

09 August 2018

Infrastructure Policy and Governance Unit
Department of the Premier and Cabinet
Locked Bag 3001
WEST PERTH WA 6872

Via email: marketledproposals@dpc.wa.gov.au

To whom it may concern

MARKET-LED PROPOSALS POLICY: PROPOSAL FOR PUBLIC CONSULTATION

Thank you for the opportunity to provide feedback regarding the *Market-led Proposals Policy* and the accompanying *Supplementary Guidelines*. The Urban Development Institute of Australia WA (UDIA) is the peak body representing the urban development industry in Western Australia. UDIA is a membership organisation with members drawn from the residential, commercial and industrial property development sectors. UDIA members include both private and public sector organisations. Our industry represents approximately 12.3% of Western Australia's Gross State Product, contributing \$30.45 billion annually to the Western Australian economy and \$251.7 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 228,500 Western Australians and over 2 million Australians across the country.

UDIA congratulates the Government for seeking to establish a framework to receive and consider, market-led proposals. UDIA strongly supports the proposal and the commitment to creating new opportunities that allow the private sector to work more collaboratively with government to enhance our communities and the economy by delivering new development and jobs.

Whilst the Institute is supportive of the intent of the proposed policy and understands Government's objectives in seeking to ensure that all opportunities are maximised, UDIA is concerned that the overly guarded and cautious nature of proposed assessment framework will limit the successful uptake of market-led proposals (MLP). The evaluation process and its multiple assessment layers adds considerable risk to proposals, undermining the intent of the policy. This submission highlights three key areas of concern, providing recommendations to overcome these challenges and to ensure that the policy is successful.

Respecting Intellectual Property and Balancing Risk with Reward

UDIA fully understands Government objectives and its commitment to competitive tendering processes to ensure that it maximises returns on investment. Whilst respecting these objectives, the proposed evaluation framework does not equitably recognise private sector investment in preparing and presenting proposals to Government. If having received a proposal, Government sees significant merit in the proposal because of the opportunities that it will create, it is likely that the Government may decide to offer that opportunity by way of an open tender. This could happen at any stage of the

evaluation process. This exposes proponents to a considerable level of risk that is likely prevent MLP's from coming forward. Whilst the Policy states that *'all reasonable steps will be taken to protect intellectual property'* it is not clear what this means in practice. To overcome this issue the Institute suggests that compensation should be made available to proponents where Government decides to pursue a particular proposal without the involvement of the proponent. For example, if the Government decides to establish a competitive tender process or retain the delivery of the proposal.

Further, consideration needs to be given to fact that the Government may not be willing or in a position to support a proposal at a particular moment in time due, despite there being clear merit in the proposal. In these circumstances, the Policy's transparency and reporting requirements, coupled with the failure to include provisions that prevent the receipt of replica proposals for defined time periods or allow for 'preferred proponents'; further increases uncertainty for MLP proponents. Whilst the Guidelines accompanying the MLP Policy note that some information may be kept confidential for a *'specified period of time'* no guidance is provided as to when this is appropriate and how long information may be kept confidential for. Guidance with this regard is needed to ensure that proponents have full confidence in the MLP evaluation process.

Recommendations

1. That the proposed policy allows for proponents of market led proposals to be reasonably compensated for work undertaken in the preparation of proposals if the Government decides to pursue a particular proposal without the involvement of the proponent. The amount of compensation should be determine an independent body or tribunal.
2. Greater clarity regarding the management and dissemination of intellectual property is provided to ensure that proponents fully understand and have confidence in the MLP evaluation process.

Evaluation Timeframes and Evaluation Process

The proposed evaluation process is variable with the composition of the MLP Steering Committee amended to suit the nature of individual proposals, although it retains a strategic focus with its membership including the Director Generals/Chief Executive Officers of at least five Government Departments. Meanwhile, at the end of each stage in the process, proposals are referred to Cabinet for decision. Proposals may also be referred to Infrastructure WA during stage's 2 and 3. Whilst acknowledging the benefits of including senior government personnel in the evaluation of proposals, the practicalities of arranging MLP Steering Committee meetings with variable members and presenting proposals to Cabinet mean that the evaluation process is likely to take considerable time to complete. Furthermore, the involvement of Infrastructure WA in projects within its thresholds that are considered 'high risk' or valued over \$100m, adds a duplicated assessment layer.

