

Code for Tenders and Contracts

Approved By: **Council**
Doc Controller: **General Manager**
File: 4/14/2

Document Code: **CP-CBS-SG-012**
Version: **5.0**
Approved Date: **15 Sep 2015**
Next Review Date: **15 Sep 2019**

1.0 Purpose The purpose of this Code for Tenders and Contracts (Code), is to provide a policy framework on best practice tendering and procurement methods in line with the legislative requirements of the *Local Government Act 1993 (the Act)* and the *Local Government (General) Regulations 2005 (the Regulations)*. The Act requires Councils to adopt a Code relating to tenders and contracts.

2.0 Objective With this Code the Burnie City Council (Council) aims to achieve the purchasing principles of:

- i) Open and effective competition;
- ii) Value for money;
- iii) Enhancement of the capabilities of local business and industry;
- iv) Ethical behaviour and fair dealing;
- v) Environmental and sustainability considerations; and
- vi) Risk management considerations.

This Code:

- a) Is consistent with the Act and Regulations;
- b) Includes procedures and guidelines for any prescribed matter;
- c) Promotes any prescribed principles; and
- d) Has been reviewed in the last four years.

As a measure of accountability and transparency, this code (and any amendments) is:

- a) Available for public inspection at the public office during ordinary office hours; and
- b) Available for purchase at a reasonable charge; and
- c) Published on Council's website. <http://www.burnie.net>

3.0 Scope This Policy applies to all Burnie City Council activities involved with tendering and procurement (excluding Controlled Entities).

4.0 Policy The Act and Regulations require Council to invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above \$250,000 (excluding GST). Council has set its tender threshold at \$100,000.

In accordance with the Regulations, Council will invite tenders by one of the following means:

- a) An open tender process; (refer Sections 11.1 through 11.9);
- b) A multiple use register; (refer Section 11.10); or
- c) A multiple stage tender; (refer Sections 11.11, 11.12).

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There are circumstances in which Council is exempt from undertaking the above processes. These circumstances are described in Section 13.

For purchases under the \$100,000 threshold, the Council, in accordance with the Regulations, has decided that a quotation process will be undertaken. Council may choose to grant an exemption from undertaking a quotation process where the same circumstances exist for that of a tender described in Section 13.

Council will not split a contract into two or more contracts for the primary purpose of avoiding compliance with the requirement to publicly invite tenders.

5.0 Definitions

Building Construction – The Construction and refurbishment of buildings and residential properties, and associated maintenance (services and residential) and professional services (e.g. Architects).

Code – refers to this Code for Tenders and Contracts which has been developed in accordance with the requirements of the *Local Government Act 1993* and the *Local Government (General) Regulations 2005* and subsequent amendments.

Consultant – a person or organization, external to a Council, engaged under a contract on a temporary basis to provide recommendations or high-level specialist or professional advice to assist decision-making by Council. The consultant will be expected to exercise his or her own skills and judgement independently of the Council. It is the advisory nature of the work that distinguishes a consultant from a contractor.

Contractor – a person or organisation, external to a Council, engaged under contract for service (other than an employee) to provide specified services to a Council.

Contract – a contract is an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do, or abstain from doing, some act.

Evaluation Panel – a panel establishes to evaluate submitted quotations and tenders often consisting of at least the Superintendent's Representative and Designated Contract Officer (DCO).

Expression of Interest (EOI) – an Expression of Interest may be used as a means of exploring the market or to pre-qualify businesses to reduce the cost of tendering by restricting the issue of formal tenders.

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Industry Capability Network Tasmania (ICNTAS) – promotes Tasmanian industry through import replacement and opportunities for participation in major projects, government procurement and commercial developments. For more information go to www.icntas.org.au

Local Business – all businesses operating in the State, which have a permanent office or presence in Tasmania and employ Tasmanian workers.

Multiple-Stage Purchasing – a process which allows for a preliminary assessment of the market to be made in terms of the capabilities of potential suppliers and the goods and services that are available to satisfy the requirement, before a final purchasing stage is undertaken.

Open and Effective Competition - ensuring that the purchasing process is impartial, open and encourages competitive offers.

Procurement – the entire process by which all resources are obtained by an entity, including, planning, design, standards determination, specification writing, selection of suppliers, financing, contract administration, disposals and other related functions.

Probity – probity is a risk management approach to ensuring procedural integrity.

Probity Advisor – a Probity Adviser provides advice on probity issues before and during the process of tendering and contracting to ensure the process is fair and in accordance with the Council's guidelines.

Public Tender – a tender where any business that can meet the requirements of the Request for Tender has the opportunity to bid.

Purchasing – the acquisition of goods or services.

Quotation – the bid submitted in response to a Request for Quotation from the Council.

Request for Quotation (RFQ) – either verbal or written request for offers from businesses capable of providing specified work, good or service. Request for Quotations are usually advertised.

Request for Tender (RFT) – a document soliciting offers from businesses capable of providing a specified work, good or service. Requests for Tender are usually advertised

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Standing Tender – a tender from which a single tenderer or multiple tenderers may be contracted for a specified period to provide specified goods or services during that period without the need for a further tender process.

Tender – a proposal, bid or offer that is submitted in response to a Request for Tender from the Council.

Tenderer – Contractor, Supplier or other bidder who is submitting a Tender.

Tender Box – the point of lodgement for tenders to ensure that the documentation is kept secure until the tender period closes. The tender box has an opening which allows large envelopes to be lodged, but does not permit access to the contents; should be secured in a fixed position; and should be locked with two locks with different keys, maintained by two different Officers.

Tender Review Committee – a committee established to review the process used for all building and construction and goods and services tenders over \$100,000.

The Act - *Local Government Act 1993.*

The Regulations - *Local Government (General) Regulations 2005.*

Value For Money – achieving the desired outcomes at the best possible price.

Verbal Quotation – a verbal request for quotation. A verbal response may be adequate for low value purchases. All verbal responses are to be documented.

Written Quotation – a written request for quotation to undertake specific works or supply goods and services.

6.0 Purchasing Principals

This Code has been developed in order to have a transparent set of strategies that Council will follow in order to comply with the four purchasing principles as required in The Regulations. Below is a brief definition of each principle and what it means in practice to Council.

6.1 Open and Effective Competition

This principle means ensuring that the purchasing process is impartial, open and encourages competitive offers.

