Unsolicited Proposal Policy

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Responsible Officer(s):	*Chief Executive Officer*
Council File Reference:	*Council Policies (P)*
Applicable Legislation:	*Local Government Act 1999*
Relevant Policies:	*Procurement Policy, Lease and Licence Policy, Disposal of Council Land and Other Assets Policy*
Related Procedures:	*Unsolicited Proposal Procedure TBC*
Delegations:	*Berri Barmera Council Delegations Register*

1. Purpose

Berri Barmera Council (Council), from time to time, receives unsolicited proposals from businesses, not-for-profit associations, community groups and other government agencies.

The purpose of this policy is to stimulate and encourage investment and innovation for the benefit of our community, and to establish the framework required to provide confidence to our community and potential proponents that all unsolicited proposals received will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value.

2. Definitions

Intellectual property	means inventions, original designs and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks; also trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by common law and additional contractual obligations such as confidentiality agreements.
Proponent	means a person, business or other organisation and approaches Council with an unsolicited proposal or with an intention to submit an unsolicited proposal.
Unsolicited proposal	means a unique proposal that could assist Council to achieve its strategic management plan objectives, which is over the financial value threshold of $50,000, has not been requested by Council

	through its regular competitive request processes. An unsolicited proposal may include a proposal for the: • purchase, lease, or development of Council owned and managed land; • supply of goods or services to or on behalf of Council; • provision of major capital works projects; or • provision of infrastructure and / or services to the community.
Unique	means a unique benefit of an unsolicited proposal and the unique ability of the proponent to deliver the unique benefit.
Value for money	means an unsolicited proposal achieves the required project outcomes and objectives in an efficient, high quality, innovative and cost-effective way, and with appropriate regard to the management and mitigation of risks.

3. Principles

This section details **what** the expectations of the Council are in creating the policy. It should detail in high level terms what the Council believe is fair, just and reasonable it the application of the policy, these principles should be congruent with community expectations of good governance.

4. Policy Statement

4.1 Objectives

The main objectives of this policy are to:

- Promote the development of unique and innovative ideas and proposals by businesses, not-for-profits, and other government agencies to assist Council achieve the community's aspirations;
- Provide a clear and identifiable process for proponents seeking to put forward unsolicited proposals to Council;
- Provide a framework for assessing unsolicited proposals with a view to delivering uniqueness, value for money, and strategic alignment with Council's strategic management plans and policies; and
- Ensure a robust level of probity is applied to all unsolicited proposals, by protecting intellectual property; maintaining impartiality, accountability, transparency and confidentiality; and managing conflicts of interests.

4.2 Commitment to testing the market

Council operates consistently with the Local Government Act 1999 (the LG Act), procuring projects, goods and services; and disposing of assets (including land and roads) using competitive processes in order to achieve value for money in a fair and transparent manner.

The unsolicited proposals process is not suitable for routine competitive processes by Council. The focus of unsolicited proposals is on unique and innovate projects or services with clear and tangible benefits aligned to Council strategic management plans. While direct negotiation with a proponent in response to an unsolicited proposal may be pursued in certain justifiable circumstances, Council's usual approach is to test the market. Testing the market generally results in the demonstrable achievement of value for money outcomes and provides fair and equal opportunities.

4.3 Considering unsolicited proposals

Council will apply a three (3) stage process to considering unsolicited proposal. As set out in Table 1**.**

Table 1 – Unsolicited Proposal Stages

Stage	Description
Stage 1 – Initial Proposal	The objective of the initial proposal stage is to enable the proponent to provide Council with a high-level overview of their unsolicited proposal and for Council to form a preliminary view as to whether the unsolicited proposal is consistent with, and should be considered in accordance with, this policy. If approved by Council or Council delegate for further consideration, it will be progressed to Stage 2.
Stage 2 – Detailed Proposal	The objective of Stage 2 is to consider the feasibility of the proposal, and whether it represents value for money. This will be an interactive process between Council and the proponent that will occur within the framework established by Council. At this stage, the proponent provides a detailed written proposal for assessment. If approved, by resolution of Council, to proceed to contract negotiation, it will be progressed to Stage 3.
Stage 3 – Contract Negotiation and Finalisation	The objective of Stage 3 is to enter formal contract negotiations to reach agreement of the terms of the contract. If approved, by resolution of Council, the parties can progress to contract execution or final binding offer.

