

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

17 December 2019

Agenda Item 11.2 Procurement of Public Infrastructure Works

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[Draft 20 November 2019]

GREATER SHEPPARTON CITY COUNCIL

Policy Number **X.X**

Procurement of Public Infrastructure Works

Version 1.0

(First number changes for a major rewrite, second number changes for a minor amendment)

Adopted by Council **Day Month Year**

Business Unit:	
Responsible Officer:	
Approved By:	Chief Executive Officer
Next Review:	

DOCUMENT REVISIONS

Version #	Summary of Changes	Date Adopted



PURPOSE

This policy is to facilitate the procurement of *Public Infrastructure Works*¹ and the purchase or acquisition of *Public Infrastructure Works Land* by Council in conjunction with developments that are subject to planning approval under the *Planning Scheme*, in compliance with *Section 186* of the *LG Act* and to provide compliance with the *Procurement Guidelines* where applicable.

This policy is also intended to reduce risks associated with procurement identified in the *IBAC Report*.

OBJECTIVE

To provide a consistent and orderly methodology for Council and developers for the procurement of *Public Infrastructure Works* and the purchase or acquisition of *Public Infrastructure Works Land*.

To facilitate compliance with *Section 186* of the *LG Act* with regard to expenditure on works associated with *Public Infrastructure Works* and facilitate good governance in relation to procurement.

To ensure Council receives best value in relation to *Works-in-Kind*.

SCOPE

This policy applies in circumstances where *Public Infrastructure Works* are required by Council as a result of, or in association with, a new use and/or development approved by way of a planning permit or otherwise under the *Planning Scheme*.

The policy applies to public infrastructure and any associated contributions that may arise by way of an approved development contribution plan, an approved development plan, an incorporated plan, a section 173 agreement or the like.

This policy also applies to the purchase or acquisition of *Public Infrastructure Works Land*, including where that land may be used as an offset for a *Development Contribution*.

This policy applies to *Subdivision Permit Works* where those works are done in conjunction with *Public Infrastructure Works* and or in conjunction with the acquisition or purchase of *Public Infrastructure Works Land*.

This policy does not apply to infrastructure works that are *Subdivision Permit Works* alone.

Where this policy applies and *Section 186* is not triggered, compliance with this policy is deemed to be in compliance with Council's *Procurement Guidelines*.

¹ Terms in italics are defined in the "Definitions" section of this policy

Where it is deemed by the Director Sustainable Development that due to the unique facts or circumstances of a particular matter the application of this policy is not practical, the *Procurement Guidelines* must apply.

DEFINITIONS

Reference term	Definition
<i>Blended Works</i>	Means civil works where <i>Subdivision Permit Works</i> and <i>Public Infrastructure Works</i> are integrated as the one project for practical reasons as determined by Council. An example of <i>Blended Works</i> is where the <i>Subdivision Permit Works</i> are the construction of a subdivisional road and the <i>Public Infrastructure Works</i> are the widening of that road as part of a development contribution plan project.
<i>Developer</i>	Means the developer of land acting in reliance on a planning permit for the use and/or development of land where that developer is the registered proprietor of the subject land or is purchasing the subject land under a contract of sale of land
<i>Development Contribution</i>	Means a development contribution payable under an approved development contribution plan under the <i>Planning Scheme</i> for which the <i>Developer</i> has a liability. It also includes contributions required by way of an approved development plan, an incorporated plan, a section 173 agreement or the like.
<i>IBAC Report</i>	Means the <i>Special report on corruption risks associated with procurement in local government</i> , Independent Broad-based Anti-corruption Commission, September 2019
<i>Independent Civil Contractor</i>	Means a civil contractor that has been engaged by Council to undertake <i>Public Infrastructure Works</i> following a tender process, but is not the <i>Developer</i> or an agent or associate of the <i>Developer</i>
<i>LG Act</i>	Means the <i>Local Government Act 1989</i>
<i>PE Act</i>	Means the <i>Planning and Environment Act 1987</i>
<i>Planning Scheme</i>	Means the Greater Shepparton Planning Scheme.
<i>Procurement Guidelines</i>	Means any Council policy, procedure or guideline, other than this policy, including the Council's Procurement Corporate Procedure, that relates to the procurement of services.

