



CONFIDENTIAL AGENDA – COUNCIL MEETING

18 JUNE 2019

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18 JUNE 2019

COUNCIL MEETING

CORPORATE AND COMMUNITY SERVICES

8.1 CONFIDENTIAL AGENDA – MANAGER COMMUNITY PROJECTS

8.1.1

SANTOS TOUR DOWN UNDER 2020

The matter of the agenda item being a Report regarding Council's potential Expression of Interest to host an event or events in the 2020 Santos Tour Down Under and pursuant to Section 90(3)(d)(i) of the Local Government Act 1999 ("the Act") being commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party, and (ii) would on balance, be contrary to the public interest.

There is strong public interest in enabling members of the public to observe Council's transparent and informed decision-making. This helps to ensure accountability, maintain transparency of public expenditure, facilitate participation, assist public awareness and allow for the scrutiny of information. Attendance at a Council meeting is one means of satisfying this interest. The public will only be excluded from a Council meeting when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the public interest of open decision making.

In this matter, the reason that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest is that the information has been provided to Council as commercial in confidence. The matter has been requested to be kept confidential until such dates any embargo on the announcement regarding venues for the 2020 Santos Tour Down Under is lifted by Events South Australia.

On balance, the above reason which supports the need for confidentiality pursuant to Section 90(2) of the Act outweighs the factors in favour of the public interest of open decision-making.

OUT OF CONFIDENCE

RECOMMENDATION:

That Council:

- (1) Under the provisions of Section 90(2) of the Local Government Act 1999, make an order that the public be excluded from the meeting with the exception of the Chief Executive Officer, Director Corporate and Community Services, Director Development and Environmental Services, Director Works and Engineering, Manager Community Projects, Communications Officer and the Minute Secretary, in order to consider in confidence, a report relating to Section 90(3) (d) of the Local Government Act 1999 relating to agenda item 8.1.1 Santos Tour Down Under 2020 being information that must be considered in confidence in order to ensure that Council does not disclose commercial information of a confidential nature (not being a trade secret) the disclosure of which – (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest.
- (2) Accordingly, on this basis, Council is satisfied that public interest in conducting meetings in a place open to the public has been outweighed by the need to keep the information and discussion confidential as the information has been provided to Council as commercial in confidence and Council could be prejudiced if it disclosed this information.

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CORPORATE AND COMMUNITY SERVICES

MANAGER COMMUNITY PROJECTS

18 JUNE 2019

8.1.1

SANTOS TOUR DOWN UNDER 2020

B8989

PURPOSE

Events South Australia has responded to Council's Expression of Interest to become a host Council for the 2020 Santos Tour Down Under (Attachment 1).

RECOMMENDATION

That Council:

- (1) Accepts the offer from Events South Australia to host Stage 1 of the Santos Tour Down Under and bring a further report to Council once the Licence (Hosting) Agreement is received. The Stage loops through the townships of Tanunda, Angaston and Nuriootpa.
- (2) Approves the addition of \$15,000 ex GST to the 2019/2020 base budget for the additional hosting fee for a start and finish of \$35,000 ex GST.
- (3) Supports officers in liaising with township community representatives to host an associated community event and provides funding of \$13,000 ex GST (already in the 2019/2020 base budget) for this purpose.
- (4) Having considered this matter in confidence under Section 90(2) of the Local Government Act (the Act) pursuant to Section 90(3)(b)(i) and (ii) of the Act being information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct business, or to prejudice the commercial position of the council, makes an order pursuant to Section 91(7) of the Local Government Act 1999, that the minutes, report and attachments other than the minutes relating to the confidentiality order of the Confidential Council Meeting held on 18 June 2019 in relation to Confidential Item Number 8.1.1 and titled Santos Tour Down Under 2020, be kept confidential and not available for public inspection until such date as any embargo on the announcement regarding venues for the 2020 Santos Tour Down Under is lifted.

REPORT

Background

At the 18 December 2018 meeting, Council resolved:

"MOVED Cr de Vries that Council:

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- (1) *Endorses in principle the Expression of Interest registration indicating an interest in hosting a 2020 Santos Tour Down Under Start and Finish entirely within Council area at a cost to be advised;*
- (2) *Endorses in principle the Expression of Interest registration indicating an interest in hosting a 2020 Santos Women's Tour Start and Finish; and;*
- (3) *requests that the host townships selected be: Start in a Barossa township to be decided in consultation with event organisers and finish In Lyndoch.*
- (4) *Having considered this matter in confidence under Section 90(2) of the Local Government Act (the Act) pursuant to Section 90(3)(b)(i) and (ii) of the Act being information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct business, or to prejudice the commercial position of the council, makes an order pursuant to Section 91(7) of the Local Government Act 1999, that the minutes, report and attachments other than the minutes relating to the confidentiality order of the Confidential Council Meeting held on 18 December 2018 in relation to Confidential Item Number 8.2.1 and titled Santos Tour Down Under 2020, be kept confidential and not available for public inspection until such date as any embargo on the announcement regarding venues for the 2020 Santos Tour Down Under is lifted.*

Seconded Cr Wiese-Smith

CARRIED CO2018/22-3"

Discussion

Events South Australia have accepted Council's expression of interest for a start and finish within The Barossa Council region for Stage 1 of the Santos Tour Down Under (TDU) on Tuesday 21 January 2020. Council requested that the finish be in Lyndoch due to the successful and committed volunteer support shown in previous years to host a community event to celebrate the TDU in our region.

The proposed Stage 1 route has both the start and finish of the event in Tanunda (Attachment 2 – proposed race route) and concentrates the race in the townships of Tanunda, Angaston and Nuriootpa.

It is unclear at this stage if there is community interest in any of these townships, and specifically Tanunda, to host an associated community event. In previous years, the Host Agreement has included a clause that requires Council to facilitate a community event to celebrate the TDU.

The 18 December 2018 report documented the following:

"Each of the region's townships with a community group were contacted to understand their interest in hosting an associated community event in 2020 and beyond. The following table provides the responses.

Township	Response
Southern Barossa	<i>SBA and sub-groups are very keen to coordinate a local finish or start for future Men's and Women's TDUs with associated community events in the Southern Barossa. "We look forward to having the opportunity to again engage community volunteers and showing off the Barossa to the world."</i>

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Angaston	<i>As it has been a number of years since hosting a start / finish, the 2019 event will gauge business interest/participation and interest from community groups and the cycling fraternity. ACBA supports participation in the event and some good future ideas but current officer observation that Council needs to assist further with driving and supporting the planning stages.</i>
Nuriootpa	<i>Beyond the capability / interest of the Nuriootpa Futures Association; however St Petri Church host food offer and children's activities.</i>
Mount Pleasant	<i>Beyond the capability of Mt Pleasant at the moment."</i>

Since the 2019 TDU, the Angaston Community and Business Alliance provided feedback from their involvement in the event and is summarised as follows:

Return on 'Investment' – Financial and volunteer time	<ul style="list-style-type: none"> • Effort required outweighs quantifiable return • Through feedback, perception that the event had a negative economic outcome for Angaston
Road Closures and Restrictions	<ul style="list-style-type: none"> • Businesses are frustrated at street closure for full day • Residents reported that road restrictions at finish straight barriers were difficult to navigate and in place prior to their normal daily departure times • Most affected still say that 'it's good for town / Barossa' but not with closures and restrictions for that long
Attendance demographic	<ul style="list-style-type: none"> • Not a 'spending one' • Congregated around finish • Dispersed quickly post race
Looped routes	<ul style="list-style-type: none"> • More appetite for businesses and people setting up along route all day
Day for Barossa Stage	<ul style="list-style-type: none"> • Would love a weekend day; businesses would support with less disruption

Consistently with previous years, officers have entered \$20,000 ex GST into the base 2019/2020 budget for the Hosting Fee. Due to a start and finish within our Council region, it is now understood that the Host Fee is \$35,000 ex GST. This will require additional budget.

At this point, it is unclear the extent of required road closures for the Stage. Indications from Events South Australia staff are that it is likely that there will be road closures required to be implemented by Council in Tanunda (with appropriate detours), and a rolling closure only for the remainder of the circuit. There may be some additional traffic infrastructure and/or traffic management required. Officers will provide a further report to Council following a risk assessment and working group meeting with organisers.

Council has not been allocated a Stage of the Women's Race for 2020.

Summary and Conclusion

Events South Australia have responded to the Expression of Interest to hold a start and finish in The Barossa Council region. The response caters for a looped route through Tanunda, Angaston and Nuriootpa; however does not include a stage finish in Lyndoch as requested.

