



SNOWY MONARO
REGIONAL COUNCIL

Unsolicited Proposals Guide for Submission and Assessment

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1 Preamble

In its daily operations the Council, Councillors and Council staff are sometimes approached by the private sector and individuals with specific proposals for the Council to entertain including, land purchases, business development, participation in a joint venture and other proposals.

As part of good governance practiced by Snowy Monaro Regional Council (SMRC) the development of procedures and guidance in such a situation was seen as worthwhile.

The Unsolicited Proposals Guide for Submission and Assessment August 2017 has provided guidance for the Council in developing a process and procedure and provides a transparent and streamlined approach that will assist the Council and the private sector working together to develop and deliver innovative ideas, services and infrastructure.

The aim is to provide consistency and certainty to the private sector as to how any unsolicited proposal to the Council will be assessed within a transparent framework.

2 Definition

An Unsolicited Proposal is an approach to Government from a Proponent with a proposal to deal directly with the Government over a commercial proposition, where the Government has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.

3 Introduction

These Guidelines are not a substitute for approved competitive practices by the Council and have been developed to provide a framework to enable a solicited proposal to be considered.

While direct negotiation with a proponent in response to an Unsolicited Proposal may be pursued in justifying circumstances, Council's usual procurement approach is to test the market. This generally results in the demonstrable achievement of value-for-money outcomes and provides fair and equal opportunities for private sector participants to do business with Council.

The Council has absolute discretion in considering proposals and will ensure that the proposal and its proponent have unique attributes such that others could not deliver a similar proposal with the same outcome. The Council may directly negotiate with an individual or organisation that presents an Unsolicited Proposal where circumstances justify this approach.

This Guide sets out the processes to be followed by both the Council and Proponents in developing Unsolicited Proposals. It represents commitment by Council to the allocation of resources to meet its responsibilities as outlined in this Guide. It is recognised that a Proponent will be entitled to a fair rate of return for its involvement in a project and that outcomes should be mutually beneficial for the Proponent and Council. Further, Council recognises the right of Proponents to derive benefit from unique ideas. The approach to the identification, recognition and protection of intellectual property rights will be addressed and agreed with the Proponent during Stage 1 of the process as set out below.

A three stage assessment process has been developed to guide the evaluation of proposals. The process involves:

3.1 Stage 1

3.1.1 Initial Submission and Preliminary Assessment

Council Executive staff will undertake a Preliminary Assessment of the proposal to determine if the submission constitutes an unsolicited proposal and if it contains sufficient potential grounds to justify direct dealing and a Stage 1 assessment. Council reserves the right to further consider, or not consider, Unsolicited Proposals beyond this stage at its absolute discretion.

3.1.2 Strategic Assessment of Initial Submission

Includes a comprehensive initial assessment of the proposal to identify the potential benefit to Council of further consideration and development with the Proponent. The outcome is advice to the Proponent of progression to Stage 2, or that the proposal will not be progressed.

3.2 Stage 2

Detailed Proposal

Requires the Proponent and Council to work cooperatively in the development and assessment of a Detailed Proposal. The outcome is advice to the Proponent of progression to Stage 3, or that the Council does not wish to proceed.

3.3 Stage 3

Negotiation of Final Binding Offer

Involves the finalisation of all outstanding issues with a view to entering into a binding agreement, should the Council accept the final offer.

Where the Council assesses a proposal as not meeting the criteria, including uniqueness, the Council reserves its usual right to go to market. The Proponent will be provided with the opportunity to participate in the procurement process should the concept be offered to the market, but will have no additional rights beyond those afforded to other market participants. If the Council elects to go to market in such circumstances it will respect any IP owned by the Proponent.

The unsolicited proposals assessment process is separate to other Council statutory approvals processes e.g. planning.

4 Principles

4.1 Optimise Outcomes

Proposals must be considered in light of the wider benefits and strategic outcomes that may be derived. In order to proceed however, proposals must be broadly consistent with Council objectives and plans, and offer some attributes that would justify departing from a competitive tender process. Outcomes must always be in the best interest of the Council.

In order to demonstrate that Value for Money will be achieved, the Council will develop an independent project cost estimate that will be used to assess Value for Money. This approach to demonstrating Value for Money will be generally consistent with Infrastructure Australia guidelines.

