

# Real Estate Matters

February 2016



## Western Australia's Unsolicited Bids Guideline

The Western Australian Government has adopted a guideline to establish a framework for the submission of unsolicited bids for the sale and lease of State-owned land (**Guideline**).

The Guideline is a separate policy from the Government's recent expansion of the scope of its land sales program.

The Guideline will apply to all unsolicited bids where a proposal is valued at US\$5 million or more (excluding the value of the state-owned land) or where the Cabinet, Premier or Minister for Lands direct that the Guideline should apply.

Where the Guideline applies, a proponent must satisfy the assessment criteria it establishes. Accordingly, a proponent must demonstrate that its proposal:

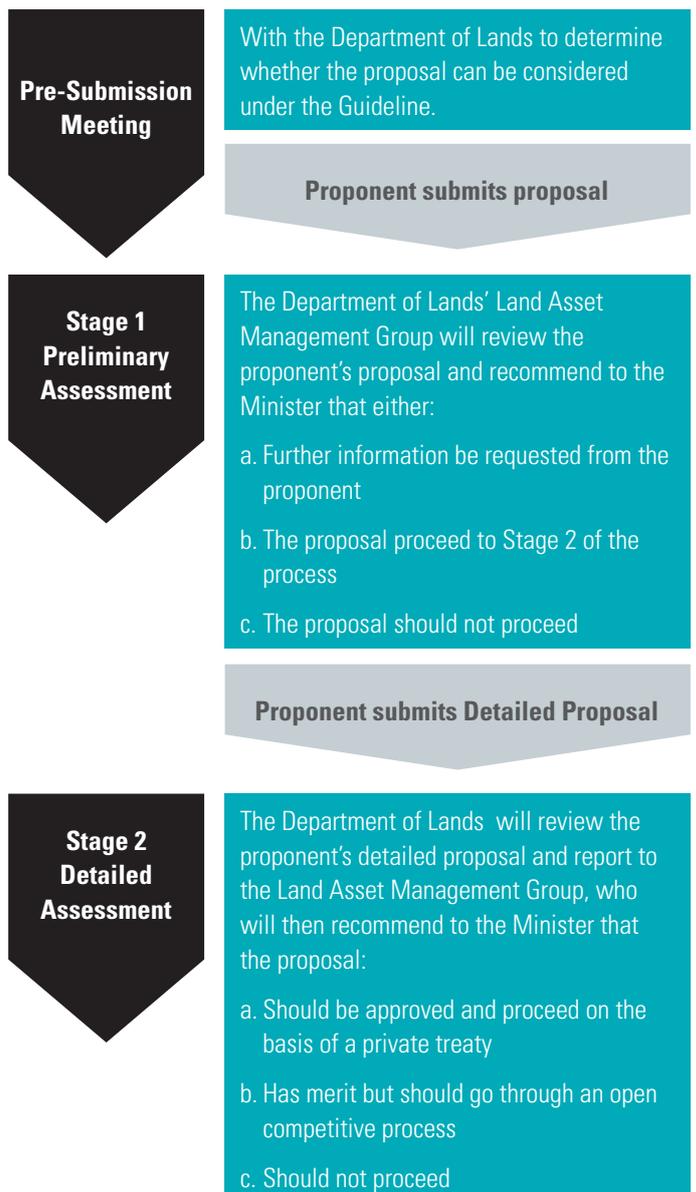
- a. Is unique and leads to an outcome that could not otherwise be achieved through a competitive process. The Guideline expressly states that an unsolicited bid proposal that is "contemporary" but that is not in itself unique will not be accepted through the unsolicited bids process

### What constitutes "unique"?

From discussions with the Department of Lands it is evident that there is no litmus test for what constitutes 'unique'. Whether or not a proposal is unique will turn on the specific site and the proposed usage for the site, and will the nature of the usage be particular to the proponent.

- b. Will have a significant and beneficial impact on the economy, community or environment
- c. Delivers value for money to the state
- d. Is feasible, with respect to the proponent's experience, capability and capacity to deliver the proposal
- e. Aligns with relevant government policy

All unsolicited bids will undergo an assessment process, which includes:



Proponents should be aware all unsolicited bids are subject to the state's public disclosure obligations and freedom of information laws, and that limited information about all unsolicited bids received and assessed will be published on the Department of Lands website. The Guideline also provides that the state will take reasonable steps protect the proponent's intellectual property.