It is now understood that Host Fee will be \$35,000 ex GST and an additional \$15,000 ex GST will be required in the 2019/2020 base budget, should Council endorse the response.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1: 19/31327 – Events South Australia Response to Expression of Interest
Attachment 2: 19/31327 – Proposed Stage 1 Route

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Community and Culture



Health and Wellbeing



Business and Employment

- 2.1 Initiate and support activities which encourage participation and pride in the Barossa Council area.
- 2.6 Support a vibrant and growing arts, cultural, heritage and events sector.
- 4.2 Create opportunities for people of all ages and abilities to participate in the community.
- 5.13 Support economic development through events

Legislative Requirements

Local Government Act 1999
Road Traffic Act 1961

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Financial Management Considerations

Hosting Fee for a start and finish of the Stage 1 of the 2020 Santos Tour Down Under is \$35,000 ex GST. The base 2019/2020 budget includes \$20,000 ex GST; therefore an additional \$15,000 ex GST will need to be applied if Council endorses the events.

Resource and Risk Management Considerations

The Tanunda community has not been consulted regarding appetite to host an associated community event. If Council endorses the event and there is not interest provided for a Tanunda community event, this will fall to officers to manage. This activity does not currently sit within officer roles.

COMMUNITY CONSULTATION

The establishment of a Working Party comprising town representatives, emergency services, service providers, tourism and event organisers will need to be established.

SANTOS TOUR DOWN UNDER

OUT OF CONFIDENCE

CONFIDENTIAL

ATTACHMENT 1

27 May 2019

The Barossa Council
Rebecca Tappert
43/51 Tanunda Road Nuriootpa SA 5355

Dear Rebecca,

Events South Australia, a division of the South Australian Tourism Commission, will stage the 22nd Santos Tour Down Under in key locations throughout metropolitan and regional South Australia from 16 – 26 January 2020.

We are pleased to advise that the *The Barossa Council* request to host a Stage Santos Tour Down Under Stage of the 2020 Santos Tour Down Under has been successful.

Date: Tuesday 21 January 2020
Stage: Santos Tour Down Under Stage One
Location: Tanunda to Tanunda
Hosting Fee: \$35,000 + GST

The Santos Tour Down Under race route will also pass through your council area on Friday 24 January 2020.

We are excited to be working with you and your appointment as a 2020 host council and require that your appointment along with all Santos Tour Down Under race information discussed and received over the coming months must remain **CONFIDENTIAL** until the Santos Tour Down Under officially releases this information to the public.

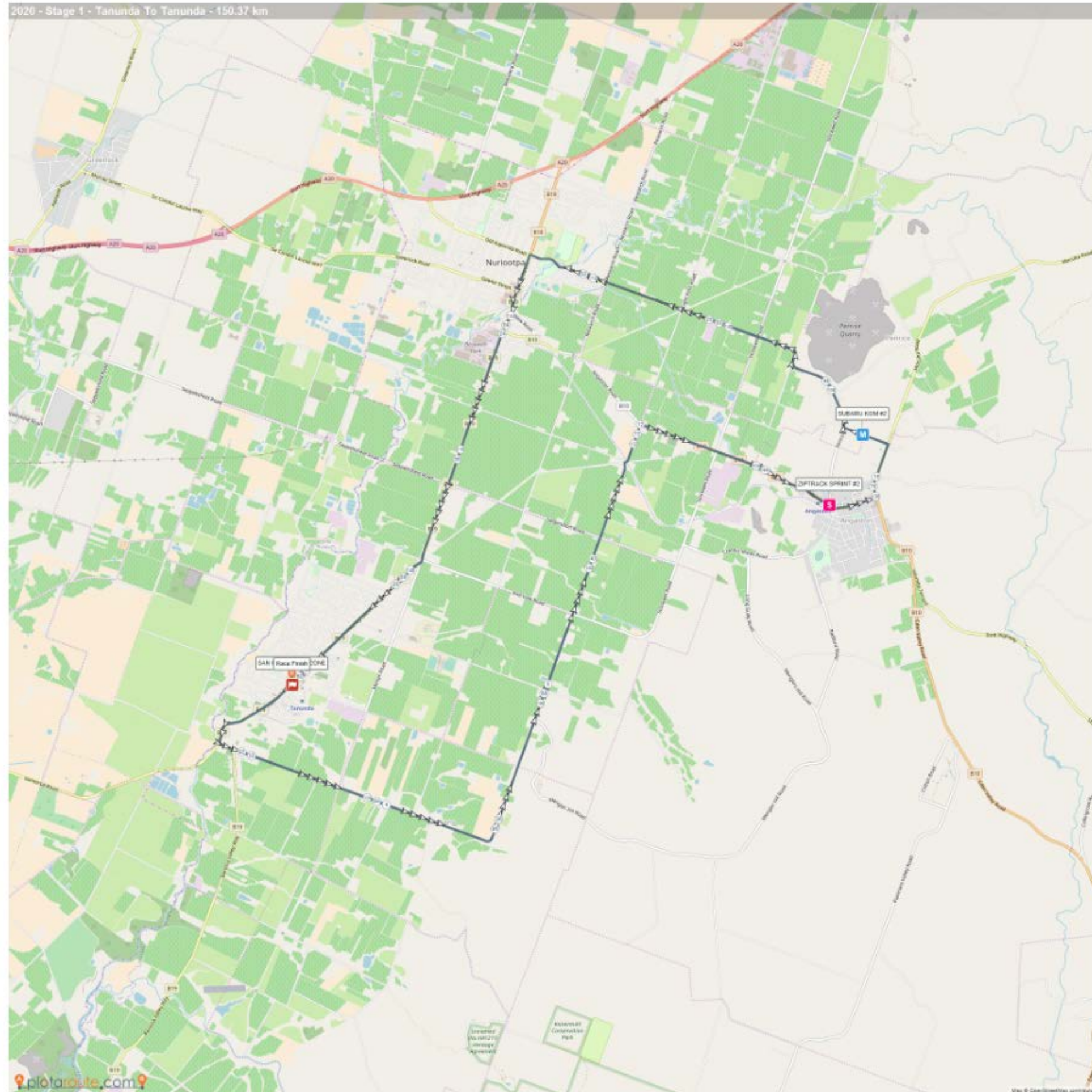
If you are approached by the media for comment on your application it would be greatly appreciated if you could respond with *'We have received notification on the status of our application, however until the official launch of the 2020 event later in the year we are not in a position to discuss the status.'*

An official contract will be sent to you in the coming weeks. If you have any queries, please do not hesitate to contact me as soon as possible on 8463 4702 to discuss. We look forward to bringing the event to the region and working with you and your team to stage a safe and successful 2020 event.

Kind regards



Ryan Healy
Event Manager
Santos Tour Down Under



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EXECUTIVE SERVICES

8.2 CHIEF EXECUTIVE OFFICER'S REPORT

8.2.1

SECTION 270 LOCAL GOVERNMENT ACT - REVIEW OF COUNCIL DECISION

The matter of the agenda item being a review of a Council decision under section 270 of the *Local Government Act*, pursuant to Section 90(3)(a) and (f) of the *Local Government Act 1999* ("the Act") being information that must be considered in confidence, as it is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead); and information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial. In particular, the Report contains information of a personal nature about the applicant and relates to a matter in respect of which he may elect to be prosecuted.

There is strong public interest in enabling members of the public to observe Council's transparent and informed decision-making. This helps to ensure accountability, maintain transparency of public expenditure, facilitate public participation, assist public awareness and allow for the scrutiny of information. Attendance at a Council meeting is one means of satisfying this interest. The public will only be excluded from a Council meeting when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the public interest of open decision-making.

In this matter, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest are that:

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- *the disclosure of private information of an individual would be unfair or harmful;*
- *detriment to the public (ie disclosing information which would inhibit the flow of information to law enforcement agencies);*
- *disclosure would prejudice the maintenance of law.*

On balance, the above reasons which support the need for confidentiality pursuant to Section 90(2) of the Act outweighs the factors in favour of the public interest of open decision-making.

RECOMMENDATION

That Council:

- (1) Under the provisions of Section 90(2) of the Local Government Act 1999, make an order that the public be excluded from the meeting with the exception of the Chief Executive Officer, Director Corporate and Community Services, Director Development and Environmental Services, Director Works and Engineering, Governance Advisor and the Minute Secretary, in order to consider in confidence a report relating to Section 90(3)(a) and (f) of the Local Government Act 1999, relating to 8.2.1 Section 270 Local Government Act – Review of Council Decision, being information that must be considered in confidence in order to ensure that the Council does not disclose information that could reasonably be expected to involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead); and information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial; and
- (2) Accordingly, on this basis, Council is satisfied that public interest in conducting meetings in a place open to the public has been outweighed by the need to keep the information and discussion confidential to prevent the disclosure of private information of an individual that would be unfair or harmful; cause detriment to the public (ie disclosing information which would inhibit the flow of information to law enforcement agencies); and/or prejudice the maintenance of law.

