease agreement obligations specific to the site and the airport precinct are not being adhered to by the lessee

Mitigation

This risk is minimised through preparation of lease agreements involves the consultation and input of Council’s contracts team, and legal services branch, who have knowledge of Council accepted service terms and conditions;

In order to mitigate the risks involved in Contract management it is important to:

- assign a responsible Council officer who is fully conversant with the lease agreement, to track and evaluate the Lessees compliance to lease conditions;
- if there are instances of non compliance by the Lessee it is the Council officer’s responsibility to formally address these with the Lessee; and
- contact Council’s legal services branch and contracts team if further assistance is required for the communication of performance or non compliance issues.

Version Control

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	Eg. Create new			DD/MM/YYYY
	Eg. Review			