4.2 Uniqueness

For unsolicited proposals to progress through the assessment process, the uniqueness needs to apply to both the proposal and the proponent. The essential elements to be addressed in any Unsolicited Proposal are -

- Can this proposal be readily delivered by competitors? If so what, if any, justification would the Council have to the public for not seeking best value through a competitive tender process? What benefit(s) would the Council gain?
- Does the proponent own something that would limit the Council from contracting with other parties if the Council went to tender? This would include intellectual property, real property and other unique assets.
- Are there other attributes which may not necessarily stand alone as unique but, when combined, create a "unique" proposal? This may include genuinely innovative ideas, including financial arrangements or solutions that are otherwise unlikely to be defined and put to market (e.g. alternatives to providing a Council service or substantive processes, products or methods for delivering a service that is not offered by other service providers and constitute a significant departure from traditional service delivery).
- Note: Proposals that are NOT considered unique are unlikely to be progressed.
- Proponents seeking to directly purchase or acquire a Council-owned entity or land parcel. Unless the proposal presents a unique opportunity to Council, the Council is unlikely to enter into such an arrangement without a competitive tender process.
- Proponents with an existing Council contract to provide goods or services seeking to bypass a future tender process.
- Proposals for significant extensions to existing contracts, or the next stage of a staged project on the basis that the contractor is already "on-site" or has some other claimed advantages, absent of other "uniqueness" criteria.
- Proposals that identify the proponent's skills or workforce capability as the only unique characteristic are unlikely to progress to Stage 2.
- Proposals to provide widely available goods or services to Council.
- Proposals for consultancy services.
- Proposals for projects where the tender process has formally commenced.

- Proposals that are early concepts or lack detail.
- Proposals seeking grants e.g. scientific research.
- Proposals that claim uniqueness that is trivial.

4.3 Assessment Criteria

Proposals will be initially assessed against the Assessment Criteria in the table below. Assessment will be based on satisfactorily meeting each of the criteria. Additional Criteria relevant to a particular proposal may also be applied at later stages. If so, the Proponent will be informed of the criteria in order for these to be addressed in its Detailed Proposal during Stage 2

Uniqueness	<p>Demonstration of unique benefits of the proposal and the unique ability of the proponent to deliver the proposal. In particular the following are to be demonstrated –</p> <ul style="list-style-type: none"> • Can this proposal be readily delivered by competitors? • Does the proponent own something that would limit the Council from contracting with other parties if the Council went to tender? • Are there other attributes which may not necessarily stand alone as unique but, when combined, create a “unique” proposal?
Value for Money	<p>Does the proposal deliver value for money to the Council? What are the net economic benefits of the proposal (the status quo should be defined)?</p> <p>Consideration will be given to factors such as: whole of life costs and revenue, quality, risk borne by Council, benefits gained, qualitative and whole of Council outcomes including timely achievement of local benefit.</p>
Return on Investment	<p>Is the proposed return on Investment to the proponent proportionate to the proponent’s risks, and industry standards?</p>
Capability and Capacity	<p>Does the proponent have the experience, capability and capacity to carry out the proposal? What reliance is there on third parties?</p>
Affordability	<p>Does the proposal require Council funding, or for the Council to purchase proposed services? Does the Council have funds available or budgeted and if not what source would be proposed?</p>
Risk Allocation	<p>What risks are to be borne by the proponent and by the Council?</p>

4.4 Probity

The Council takes all necessary steps to conduct its commercial dealings with integrity. The assessment of Unsolicited Proposals must be fair, open and demonstrate the highest levels of probity consistent with the public interest. The assessment of Unsolicited Proposals will be conducted through the application of established probity principles and in accordance with the Council's adopted probity framework.

4.4.1 Maintaining Impartiality

Fair and impartial treatment will be a feature of each stage of the assessment process. The process will feature a clearly defined separation of duties and personnel between the assessment and approval functions.

4.4.2 Maintaining Accountability and Transparency

Accountability and transparency are related concepts. The demonstration of both is crucial to the integrity of the assessment.