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EXECUTIVE SERVICES

CHIEF EXECUTIVE OFFICER REPORT

18 JUNE 2019

8.2 CHIEF EXECUTIVE OFFICER - CONFIDENTIAL

8.2.1

SECTION 270 LOCAL GOVERNMENT ACT - REVIEW OF COUNCIL DECISION

B9332

Author: Governance Advisor

PURPOSE

Council is asked to receive the report and recommendation given by Ms Kate Brandon of HWL Ebsworth Lawyers in her external party review report entitled 'Internal Review Report: The Barossa Council: Mr Antonio Santamaria and Expiation Notice No. 10327', which was provided to Council officers on 4 June 2019 as regards a decision made by Council officers not to withdraw Expiation Notice 10327 issued to the applicant, Mr Antonio Santamaria.

RECOMMENDATION

- (1) That Council receive the independent external party review report and attachments, provided to officers on 4 June 2019 by the external reviewer, Ms Kate Brandon of HWL Ebsworth Lawyers, as regards a decision made by Council officers not to withdraw Expiation Notice 10327 issued to the applicant, Mr Antonio Santamaria (the "Decision"), at Attachment 1.
- (2) That, as per the external reviewer's recommendations, Council take no further action in relation to the applicant's application of 18 February 2019, to review the Decision under section 270 of *Local Government Act* (the "Application"); or the Decision.
- (3) That, in accordance with the external reviewer's recommendations, the Chief Executive Officer inform the applicant that:
 - (a) the Application does not fall within the Council Internal Review of Council Decisions Policy;
 - (b) Council has, in the interests of demonstrating transparency, fairness and accountability, determined that it is appropriate to obtain an independent report in relation to the decision to be undertaken having regard to the matters contained in Council's Internal Review of Council Decisions Policy and Process;
 - (c) the independent report has, in accordance with Council's Internal Review of Council Decisions Policy and Process, considered all the information before the original decision maker at the time of the Decision and the additional information submitted by the application, and found that the Decision has been undertaken in a legally and procedurally correct manner, and that a different decision would not provide an improved outcome; and

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(d) no further action will be taken in relation to the Application or the Decision.

- (4) Having considered this matter in confidence under Section 90(2) of the Local Government Act 1999, and pursuant to section 90(3)(a) and (f) of the Act, being information that must be considered in confidence in order to ensure that the Council does not disclose information that could reasonably be expected to involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead); and information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial, makes an order pursuant to Section 91(7), that the reports and attachments, and minutes other than the minutes relating to this confidentiality order of the Confidential Council Meeting held on 18 June 2019 in relation to item 8.2.1 Section 270 Local Government Act – Review of Council Decision be kept confidential and not available for public inspection until the applicant has exhausted all legal avenues in relation to matters for which he may elect to be prosecuted in relation to the contents of the Report, and authorise the Chief Executive Officer to review and revoke the order.

REPORT

Background

Mr Antonio Santamaria (the "Applicant") made an application on 18 February 2019 for a review under section 270 of the *Local Government Act* of a decision by Council officers not to withdraw Expiation Notice 10327 issued to the applicant (the "Decision"). The applicant was notified of the Decision on 30 January 2019.

Reviews under section 270 of the *Local Government Act* are governed by Council's Internal Review of Council Decisions Policy (the "Policy") and Internal Review of Council Decisions Process (the "Process").

Due to the review of the Decision requiring specialist knowledge, but employees with the specialist knowledge having a conflict of interest in the matter or being unavailable, the Chief Executive Officer determined, pursuant to clause 4.5.3 of the Process, to appoint an external reviewer. Subsequently, Ms Kate Brandon from HWL Ebsworth Lawyers was appointed as the external reviewer.

Introduction

Ms Brandon has finalised her investigation, and subsequently her report and recommendations are presented for Council's consideration at Attachment 1.

Discussion

In her review, Ms Brandon first addressed whether the Decision falls within the scope of the Policy, having considered that:

- the applicant has already requested a review of the expiation notice under section 8A of the *Expiation of Offences Act 1996*, which provides that a person can apply for a review of an expiation notice on the ground that the offence to which the notice relates is 'trifling';
- the review of the expiation notice under section 8A of the *Expiation of Offences Act* was conducted by Council officers and upheld the initial decision to issue the expiation notice; and
- the Policy addresses circumstances where decisions will not be subject to review under the Policy, and include where other legislation governs the review

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of, or appeal from, a type of decision, and provides the example of an expiation notice under the *Expiation of Offences Act 1996* (at clause 2.2.2);

and determined that the Decision falls outside of the scope of the Policy. However, in light of the complaint made by the applicant and in the interests of demonstrating transparency, fairness and accountability, it was deemed appropriate to nonetheless obtain a report from the external reviewer, addressing the merits of the Decision (i.e. whether the Decision is legally, procedurally and meritoriously correct).

Ms Brandon considered whether the Decision as legally, procedurally and meritoriously correct having regard to the following, that the Council officer/s:

- had the power to make the Decision;
- considered all the matters which were relevant to the making of the Decision at the time and did not take into account matters which were not relevant;
- did not exercise a discretion or power in bad faith, for an improper purpose or while subject to duress or the influence of another person;
- had no conflict of interest, bias or perceived bias;
- ensured that the findings of fact were based on evidence;
- considered any relevant legislation, policies or processes;

and that the decision was reasonable in all circumstances.

She also considered whether a different decision based on the evidence available or new evidence provided or found, would have provided an improved outcome.

Procedural fairness was observed throughout this review so that the applicant was given an opportunity to put forward information and materials in support of the application for review, was informed of the proposed outcome of the review, and had the opportunity to make further submission to Ms Brandon on the outcome and have any matters raised taken into account.

Having completed her review, Ms Brandon found that the Decision falls outside the scope of the Policy and Process, and is not subject to review under the Policy. However, that having considered the merits of the Decision, the Ms Brandon found that the Decision was made in accordance with the legal and procedural requirements and that a different decision would not have provided an improved outcome. Accordingly, Ms Brandon's recommendations are that:

- (1) Council take no further action in relation to the applicant's application or the Decision; and
- (2) That Council inform the applicant that:
 - a. The application does not fall within Council's Internal Review of Council Decisions Policy;
 - b. Council has, in the interests of demonstrating transparency, fairness and accountability, determined that it is appropriate to obtain an independent report in relation to the decision to be undertaken having regard to the matters contained in Council's Internal Review of Council Decisions Policy and Process;
 - c. The independent report has, in accordance with Council's Internal Review of Council Decisions Policy and Process, considered all the information before the original decision maker at the time of the Decision and the additional information submitted by the applicant, and found that the Decision has been undertaken in a legally and

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- procedurally correct manner, and that a different decision would not provide an improved outcome; and
- d. No further action will be taken in relation to the applicant's application or the Decision.

Summary and Conclusion

Council is asked to receive the external reviewer, Ms Brandon's external party review Report and recommendation(s).

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 - the independent external party review report and attachments prepared by the external reviewer, Mr Kate Brandon of HWL Ebsworth Lawyers, titled 'Internal Review Report: The Barossa Council: Mr Antonio Santamaria and Expiation Notice No. 10327, which was provided by the external reviewer to officers on 4 June 2019

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS



How We Work – Good Governance

Corporate Plan

Community and Culture:

2.3 Support and promote community involvement and networks and provide opportunities for participation in local decision making.

Good Governance:

6.1 Ensure that the community has access to information regarding the discussions held and decisions made by Elected Members.

6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements.

6.7 Implement strategies for the community to be actively engaged in Council decision making through sound information and communication.

Legislative Requirements

Local Government Act 1999, section 270

Policy

Internal Review of Council Decisions Policy

Internal Review of Council Decisions Process

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Risk is mitigated by complying with Section 270 of the *Local Government Act* and the provisions of Council's Internal Review of Council Decision Policy and Process. Whilst the external reviewer found that the decision falls outside of the scope of the Policy and Process and therefore is not subject to review, in light of the applicant's complaint and in the interests of demonstrating transparency, fairness and accountability, an assessment of the merits of the decision was undertaken by the external reviewer (i.e. whether the decision was procedurally, legally and meritoriously correct).

The costs associated with engaging an external reviewer have been taken from the Development and Environmental Services Directorate's budget, in accordance with Council's Internal Review of Council Decision Policy and Process. Other tasks associated with the review have been done as part of officers' current duties.