The detailed assessment process is contained in Council's Unsolicited Proposal Procedure.

4.4 Contact with Council

Once an unsolicited proposal has been submitted, proponents must not contact Councillors or Council officers in regard to the unsolicited proposal outside of the formal assessment process. This includes organisations authorised to act on the proponent's behalf. Council officers may contact the proponents where necessary in order to seek clarifications and further information.

Councillors will be notified by a confidential process that an unsolicited proposal (with some detail) has been received and now formal processes are in place. Councillors are then obliged to no longer engage with any party involved in the unsolicited proposal process.

4.5 Period of Exclusivity

Council may, at its absolute discretion, enter into a period of exclusive negotiation with a proponent. During this period of exclusivity, the proponent's intellectual property shall be protected and appropriate confidently maintained.

4.6 Intellectual Property

Council acknowledges unsolicited proposals may contain intellectual property of the proponent and/or third parties. If Council declines to consider, or ends its consideration of an unsolicited proposal, and elects to approach the market in relation to the subject matter of the unsolicited proposal, Council will respect that any intellectual property rights of the proponent and/or third parties as legally required.

4.7 General Terms

Council is under no contractual or other legal obligations to the proponent with respect to the receipt, assessment, consideration, acceptance or rejection of any unsolicited proposal.

Council may have legislative obligations that it needs to comply with in relation to a particular unsolicited proposal and nothing in this policy is intended to override or circumvent those obligations.

Proponents of unsolicited proposals must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest. If any conflict or potential conflict exists, the proponent must advise Council how it proposes to address the conflict or potential conflict.

A proponent bears its own costs of preparing, discussing and negotiating any unsolicited proposal with Council.

Unless specifically stated in this policy or determined by Council, this policy is not intended to override any other policy of Council that may apply to an unsolicited proposal.

If Council decides to progress an unsolicited proposal, it should not be interpreted as any form of explicit or tacit support for planning, building or other required approvals.

Council may at any time:

- accept or reject any unsolicited proposal or part of an unsolicited proposal;
- if it assesses that an unsolicited proposal does not meet the criteria to be considered or considered further, end consideration of the unsolicited proposal and withdraw from any negotiation with the proponent in relation to it and make an approach to the market in respect of the subject matter of the proposal;
- subject to any period of exclusivity, negotiate with any person in relation to the subject matter of the unsolicited proposal;
- discontinue negotiations with any proponent;
- include the proponents name in council reports, and subject to the period of exclusivity of any agreement with the proponent, make those council reports public;
- amend, vary or revoke this policy.

4.8 Roles and Responsibilities

4.8.1 Council

The elected Council has final responsibility for the approval of any unsolicited proposal. Approval by Council or Council's delegate at Stage 1 is required for an unsolicited proposal to progress to Stage 2, and a Council resolution is required to progress through the remaining unsolicited proposal stages.

4.8.2 Steering Group

An Unsolicited Proposal Steering Group (Steering Group) will be established for Stage 2 consideration of unsolicited proposals to oversee the assessment and other process steps for Stage 2 and Stage 3. The Steering Group will have at least 3 members (in addition to the Proposal Manager) from different divisions of Council.

4.8.3 Advisers

The following key advisers may be appointed, as required, to provide specialist expertise to assist in proposal assessment and probity processes.

- Legal
- Financial
- Technical
- Environmental
- Probity

Advisers are to adhere to the protection of intellectual property rights contained in the unsolicited proposal and confidentiality requirements of the process.

5. Availability of Policy

This Policy will be available for inspection on the Council's website www.berribarmera.sa.gov.au. Copies can also be provided upon payment of a fee in accordance with Council's Schedule of Fees and Charges.