In practice this means that Council will:

- Use transparent and open purchasing processes so that potential contractors, suppliers and the public can have confidence in the outcomes;

- Adequately test the market by applicable processes. For example, by open tender or by seeking quotations;
- Avoid biased specifications; and
- Treat all suppliers consistently and equitably.

6.2 Value for Money

This principle means achieving the desired outcome at the best possible price.

In practice this means that Council will weigh up the benefits of each purchase against the costs of that purchase. In doing this Council may take the following factors into consideration:

- Fitness for purpose;
- Maintenance and running costs over the lifetime of the product;
- The advantages of buying locally, e.g. shorter delivery times, local backup and servicing, and the availability of spare parts;
- The contribution to the achievement of other Council objectives such as industry development and employment creation;
- Quality assurance and perceived level of risk; and
- The capacity of the supplier (e.g. managerial and technical abilities); disposal value.

6.3 Enhancement of the Capabilities of Local Business and Industry

This principle means ensuring that local businesses that wish to do business with Council are given the opportunity to do so.

In practice this means that Council will, where possible:

- Actively seek bids from local business, particularly from those which have previously requested the opportunity to quote;
- For purchases less than \$10,000 excluding GST seeks at least one verbal quote from a local business. Exemptions may apply to items below \$1,000 excluding GST (see table 8.2.1).
- For purchases between \$10,000 and \$100,000, where practicable seek at least three written quotes, of which at least one will be sought (if available) from local businesses;
- For purchases greater than \$100,000, seek to get at least one tender from a local business; and
- Where the market is unfamiliar and capacity is unknown, Council may contact ICNTAS and use BIZTAS, to check local capability.

6.4 Ethical Behaviour and Fair Dealing

This principle means that all purchasing is undertaken in a fair and unbiased way and in the best interests of Council.

In practice this means that Council will:

- Be fully accountable for the purchasing practices that it uses and the decisions it makes;
- Ensure that decisions are not influenced by self-interest or personal gain;
- Identify and deal with conflicts of interest;
- Maintain confidentiality;
- Ensure that all procurement is undertaken in accordance with Council's policies;
- All procurement activity will be undertaken without favour or prejudice and will aim to maximise value in all transactions;
- Confidentiality will be maintained in all dealings; and
- Acceptance of gifts, gratuities or any other benefits, which may influence, or might be deemed to influence, equity or impartiality will not be permitted.

6.5 Environmental and Sustainability Considerations

This principle means that Council when making a purchase will consider the potential environmental impact of the product or services to be purchased and take into consideration the longer term sustainability impacts of the purchase.

In practice this means that Council will:

- Undertake an assessment of the life cycle costs of the purchase with a view to minimising the use of energy, fuel and like inputs;
- Consider the source of the materials incorporated in the purchase and favour products that are produced using sustainable resources;
- The scoping of potential purchases considers relevant Council policies;
- Contract documentation requires that contractors prepare an environmental management plan to mitigate environmental impacts of construction work; and

- Council will comply with relevant environmental legislation in tenders and contracts.

6.6 Risk Management Considerations

This principle means that the risks associated in a tender or contract process and in the actual implementation of the work or use of a product or material are assessed.

In practice this will mean:

- A risk assessment will be carried out in the preparation of contract documentation (projects over \$100,000) and for purchases that present a work, health and safety, economic or environmental risk to Council; and
- Purchasing and contract documentation will include risk management considerations in the selection criteria and Council's expectations in relation to risk management will be included in contract specifications.

A risk assessment will be required to be prepared for all contracts by the successful tenderer and implemented.

7.0 Ethics and Probity

7.1 Ethics

Council will observe the following ethical standards when making purchasing transactions:

- All business will be conducted in the best interests of Council avoiding any situation which may impinge, or might be deemed to impinge, on impartiality;
- All expenditure will be in accordance with the requirements of The Regulations;
- All procurement activity will be undertaken without favour or prejudice and will aim to maximise value in all transactions;
- Confidentiality will be maintained in all dealings; and
- Acceptance of gifts, gratuities or any other benefits, which may influence, or might be deemed to influence, equity or impartiality will not be permitted.

7.2 Probity

In order to achieve probity, Council will consider the following five probity principles throughout all stages of procurement and contracting processes to ensure success in achieving the best value for public money:

- Open competitive processes;
- Transparency of process;
- Identification and resolution of conflicts of interest;
- Accountability; and
- Monitoring and evaluating performance.

7.3 Purchasing Code of Conduct

The following points make up Council's Purchasing Code of Conduct. The Council aims to:

- Ensure that all potential suppliers are provided with identical information upon which to base tenders and quotations and are given equal opportunity to meet the requirements;
- Establish and maintain procedures to ensure that fair and equal consideration is given to all tenders and quotations received;
- Promote honesty and equity in the treatment of all suppliers of goods and services;
- Provide a prompt and courteous response to all reasonable requests for advice and information from potential or existing suppliers;
- Promote fair and open competition and seek value for money for the Council and its local community;
- Where practicable seek to ensure that cost is not a barrier to suppliers for participation in the procurement process;
- Protect commercial-in-confidence information;
- Satisfy accountability standards;
- Establish processes that avoid situations where private interests of Council's employees may conflict with public/Council duty and provide for the declaration of any conflicts of interest that do arise;

- Provide a clear statement that soliciting or accepting remuneration or other benefit from a supplier for the discharge of official duties is not permitted and may be illegal; and
- Inform tenderers that during the tender process automatic disqualification will result if the tenderer canvasses counsellor/s, or interferes in the process in any way.

8.0 Making a Purchase

8.1 Procurement Overview – Processes

The following procurement overview is provided to give a brief outline on the way in which Council procures routine goods and services:

- i) Plan the purchase (which includes the selection of the most appropriate purchasing method);
- ii) Prepare the relevant documents (e.g. quotation, tender or expression of interest);
- iii) Invite and receive offers;
- iv) Evaluate those offers;
- v) Advise the successful bidder and offer to debrief any unsuccessful bidders; and
- vi) Manage any contract that has been implemented as a result of the procurement.