COMMUNITY CONSULTATION

There is no community consultation required under legislation for this matter.

Internal Review Report

The Barossa Council

Mr Antonio Santamaria and Expiation Notice No. 10327

4 June 2019

Introduction

1. Mr Antonio Santamaria has sought a review pursuant to section 270 of the *Local Government Act 1999* (SA) (**the Act**) in relation to the decision made by the Barossa Council (**Council**) not to withdraw Expiation Notice 10327 (**Expiation Notice**).
2. Mr Santamaria's application for a section 270 review of a Council decision was made by email dated 18 February 2019 (the **Application**). Further particulars as to the reasons for the Application were provided as follows:
 - (a) By email to Council dated 3 March 2019; and
 - (b) By telephone call to HWL Ebsworth Lawyers on 28 March 2019(the **Further Particulars**).

The Application and the Further Particulars are attached at **Appendix 1**.

3. HWL Ebsworth Lawyers has been engaged by Council to provide a report to Council in respect of the Application.

The Council Decision

4. Mr Santamaria's request for review relates to a decision made by Council not to withdraw the Expiation Notice. Mr Santamaria was notified of the decision by letter dated 30 January 2019 (**Decision**). The letter is attached at **Appendix 2**.

History

5. A summary of the history of the Decision and the Application is set out below. The below is intended as a non-exhaustive summary of these matters. The correspondence should be referred to for its full terms and effect.
6. On 27 June 2018, Council sent a letter to Mr Santamaria, advising that Council had received an allegation that Mr Santamaria had allowed his dog to defecate in public without picking up and disposing of the litter. A copy of the letter is attached at **Appendix 3**. The letter advised that the matter had not been formally investigated, but noted that:

"[u]nder the *Dog and Cat Management Act 1995* (SA) it is an offence to let your dog defecate in a public place without the immediate removal and lawful disposal of the faeces. Failure to pick up after your pet in public areas can incur on-the-spot fines."
7. On 12 December 2018, at approximately 8.57am, Mr Jamie Turley (Manger, Regulatory Services at Council) observed Mr Santamaria walking his dogs on Main Street, Tanunda. Mr Turley observed Mr Santamaria fail to clean up after his dog. Mr Turley took handwritten notes of the incident which, in summary, record as follows:

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- (a) Mr Turley was travelling through Main¹ Street, Tanunda and observed Mr Santamaria walking two dogs.
- (b) Mr Turley pulled up in the next available parking space and parked the vehicle.
- (c) From the parked vehicle, Mr Turley then observed one of Mr Santamaria's dogs defecate. Mr Santamaria pulled a bag out of his pocket and made a motion to pick up the faeces, but appeared not to. Mr Santamaria then continued walking and 10 to 15 metres further the dog defecated again. Mr Santamaria looked around and kept walking.
- (d) Mr Turley then drove further down the street, parked the vehicle on the side road ahead of Mr Santamaria, and walked across the road to introduce himself.
- (e) The following exchange then took place between Mr Turley and Mr Santamaria:

Mr Turley: *"Good Morning Mr Santamaria, my name is Jamie from the Barossa Council I have just observed you not picking up after your dog."*

Mr Santamaria: *"Yeah, I normally have bags from the Tanunda Oval but don't have any. I was going to come back and pick up."*

Mr Turley: *"I saw you get a plastic bag out of your pocket and go to pick it up but you didn't."*

Mr Santamaria: *"Yeah it's the wrong sort of bag."*

Mr Turley: *"I don't believe you. We have written to you about this before."*

- (f) Mr Turley then noticed part of a dark grey bag sticking out of the pocket of Mr Santamaria's shorts. It had distinctive white markings. Mr Turley believed it was a dog bag.
- (g) Mr Turley then said *"You have a dog bag in your pocket. I can see it"* and asked Mr Santamaria to remove the faeces immediately.
- (h) Mr Turley and Mr Santamaria both walked 30 to 40 metres back south and found two spots where faeces remained. Mr Santamaria then removed the faeces.
- (i) Mr Santamaria said: *"I know you can fine me so I appreciate the warning."*
- (j) Mr Turley responded: *"Consider this the final warning. The community despises this behaviour."*
- (k) Mr Santamaria acknowledged and thanked Mr Turley before walking off.

A copy of Mr Turley's notes is attached at **Appendix 4**.

¹ Mr Turley's handwritten notes record that the incident occurred on Main Street, Tanunda. Mr Turley has since clarified that the incident occurred on Murray Street, the main street of Tanunda.

8. On 9 January 2019, Council wrote to Mr Santamaria enclosing the Expiation Notice and advising that:

"Following our conversation I have reviewed the matter further. Given that Council wrote to you about the matter previously and this behaviour has continued, I have enclosed an expiation notice for the offence of failing to immediately remove and dispose of faeces in a lawful and suitable manner."

A copy of the letter and enclosed Expiation Notice is attached at **Appendix 5**.

9. By emails to Council dated 20 and 22 January 2019, Mr Santamaria requested a review of the Expiation Notice. In his email, Mr Santamaria:

- (a) set out his version of the events on 12 December 2018 as follows:

"Jamie Turley approached me on Murray street, Tanunda in regards to dog feces (sic) that were not picked up immediately. In my conversation with James, I had told him that I didn't have a bag with me and was going to pick it up on the way back from the Tanunda oval, where I knew there were dog bags. James told me that he didn't believe me, but if I went and picked it up now, he would give me one more chance before issuing me an expiation notice. He followed me to make sure it was picked up and I thanked him for his understanding in this matter. He went on to say that this was my last chance, and that next time he'll issue me with a expiation notice. I went on to thank him, and we parted ways."

- (b) alleged that, two or three days after the incident, he was involved in a private road rage incident with Mr Turley on Murray Street, Tanunda, and that Mr Turley's decision to issue an expiation notice was a retaliatory gesture.
- (c) alleged that Mr Turley's explanation for issuing the Expiation Notice was not truthful and that he did not accept that Mr Turley had decided to issue the Expiation Notice upon reviewing the matter further, as when Mr Turley spoke to Mr Santamaria on 12 December 2018 and gave a warning, Mr Turley was aware of the previous incident and that Council had written to Mr Santamaria previously.
- (d) alleged that Mr Turley stated that he was not going to fine him and this was his last warning.

Copies of the emails from Mr Santamaria to Council are attached at **Appendix 6**.

10. Between 23 January 2019 and 30 January 2019, the following employees of Council considered the Expiation Notice in order to provide recommendations as to whether the Expiation Notice should be withdrawn to the Director, Development and Environmental Services, Mr Gary Mavrinac:

- (a) Chris Horsell;
- (b) Karen Watson;
- (c) Michael Clark;

(d) Steven Kaesler;

(e) Eliza Wedge.

(the **Review Panel**)

11. The majority of the Review Panel members recommended that the Expiation Notice not be withdrawn.
12. Mr Santamaria's application for review was then considered by Mr Mavrinac. On 30 January 2019, Mr Mavrinac wrote to Mr Santamaria advising that the Review Panel had reviewed the request to have the Expiation Notice withdrawn and that the Expiation Notice had been upheld. A copy of the letter dated 30 January 2019 is attached at **Appendix 2** and constitutes the Decision.
13. On 18 February 2019 Mr Santamaria sought a review of the Decision, being Mr Mavrinac's decision to uphold the Expiation Notice.

Section 270 of the Act and Internal Review Policy

14. Section 270 of the Act provides that a council must establish procedures for the internal review of a decision of the council. As required by section 270 of the Act, Council has developed and established an internal review procedure. That procedure is set out in documents titled 'Internal Review of Council Decisions Policy' (**the Policy**) and 'Internal Review of Council Decisions Process' (**the Process**).
15. Decisions of Council, employees of Council, and other persons acting on behalf of Council may be subject to review under the Policy.
16. The Process provides that where a decision of Council, an employee of Council or another person acting on behalf of Council is subject to review under the Policy, an internal review must be conducted by the following procedure:
 - (a) The reviewer will consider the merits of all the materials and information that were before the original decision-maker at the time of the decision and any additional relevant information or material provided by the applicant or which has become available during the course of the review (paragraph 4.6.1 of the Process).
 - (b) The reviewer will consider whether the original decision is legally and procedurally correct having regard to the following matters:
 - (i) that the original decision maker had the power to make the decision;
 - (ii) that the original decision maker considered all the matters which were relevant to the making of the decision at the time and did not take into account matters which were not relevant;
 - (iii) that the original decision maker did not exercise a discretion or power in bad faith, for an improper purpose, or while subject to duress or the influence of another person;

- (iv) that the original decision maker had no conflict of interest, bias or perceived bias;
- (v) that the original decision maker ensured that the findings of fact were based on evidence;
- (vi) that the original decision was reasonable; and
- (vii) that the original decision maker considered any relevant legislation, policies or processes

(paragraph 4.6.2 of the Process).