Accountability requires that all participants be held accountable for their actions. The assessment process will identify responsibilities, provide feedback mechanisms and require that all activities and decision making be appropriately documented.

Transparency refers to the preparedness to open a project and its processes to scrutiny, debate and possible criticism. Relevant information regarding proposals under consideration at Stage 2 should be publicly available.

4.4.3 Managing conflicts of interest

In support of the public interest, transparency and accountability, the Council requires the identification, management and monitoring of conflicts of interest. All parties will be required to disclose any current or past relationships or connections that may unfairly influence or be seen to unfairly influence the integrity of the assessment process.

4.4.4 Maintaining Confidentiality

In the assessment of Unsolicited Proposals there is need for high levels of accountability and transparency. However, there is also a need for some information to be kept confidential, at least for a specified period of time. This is important to provide participants with confidence in the integrity of the process. All proposals submitted will be kept confidential at Stage 1 of the assessment process.

4.4.5 Obtaining Value for Money

Obtaining optimal value for money is a fundamental principle of good governance. Proponents can make proposals with the confidence that they will be assessed on their merits and where Council appropriately considers value.

4.5 Resource Commitments

In order for an Unsolicited Proposal to progress, and the Proponent will be required to commit resources. The staged approach to assessment as detailed in this Guide seeks to balance resource input at each stage to reduce the potential for unnecessary expense. While this Guide sets out information and processes to minimise costs for Proponents, the Council will not normally reimburse costs associated with Unsolicited Proposals.

4.6 Governance Arrangements

Once a proposal reaches Stage 2 of the assessment process, Council will establish appropriate governance arrangements including assessment/technical panels, management of confidentiality and conflict of interest, and provide details of the appointed Proposal Manager and probity advisor.

In preparing the governance arrangements, Council will have regard to relevant processes and approval requirements.

4.7 Participation Agreement

A Participation Agreement provides an agreed framework for Stage 2 which will be entered into by both Council and the Proponent in order to ensure the alignment of expectations regarding participation in the process.

The Participation Agreement will contain:

- Acknowledgement that a Value for Money outcome is a requirement for the proposal to proceed
- Assessment Criteria and other relevant Council requirements
- Communication channels, including a prohibition on lobbying
- Agreement regarding cost arrangements
- Resource commitments
- Conflict of interest management arrangements
- Confidentiality requirements
- Commitment to following an open book approach to discussions
- Commitment to providing a local benefit
- Timeframe
- Approval requirements.

Stage 3 Agreement

A Stage 3 Agreement provides an agreed framework for participation in Stage 3 which will be entered into by both Council and the Proponent in order to ensure alignment of expectations. The Stage 3 Agreement will contain (but not limited to):

- Communication channels, including a prohibition on lobbying.
- Agreement regarding cost arrangements.
- Resource commitments.
- Conflict of interest management arrangements
- Confidentiality requirements
- Timeframe
- Approval requirements
- Schedule of items and issues to be negotiated

5 Roles and Responsibility

5.1 Proponent

The Proponent is required to:

- Prepare a submission and meet with Council staff to discuss its unique characteristics and other key principles, prior to lodgement of a formal submission. This involves the Proponent completing an initial Schedule of Information Requirements.
- Prepare and lodge with Council an Initial Submission for Preliminary or Stage 1 Assessment. This involves the Proponent completing the Schedule of Information Requirements and attaching any other relevant information.
- Enter into a Participation Agreement if recommended to proceed to Stage 2
- Provide a Detailed Proposal at the conclusion of Stage 2
- Provide a Binding Offer at the conclusion of Stage 3.

5.2 Council

Proposals will be submitted to the Council for approval prior to any progression of a proposal to Stage 2 or 3.

Projects requiring capital and/or recurrent funding require the approval of Council. The required approval process will be described to the proponent.

5.3 Advisers

The council may procure Advisors with specialist expertise to assist in project scoping and assessment:

- Legal
- Financial
- Technical
- Environmental

Other advisers may be appointed where specialist input is required. All Advisers are to follow all project governance and probity requirements.

5.4 Probity Advisers

An independent probity adviser may be appointed for large-scale projects or where probity risk is considered sufficient to warrant appointment. The role of the probity adviser is to monitor and report on the application of the probity fundamentals during the assessment process. Probity advisers are usually appointed at Stages 2 and 3 of the assessment process.