8.2 Planning the Purchase

During the planning phase of a purchase the following steps may be taken by Council's staff:

- Any relevant approval to undertake a purchase is obtained;
- An estimate of the cost of good or service is undertaken and available Council funding of such a purchase is confirmed and an appropriate method of purchasing is chosen;
- Market research and consultation is undertaken (e.g. what products are available on the market and how many suppliers);
- Specifications shall, where applicable, comply with the relevant sections of the *Work Health and Safety Act 2012 and Work Health and Safety Regulations 2012*;
- Specifications shall, where applicable, comply with *Work Health and Safety Act 2012 Section 22-26*;
- The establishment of an evaluation committee; where the purchase cost exceeds \$100,000 ex. GST;

- The establishment of evaluation criteria and evaluation methodology (undertaken by evaluation committee);
- The development of a risk assessment and management plan;
- The commencement of a contract management plan; and
- If necessary, the engagement of a probity advisor.

There are three tendering and procurement thresholds that require different levels of involvement in planning and executing the purchase. The following table refers to the thresholds and summarises what purchasing method Council utilises based on the total dollar value of the purchase.

Table 8.2.1 Tendering and Procurement Thresholds

Procurement Value ex GST	Minimum Requirement
\$10,000 and below	Verbal Quotations

No formal quotations are required; however, the General Manager or delegated officer may at his discretion obtain verbal quotations (which are to be documented), of which at least one will be sought from a local business (if suitable options exist).

Exemption from obtaining verbal quotations:

Quotations are not required for one-off purchases using a Council purchase card valued at \$1000 or less that fall outside the Preferred Supplier Listing where it would not be cost effective to obtain verbal quotations.

Between \$10,000 and \$100,000 Written Quotations

Where practicable, at least three written quotations will be obtained, of which at least one will be sought from a local business (if available).

\$100,000 and greater Public Tender

- Tenders will be advertised in the Saturday edition of The Advocate newspaper.
- Each of Council's tenders will be advertised on its own website: <http://www.burnie.net> and may also be advertised on <http://www.tenders.tas.gov.au>
- Council will seek at least one tender from a local business (if available).

Council will apply the above requirements to the purchase of all goods and services with the exception of certain circumstances. The circumstances in which the above requirements may not be used are described under Section 13 – *Exemptions*.

9.0 Verbal Quotations (for purchases \$10,000 and below excluding GST)

9.1 Purchasing Documentation

Council will undertake most purchases below \$10,000 ex. GST on a verbal basis and as such there will not be any formal quotation documentation. However, Council may choose to provide suppliers with a written specification and request a written quotation for all but very low-value / low-risk purchases.

9.2 Inviting Offers

Council will follow the following procedures when inviting verbal quotations:

- Provide each supplier with the same information and will give each supplier the same amount of time to prepare a quote;
- Seek at least one verbal quotation from a local business (if available); and
- Document all verbal quotations.

9.3 Receiving Offers

In receiving quotations, Council will hold any written or documented verbal quotation received prior to the closing time in a secure location to maintain confidentiality, to ensure probity and to protect the individuals involved from claims of unfair practices.

Depending upon the nature and value of the purchase, Council may from time to time, choose to use a tender box as a point of lodgement for written quotations, to ensure that the documentation is kept secure until the tender period closes.

All quotations that the Council receives will be clearly marked with the time and date of receipt, and recorded in an appropriate schedule or register.

The Council treats information provided by suppliers as confidential and will not provide this information to unauthorised persons.

For written quotations Council will follow the procedures set out in the conditions of quotations for any late quotations, and by accepting a late quotation, will ensure that it is not providing an advantage to that bidder over other bidders.

9.4 Evaluating Offers

Council when evaluating verbal and written quotations do so with the objective of identifying the offer that best meets requirements and provides the best value for money. When evaluating quotations Council will take into consideration the following aspects of a bid:

- Value for money, taking into account estimated life, disposal value and maintenance requirements and costs;
- Price;
- Compliance with quotation specifications;
- Quality, delivery and service;
- The full benefits of sourcing locally, including consideration of employment and economic benefits for businesses in the immediate geographic area of the municipality is assessed;
- The consequences, including possible risks, of entering into a contract where there is one supplier, or a limited number of suppliers, that can provide and maintain the particular product over its lifetime; and
- Any relevant Council policies.

10.0 Written Quotations (for purchases between \$10,000 and \$100,000 excluding GST)

10.1 Purchasing Documentation

The Request for Quotation (RFQ), which may be in letter, facsimile or email form, is a document inviting offers from businesses to provide a specified good or service. Council's quotation documents will include all terms and conditions of quotation, together with a clear description of the goods or services required, and the details of any applicable Council policies.

The complexity of the documentation will depend upon the nature and value of the purchase. Generally the RFQ documentation will consist of:

- **Conditions of Quotation** – The conditions set out the terms under which Council will receive and evaluate tenders. The conditions will usually include:
 - Evaluation criteria and a brief outline of the evaluation methodology to be used;
 - Closing date, time and place of lodgement;
 - Council contact details;

- Pricing requirements (eg the price should exclude GST);
- Relevant Council policies and principles;
- Entitlement of unsuccessful bidders to be debriefed; and
- Information on the Council's complaints process.
- Specification – The specification clearly, accurately and completely describes the essential requirements of the goods or services being purchased. It is the basis of all offers and is the foundation for the contract. The specifications will usually include the:
 - Functional requirements;
 - Performance requirements; and
 - Technical requirements.

10.2 Inviting Offers

When inviting written quotations Council will follow these procedures:

- Where practicable, Council will seek at least three written quotations of which one quotation will be sought from a local business if available;
- In some cases, Council may choose to advertise a quotation if advantageous to do so;
- Council will directly send the invitation to quote to identified businesses (such as businesses that already provide the service and businesses identified during the market research phase);
- Exemption from seeking quotations will only be granted by the General Manager in circumstances as described under Section 13 – *Exemptions*;
- Council will issue the request for quotation documentation either by mail, facsimile or by e-mail;
- When issuing a RFQ to a business, the details of that business will be recorded. The details recorded will include: name of business, address, contact person, e-mail, telephone, and facsimile; and
- The time the Council provides to bidders to respond to the request for quotation will depend largely upon the nature and the complexity of the purchase, but equal time will be given to all businesses requested to quote.

10.3 Receiving Offers

In receiving quotations Council will hold any written quotation received prior to the closing time in a secure location to maintain confidentiality, to ensure probity and to protect the individuals involved from claims of unfair practices.