Public Infrastructure Works	Means public infrastructure that is required pursuant to an approved development contributions plan under the <i>Planning Scheme</i> or other public infrastructure that is required by Council, but is not infrastructure for which the <i>Developer</i> can be compelled to provide under a planning permit. <i>Public Infrastructure Works</i> is infrastructure for which Council has assumed the obligation to provide.
Public Infrastructure Works Land	Means land or a legal property right that is acquired or purchased by Council for the purpose of facilitating <i>Public Infrastructure Works</i> .
Section 186	Means the requirements under section 186 of the <i>LG Act</i> .
Subdivision Permit Works	Means public civil works directly relating to a subdivision and specifically required as part of the planning approval for a subdivision for which the <i>Developer</i> is responsible to provide.
Subject Land	The land to which the planning approval applies and which is associated with the <i>Public Infrastructure Works</i> and/or the <i>Public Infrastructure Works Land</i>
Works Implementation Agreement	Means a Works Implementation Agreement as described in Section 2 of this policy. The <i>Works Implementation Agreement</i> is separate to the detailed contract for the carrying out of specific works.
Works-in-Kind	Means <i>Public Infrastructure Works</i> required by Council carried out by a <i>Developer</i> to offset an obligation to pay a <i>Development Contribution</i> .

SECTION 186 OF THE LG ACT BACKGROUND

Section 186, amongst other things, relates to the restriction on the power of Council to enter into a contract for the carrying out of works over \$200,000 (as at the date of this policy).

Where *Section 186* is triggered there is a process required by the *LG Act* that in practical terms involves a public tender process for entering into a contract for the works concerned.

It is noted that the purchase or acquisition of *Public Infrastructure Works Land* is not subject to *Section 186*.

Council has existing systems and processes in place for the entering of contracts where *Section 186* is triggered.

This policy does not intend to change those systems or processes.

In accordance with part 3.6.10 of the *Victorian Local Government Best Practice Procurement Guidelines 2013* and consistent with legal advice Council has received, *Works-in-Kind* associated with *Public Infrastructure Works*, despite the value of the works being in excess of \$200,000, can be offset against a *Development Contribution* liability without triggering the need for a tendering process under *Section 186*.

Having regard to the above matters, for the purpose of this advice, *Section 186* is considered to be triggered in circumstances where the cost of the *Public Infrastructure Works* cannot be offset at all or can only be partially offset by *Development Contributions* and the total amount to be paid by Council for *Public Infrastructure Works* is more than \$200,000.

POLICY

1. Procurement

- a. Procurement that falls within this policy must be undertaken having regard to the following broad principles:
 - i value for money;
 - ii open and fair competition;
 - iii accountability;
 - iv risk management;
 - v probity and transparency; and
 - vi ethical behaviour.
- b. No single Council Officer should have end-to-end control over a particular procurement.
- c. All Council Officers involved in the procurement process must be subject to appropriate supervision in accordance with Council's organisational structure and policies.
- d. Information held by Council of commercial value to potential suppliers to Council must be managed such that no single supplier is given an advantage over another and no one Council Officer has sole knowledge and control of valuable commercial information.
- e. Comprehensive and accurate records for a particular procurement must be kept on the relevant Council file.
- f. All procurement under this policy is subject to Council's *Procurement Guidelines*, except where explicitly stated in this policy.

- g. If a potential conflict of interest becomes apparent during a procurement of *Public Infrastructure Works* this must be reported to the relevant supervising Council Officer.
- h. It is policy that an on-going Officer's Report for the procurement process be kept on the relevant Council file in relation to each procurement which, amongst other things, includes:
 - i the basic facts of the procurement;
 - ii the Council Officers who are responsible for the procurement;
 - iii the amount of the Council spend;
 - iv the process followed;
 - v confirming compliance with this policy, as relevant, throughout the procurement process;
 - vi identifying any matters for which compliance with this policy was not achieved and reasons for such non-compliance; and
 - vii any other matters relevant to compliance with this policy.
- i. A suggested template for the Officer's Report is provided as Attachment 2 to this policy.

