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Date / / 2017

## **Invitation for Expression of Interest**

**For the purchase and development of 13 Leith Road, Montrose**

Prepared for:  
**Yarra Ranges Shire Council**

**Expressions of Interest close at 5:00pm (Australian Eastern Standard Time) on  
Monday 14<sup>th</sup> August 2017**

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# Invitation for Expression of Interest

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## 1. Definitions

In this Invitation:

**Business Day** means Monday to Friday excluding public holidays in Victoria.

**Council** means Yarra Ranges Shire Council.

**Invitation** means this invitation for expressions of interest.

**Property** means the whole of the land together with any improvements contained in certificate of title 11831 folio 695 and known as 13 Leith Road, Montrose.

**Proponent** means a person or corporate body who lodges a Proposal in accordance with this Invitation.

**Proposal** means the Proponent's response to this Invitation.

**Registration Form** means the registration form attached in Schedule 1.

**Vendor's Statement** means the vendor's statement of the Property attached in Schedule 2.

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## 2. Purposes

Council's purposes in undertaking this Invitation are to:

- 2.1 provide sufficient details to enable each Proponent to make an assessment of the Property and prepare an informed Proposal;
- 2.2 enable Council to identify Proposals which meet Council's objectives; and
- 2.3 permit Council to consider and assess all relevant issues in relation to the sale of the Property.

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## 3. Council's objectives for the Property

The principal objectives of Council are to:

- 3.1 maximise the financial return to Council;
- 3.2 secure a Proponent who will develop the Property to benefit the local Montrose community and the wider community; and
- 3.3 secure a Proponent with experience in undertaking similar projects.

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## 4. The expression of interest process

### 4.1 Timetable

Proposals must be submitted by 5:00pm (Australian Eastern Standard Time) on Monday 14<sup>th</sup> August, 2017 (**Closing Date**).

### 4.2 Key terms of sale

The successful Proponent will be required to enter into a contract of sale with Council, of which the key terms of the sale of the Property are as follows:

- 4.2.1 the purchaser must pay a deposit of 10% of the price on the purchaser signing the contract;
- 4.2.2 the purchaser must pay the balance of the price and any GST at settlement;
- 4.2.3 settlement is to occur 60 days after the date of the contract;
- 4.2.4 as a condition of sale, the purchaser may be required to enter into an agreement pursuant to section 173 of the *Planning and Environment Act 1987* (Vic) (**Section 173 Agreement**) prior to settlement, to be registered on the title to the Property, which will require the Proponent to:
  - (a) substantially commence the development within 2 years from the date of settlement under the contract;
  - (b) practically complete the development within 4 years from the date of settlement under the contract; and
  - (c) re-transfer the Property to Council at Council's election if the purchaser does not substantially commence or practically complete the development within the stipulated timeframes.

### 4.3 Vendor's Statement

A copy of the Vendor's Statement is attached in Schedule 2 of this Invitation.

### 4.4 Expression of interest – registration form

Each Proponent must submit a Registration Form.

### 4.5 Proposals

Each Proposal must include the following:

#### 4.5.1 *Commercial terms of the sale*

The Proponent's purchase price for the Property plus GST, the deposit and settlement terms.

#### 4.5.2 *Proposed development of the Property*

Details of the proposed use and development of the Property, including a statement of how the development will benefit the local Montrose community and wider community.

4.5.3 *Experience*

A statement setting out the Proponent's experience in undertaking similar projects.

4.5.4 *EOI Deposit*

A bank cheque in the amount of \$2,500 payable to Yarra Ranges Shire Council (**EOI Deposit**).

**4.6 Procedure for lodgement**

4.6.1 All Proposals must be completed in accordance with clause 4.4 and 4.5, and the Proposal and EOI Deposit (and any required attachments) must be lodged by placing in a sealed envelope marked '**Expression of Interest – 13 Leith Road, Montrose**' and lodged at the tender box at Professionals-Methven Real Estate, 46 Brice Avenue, Mooroolbark, Victoria 3138 (**Agent**).