Depending upon the nature and value of the purchase, Council may from time to time, choose to use a tender box as a point of lodgement for written quotations, to ensure that the documentation is kept secure until the tender period closes.

All quotations that the Council receives will be clearly marked with the time and date of receipt, and recorded in an appropriate schedule or register.

The Council treats information provided by suppliers as confidential and will not provide this information to unauthorised persons.

For written quotations, Council will follow the procedures set out in the conditions of quotations for any late quotations and by accepting a late quotation, Council will ensure that it is not providing an advantage to that bidder over other bidders.

10.4 Evaluating Offers

The Council evaluation panel when evaluating written quotations do so with the objective of identifying the offer that best meets requirements and provides the best value for money. When evaluating quotations the evaluation panel will take into consideration the following aspects of a bid:

- Value for money, taking into account estimated life, disposal value and maintenance requirements and costs;
- Price;
- Compliance with quotation specifications;
- Quality, delivery and service;
- The full benefits of sourcing locally, including consideration of employment and economic benefits for businesses in the immediate geographic area of the municipality is assessed;
- The consequences, including possible risks, of entering into a contract where there is one supplier, or a limited number of suppliers, that can provide and maintain the particular product over its lifetime; and
- Any relevant Council policies.

**11.0 Tenders
(for purchases
greater than
\$100,000
ex. GST)**

11.1 Purchasing documentation

The Request for Tender (RFT) is a document inviting offers from businesses to provide a specified good or service. Council's Request for Tender documentation usually consists of four main parts. These four parts are:

- **Conditions of Tender** – The conditions of Tender set out the terms under which Council will receive and evaluate tenders. The conditions will usually include:
 - Evaluation criteria and a brief outline of the evaluation methodology to be used;
 - Closing date, time and place of lodgement;
 - Council contact details;
 - Pricing requirements (e.g. the price should exclude GST);
 - Relevant Council policies and principles;
 - Entitlement of unsuccessful bidders to be debriefed; and
 - Information on the Council's complaints process.
- **Specification** – The specification clearly, accurately and completely describes the essential requirements of the goods or services being purchased. It is the basis of all offers and is the foundation for the contract. The specifications will usually include the:
 - Functional requirements;
 - Performance requirements; and
 - Technical requirements.
- **Conditions of Contract** – The conditions of contract contain the contractual terms defining the obligations and rights of the parties concerned. Generally, contracts are used for all purchases over \$100,000ex.GST or where there are material risks involved.
- **Tender Form** – The Tender Form must be completed, signed and returned by the tenderer. It includes a declaration by the tenderer that: the tenderer agrees to the Conditions of Tender; the information provided in the tender is accurate and correct; and the person signing the form is duly authorised to do so.

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Council when preparing tender documentation will undertake the following procedures and processes:

- Prepare clear and concise tender documentation that include all the terms and conditions of the planned purchase with a clear description of the goods or services required and details of any applicable Council policies;
- Prepare tenders that include details of the intended duration of the contract, including any extensions that are applicable to the contract;
- Prepare tenders that include details of the evaluation criteria (which are based on the specifications), any weightings to be used in the assessment of bids and the evaluation methodology;
- Under no circumstances will Council modify the evaluation criteria or methodology after the request for tender has been released without advising all potential tenderers;
- Prepare specifications that do not restrict competition, reflect bias to any brand, or act as a barrier to the consideration of any alternatives;
- Provide advice and details of any briefing sessions to be held in relation to the purchase;
- Provide details on the availability of de-briefing sessions for unsuccessful bidders;
- Provide details on Council's complaints process and include the contact details of complaints officer
- Prepare documentation that clearly specifies the Council's contact details (including Contact Officer), closing time, date and place of lodgement;
- Prepare documentation that clearly states how and in what circumstances the purchasing documentation can be altered including the length of time given to bidders to prepare their submissions (which is to be at least 14 days from the date on which the tender notice is published);
- Provide advice on the treatment of late submissions;
- Provide an indication if alternative bids will be considered; and
- Where applicable, documentation such as the Conditions of Tender will be cleared by Council's legal advisors and the General Manager before being issued.

11.2 Inviting Tenders

- Council when Inviting Tenders will undertake the following procedures and processes:
- Advertise each tender at a minimum in the Saturday edition of The Advocate newspaper, and on our website at <http://www.burnie.net>. Tenders may also be advertised on <http://www.tenders.tas.gov.au>. The following information will be specified:
 - The nature of the goods or services the Council requires;
 - Any identification details allocated to the contract;
 - Where the tender is to be lodged;
 - Particulars identifying a person from whom more detailed information relating to the tender may be obtained; and
 - The period within which the tender is to be lodged.
- Make Tender documentation available via mail, email, or electronically available on Council's own website at <http://www.burnie.net>. Hard copies can be made available upon request. (any electronic or online tendering process undertaken by Council will be in accordance with the requirements of the Electronic Transactions Act 2000);
- Council may send tender documentation directly to identified businesses, however, it will not provide any documentation to any potential tenderer until the tender has been advertised (so as not to give one tenderer an advantage over another);
- Council will endeavour to get a minimum of three bids of which it will seek at least one from a local business if available;
- Council will ensure that all potential suppliers are provided with identical information upon which to base tenders and are given equal opportunity to meet the requirements;
- When inviting tenders Council will ensure that sufficient time has been provided to allow bidders to prepare an adequate response. At a minimum tenders will be open for 14 days. However, this may increase dependant on whether the requirements are complex, or if it is likely that interested businesses may need to form partnerships/consortiums with other businesses in order to fulfil the requirements of the tender;

- When issuing a RFQ to a business, the details of that business will be recorded. The details recorded will include: name of business, address, contact person, e-mail, telephone, and facsimile;
- If for any reason, there is a need to alter the tender documentation once it has been issued, an addendum will be sent to all businesses that have been issued with the documentation; and
- If it is necessary to extend the closing date of the tender the following will be done:
 - All businesses that have been issued with tender documentation will be advised in writing of the change of closing date; and
 - The new closing date will be advertised in all newspapers and websites where the original advertisement was placed.

11.3 Receiving Tenders

Council will accept lodged tenders in the tender box, via mail, or to Council tender email address tender@burnie.net. Faxed tenders will not be considered.