- (c) The reviewer will also consider whether a different decision based on the evidence available or new evidence provided or found provides an improved outcome (paragraph 4.6.2 of the Process).

17. For the purposes of this report, the Decision will be considered in three parts:

- (a) whether the Decision is subject to review under the Policy;
- (b) whether the Decision complies with the procedural requirements as listed at paragraph 16(b) above;
- (c) in light of all relevant material, whether a different decision based on the evidence available or new evidence provided or found provides an improved outcome.

Statutory Framework

- 18. Under section 45A(6) of the *Dog and Cat Management Act 1995* (SA) (**the D&CM Act**), a person who owns or is responsible for the control of a dog (not being an accredited assistance dog) is guilty of an offence if the dog defecates in a public place and the person responsible for the control of the dog does not immediately remove the faeces and dispose of them in a lawful and suitable manner. The offence is an expiable offence, and an expiation fee of \$210 is fixed.
- 19. Under section 5(1) of the *Expiation of Offences Act 1996* (SA) (**the EoO Act**), if an expiation fee is fixed by an Act in relation to an offence, an expiation may be given to a person alleged to have committed the offence and the alleged offence may accordingly be expiated in accordance with the EoO Act.
- 20. A person who has been given an expiation notice may apply, pursuant to section 8A of the EoO Act, for a review of the notice on the ground that an offence to which the notice relates is trifling.
- 21. If a council, following receipt of an application under section 8A of the EoO Act, is satisfied that the offence is trifling, the council must by notice in writing to the alleged offender withdraw the expiation notice under section 8A(5) of the EoO Act.
- 22. In accordance with the special meaning of "trifling" under section 4(2) of the EoO Act, an alleged offence will, for the purposes of the EoO Act, be regarded as trifling if, and only if,

the circumstances surrounding the commission of the offence were such that the alleged offender ought to be excused from being given an expiation notice on the ground that:

- (a) there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the offence; or
- (b) the alleged offender could not, in all the circumstances, reasonably have averted committing the offence; or
- (c) the conduct allegedly constituting the offence was merely a technical, trivial or petty instance of a breach of the relevant enactment.

Is the Decision subject to review under the Policy?

- 23. Not all decisions are subject to a review under the Policy.
- 24. Clause 2.2 of the Policy sets out when decisions are not subject to review under the Policy. In particular, in accordance with Clause 2.2.2 of the Policy, where other legislation governs the review of a specific type of decision, a decision of that type will not be reviewed under the Policy. The Policy cannot override that legislation or operate inconsistently with those legislative processes.
- 25. A review of an expiation notice under the EoO Act is specifically listed in clause 2.2.2 of the Policy as an example of a decision that would not be subject to a review under the Policy. Section 8A of the EoO Act provides a separate process to review an expiation notice, whereby a person who has been given an expiation notice may apply on the grounds that the offence to which the notice relates is trifling.
- 26. Accordingly, we consider that as there is legislation which governs the review of this type of decision, and the Policy cannot override or operate inconsistently with that legislation, the Decision is outside the scope of the Policy and is not subject to review under the Policy.
- 27. However, in light of the complaint made by Mr Santamaria, and in the interests of demonstrating transparency, fairness and accountability, Council has determined that it is appropriate to nonetheless obtain an independent report in relation to the Decision. Accordingly, Council has instructed us to review and address the merits of the Decision having regard to the matters contained in the Policy and Process.

Compliance with Procedure

- 28. As required by the Process, a review of the Decision should ensure that the Decision is legally and procedurally correct, having regard to the factors as summarised at paragraph 16(b)(i) to 16(b)(vii).

Decision maker had power to make the decision (paragraph 16(b)(i))

- 29. The Decision was made by the Director, Development and Environmental Services, Mr Mavrinac.
- 30. Pursuant to section 44 of the Act, a council may delegate a power or function vested or conferred under the Act and that delegation may be made to an employee of the council.

31. Pursuant to section 101 of the Act, the chief executive officer may delegate or sub-delegate a power or function vested or conferred in or on the chief executive officer under the Act, including to an employee of the council or employee for the time being occupying a particular office or position.
32. The Council maintains a delegations register which sets out the delegations under section 44 and section 101 of the Act. The following delegation was made:
 - (a) The duty pursuant and subject to Section 8A(5) and (6) of the EoO Act upon being satisfied the offence is trifling to withdraw the expiation notice in respect of the offence by giving written notice to the alleged offender delegated to the Chief Executive Officer and sub delegated to persons including Director, Development and Environmental Services.
33. Accordingly, Mr Mavrinac, as Director Development and Environmental Services, was sub-delegated the authority to make the Decision.
34. The Decision was therefore made within a power properly conferred on the decision maker.

Relevant Matters Considered (paragraph 16(b)(ii))

35. Prior to Mr Mavrinac making the Decision, the Review Panel considered the Expiation Notice. The members of the Review Panel were provided with a bundle of materials for this purpose, including the letter from Council to Mr Santamaria of 27 June 2018 (Appendix 3), Mr Turley's handwritten notes (Appendix 4), the original letter to Mr Santamaria from Council issuing the Expiation Notice and a copy of the Expiation Notice (Appendix 5), and the emails from Mr Santamaria to Council dated 20 and 22 January 2019 (Appendix 6).
36. The members of the Review Panel specifically recalled that they had been provided with the following materials by Council:
 - (a) Ms Horsell specifically recalled receiving a copy of the customer request, Mr Turley's handwritten notes, and a chronology.
 - (b) Ms Wedge specifically recalled receiving a copy of the letter to Mr Santamaria, a copy of the Expiation Notice, Mr Turley's handwritten notes, and internal emails and correspondence with Mr Santamaria.
 - (c) Mr Kaesler specifically recalled receiving a package with the full record of relevant communications from Council's customer request system, including trails of emails in full form.
 - (d) Ms Watson specifically recalled receiving a letter to Mr Santamaria, a timeline of events and other correspondence and emails.
 - (e) Mr Clarke specifically recalled receiving Mr Turley's handwritten notes, correspondence from Mr Santamaria's request, and the Expiation Notice.
37. All members of the Review Panel confirmed that they recalled reading and considering all materials that they had been provided, and did not consider any other matters in making a recommendation regarding the Expiation Notice.

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38. Each member of the Review Panel completed and signed a response sheet containing their individual recommendation in relation to the Expiation Notice. The response sheets completed by the Review Panel include comments that indicate familiarity with the material provided.
39. Mr Mavrinac recalled that he was provided with the Review Panel recommendations, together with all the materials that the Review Panel had been provided. Further, Mr Mavrinac confirmed it was his usual practice to review all the materials provided to him.
40. Accordingly, based on our review of the decision and the relevant materials, we are satisfied that Mr Mavrinac had regard to all the matters that were relevant to the making of the decision at the time. There has been no suggestion and there is no evidence that the Decision was made by Mr Mavrinac on the basis of irrelevant matters, or that relevant matters were not considered.

Decision Made In Bad Faith, for Improper Purpose, or while Subject to Duress or Influence (paragraph 16(b)(iii))

41. There is no suggestion and no evidence that the Decision was made by Mr Mavrinac in bad faith or for an improper purpose, or subject to duress or the influence of another person.
42. There is no suggestion and no evidence that the recommendations were made by the Review Panel in bad faith or for an improper purpose, or subject to duress or the influence of another person.
43. Further, while the members of the Review Panel are provided with the same materials, they each conduct an individual, independent assessment of those materials. Generally, the members of the Review Panel will work in different areas of Council and are actively encouraged to be independent. The members of the Review Panel do not see the decisions of the other members of the Review Panel.
44. Mr Mavrinac read the individual recommendations made by each member of the Review Panel. However, Mr Mavrinac confirmed that, whilst he had regard to those recommendations, he undertook his own review of the relevant materials in making the Decision.

Findings of Fact Based on Evidence (paragraph 16(b)(v))

45. Mr Mavrinac and the Review Panel did not personally observe the alleged offending on 12 December 2018.
46. However, the materials provided to Mr Mavrinac and the Review Panel included Mr Turley's detailed handwritten notes. Further, Mr Mavrinac and the Review Panel were provided with Mr Santamaria's account of the incident.
47. As such, we are satisfied that the findings of fact relevant to the decision were based on evidence.