The probity adviser will report to the Council and will be available to Proponents to discuss probity related matters.

In the absence of a probity adviser, this role will be undertaken by the General Manager's nominee. Proponents are able to request the appointment of a probity adviser.

6 The Process

6.1 Introduction

This section outlines an assessment process for the consideration of Unsolicited Proposals. It is recognised that the nominated stages may be refined in order to most effectively manage the assessment of any particular proposal. For example, each stage may include a number of milestones to be achieved.

6.2 Pre-Submission Concept Review Stage

6.2.1 Timing

It is recognised that there may be numerous discussions at many levels between the proponent and Council stakeholders in order to ascertain Council needs and to better understand the business environment. These are informal discussions and are outside the realm of this Guide.

This initial meeting represents the first formal step in assessing the merits of each Unsolicited Proposal and may be before or after lodgement of the full proposal. The Council's strong preference is that this occurs before formal lodging of any proposal and commencement of Stage 1.

6.2.2 Proponent responsibilities

In order for this meeting to be helpful, the proposal needs to be developed to a stage where the key inputs and outcomes have been identified, key assumptions and requirements of Council are clear, and other key elements have been identified. In particular, the unique ability of the proponent to deliver the proposal should be demonstrated and documented. The initial Schedule of Information.

6.2.3 Council responsibilities

Where the Council is of the view that there is little prospect of the uniqueness criteria being met, it will communicate this to the proponent. In such circumstances, the Council reserves the right not to advance assessment of the proposals to Stage 1 assessment as set out below.

6.3 Stage 1

6.3.1 Initial Submission and Preliminary Assessment

Objective

For Council to undertake a Preliminary Assessment of the proposal and to determine if the submission constitutes an unsolicited proposal and if sufficient justification exists to justify direct dealing and therefore undertake a Stage 1 assessment. Council reserves the right to further consider, or not consider, Unsolicited Proposals beyond this stage at its absolute discretion.

Proponent responsibilities

During stage 1, the Proponent is responsible for:

- Preparing an Initial Submission in accordance with the Schedule of Information
- Requirements listed on the Council Website
- Identification of unique elements of the proposal
- Forwarding the Initial Submission to the Council
- Responding to requests for further information. The information to be provided will depend on the size and complexity of the proposed project.

Council responsibilities

During Stage 1, Council is responsible for:

- Promptly acknowledging receipt of the Initial Submission
- Undertaking an initial compliance check to ensure the required information has been provided
- Requesting further information from the Proponent if required. This may involve clarification meetings with the Proponent in order to promote clarity of Council requirements
- Undertaking a Preliminary Assessment that will be based on the potential for the proposal to satisfactorily meet the Assessment Criteria
- Council approval to progress to Stage 1.b, if warranted
- Notification of the Preliminary Assessment outcome to the Proponent advising if it is to be progressed.

Outcomes

The outcomes will be that the Proposal is considered acceptable or not suitable to progress to Stage 1

Feedback

Proponents will be provided with written feedback on whether their Submission has progressed to Stage 1 or reasons for a decision not to proceed with a proposal.

6.3.2 Strategic Assessment of Initial Submission

Objective

Council to undertake a comprehensive initial assessment of the proposal to identify the potential benefit to Council of further consideration and development with the Proponent.

Proponent responsibilities

During Stage 1, the Proponent is responsible for

- Responding to requests for further information. The information to be provided will depend on the size and complexity of the proposed project.

Council responsibilities

During Stage 1, the Council is responsible for:

- Commitment by Council Executive.
- Requesting further information from the Proponent if required. This may involve clarification meetings with the Proponent in order to promote clarity.
- Undertaking a formal assessment. The assessment will be based on the potential for a subsequent Detailed Proposal to satisfactorily meet each of the Assessment Criteria if progressed to Stage 2
- Preparing an Assessment Report for review and approval
- Preparing a draft Participation Agreement for all proposals deemed appropriate to progress to Stage 2
- Notification of the initial assessment outcome to the Proponent
- Council approval to progress to Stage 2, if warranted.