Council will provide a locked tender box at the designated tender lodgement location. The tender box will not be opened until the time set for the closing of tenders has elapsed.

It will be the Tenderers responsibility to ensure that before the designated closing time for tenders, their tender is either:

- Delivered in person and placed in the tender box; or
- Posted or delivered by courier in sufficient time to allow delivery, receipt and placement in the tender box.

Council will follow the procedures set out in the conditions of tender for any late tender submissions and by accepting a late tender, Council will ensure that it is not providing an advantage to that bidder over any other bidders.

When opening tenders Council will ensure that tenders are:

- Opened in the presence of a minimum of two officers; and
- Clearly identified and recorded.

Council treats information provided by tenderers as confidential and will not provide this information to unauthorised persons, except as provided in this policy.

In receiving tenders, Council may reject non-compliant offers (in accordance with the terms of tender documents) which:

- Are lodged after the closing time without a valid reason;
- Are not signed where required;
- Are incomplete – for example, questions have not been answered, pages are missing, or required documentation has not been attached (for example, insurance certificates);
- Do not comply with mandatory conditions of tender; or
- Fail to meet mandatory specifications.

11.4 Evaluating Offers

The Council evaluation panel will evaluate tenders in accordance with the evaluation criteria and methodology specified in the evaluation plan, which was developed prior to offers being invited. Under no circumstances will Council modify the evaluation criteria or methodology after the Request for Tender has been released unless all potential tenderers are advised of the change in writing (addendum).

In evaluating tenders the evaluation panel will undertake the following steps:

- **Evaluate compliance** – Screen all offers to ensure that they are complete and comply with all mandatory evaluation criteria. Offers, which do not meet all mandatory criteria, may be excluded from further evaluation.
- **Clarify offers** – It may be necessary to seek clarification from a tenderer if an offer is unclear. Clarification does not mean that tenderers can revise their original offer. Any clarification sought should be documented.
- **Evaluate qualitative/non-cost criteria** – this stage involves a detailed analysis of each offer against the non-cost or qualitative evaluation criteria and weightings specified in the evaluation plan (the supplier must demonstrate that they meet the evaluation criteria, not just assert it).
- **Shortlist offers** – This step is only used for complex purchases in order to eliminate offers that are clearly not competitive. However, during this process, eliminated offers are not yet totally rejected, and may be re-visited later in the evaluation process.

- **Requests for Tenderers to make a formal presentation** – If appropriate, and providing that tenderers have been forewarned in the Conditions of Tender, tenderers may be requested to make a formal presentation to the evaluation committee, clarifying their tender and providing the opportunity for the committee to ask questions. Under these circumstances, the tenderer will be directed to not introduce new or revised information. All information, questions and answers will be formally recorded by the Council.
- **Calculate value for money and compare offers** – The aim of Council’s comparative evaluation process is to determine which offer best meets all the requirements of the specification and offers the best value for money. The major factors which Council take into consideration when evaluating value for money are:
 - The quality of the proposed good or service, that is, how well it meets the specified requirements; verses.
 - Whole of life costs; verses.
 - Risk, that is, the capacity of the tenderer to deliver the goods or services, as specified, on-time and on-budget.
- **Select preferred tenderer** – when selecting the offer that represents the best value for money for Council and where two or more firms are ranked equally following the value for money assessment, Council will give preference to a Tasmanian business over an inter-state or overseas business. In selecting a preferred tenderer for a high risk/high value or complex process, Council will often undertake a due diligence investigation to ensure that the tenderer has the capacity and stability to fulfil all of the requirements of the contract.
- **Write the evaluation report** – On completion of the evaluation process Council will document the selection of a successful tenderer in an Evaluation Report to be submitted to the relevant approval authority (e.g. Tender Review Committee and/or General Manager). Council’s evaluation reports include:
 - A comprehensive record of the evaluation method, the rationale used to select the preferred supplier, and whether it is recommended that negotiations should be undertaken, and on what basis; and
 - Reasons for overlooking lower priced tenders.

11.5 Tender Review Committee

A Tender Review Committee may be established by the General Manager to review the purchase/lease of all goods and services over \$100,000 excluding GST prior to the awarding of contracts, to ensure that Council's procurement policies are adhered to.

The Tender Review Committee will usually consist of not less than three members, which includes a Chairperson, Secretary and one person who is knowledgeable of Council's procurement policies.

Where the General Manager decides that the establishment of a Tender Review Committee is necessary to review tender policy compliance, the managing officer of that Evaluation Panel may be required to present a submission to the Tender Review Committee which may include the evaluation Report and Probity Advisors Report (if relevant), for its endorsement of the tender and evaluation process.

The Tender Review Committee will usually review and consider the following aspects of a tender:

- The tender evaluation process adopted;
- The final tender evaluation report, signed by the Evaluation Panel;
- Critical dates (e.g. when the contract is to start, when the current contract is due to expire, critical project milestones, expenditure constraints [e.g. funds only available this financial year] etc.);
- Any other relevant issues or information, such as a Probity Adviser's report; and
- A certification by the officer responsible for managing the tender evaluation process, verifying conformity with relevant Council policies and guidelines.

On completion of its evaluation, the Tender Review Committee will report to the managing officer of the Evaluation Panel and convey their findings.

The Tender Review Committee may refer a tender to Council for determination. In making the determination Council will take regard of the tender evaluation report, supporting documentation and recommendation of the Tender Review Committee. Where Council determines not to follow the recommendation of the Tender Review Committee, a rationale for the decision will be provided to the Tender Review Committee.

11.6 Notification of Successful and Unsuccessful Bidders

Once the preferred bidder is selected and all relevant Council approvals to proceed with the purchase have been granted, Council shall write and in most circumstances telephone the preferred provider to notify them that they have been successful. After the preferred bidder has been notified, Council will notify all unsuccessful bidders in writing of their non-selection.

The unsuccessful bidders shall be advised of:

- The tender outcome, including the contract number and title;
- The successful contractor; and
- The term of the contract.

Details of tenders awarded will be displayed on Council's public notice board for a period of not less than 14 days.

All unsuccessful bidders may request a debriefing session.

11.7 Debriefing Unsuccessful Bidders

The purpose of the debriefing session is to help unsuccessful tenderers submit more competitive bids in future by identifying ways in which the tenderer's offer could be improved. Council will provide a debriefing interview to any unsuccessful bidder who requests one. The Council's debriefing team will include at least one member from the evaluation panel.