Procedural Fairness (paragraph 16(b)(iv))

48. Generally speaking, procedural fairness requires that a person has a fair hearing and that a decision is made in the absence of bias.

49. Mr Santamaria made a number of representations to the Council which were considered by Council. Mr Mavrinac and the members of the Review Panel all confirmed that they took the matters raised by Mr Santamaria into account.
50. There is no evidence or suggestion of any bias towards Mr Santamaria on the part of Mr Mavrinac or the members of the Review Panel.

Decision Reasonable (paragraph 16(b)(vii))

51. For the reasons set out below, we are satisfied that the Decision was reasonable.

Application of Relevant Legislation, Policies or Processes (paragraph 16(b)(vii))

52. Mr Mavrinac confirmed that in making the Decision, he considered the relevant legislation, including the D&CM Act and the EoO Act. In particular, Mr Mavrinac confirmed that he specifically considered the special meaning of "trifling" under the EoO Act, and was not satisfied that the circumstances surrounding the commission of the offence, and the matters raised by Mr Santamaria, provided grounds to excuse the offence.

Would a Different Decision Provide an Improved Outcome?

53. The Process also requires that the reviewer "consider whether a different decision based on the evidence available or new evidence provided or found provides an improved outcome".
54. In summary, the following information and materials are relevant to the Decision and the review:
 - (a) The Application and Further Particulars (Appendix 1);
 - (b) The Decision (Appendix 2);
 - (c) The materials provided to the Review Panel and Mr Mavrinac;
 - (d) *Expiation of Offences Act 1996* (SA);
 - (e) *Dog and Cat Management Act 1995* (SA);
 - (f) Telephone conversations with Mr Turley, Mr Mavrinac and the members of the Review Panel; and
 - (g) Email from Mr Turley to HWL Ebsworth dated 2 May 2019.
55. Where the content of the materials referred to above are not specifically referred to in this report, this does not indicate that the material has not been taken into account in undertaking the review. Each of the materials have been reviewed and considered in full.
56. In his Application, Mr Santamaria raised the following matters:
 - (a) that he was informed by Mr Turley that an expiation notice would not be issued if he returned to the location of the dog faeces and picked it up;

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- (b) that he returned to the location of the dog faeces and picked it up and that this was witnessed by Mr Turley;
- (c) that at the time of the incident, Mr Turley was aware that he had previously been issued with a warning by Council; and
- (d) that Mr Turley's decision to issue an expiation notice was motivated by his personal involvement in a road rage incident that occurred two or three days after the incident on 12 December 2018.

57. By email dated 3 March 2019, Mr Santamaria raised the following matters:

"I would like to reiterate to whomever is reviewing this matter that James, by saying to me if I were to pick up the feces (sic) he would not fine me for this incident, had verbally entered into a contract with me regarding this matter. As far as I am aware, he has not denied this. Therefore with me picking up the feces (sic), a fine is unwarranted.

In his letter attached to the expiation notice on the fine, he states "after reviewing this matter, I have decided to fine you because of my previous warning", however at the time of the incident he stated that he had previously written to me, so when he let me off with this warning he had full knowledge of the letter he had previously sent me as it came up during our conversation. It was only after a minor road rage incident involving myself and James, that he decided to use his position as a manner of revenge, which is completely unacceptable for a council inspector to do..."

58. By telephone call to HWL Ebsworth Lawyers on 28 March 2019, Mr Santamaria raised the following matters:

- (a) that Mr Turley had raised with him at the time of the incident on 12 December 2018 that he had previously been given a warning, and as such was aware that he had previously been issued with a warning by Council;
- (b) that Mr Turley told him that he wouldn't fine him if he returned and picked up the dog faeces, so he returned to the site of the dog faeces and removed it;
- (c) that Mr Turley observed him pick up the dog faeces at the time;
- (d) that he said to Mr Turley that he appreciated the warning; and
- (e) that he was subsequently involved in a road rage incident with Mr Turley where both parties gave each other a rude gesture. He recognised Mr Turley's vehicle as it was a white, Hilux type vehicle with a canopy.

59. Mr Santamaria's recollection on 28 March 2019 of the road rage incident differs from the version of events as stated in his email of 20 January 2019, in which he states that only he gave Mr Turley a finger gesture, after Mr Turley failed to give way to him on Murray Street, Tanunda. On 28 March 2019, Mr Santamaria stated that both parties gave each other a rude gesture.

60. We have considered the matters raised by Mr Santamaria in respect of the alleged road rage incident and in respect of the events on 12 December 2018.

Alleged road rage incident

61. In respect of Mr Santamaria's allegation that he and Mr Turley were involved in a road rage incident two or three days after the incident on 12 December 2018, we have considered the matters raised by Mr Santamaria and we consider that there is not sufficient evidence to find that Mr Turley was involved in a road rage incident. In particular:
- (a) Mr Santamaria has indicated that he recognised the vehicle as the vehicle driven by Mr Turley and described the vehicle as a white Hilux type vehicle with a canopy.
 - (b) Mr Turley confirmed that he drives a Council issued vehicle meeting this description (a white dual cab Holden Colorado utility vehicle with a canopy).
 - (c) However, Council has five white dual cab Holden Colorado utility vehicles with a canopy in its fleet. There are two in Mr Turley's team, and three based in the maintenance depot at Tanunda.
 - (d) Further, Mr Turley's vehicle is regularly used during the day by other members of his team.
 - (e) There is nothing unique about the white dual cab utility vehicle in Council's fleet, such that it may not have been a Council vehicle.
 - (f) Mr Turley denies being involved in the incident.

Events on 12 December 2018

62. In general, we accept the factual matters raised by Mr Santamaria in respect of the events on 12 December 2018 as accurate. We consider that Mr Turley's handwritten notes in relation to the incident on 12 December 2018 are consistent with Mr Santamaria's account. In particular, we draw attention to the following matters:
- (a) There is no dispute that on 12 December 2018, Mr Santamaria was walking his two dogs along Murray Street, Tanunda and was observed by Mr Turley failing to immediately pick up and dispose of dog faeces in contravention of section 46A of the D&CM Act.
 - (b) There is no dispute that Mr Santamaria returned to the location of the dog faeces and removed the faeces. Mr Turley's notes record that he walked with Mr Santamaria 30 to 40 metres to the location of the dog faeces and he observed Mr Santamaria remove the faeces.
 - (c) There is no dispute that Mr Turley gave Mr Santamaria a warning at the time of the offending. Mr Turley's notes indicate he gave a warning to Mr Santamaria. While Mr Turley's notes do not record that a warning was provided prior to Mr Santamaria picking up the faeces, we are satisfied that it is likely that this occurred because Mr Turley's notes record that after Mr Santamaria removed the faeces Mr Santamaria said: "I know you can fine me so I appreciate the warning" and Mr Turley responded: "Consider this the final warning". This exchange suggests that a warning had already been provided by Mr Turley at this time.

- (d) There is no dispute that Mr Turley was aware of the previous warning at the time of the offending. Mr Turley's notes record that he told Mr Santamaria "we have written *to you about this before*", and accordingly was aware at the time of the previous warning issued by Council.

The Decision

63. Having considered the matters raised by Mr Santamaria:
- (a) We are not satisfied that Mr Turley was motivated by his involvement in an alleged road rage incident in issuing the Expiation Notice.
 - (b) We do not consider that it was inappropriate for Mr Turley to issue the Expiation Notice to Mr Santamaria after giving further thought to the matter. In particular, we note that Mr Santamaria has not disputed that he acted in contravention of section 46A of the D&CM Act.
64. In any event the subject of the Application, the Decision, is the decision of Council not to withdraw the Expiation Notice pursuant to section 8A of the EoO Act. Pursuant to section 8A an expiation notice may be withdrawn on the grounds that the expiation notice is trifling.
65. Having regard to the special meaning of trifling under section 4(2) of the EoO Act, we consider that the circumstances surrounding the commission of the offence, and the matters raised by Mr Santamaria, do not provide grounds to excuse Mr Santamaria from being given the Expiation Notice. In particular:
- (a) There is no evidence of any compelling humanitarian or safety reasons for Mr Santamaria's conduct.
 - (b) There is no evidence that Mr Santamaria in all the circumstances, could not have reasonably averted committing the offence. In particular, Mr Santamaria had appropriate bags to remove the faeces on his person at the time.
 - (c) The conduct constituting the offence was not merely a technical, trivial or petty instance of the breach of section 46A of the D&CM Act. Where a dog defecates in a public place, section 46A requires the person responsible for the dog to remove and lawfully dispose of the excrement *immediately*. Mr Santamaria's conduct is a clear example of a breach of section 46A of the D&CM Act. Further, while there is no dispute that Mr Santamaria subsequently removed the dog excrement, this was not done immediately, but only after walking a further 30 to 40 metres off the road and being asked to remove it by a Council officer.
66. Accordingly, having considered the matters raised by Mr Santamaria, we do not consider that a different decision based on the evidence available or new evidence provided or found provides an improved outcome.