2. Offsets

- a. *Public Infrastructure Works* that are part of *Blended Works* should be given priority for *Works-in-Kind* as an offset for a *Development Contribution* liability over *Public Infrastructure Works* that are not *Blended Works*.
- b. It is Council's preference that the purchase or acquisition of *Public Infrastructure Works Land* not be used as an offset for a *Development Contribution* liability in circumstances where *Works-in-Kind* for *Public Infrastructure Works* may be used as an offset instead.
- c. Where the *Public Infrastructure Works* comprise a combination of *Blended Works* and *Public Infrastructure Works* that can be implemented as one or more separate projects, the relevant decision-making Council Officers may agree in their absolute discretion to implement the *Public Infrastructure Works* that are not part of the *Blended Works* as one or more separate projects. In other words, Council Officers have discretion to group certain projects together and to manage the sequencing of projects to achieve the optimal overall outcome for Council and the community.

- 3. Procurement of *Public Infrastructure Works* - Section 186 applies**
- a. In circumstances where the net payment by Council for works and services is in excess of \$200,000 (including GST) and *Section 186* applies, the procurement of *Public Infrastructure Works* should be in accordance with the procurement process under the *Procurement Guidelines* and undertaken by Council's Project Management Office.
 - b. Council will seek to prepare a detailed design for the *Public Infrastructure Works* as early as is reasonably practicable in the overall infrastructure works process, having regard to the particular facts and circumstances, in consultation with the *Developer*, for the purpose of scoping and costing the *Public Infrastructure Works*.
 - c. More than one price is not required where a service authority requires design and/or works to be carried out to its infrastructure as a result of implementing *Public Infrastructure Works*, in the circumstance where the public authority controls who may carry out design and works on its infrastructure and where there is no practical ability to get multiple quotes for that design or works.
 - d. Where practicable, the timing, administration and any other requirements relating to the implementation of *Public Infrastructure Works*, purchase or acquisition of *any associated Public Infrastructure Works Land or Subdivision Permit Works* should be controlled by a *Works Implementation Agreement*.
 - e. The timing of the implementation of *Subdivision Permit Works* may be after the issue of a statement of compliance if the implementation of those works is pursuant to a *Works Implementation Agreement*.
- 4. Procurement of *Public Infrastructure Works* - Section 186 does not apply**
- a. Where *Section 186* of the *LG Act* is not triggered as the net payment by Council for works and services is less than \$200,000 (including GST), the procurement process for the *Public Infrastructure Works* should be administered by the Building and Planning Department and the Projects Department in consultation.
 - b. The procurement process must be administered in a manner that reasonably optimises the value to Council and the community and ensures that the works are conducted to an acceptable and reasonable engineering standard, as may be appropriate given the facts and circumstances of each project.

- c. Council will seek to prepare a detailed design for the *Public Infrastructure Works* as early in the overall infrastructure works process as is reasonably practicable, having regard to the facts and circumstances, in consultation with the *Developer* for the purpose of scoping and costing the *Public Infrastructure Works*.
- d. More than one price is not required where a service authority requires design and/or works to be carried out to its infrastructure as a result of implementing *Public Infrastructure Works*, in the circumstance where the public authority controls who may carry out design and works on its infrastructure and where there is no practical ability to get multiple quotes for that design or works.
- e. The purchase or acquisition of *Public Infrastructure Works Land* is to be administered by the Building and Planning Department and the Projects Department in consultation.
- f. Where practicable, the timing, administration and any other requirements relating to the implementation of *Public Infrastructure Works*, purchase or acquisition of any associated *Public Infrastructure Works Land* or associated *Subdivision Permit Works* should be controlled by a *Works Implementation Agreement*.
- g. The timing of the implementation of *Subdivision Permit Works* may be after the issue of a statement of compliance if the implementation of those works is pursuant to a *Works Implementation Agreement*.