At this interview the unsuccessful bidder will be briefed as follows:

- How their offer performed with respect to the evaluation criteria; and
- Strengths as well as weaknesses of their offer.

During this interview, the following will not happen:

- Comparisons between the unsuccessful tenderer's offer and the winning, or any other offer; or
- The debriefing interview being used to justify the selection of the successful tenderer.

The Council will document the proceedings at each debriefing interview, including:

- Who attended (from the Council and from the tenderer);
- The information provided to the unsuccessful tenderer;
- Any issues arising;
- The details of any information that was requested, but not disclosed due to commercial-in-confidence considerations; and
- Any likely future complaints and recommendations for further action to submit more competitive bids in the future.

Where a multiple-stage purchasing process is used (for example, where Expressions of Interest are used to short-list tenderers), suppliers not short-listed may be offered a debriefing interview, in a similar way to unsuccessful tenderers.

11.8 Contract Management

A contract defines the rights and obligations of both parties once a tender is awarded. A contract is established when an offer is made and accepted. A contract comprises all relevant information provided to and by the business, which has made the successful offer. This includes:

- The conditions of tender;
- The specifications, including any plans and other attachments;
- The successful offer; and
- The conditions of contract.

A draft copy of the conditions of contract will usually be included in Council's original request for tender package.

For complex or high value purchases it may be necessary for Council to enter into negotiations prior to finalising the contract in consultation with Council's legal advisors. The purpose of these negotiations is to:

- Test the understandings and assumptions made by tenderers in determining their costs;
- Clarify and rectify any false assumptions; and
- Achieve operational refinements and enhancements that may result in cost reductions.

The outcomes of these negotiations will be reflected in the final contract and once completed and agreed, the formal contract is then signed by both parties.

A formal contract management plan is not required for all contracts, but Council may develop contract management plans for contracts that involve large dollar amounts, complex technical requirements, or when the contract manager is responsible for managing a large number of contracts simultaneously.

11.9 Standing Tenders

From time to time Council may utilise a standing tender in which one or more tenderers are contracted through an open tender process to provide specified goods or services over a period of time without the need for a further tender process.

The way in which a standing tender is established is the same as for an open tender process where the specification and description of the tender describe the intent of the standing contract and the conditions of its use.

11.10 Multiple-Use Register

From time to time Council may utilise a multiple-use process to establish a register of suppliers that Council has determined satisfy the conditions for participation in that register, and that Council intends to use more than once.

If it is determined that Council will establish such a register, the General Manager (GM) will invite expressions of interest from prospective applicants for inclusion on a register by publishing at least once in a daily newspaper circulating in the municipal area a notice specifying:

- A description of the goods and services, or categories thereof, for which the register may be used;
- The name and address of the Council and other information necessary to contract the entity and obtain all relevant documents relating to the register; and
- Any deadlines for submission of application for inclusion of the register.

The GM or a Delegated Officer (DO) will ensure that applicants are provided with the following in order to make an application:

- Details of the categories of goods or services required;

- The criteria for evaluating applications;
- The method of evaluating applications against the criteria; and
- A reference to the Council’s Code for Tenders and Contracts.

The GM/DO will advise all prospective tenderers of the results of their application including all categories for which they are registered and the reasons for rejection of inclusion on the register as soon as practicable.

When Council wishes to use the register, the GM/DO will invite all successful applicants that are registered for the relevant category to tender for the provision of the required good or service.

Council will review any established register at least once every 2 years.

Council will allow a prospective applicant to apply for inclusion on a register of tenderers at any time, unless the prospective tenderer:

- Has applied within the previous 12 months; and
- Has not been accepted.

The following table outlines the differences between a standing tender and a multiple-use register:

Standing Tender	Multiple-use Register
Outcome of a procurement process.	
Can purchase directly from a panellist.	
Panellists selected following evaluation.	
Size is set at conclusion of process.	
Indicative or set price.	
Operates for a finite period.	
Re-opens at conclusion of period.	Part of a procurement process.
Basis for select tendering.	
Conditions for participation stated.	
Cannot limit size.	
No pricing.	
Can operate indefinitely.	Open continuously or annually.

11.11 Multiple-Stage Tenders

From time to time Council may utilise a multiple-stage tendering process to:

- Gain market knowledge and clarify the capability of suppliers;
- Shortlist qualified tenderers; and
- Obtain industry input.

A multiple-stage purchasing process may be more costly and time-consuming for both suppliers and for Council, and as such will usually only use them where:

- The best way to meet the requirement is unclear;
- It is considered appropriate to pre-qualify businesses and restrict the issue of formal tenders (to reduce the cost of tendering);
- There are benefits which cannot be obtained by researching the market through conventional means; and
- Maximum flexibility is required throughout the procurement process.

The multiple-stage processes that Council may use are as follows:

- **Expression of Interest** – an expression of interest (sometimes called a registration of interest) is generally used to shortlist potential suppliers before seeking detailed offers. Suppliers are short listed on their technical, managerial and financial capacity, reducing the cost of tendering by restricting the issue of formal tenders to those suppliers with demonstrated capacity;
- **Request for Proposal** – may be used by Council when a project or requirement has been defined, but where an innovative or flexible solution is sought;
- **Request for Tender** – may be used by Council when a project requirement has been defined to solicit offers from businesses capable of providing a specified work, good or service;
- **Request for Information** – may be used at the planning stage of a project to assist with defining the project. Council will not issue a request for information to identify or select suppliers; and

- **Closed Tender Process** – may be used if the initial specification is well defined and an expression of interest or request for proposal has already been used to shortlist suppliers. Suppliers will be informed in advance that only those short-listed will be requested to tender.

Council is mindful of the following aspects when conducting a multiple-stage tender process:

- The same mandatory requirements regarding advertising and seeking at least one bid from a local business, that apply to a public tender process;
- That a short-listed party cannot be engaged without going through a more detailed second (tender) stage process, unless they are the only supplier who meets the determined criteria or approved by an absolute majority of Council; and
- When using a Request for Information, issues relating to intellectual property and copyright must be clarified prior to using the information provided to prepare the Request for Tender.

11.12 Multiple-Stage Tender Process

The General Manager (GM) will invite expressions of interest, and use the list of suppliers who lodge an application as the basis for inviting potential suppliers to submit tenders.