As no evaluation timeframes are provided, the Institute is concerned that the lengthy evaluation process and multiple layering of government checking expose MLP proponents to impractical levels of uncertainty and risk regarding government's commitment to proposals.

The Institute is also concerned that there may be an inherent conflict of interest in the appointment of the lead government agency to oversee the evaluation process. This conflict is likely to be driven by two interrelated factors. Firstly, as proposals put forward will fall within the portfolio and remit of the lead agency, it is likely that the leading government agency will have previously considered delivering the proposal or a similar proposal put forward and as such, decided not to proceed with the project. Therefore, having decided on a course of action, the agency is unlikely to support a similar proposal put forward by the market. Secondly, government departments and agencies are highly focused and structured towards achieving specific objectives and satisfying the key performance indicators set by government. However, MLP's are likely to satisfy a number of broader government objectives. For example, a proposal to redevelop a train station, or land adjoining a train station may satisfy a number of government objectives such as creating jobs, delivering infill development and providing affordable housing etc. However, despite these benefits, such a project may be considered to conflict with Department of Transport/PTA agency specific objectives and priorities which are focussed moving as many people as quickly as possible.

To overcome any preconceived agency bias, whether real or perceived, and to ensure that the full range of benefits of proposals are properly considered, proposals should be independently evaluated or by the whole of government. Therefore all proposals should be led by the Department of Premier and Cabinet or Infrastructure WA through the evaluation process with the relevant government agencies acting as referral agencies. As well as providing consistency, this would also help to minimise any government agency resistance and ensure that the delivery of proposals is undertaken in a more collaborative and effective manner.

Another area of concern is the Policy's statement that proponents may be required to pay the cost of any third party experts appointed by Government to assist with the evaluation of the proposal, on a cost recovery basis. This exposes the proponent to yet more risk and is likely to prevent MLP's from coming forward. If experts are chosen by the government and appointed on hourly or daily rate, then the potential cost of preparing a proposal are unknown. The appointment of any additional expertise to evaluate proposals should be at the proponent's discretion and for an agreed fee or fee structure.

Recommendation

3. Consideration is given to streamlining the evaluation process to ensure that the process can be negotiated efficiently and effectively by all parties. Consideration should be given to the fast tracking 'supported', 'uncomplicated' and or 'low risk' proposals.
4. That proposals are led by an independent government agency through the evaluation process.
5. The appointment of any additional expertise to evaluate proposals is at the proponent's discretion and for an agreed fee or fee structure.

Evaluation Criteria

The MLP Supplementary Guidelines state that proposals will be assessed against their strategic alignment with government policies and expenditure commitments. Whilst it is important that proposals align with government priorities, the very nature of a MLP means that it unlikely to align with expenditure commitments. The guidelines should recognise this and clarify the statement.

The 'value for money criteria' is particularly focused on the cost implications of proposals to government. This includes considering whether the proposal will create ongoing costs to government, or directly result in reduced government revenues. Whilst these are relevant considerations, they should be appropriately balanced against any uplift in government revenues including any indirect revenues. Similarly, the cost of doing nothing should also be an important consideration in the evaluation process.

Clarity is needed as to how proposals relating to property will be evaluated. The MLP Guidelines state that such proposal may provide justification for exclusive negotiation. However, the Guidelines go on to state that proposals seeking to acquire government property have a low probability of success for exclusive negotiation. Meanwhile, the three exclusive negotiation examples provided all relate to proposals concerning property, two of which concern government owned land. As a result, it is not clear how proposals relating to property including those which may involve the development of adjoining property, the consolidation of land, or property exchanges will be managed and evaluated.

Recommendation

6. Clarity is provided as to how proposals will be evaluated against government speeding commitments.
7. That the cost and benefits of proposals to government, the community and economy are equally considered.
8. Clarity is provided as to how market led proposals relating to property will be evaluated.

In closing, UDIA would like to reiterate our strong support for the establishment of the market-led proposal evaluation process. UDIA greatly appreciates the Department's efforts in engaging with industry on this issue and we are hopefully that comments will assist in ensuring that opportunities are presented to government.

UDIA trusts that these comments will assist in the finalisation of the market-led proposals policy. Should the Department require any further information regarding these comments, please contact Chris Green, Director of Policy and Research at cgreen@udiawa.com.au or 9215 3400.

Yours sincerely



Allison Hailes
Chief Executive Officer