4.6.2 Expressions of interest received by Council after the Closing Date may not be accepted and will only be evaluated if Council (in its sole and absolute discretion) makes a decision to do so.

**4.7 Variations**

Council is under no obligation to provide a Proponent with a further opportunity to respond to this Invitation or allow a Proponent to vary its Proposal, once that Proposal has been lodged.

**4.8 More than one Proposal**

Proponents may submit more than one Proposal in response to this Invitation.

**4.9 Non-conforming Proposals**

Council may consider Proposals which do not conform to this Invitation.

**4.10 Local Government Act 1989**

Proponents acknowledge that Council has complied with sections 189 and 223 of the *Local Government Act 1989* (Vic) and has resolved to proceed with the sale of the Property.

**4.11 Late Proposals**

Late Proposals may be accepted and will only be admitted to evaluation if Council (in its sole and absolute discretion) makes a decision to do so.

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**5. Evaluation Process**

5.1 In assessing each Proposal received, Council will use the following evaluation criteria (not listed in any order of importance):

5.1.1 financial return to Council;

5.1.2 the extent to which the Proponent's proposed development of the Property will benefit the local Montrose community and the wider community; and

5.1.3 experience of the Proponent in carrying out similar projects.

- 5.2 On completion of assessment of Proposals, Council may decide to:
- 5.2.1 proceed to a request for proposals process with short-listed Proponents;
  - 5.2.2 appoint a Proponent as preferred Proponent;
  - 5.2.3 negotiate with any or several of the Proponents; or
  - 5.2.4 terminate this Invitation.
- 5.3 Council will not be bound to engage any Proponent or review any Proposal that does not conform with the requirements set out in this Invitation.
- 5.4 The Proponent acknowledges that Council is not bound to accept the Proposal with the highest price or any Proposal submitted in respect of this Invitation and may terminate the expression of interest process at any time.
- 5.5 The submission of a Proposal does not give rise to any contract governing, or in any way concerning, the expression of interest process, or any aspect of the expression of interest process. Council expressly disclaims any intention to enter into such a contract.

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## **6. EOI Deposit**

The Proponent acknowledges that:

- 6.1 all bank cheques for EOI Deposits will be held by Council's solicitor for safe custody;
- 6.2 in the event that a Proponent is appointed as the preferred Proponent, its EOI Deposit will form part of the deposit in accordance with the terms of the contract of sale; and
- 6.3 in the case of any unsuccessful Proponent, the EOI Deposit will be returned once Council enters into a contract of sale for the Property.

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## **7. No fettering of Council's powers**

Nothing in this Invitation shall fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with any use or development of the Property, or the granting of any planning approval or building permit, the approval or certification of any plans of subdivision or consolidation applicable to the Property or the issue of a statement of compliance in connection with any such plans.

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## **8. Costs and expenses**

Proponents will be responsible for all costs associated with making and submitting their Proposal in response to this Invitation.

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## **9. Agency**

If Proponents are responding through agents, then they must:

- 9.1 note that the agent is acting for and will be remunerated by the Proponent; and

9.2 provide formal written confirmation of authority from the Proponent with their response.

Neither Council nor any of its consultants will deal with or recognise any party other than those who have submitted the requested formal authority.

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## 10. Nomination

Where a Proponent proposes forming a company specifically to be the purchaser pursuant to any contract of sale, Council may permit that contract of sale to be executed in the name of the Proponent or nominee (or both of them) where the nominee will be the company to be formed, provided that:

- 10.1 such a proposal is clearly identified in the Proposal;
- 10.2 the proposed principals of such company are clearly identified in the Proposal; and
- 10.3 both the Proponent and the principals of that company guarantee the performance of that company pursuant to the provisions of the contract of sale.

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## 11. Confidentiality

Until a Proponent's offer is accepted by way of entry into a contract of sale, neither the Proponent, nor Council, may disclose the terms of any Proposal, unless:

- 11.1 in the case of proposed disclosure by the Proponent, the Proponent obtains the consent of Council;
- 11.2 in the case of proposed disclosure by Council, Council obtains the consent of the Proponent; or
- 11.3 such disclosure is required for the purpose of the implementation of this expression of interest process.