The GM is to publish at least once in a daily newspaper circulating in the municipal area a notice requesting any interested supplier to submit an expression of its interest to supply the good or service required. The notice is to specify:

- The nature of the goods or services the Council requires;
- Any identification details allocated to the contract;
- Where the expression of interest is to be lodged;
- Particulars identifying a person from whom more detailed information relating to the tender may be obtained; and
- The period within which the expression of interest is to be lodged.

The GM or Delegated Officer (DO) will ensure that prospective tenderers are provided with the following in order to lodge an expression of interest:

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- Details of the goods or services required;
- The criteria for evaluating expressions of interest;
- The method of evaluating expressions of interest against the criteria;
- Details of any further stages in the tender process; and
- A reference to Council's Code for Tenders and Contracts.

The GM/DO will then send an invitation to tender to all of the suppliers that expressed an interest in providing the good or service required unless it has stated specifically in the notice that the Council may limit the suppliers that it will invite to participate.

Provided the notice requesting expressions of interest states that Council may limit the suppliers it will invite to participate and the relevant requirements and evaluation criteria have been specified in the notice or associated documentation, the GM/DO in determining the suppliers that will be invited to tender may:

- In assessing the technical ability, assess the extent to which an application meets the technical performance specifications of the procurement; and
- Limit the number of businesses that it invites to tender, based on its rating of applications, provided that the largest number of potential suppliers selected, is consistent with an efficient tender process.

The GM/DO will:

- Ensure that the evaluation criteria used to make a decision at the first stage of the process (expression of interest), is consistent with the criteria to be used for the second (tender) stage; and
- Not directly engage a short-listed party without going through a more detailed second (tender) stage process, unless they are the only supplier who meets the determined criteria or approved by an absolute majority of Council.

12.0 Communication 12.1 Communication with all Potential Suppliers and Bidders – Contact Officer

Council will do the following in respect of communication with all potential suppliers and bidders:

- Nominate one contact person for each purchasing activity and clearly specify their name, contact details (including phone

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number and mailing address) so that tenderers know who to contact for more information (only one for probity reasons);

- The Contact Officer will be the sole point of official communication with potential suppliers and bidders and will document any questions asked of them by a potential supplier or bidder and any response given. In relation to plant purchases, additional nominated persons may have correspondence with suppliers to establish details of plant relative to their potential involvement with the machinery in the context of Operator or Mechanical evaluation;
- Where possible, the Contact Officer will request that questions from potential suppliers and bidders be put in writing (email or facsimile will suffice). Any response from the Contact Officer will also be provided in writing;
- Where possible the Contact Officer will limit the provision of information to the clarification of procedural issues; and
- Any additional information provided to one prospective tenderer is also provided to everyone else who has requested or received tender documentation.

13.0 Exemptions

The *Local Government (General) Regulations 2005* provide that Councils must publicly invite tenders for the purchase of goods and services with a value in excess of \$100,000 excluding GST. Burnie City Council are committed to:

- Encouraging open and effective competition between suppliers with the objective of obtaining value for money; and
- Enhancing opportunities for local business.

As per the Regulations, Council may not issue a tender or use a quotation process where the goods and services sought relate to:

- a) An emergency if, in the opinion of the general manager, there is insufficient time to invite tenders for the goods or services required in that emergency;
- b) A contract for goods or services supplied or provided by, or obtained through, an agency of a State or of the Commonwealth; and
- c) A contract for goods or services supplied or provided by another Council, a single authority, a joint authority or the Local Government Association of Tasmania;
- d) A contract for goods or services obtained as a result of a tender process conducted by:

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- (i) another Council; or
 - (ii) a single authority or a joint authority; or
 - (iii) the Local Government Association of Tasmania; or
 - (iv) any other local government association in this State or in another State or a Territory; or
 - (v) any organisation, or entity, established by any other local government association in this State or in another State or a Territory;
- e) A contract for goods or services in respect of which a Council is exempted under another Act from the requirement to invite a tender;
 - f) A contract for goods or services that is entered into at public auction;
 - g) A contract for insurance entered into through a broker;
 - h) A contract arising when a Council is directed to acquire goods or services due to a claim made under a contract of insurance;
 - i) A contract for goods or services if the Council resolves by absolute majority and states the reasons of the decision, that a satisfactory result would not be achieved by inviting tenders because of:
 - i) Extenuating circumstances; or
 - ii) Remoteness of the locality; or
 - iii) The unavailability of competitive or reliable tenderers;
 - j) A contract of employment with a person as an employee of the Council.

Point i) of this clause may be applied for one or more of the following reasons:

- Where it can be established that there is only one supplier of a particular product or service and there is no appropriate substitute available, or where alternative options are not viable or do not provide value for money;
- Where the original product or service has been selected through an open tender process and the request for exemption relates to the proposed purchase of an upgrade or addition to the existing system, and there are limited supply options;
- The product is being trialled to assist in the evaluation of its performance prior to a large scale purchase for which open tenders will be called;

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- To assist in the development of a new product in conjunction with a private sector business;
- Where the cost to Council and to suppliers would outweigh the value for money benefits of calling public tenders;
- Projects of genuine urgency (e.g. in the case of a natural disaster or similar emergency circumstances); or
- Other exceptional circumstances, where conclusive justification of the request is provided.

Where an exemption has been granted on the basis of point a) and i) of this clause, Council will report in its Annual Report the following details:

- (i) A brief description of the reason for not inviting public tenders;
- (ii) A description of the goods or services acquired;
- (iii) The value of the goods or services acquired; and
- (iv) The name of the supplier.

14.0 Complaints Process

Tasmanian Councils are provided with broad competency powers under *The Act* to carry out the role of providing services to their communities.

The *Act* also includes accountability measures under which Councils can be held responsible to their communities for their actions and decisions.

The resolution of complaints against Council is a responsibility of Council. Information regarding formal complaint resolution process is available in *Council's Customer Service Charter (C-22)*.

In the first instance, complainants are encouraged to seek resolution through the Director or officer in charge of Council's purchasing/tender process. If relevant, complainants are encouraged to seek a debriefing, if they have not already done so.