Provision of Provisional Report to Council and Mr Santamaria

67. In accordance with Council's instructions in relation to our review, we prepared a provisional report with our findings and recommendations in relation to the Decision.

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68. In accordance with Council's practice and in the interests of procedural fairness, we provided the provisional report to Council and Mr Santamaria for comment.
69. On 27 May 2019, Mr Santamaria provided the following comments for our consideration:
- (a) That Mr Turley recorded in his notebook that he said to Mr Santamaria that Mr Santamaria should "consider this the final warning" and that:

"it is very clear in any language that this means you have one more chance before further action is taken, which [Mr Turley] has failed to uphold";
 - (b) That Mr Turley is untruthful in his denial of the road rage incident, and that:

"Mr Turley definitely recognised me, as he suggested by way of giving me obscene gestures directly at me. The Council has also put forward about the amount of vehicles that are owned by the Council that are similar to the one I described he was driving. However it is not a coincidence that I recognised the exact vehicle he was driving, as well as Mr Turley himself, not an unfamiliar council employee";
 - (c) That he once tried to meet with Mr Mavrinac and Mr Turley, but they refused to meet with him to discuss the matter.
70. We note that the matters raised by Mr Santamaria as summarised at 69(a) above were also raised by him in his emails of 20 January 2019, 18 February 2019, and 3 March 2019, and in his telephone call to HWL Ebsworth on 28 March 2019. In particular in his email of 3 March 2019, Mr Santamaria states that Mr Turley had "verbally entered into a contract" with him (see paragraph 57 above) in that if Mr Santamaria picked up the faeces, Mr Turley would not issue an expiation notice.
71. For the avoidance of doubt, we are not satisfied that what occurred between Mr Turley and Mr Santamaria constitutes a verbal contract which would prevent Mr Turley from issuing the Expiation Notice to Mr Santamaria. However, we note that in giving Mr Santamaria a direction to pick up the faeces and in issuing the Expiation Notice, Mr Turley was exercising a statutory power pursuant to the D&CM Act and EoO Act. As a person exercising a statutory power, Mr Turley cannot fetter that power by entering into a contract or undertaking which is incompatible with his statutory power. Any such contract, if entered into, would be invalid and unenforceable in accordance with common law.
72. We have taken Mr Santamaria's comments into account and have considered his comments in light of the other matters as summarised in this within report and in accordance with the Process. Having considered those matters, we have not revised the findings made in the provisional report and our conclusions remain as set out in that report.

Summary of Review and Recommendations

73. We consider that the Decision is outside the scope of the Policy, and is not subject to review under the Policy.

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74. However, in any event, we consider that the Decision was made in accordance with legal and procedural requirements and we do not consider that a different decision would provide an improved outcome.
75. Accordingly we recommend that Council take no further action in relation to the Application and the Decision.
76. Further we recommend that Council inform Mr Santamaria that:
- (a) the Application does not fall within the Council Internal Review of Council Decisions Policy;
 - (b) Council has, in the interests of demonstrating transparency, fairness and accountability, determined that it is appropriate to obtain an independent report in relation to the decision to be undertaken having regard to the matters contained in the Council Internal Review of Council Decisions Policy and Internal Review of Council Decisions Process;
 - (c) the independent report has, in accordance with Council Internal Review of Council Decisions Policy and Internal Review of Council Decisions Process, considered all the information before the original decision maker at the time of the Decision and the additional information submitted by Mr Santamaria, and found that the Decision has been undertaken in a legally and procedurally correct manner, and that a different decision would not provide an improved outcome; and
 - (d) no further action will be taken in relation to the Application or the Decision.
77. This concludes our report.

4 June 2019



Kate Brandon
Partner
HWL Ebsworth

APPENDIX 1

OUT OF CONFIDENCE

Emma Carnell

From: Antonio Mia <pizza.head@outlook.com>
Sent: Monday, 18 February 2019 7:50 PM
To: MBX Inspect
Subject: Re: Re-Expiation Notice

To whom it may concern,

I have received your letter that council has made a decision to proceed with the expiation notice. I have been informed that I have a right for a review of that decision from a layperson. I wish to proceed with that right for a review. The basis for the review is such that on one of the reviews was that I had not picked up the dog excrement. No. 1 Mr James Turley did not deny the fact that he witnessed me picking it up. No. 2 he also did not deny that he told me he was going to give me another chance before issuing me a expiation notice. No. 3 Mr Turley used his position as a council inspector to wrongfully execute a expiation notice to settle a minor road rage incident. I also request to be provided to me minutes retaining to the decision of the refusal of the expiation notice. I further state that an inquiry should be made into the conduct of Mr Turley's wrong doing by using his position to settle a personal incident.

Regards,
Antonio.

From: MBX Inspect
Sent: Tuesday, 22 January 2019 10:19 AM
To: Antonio Mia
Subject: RE: Re-Expiation Notice

Hi Antonio, I acknowledge receipt of your email, can I please confirm that you are requesting a review of your expiation notice?

Regards,

Sarah

From: Antonio Mia [mailto:pizza.head@outlook.com]
Sent: Sunday, 20 January 2019 6:57 PM
To: MBX Inspect
Subject: Re-Expiation Notice

To whom it may concern;

As stated on the 12th of December in the letter from the Barossa council to myself, Jamie Turley approached me on Murray street, Tanunda in regards to dog feces that were not picked up immediately. In my conversation with James, I had told him that I didn't have a bag with me and was going to pick it up on the way back from the Tanunda oval, where I knew there were dog bags. James told me that he didn't believe me, but if I went and picked it up now, he would give me one more chance before issuing me an expiation notice. He followed me to make sure it was picked up and I thanked him for his understanding in this matter. He went on to say that this was my last chance, and that next time he'll issue me with a expiation notice. I went on to thank him, and we parted ways. Two or three days after this incident I had given Mr Turley a finger gesture after he failed to give way on Murray street, Tanunda. I put it to Mr Turley that this is a retaliatory gesture, having issued me with this expiation notice after he assured me he was not going to do so. I further note that Mr Turley wrote in his letter that he reviewed this matter and after consideration he chose to issue me with the fine given that the council wrote to me previously about this

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issue. But in our conversation on the 12th of December, he mentioned this previous issue and still only gave me a warning. So to write in his letter that under further review of this matter, given that the council had wrote to me, is a untrue statement. I find the explanation in his letter as Mr Turley states that he had reviewed the matter further, to be not truthful and purely retaliatory on his behalf. It is upsetting for me to think that someone in this council could act without candor. I put it to Mr Turley that he witnessed me picking up the dog defecates and furthermore he was aware that he had written to me previously. I also put it to Mr Turley that he did state he was not going to fine me this time, and that it was my last warning and this is purely a retaliation on a private road rage incident.

Kind regards,
Antonio

OUT OF CONFIDENCE

Rugiyya Martin

From: Antonio Mia <pizza.head@outlook.com>
Sent: Sunday, 3 March 2019 7:20 PM
To: Rugiyya Martin
Subject: Re: Request for Review under Section 270 Local Government Act

Thank you for your email.

I would like to reiterate to whomever is reviewing this matter that James, by saying to me if I were to pick up the feces he would not fine me for this incident, had verbally entered into a contract with me regarding this matter. As far as I am aware, he has not denied this. Therefore with me picking up the feces, a fine is unwarranted.

In his letter attached to the expiation notice on the fine, he states "after reviewing this matter, I have decided to fine you because of my previous warning", however at the time of the incident he stated that he had previously written to me, so when he let me off with this warning he had full knowledge of the letter he had previously sent me as it came up during our conversation. It was only after a minor road rage incident involving myself and James, that he decided to use his position as a manner of revenge, which is completely unacceptable for a council inspector to do.

The other thing that is of concern to me is that I am a proprietor of a pizza bar in Tanunda and James and his employer may seek revenge for my complaint, such as sending unwarranted inspectors, after this similar behaviour has been displayed by James. I therefore have no choice but to put the council on notice that any retaliation by any of it's members or staff would be dealt with by the Ethics and Corruption Watchdog.

I have requested the minutes pertaining to how the decision was made to proceed with the fine. Could you please provide these to me?