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## 12. Canvassing

- 12.1 The Proponent, its employees and consultants, must not approach, or request any other person to approach, any member, employee, officer or consultant of Council:
  - 12.1.1 to solicit support for its Proposal; or
  - 12.1.2 otherwise seek to influence the outcome of this Invitation.
- 12.2 The Proponent will, to the extent practicable and reasonable, avoid socialising with members, employees, officers or consultants of Council and, where such socialising occurs, refrain from discussing its Proposal or the Invitation.
- 12.3 The Proponent will direct all communications during this expression of interest process to Council's nominated representative, in written form, either by post or by email.
- 12.4 If the Proponent breaches this clause 12, Council may, in its sole discretion, disqualify the Proponent from participating in this expression of interest process.

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**13. Conflicts of interest**

Proponents must declare to Council any direct or indirect conflict of interest of:

- 13.1 the Proponent;
  - 13.2 any agent acting for the Proponent; and
  - 13.3 any other consultant acting for the Proponent,
- in respect of Council or this expression of interest process.

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**14. Public statements**

A Proponent must not make any public statement, including doing any media releases, in relation to this expression of interest process and must refer all enquiries from the media to Council.

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**15. Probity**

The Proponent agrees to comply with any probity requirements of the Council or any probity auditor appointed by the Council during the process covered by this Invitation.

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**16. Disclaimer**

- 16.1 Neither Council nor any of its consultants accept any responsibility to any Proponent or other third parties under the law of contract, tort or otherwise for any loss or damage which may arise from anything contained in this Invitation, any matter deemed to form part of this Invitation, the supporting information or documents referred to in this Invitation, or any other information supplied to any Proponent on behalf of Council.
- 16.2 All information given to a Proponent and ultimately the preferred Proponent by Council or its respective officers or agents will be given on an “all care and no responsibility” basis.
- 16.3 By receiving delivery of this Invitation, each organisation and ultimately the Proponent shall, without qualifications, be deemed to have acknowledged acceptance of and shall be bound by the provisions of this clause 16.
- 16.4 Council reserves the right not to proceed with the Invitation and to decline to discuss the Invitation further with any parties. No reimbursement of costs will be paid to persons or organisations preparing Proposals in relation to this Invitation.
- 16.5 No unsuccessful organisation will be entitled to any redress against Council or in the event that Council permits any amendments or additions to any Proposals or enters into any agreement in relation to the sale of the Property with any other person whether an organisation or not.

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**17. Further information**

17.1 All requests for further information regarding this Invitation should be directed to:

Russell Bartlett / Greg Earney  
Professionals-Methven Real Estate  
46-50 Brice Avenue  
MOOROOLBARK VIC 3138

Phone: (03) 9726 8888

Email: russellbartlett@methven.com.au / gregearney@methven.com.au

17.2 Unless Council is of the opinion that questions or requests for further information or clarification are specific to a particular Proponent, answers provided to questions or requests for further information or clarification will be made available to all Proponents. Council will not disclose the identity of the Proponent that submitted the question or request for further information or clarification.

17.3 Council, in its absolute discretion, reserves the right not to respond to questions or requests for further information or clarification.

17.4 After the Closing Date, Council may seek to clarify any aspect of a Proposal that it considers to be unclear, ambiguous or contain contradictory statements on the following basis:

17.4.1 requests for clarification may be issued to Proponents with response time constraints. If the Proponent fails to respond within the requisite timeframe, the answer, once received, may not be admissible;

17.4.2 requests for clarification will be presented in writing to the Proponent's nominated contact person via the email address stated in Schedule 1;

17.4.3 Proponents may be invited to an interview to provide responses to requests for clarification; and

17.4.4 responses to a request for clarification must not change a Proposal and any response attempting to change a Proposal will be withheld from consideration.

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# Schedule 1

## Expression of Interest – Registration Form



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## Schedule 2

### Section 32 Vendor's Statement