If a complainant is not satisfied with the response of Council's Director in charge of the purchasing/tender process, the complainant is able to write to the General Manager providing copies of all correspondence and other relevant material. Council's General Manager will take whatever action is considered necessary to resolve the complaint. In certain circumstances, Council may employ a Probity Auditor to investigate the complaint.

Council will maintain the following for any complaint made against Council in

relation to a procurement activity:

- The date the complaint was made;
- The complainant's details (e.g. business name, contact details);
- A brief description of the complaint;
- Action in progress (including dates actions are taken);
- The outcome (including whether the complaint was resolved or whether it was referred to another body for further review); and
- The response time.

15.0 Contract Renewal and Extension

15.1 Contract Renewals

In most cases, where the goods or services being delivered under the contract are required on an ongoing basis, Council will undertake a new procurement process (tender/quotation) prior to the completion of the existing contract.

15.2 Contract Extension

In some circumstances, it may be desirable for Council to extend an existing contract, rather than seek new tenders or quotations for the delivery of the goods or services.

Contracts will only be extended:

- By an absolute majority of Council;
- Following a full evaluation of the performance of the current contractor; and
- Where the principles of open and effective competition are protected.

As a general rule, Council will not extend contracts if:

- The original contract does not allow an extension; and/or
- Since the previous tender, the market has changed substantially; or the nature of the goods/services required has substantially changed.

16.0 Disposals

Disposals are to be conducted so that the best return to Council is achieved. Disposal of land will be made in accordance with Division 1 of Part 12 of the Local Government Act 1993.

16.1 Disposals Less Than \$10,000

Council will dispose of items with a disposal value of less than \$10,000 at

the discretion of the General Manager.

Council will only dispose of items that cannot be reused or recycled and with no commercial use or appreciable market value by dumping them at approved refuse sites or by destruction.

In the case of vehicles, Council may under special circumstances, and at the discretion of the General Manager, advertise for disposal of the vehicle for sale or trade-in. The decision to offer the sale vehicles will be taken where it is considered the financial benefit/return represents best value to Council.

16.2 Disposals Greater Than \$10,000

Council shall dispose of items with an estimated disposal value in excess of \$10,000 by way of tender, public auction, or trade-in to the extent practicable.

When disposing items by tender, Council may choose to advertise the item for disposal in specialist newspapers or journals, or in the appropriate classified section of the local newspaper (e.g. boats and marine if disposing of a boat), if these are more likely to attract appropriate interest.

17.0 Reporting

17.1 Annual Report

Council will publish in its Annual Report in relation to all contracts for the supply or provision of goods and services valued at or above \$100,000 excluding GST and separately note those valued at or above \$250,000 excluding GST, awarded or entered in the financial year, including extensions granted:

- A description of the contract;
- The period of the contract;
- The periods of any options for extending the contract;
- The value of any tender awarded or, if a tender was not required, the value of the contract excluding GST;
- The business name of the successful contractor; and
- The business address of the successful contractor.

Where an exemption has been granted from a tender process [refer Section 13 point a) and i)], Council will report in its Annual Report the following details:

- A brief description of the reason for not inviting public tenders;
- A description of the goods or services acquired;
- The value of the goods or services acquired; and
- The name of the supplier.

17.2 Reporting to Council

The General Manager will report at each Council meeting any instance, since the previous meeting, where a purchase of a good or service is made where a public tender or quotation process is not used.

18.0 Common Use Contracts

Where the Department of Treasury and Finance has established whole-of-Government contracts for the supply of goods or services to agencies and other authorised organisations, Council may choose to utilise these contracts:

- [A001](#) Advertising - Television (Master Ordering Arrangement)
- [A002](#) Advertising - Print Media (Master Ordering Arrangement)
- [A003](#) Advertising - Print Media Services for Vacancy Notices, Tenders and Public Notices
- [A004](#) Advertising - Radio (Master Ordering Arrangement)
- [BK03](#) Government Banking Services
- [C106](#) Cartage, Interstate Air Freight
- [C141](#) Computer Software - Microsoft
- [C150](#) Information and Communications Technology Hardware Contract
- [F200](#) Fleet Management Agreement
- [L300](#) Leasing Finance Facility
- [P450](#) Petroleum Products
- [V672](#) Vehicles
- [V675](#) Vehicles Hire and Drive

Further information is available from the Department of Treasury and Finance's

website at www.purchasing.tas.gov.au

18.1 Local Buy

Local Buy is the Local Government Association Queensland procurement service, established in 2001 to aggregate the buying power of local government authorities, shorten procurement timeframes and streamline interactions between business and Local Government without the time consuming and administrative burden of following the Local Government Act and Regulations requirement for seeking tenders or quotations. The system is available through the Local Government Association of Tasmania for purchases across a diverse range of good and services from Local Buy contracted suppliers.

18.2 Procurement Australia

Procurement Australia are an organisation similar to Local Buy with a range of providers and services being available to Local Government.

Exactly the same principals apply as Local Buy, however, Procurement Australia only seek RFQ's four times per year, unlike Local Buy which enables RFQ's any time.

19.0 Legislation

[Local Government Act 1993 \(No. 95 of 1993\)](#)

[Local Government \(General\) Regulations 2005 \(S.R. 2005, No. 64\)](#)

[Local Government \(General\) Amendment Regulations 2006 \(S.R. 2006, No. 42\)](#)

20.0 Related Documents

Australian Code of Tendering (AS4120)

Customer Service Charter (C22)

Work Health and Safety Act 2012 and Regulations 2012;

Electronic Transactions Act 2000

Purchasing Policy



COUNCIL POLICY

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Policy Endorsement

Responsibility:	It is the responsibility of the Director Works and Services to facilitate the implementation of this policy and review its content from time to time. It is the responsibility of the Governance Unit to maintain this policy in the Policy Register.
Minute Reference:	MO251/15 (Item Number AO222/15)
Council Meeting Date:	15 September 2015
Strategic Plan Reference:	Strategy 7.1.1 Formulate policy that is equitable, inclusive and responsive to current needs, and ensure decision-making is informed and accountable.
Previous Policies Replaced:	This policy replaces the previous policy CP012 version 4.0 dated 20 August 2013 (Item AO192/13 on 20 August 2013).
Date of Commencement:	16 September 2015
Publication of Policy:	Members of the public may inspect this policy at the City Offices where copies can be obtained free of charge. Alternatively it can be accessed on Council's website (www.burnie.net)