Outcomes

The following outcomes may result from this stage:

- The proposal is considered suitable for progression to Stage 2
- The proposal, in concept form, is deemed of sufficient interest to Council to warrant further development and progression to a more defined project either with the original Proponent or with a view to bringing a project to market
- The proposal is not sufficiently unique to justify direct negotiations with the Proponent
- The submission is considered suitable for further consideration if the project appears to have merit, requires a relatively low resource commitment by Council is low risk
- The Submission is not considered suitable for further consideration.

Feedback

Proponents with proposals considered suitable to proceed to Stage 2 will be provided with the following information:

- A summary of the assessment findings
- The proposed process for the further development and consideration of a Detailed Proposal, including governance arrangements
- Guidance regarding: value, scope, appropriate target return on investment parameters, timing, risk and other limitations affecting the Detailed Proposal in order to avoid unnecessary costs for the Proponent
- Written feedback providing reasons for a decision not to proceed with a proposal will be provided.

6.4 Stage 2 Detailed Proposal**Objective**

For the Proponent and Council to work cooperatively in the development and assessment of a Detailed Proposal, which may require a degree of preliminary negotiation on key issues, subject to the nature of the proposal.

Proponent responsibilities

During Stage 2, the Proponent will:

- Enter into a Participation Agreement
- Attend the Establishment Meeting
- Prepare and submit a Detailed Proposal in a form previously agreed with Council that addresses each of the Council's Assessment Criteria. This may include draft commercial terms for Council's consideration, if appropriate.

Council responsibilities

During Stage 2, the Council will:

- Enter into a Participation Agreement
- Facilitate an Establishment Meeting in order to:
 - Provide feedback to the Proponent regarding risks and concerns with the Initial Submission
 - Provide guidance to the Proponent regarding Council requirements
 - Agree the approach to managing Proposal Development Workshops
 - Advise of the relevant Assessment Criteria
 - Agree the format for the Detailed Proposal, including the information and level of detail required
 - Commence discussions concerning the acceptable commercial and legal terms (with a view to developing draft commercial and legal terms that will form the basis of a final binding offer).

- Commit appropriately experienced and qualified resources to participate in the Stage 2 process
- Prepare a Governance Plan
- Define a Reference Project which accurately reflects the scope of the proposal
- Investigate benchmarking and prepare the Public Sector Comparator for the Reference Project, where appropriate
- Participate in Proposal Development Workshops.
- Provide further information to the Proponent to assist with proposal development
- Receive the Detailed Proposal
- Undertake assessment of the Detailed Proposal (by the Assessment Panel) against each of the Assessment Criteria
- Request further information from the Proponent as required
- Prepare an Assessment Report (by the Assessment Panel) and make recommendations to the Steering Committee
- Make recommendations to Council.

Outcomes

The outcomes will be that the Proposal is considered acceptable or not suitable to progress to Stage 3

Feedback

- Proponents progressing to Stage 3 will be provided with a draft Stage 3 Agreement and a schedule of items and issues to be negotiated (this may be provided separately to the Stage 3 Agreement).
- Written feedback providing reasons for a decision by Council to not proceed will be provided.

6.5 Stage 3 Negotiation of Final Binding Offer

Objective

To finalise all outstanding issues with a view to entering into a binding agreement.

Proponent responsibilities

During Stage 3, the Proponent will:

- Enter into a 'Stage 3 Agreement'
- Participate in the negotiation process
- Submit a Binding Offer, including appropriate legal and commercial terms.

Council responsibilities

During Stage 3, Council will:

- Enter into a 'Stage 3 Agreement'
- Inform the Proponent of the process and protocols for negotiation
- Provide the Proponent with a schedule of items for negotiation

- Prepare an internal Governance Plan and appoint the Probity Officer
- Commit appropriately qualified resources to complete negotiations, including legal, financial and technical advice where appropriate
- Undertake a comprehensive assessment of the Binding Offer
- Define the appropriate Contract Management arrangements to monitor and ensure contracted outcomes are delivered
- Make recommendations to Council