5. **Works Implementation Agreement**

- a. A *Works Implementation Agreement* should be used, where this is considered to be practicable by Council Officers, to manage matters including:
 - i the orderly sequencing of the implementation of *Public Infrastructure Works* and *Subdivision Permit Works*;
 - ii the tender process for the provision of *Public Infrastructure Works*;
 - iii the purchase or acquisition of *Public Infrastructure Works Land*;
 - iv the agreed valuation for *Public Infrastructure Works Land*;
 - v the *Development Contribution* offsets for *Public Infrastructure Works*;
 - vi the completion of *Subdivision Permit Works* after the issue of a *Statement of Compliance* under the *Subdivision Act 1988*;

- vii any necessary payments by Council in relation to *Public Infrastructure Works*; and
 - viii any other matters relating to the implementation, timing, administration, payment for, and management of, *Public Infrastructure Works*, *Subdivision Permit Works*, *Public Infrastructure Works Land* or associated matters.
- b. A sample *Works Implementation Agreement* is provided as Attachment 1 to this policy. The sample agreement is provided as a guide only as an agreement will need to be drafted to address the relevant facts and circumstances of each particular matter.

6. Compliance

- a. In any circumstance in which the relevant Council Officer responsible for the procurement of *Public Infrastructure Works* and/or the purchase or acquisition of *Public Infrastructure Works Land* is concerned regarding compliance with section 186 of the *LG Act* and/or compliance with any other legislation, this policy or another Council policy relevant to the matter, legal advice should be obtained as reasonably considered appropriate.
- b. Compliance with this policy where *Section 186* is not triggered is deemed to be compliance with the *Procurement Guidelines*.

7. Summary - Application of Policy

- a. This policy applies when *Public Infrastructure Works* are required by Council.
- b. Can the cost of the *Public Infrastructure Works* be fully or partially offset by a development contribution obligation?
- i Yes – the cost of the works can be offset by works-in-kind.
 - ii No – Council must pay for the works that cannot be offset.
- c. Is a net payment required by Council to the *Developer* of more than \$200,000 (inclusive of GST)?
- i Yes – *Section 186* requirements apply and the procurement process is undertaken by Council's Project Management Office.
 - ii No – the procurement process may be undertaken by the Building and Planning Department and Projects Department in consultation.

- d. A *Works Implementation Agreement* should be used, where reasonably practicable, to manage the implementation and sequencing of the works, offsets and payments.
- e. The operation of the policy is illustrated by way of a flowchart at Attachment 3.

RELATED POLICIES AND DIRECTIVES

- Council *Procurement Guidelines*
- *Victorian Local Government Best Practice Procurement Guidelines 2013* (part 3.6.10 *Developer Contribution Plans*)
- *Special report on corruption risks associated with procurement in local government*, Independent Broad-based Anti-corruption Commission, September 2019

RELATED LEGISLATION

- Section 186 of the *LG Act* (*Contracts for goods, services or carrying out works*)
- Part 3B of the *PE Act* (*Development contributions*)
- Division 2 Part 9 of the *PE Act* (*Section 173 agreements*)

REVIEW

Define who is to review the Policy and when this review is to occur. Generally, policies should be reviewed every four years to ensure that they remain relevant. If the Policy replaces any previously adopted Council document/s, list any documents which have been replaced.