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Proponents who are concerned about protecting their intellectual property may, during Stage 2, enter into a participation agreement with the state to formalise, among other submission related matters, a process for identifying and treating proponents' intellectual property.

Please contact our team if you have any queries regarding how the Guideline may affect you.

## Timely Bushfire Reforms to Help Protect Lives and Property Against Bushfire Threat

The Western Australian State Government recently launched its bushfire reform package in response to planning and building recommendations from the Keelty Report into the Perth Hills bushfire of 2011. The reforms are of particular interest to persons intending to develop or build in bushfire prone areas, with new statutory requirements to assess a property's bushfire risk and take construction measures to limit bushfire risk (a requirement which may, in some cases, significantly increase construction costs).

On 7 December 2015, the *Planning and Development (Local Planning Scheme) Amendment Regulations 2015 (WA) (LPS Regulations)* introduced deemed provisions relating to bushfire risk management. The deemed provisions require a Bushfire Attack Level (**BAL**) assessment or BAL Contour Map to be undertaken, and a development approval to be obtained, where the BAL indicates BAL-40 or BAL-FZ, before new development can commence in a designated bushfire prone area. *State Planning Policy 3.7: Planning in Bushfire Prone Areas (SPP 3.7)* sets out the planning hierarchy and the information required at each stage of the planning process, while the *Guidelines for Planning in Bushfire Prone Areas (Guidelines)* provide information on how SPP 3.7 should be implemented.

Some important things to note:

- A property is "bushfire prone" if it is within 100 metres of one hectare or more of bushland. On 7 December 2015, the Fire and Emergency Services Commissioner made the first order designating bushfire prone areas in Western Australia, which resulted in most of the State being designated as bushfire prone.
- If you are building a single house on a lot of less than 1,100 square metres in a bushfire prone area, you will not require a BAL assessment. The building permit approval process may still require a BAL assessment or BAL Contour Map.
- If a local planning scheme does not apply to your property, then you will also be exempt from undertaking a BAL assessment.

## Strata Title Reforms – Western Australia

As Western Australia's population is estimated to reach between 4.4 and 5.6 million by 2056, there is a need to create ways to cope with the growing demand by devising more innovative housing options. In 2014, the Western Australian government announced a host of proposed reforms to the Strata Titles Act 1985 (WA). The reforms aim to provide more flexible and sustainable housing options to benefit developers, strata owners, investors, residents and tenants.

After receiving feedback from the public and industry professionals, particularly concerning termination of existing schemes, in January 2016, Landgate refined its original proposal to include the following:

1. New forms of strata schemes including a community title and a leasehold strata scheme
2. Improved management of strata schemes
3. Clearer and easier ways to resolve strata disputes
4. Better buyer information and protection
5. Staged strata development
6. Termination of strata schemes

The amended legislation is due to be read in the second half of 2016, so watch this space.



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## Darwin Update

The New Year has started strongly in the Darwin office, with many clients anxious to press ahead with urgent projects before the scheduled Territory elections in August this year.

Late in 2015 the NT Government announced it was seeking expressions of interest for the development of a luxury hotel in Darwin, with offers of government assistance available to the successful proponent, including by making available a government owned site as the potential development site. The expression of interest closes on 26 February 2016 and according to the government, there is considerable national and international interest in the development opportunity.

On 4 February 2016, the consultation period on the draft bill to establish the Northern Australia Infrastructure Facility (NAIF) closed. The draft bill is the first step to establishing the Commonwealth governments' AU\$5 billion concessional finance

Facility for investing in major infrastructure projects in Northern Australia. The consultation paper sets out some details on both mandatory and non-mandatory eligibility criteria, and once the final bill is prepared following consideration of submissions, details around eligibility requirements and the Minister's Investment Mandate, will become clearer. Watch out for future releases on this important initiative for investing in the north.

Finally, as part of our engagement with the PowerWater Corporation, we recently achieved contract close on the procurement of a high energy storage system to be installed at Nauiyu (Daly River) as part of a broader roll-out of solar installations across the Territory under the Solar Energy Transformation Program (SETuP). The 800kW/1500kWh high energy storage system will be paired with a 1MW solar installation to substantially reduce (by up to 50%) the community's reliance on diesel powered electricity.

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