



BYRON SHIRE COUNCIL

POLICY NO. 3.2

ENGAGEMENT OF CONSULTANTS

TABLE OF CONTENTS

1	OBJECTIVES	1
2	APPLICATION	1
3	DEFINITIONS	1
4	POLICY STATEMENT	2
5	PROCESS TO BE USED BY COUNCIL, THE GENERAL MANAGER OR RELEVANT MANAGER IN THE ENGAGEMENT AND USE OF CONSULTANTS	3

POLICY TITLE	ENGAGEMENT OF CONSULTANTS
FILE REFERENCE	COR050505
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1 OBJECTIVES

- 1.1 To monitor and record the engaging of consultants.
- 1.2 To provide for open and effective competition between consultants.
- 1.3 To obtain the best quality for the best price, ie, value for money.
- 1.4 To enhance the capabilities of staff within Byron Shire Council.
- 1.5 To enhance the capabilities of local consultancies, ie, not to discriminate against local consultancies.
- 1.6 To ensure ethical behaviour and fair dealing, ie, an impartial, fair, professional and open process carried out with integrity.

2 APPLICATION

- 2.1 This Policy applies to the engagement of consultants by contracts (including letters of engagement) involving an estimated expenditure of less than \$100,000 or such other amount as may be prescribed by legislation. For contracts involving amounts of \$100,000 or more the tendering process required by the Local Government Act, 1993 (Section 55) and by the Council's "Manual of Tendering Requirements, Processes and Criteria" issued on 19 July, 1995 or as amended apply.
- 2.2 The Policy is applied in accordance with the NSW State Government (Public Employment Office) "Guidelines for the engagement and use of consultants".

3 DEFINITIONS

Consultant: A consultant is an organisation or individual contracted to perform specific tasks and to provide expert advice, including recommendations to the Council as a basis for making a decision or taking a certain course of action. A consultant is characterised by the presence of the following elements:

- There is no master/servant relationship between the consultant and the Council;
- The consultant is a registered business or company for taxation purposes;
- The consultant is generally engaged for a fixed period of time at an agreed rate of payment;
- For short duration or small, discrete specific tasks the consultant may be engaged on an hourly rate with an upper limit;

- The work is not directly supervised by the Council, but is subject to Council review and discretion as to its adequacy in terms of best practice and the consultant brief;
- Involves independent research and investigation into a particular matter or issue or range of matters or issues together with expert advice with recommendations.

4 POLICY STATEMENT

- 4.1 The General Manager shall be responsible for maintaining a consultants' register to record all consultant contracts entered into by Council, including details of the consultancy and contract, payment to the consultant and, references to Council's Minutes or Management Plan authorising the consultancy work.
- 4.2 Consultants shall be engaged only at the direction of Council or the General Manager for projects in excess of \$20,000. Where works are for \$20,000 or less, consultants may be engaged at the direction of the relevant Manager, with the concurrence of the General Manager, provided that the project or task has been recognised in Council's annual Management Plan and funding has been so allocated in the budget process or expressly authorised by a Council resolution and recorded in the Council's Minutes.
- 4.3 A minimum of three (3) written competitive quotations shall be obtained to assist the General Manager, in determining the appointment of consultants where the particular project is in excess of \$10,000 but less than \$100,000. The consultant shall supply a copy of its schedule of fees.
- 4.4 Where the proposed consultant brief is for \$10,000 or less, then the relevant Manager, with the concurrence of the General Manager, or the General Manager may select the most appropriate consultant where a general expression of interest has been called for by Council by advertising to provide a particular type or range of tasks. For example, expressions of interest may be sought annually from suitably qualified people who are interested in providing technical assessment skills to assist Council in processing development applications on an annual basis. Such an expression of interest may seek people to provide advice on for example, flora and fauna impact assessments, preparation of fauna impact statements, expert witness in litigation matters in relation to flora and fauna assessments, and the like. Similarly, a general expression of interest may be sought to assist Council in Strategic Planning matters. Where such a general expression of interest has been sought for the 12 month period, then the relevant Manager or General Manager may select the suitably qualified consultant where the proposed consultant brief is for \$10,000 or less.
- 4.5 General expressions of interest to provide consultancy services to Council for projects of \$10,000 or less need to be made on an annual basis. This can occur at either the beginning of each financial year at the discretion of the relevant Manager.
- 4.6 When a consultant contract has been signed, the relevant Council Manager has the power to make minor variations to the provision of consultant services as may be allowed by the contract or letter of engagement. In determining what is 'minor' the Manager must have regard for the outcomes sought from the consultancy services, the original agreed fee, the Council's budget allocation, the public interest and any other relevant matters. Changes to consultancy briefs for the provision of services must be recorded. Any changes greater than 20% shall be determined by the General Manager.
- 4.7 Consultants engaged by Council shall be given access to Council records and other information during the course of the consultancy as determined by the General Manager or Manager as appropriate. Consultants shall provide their own

administrative support and shall not be entitled to use Council's offices, equipment and staff resources unless otherwise negotiated beforehand as part of the contract. However, in entering into a consultant contract a master servant relationship is not to be established.

- 4.8 The General Manager is given authority to depart from this Policy on an as needs arise basis should this be necessary, but only where statutory, judicial, semi-judicial or Ministerial requirements dictate that the Policy cannot be implemented or where the public interest or Council resolutions would be compromised if the Policy as drafted were to be implemented. The General Manager in exercising his/her discretion to depart from the Policy must report each variation to Council.

5 PROCESS TO BE USED BY COUNCIL, THE GENERAL MANAGER OR RELEVANT MANAGER IN THE ENGAGEMENT AND USE OF CONSULTANTS

- 5.1 Identify and demonstrate the need for a consultant.
- 5.2 Identify the source of funding for the consultant study. Has it been provided for in Council budget? Does it come from grants or subsidies?
- 5.3 Prepare the consultant brief. Identify specific tasks required from the consultant. Identify specific outcomes required from implementation of the consultant's project brief. Identify what resources Council will provide by way of assistance to the consultant, if any. Identify the time horizon for the project brief. Identify any milestones to be associated with any payment schedule in the project brief.
- 5.4 Select the consultant. Call for expressions of interest if consultancy is for more than \$10,000. Select consultant from previously called general expressions of interest if contract is for \$10,000 or less.
- 5.5 Evaluate consultants. Establish selection criteria. Weight if necessary. Appoint appropriate selection committee of three (3) people or more as appropriate.
- 5.6 Engage and manage the consultant. Establish final consultant project brief. Sign the consultant brief and initial each page by both Council representative and consultant representative. Prepare contract for signature by both Council and consultant. The consultant contract should have provision for copyright to be vested in Council, payment schedule upon satisfactory completion of certain tasks, fees including any disbursements and other costs, mediation of any dispute, the ability of Council to stop the contract with two (2) weeks notice and any payment to be made up to that point without further mediation or arbitration for any reason whatsoever, a requirement for quality control/quality assurance, indemnity of Council from consultant's work.
- 5.7 Evaluate the results. Manager of consultant contract should evaluate the consultant's results in reference to the original project brief to determine whether the tasks have been adequately performed and best practice has been achieved.
- 5.8 Report consultant contract results to Council either directly or by way of an attachment to a report indicating how the consultant project has contributed to the final recommendation to Council.
- 5.9 Performance report. Prepare a short performance report on the consultant engaged for future reference purposes and placement on register of consultants held by the General Manager.