Peter Harriott
Chief Executive Officer

Date

ATTACHMENTS

Attachment 1: Sample Template *Works Implementation Agreement*

Policy

GREATER SHEPPARTON CITY COUNCIL
TRIM Ref. M12/67758
(Title) Policy

12

Adopted: Day Month Year

ATTACHMENTS

Attachment 2: Sample Template for Officer's Report

Policy

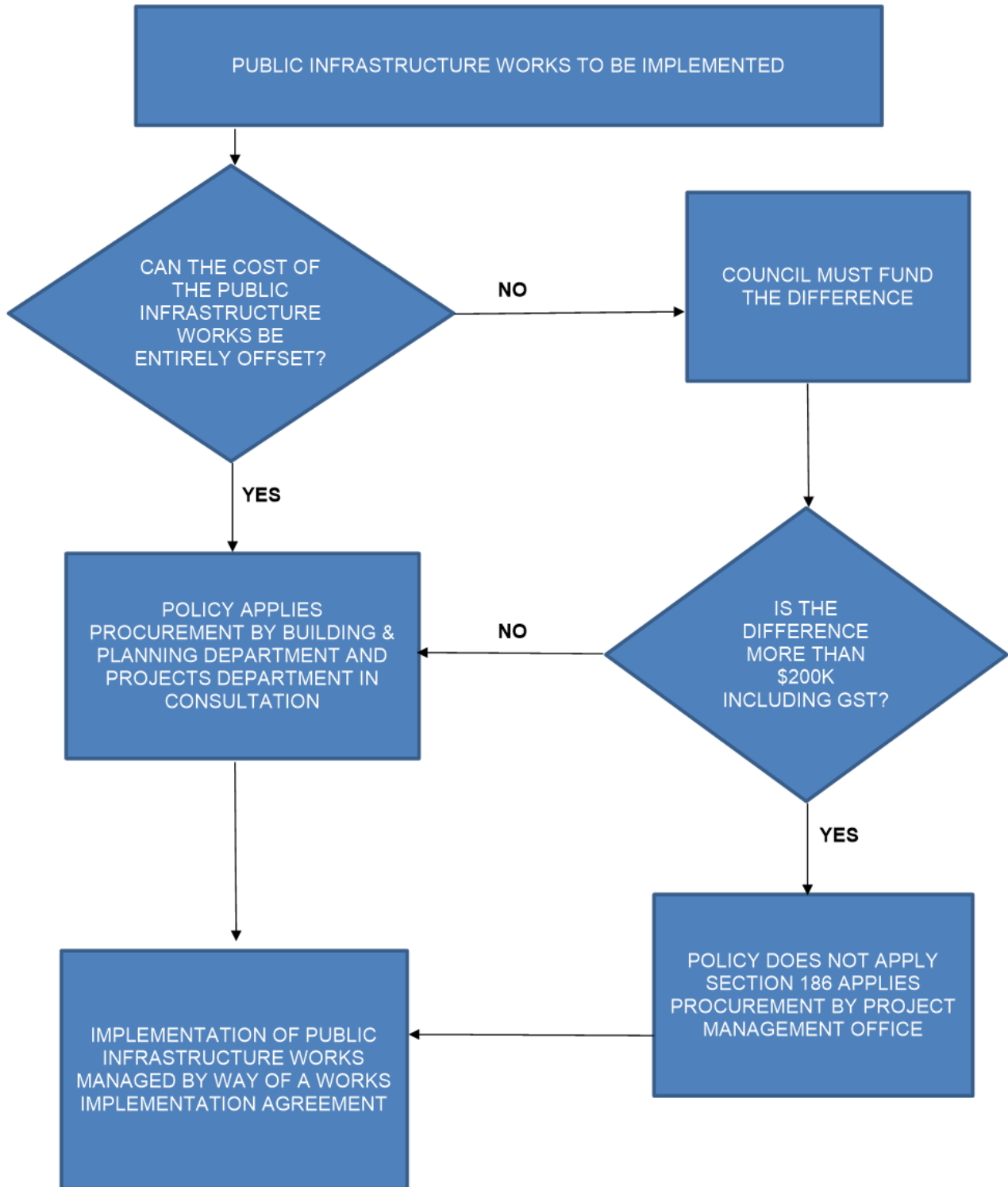
ATTACHMENTS

Attachment 3: Flowchart illustrating operation of the policy

Policy

GREATER SHEPPARTON CITY COUNCIL
TRIM Ref. M12/67758
(Title) Policy

APPLICATION OF POLICY



IDP 8975570v1 LVV

Delegates Report – Procurement of Public Infrastructure Works

Application Details:

Responsible Officer:	
Planning Application Number:	
Applicant Name:	
Land/Address:	
Description of PIW	

Proposal

What is being procured?

Set out the basis facts of the procurement

Assessment

What is the amount of Council spend?

What process was followed

Confirm compliance with the Procurement of Public Infrastructure Works policy

Identify any matters for which compliance with the policy was not achieved and reasons for such non-compliance

Any other matters relevant to compliance with this policy

Conclusion

Recommendation

Responsible Officer: _____ Team Leader: _____

Signature: _____ Signature: _____

Date: _____ Date: _____

Should this file be checked by the Manager? Yes No