Outcomes

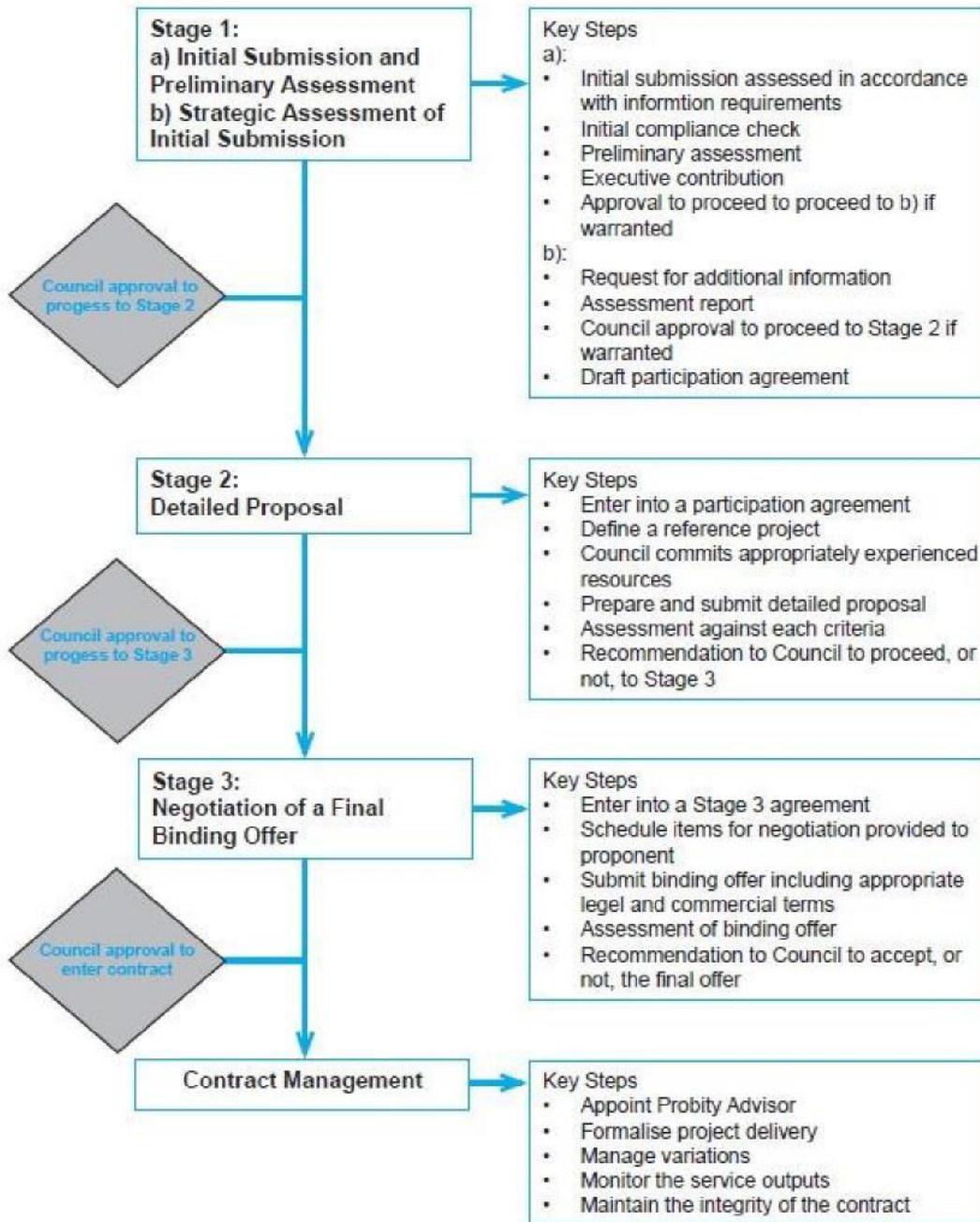
The outcome from this stage will be a recommendation to Council that the Binding Offer be or not be accepted. If the recommendation is positive a full brief of the proposal will be provided to the Council.

Feedback

Notification of the recommendations and ongoing procedures or a decision to not proceed.

7 Process Flow Chart

Key Stages in the Consideration of Unsolicited Proposals



8 Variation

Council reserves the right to review, vary or revoke this policy and should be reviewed periodically to ensure it is relevant and appropriate.