Regards,
Antonio Santamaria

From: Rugiyya Martin
Sent: Thursday, 28 February 2019 4:37 PM
To: 'pizza.head@outlook.com'
Cc: Martin McCarthy; Rebecca Tappert
Subject: Request for Review under Section 270 Local Government Act

Dear Mr Satamaria,
Please find the attached correspondence and attachments regarding your section 270 internal review application.
Many thanks.
Kind regards,
Rugiyya Martin
Governance Advisor
T: 08 8563 8408

OUT OF CONFIDENCE



The Barossa Council 43-51 Tanunda Road NURIOOTPA SA 5355 PO Box 867

T: 08 8563 8444 | F: 08 8563 8461 | www.barossa.sa.gov.au | [Visit us on Facebook](#)

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APPENDIX 2

OUT OF CONFIDENCE

Reference: CRM 66510
TRIM Ref 19/4595

30 January 2019



The Barossa Council

Antonio Santamaria
6 Kook Street
TANUNDA SA 5352

Dear Mr Santamaria,

RE: Expiation Notice No.10327

Thank you for your application requesting a review of Expiation Notice 10327 dated 22 January 2019.

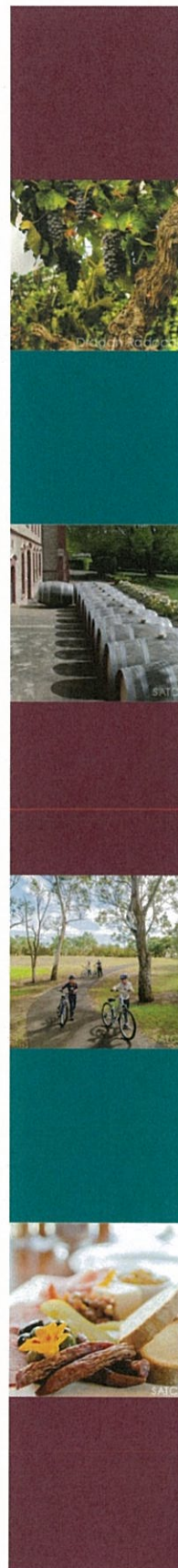
The Review Panel has reviewed your request to have the expiation withdrawn and I advise that the initial decision has been upheld. As such the expiation notice remains payable as previously issued, with a revised due date of **27 February 2019.**

Should you require any further information regarding this matter please do not hesitate to contact the Manager, Regulatory Services at the Nuriootpa office on 8563 8444.

Yours sincerely,

Gary Mavrinac

Director, Development and Environmental Services



premium wine food tourism heritage lifestyle community

OUT OF CONFIDENCE

Expiation Notice

Expiation of Offences Act 1996
ABN 47749871215

Notice Number

10327

Date of Issue

30 January 2019

Antonio Santamaria
6 Kook Street
TANUNDA SA 5352

The Offence is expiable by payment to:
The Barossa Council on or before the pay-by date.

Issuing Officer – B2

It is alleged that you committed the following offence according to the Dog & Cat Management Act 1995

OFFENCE	D45A6 - Fail to remove/dispose dog faeces - public place
DATE OF OFFENCE	12-Dec-2018
TIME	08:57:00
LOCATION	Murray Street, TANUNDA
DETAILS	

AMOUNT PAYABLE	\$210.00
EXPIATION FEE	\$210.00
TOTAL	\$210.00
PAY BY DATE	27-February-2019

PENALTIES FOR LATE OR NON PAYMENT

May Include:

Reminder Notice Fee, Administration Fee if the offence is vehicle related, Expiation enforcement warning notice fee.

If no choice is made, one reminder notice will be issued (a reminder notice fee will apply). After that, the outstanding amount will be referred to the Fines Enforcement and Recovery Officer.

YOU MUST READ ALL THE INFORMATION ON THE OTHERSIDE OF THIS NOTICE
If you take no action on this notice, you may be automatically convicted of the offence



On-Line Payments

www.barossa.sa.gov.au

Access on-line services and payments to pay via credit or debit card.



Phone Payment and Enquiries

For telephone payment and enquiries contact our Customer Service Officers on (08) 8563 8444.



Postal Payments

Please detach and complete the payment advice on the reverse and post it with your cheque or money order payable to:

The Barossa Council

PO Box 867, NURIOTPA SA 5355

PAYMENT IN PERSON

Payments may be made by cash, credit card, EFTPOS or cheque at any of the following council offices:

The Barossa Council Office

43-51 Tanunda Road, Nuriootpa

Branch Offices:

Lyndoch Library

29 Barossa Valley Way, Lyndoch

Angaston Library

Angaston Town Hall, Washington Street, Angaston

Mount Pleasant Library

130 Melrose Street, Mount Pleasant

DO NOT POST CASH OR SEND PART PAYMENT

OUT OF CONFIDENCE

PLEASE READ ALL THE INFORMATION ON THIS PAGE

YOUR CHOICES:

You may on or before the due date for payment:

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).
If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend Court.
- Pay the total amount due for the offence(s) not disputed (including levies and reminder notice fees).
- Enter into a payment arrangement with the Chief Recovery Officer which may include payment of the amount of the fee(s) in instalments, an extension of time in which to pay or other options by agreement with the Chief Recovery Officer. Phone **1800 659 538** or visit www.fines.sa.gov.au. A fee will apply to enter into an arrangement.
- If you think the offence(s) was trifling – apply in writing to The Barossa Council for a review of the expiation notice.** (For Special meaning of 'trifling' see Section 4(2) of the Expiation of Offences Act 1996).
- If the offence is a parking, traffic, litter or nuisance offence involving a vehicle and you were not the driver at the time of the offence(s) or if you sold the vehicle and transferred ownership before the offence(s) or you were not the principal littering or nuisance offender, submit a statutory declaration providing the full name and address details of the driver/new owner/ principal offender.

If you require further information on the offence(s) or wish to dispute the offence(s) informally please contact the Council immediately at the address set out on the front of this notice.

If no choice is made for an offence within the expiation period, 1 reminder notice will be sent and a reminder fee will apply. After that, the outstanding amount may be referred to the Chief Recovery Officer who may take enforcement action against you which may involve entering into a payment arrangement or property that you own (including motor vehicles and land) being seized and sold. An additional amount will become payable if enforcement action is taken.

ELECTION TO BE PROSECUTED

Expiation Notice No. 10327

ELECTION TO BE PROSECUTED

I **Antonio Santamaria..**

of.....

.....Postcode.....

☐ elect to be prosecuted for the offence.

☐ I dispute the offence for the following reasons
(you do not have to, but may fill this in):

.....
.....
.....
.....
.....

(If insufficient space please attach further sheets)

- If you were not driving at the time of the offence or were not the principal littering or nuisance offender do not complete this form but instead complete the statutory declaration on the other side of this form.
- You may, before electing to be prosecuted, dispute the offence informally in writing.** (Contact the Council on 85638444 for further information.)

Signed.....

Date.....

PAYMENT ADVICE

Expiation Notice No. 10327

PAYMENT SLIP ONLY

I wish to expiate the offence by payment in full
(including any reminder notice fee).

Payment by cheque or money order to be address to
The Barossa Council
PO Box 867
Nuriootpa SA 5355

Name **Antonio Santamaria**

Signature

Amount Payable: \$210.00

APPENDIX 3

27 June 2018



The Barossa Council

COPY

A Santamaria
6 Kook Street
TANUNDA SA 5352

Dear Antonio,

Alleged report to Council of dog faeces

Council has received an allegation that on occasion when exercising your dog in public, you have let your dog defecate without picking up and disposing of the litter.

Whilst this matter has not been formally investigated, if it is your practise to clean up after your dog in a public place, then please disregard this letter. However if on occasion you have not cleaned up after your dog, you are requested to do so on all occasions.

As a responsible dog owner, you have an obligation to care for your pets as well as a duty to ensure your dog's activities don't impact on your neighbours or affect the environment.

Under the Dog and Cat Management Act 1995 it is an offence to let your dog defecate in a public place without the immediate removal and lawful disposal of the faeces. Failure to pick up after your pet in public areas can incur on-the-spot fines.

Should you require further information, please contact me on 85638421.

Yours sincerely

John Armstrong
General Inspector
Regulatory Services



APPENDIX 4

Wednesday 12 Dec. 8.57am

travelling through Main St Tamara
Noticed Mr Santamaria walking
his 2 dogs adjacent to the st intersection
Pulled up in next available parking
space to monitor. Within 15secs
one dog defecated. Mr S pulled a
bag out of his pocket and made
a motion to pickup but appeared
not to. He continued walking
10-15m further on the dog def
again. He then looked around
and kept walking. I took
photo from parked car then
pulled up on side road ahead.
I walked across road to introduce
myself. I recognised him and
his dogs.

JT: Good Morning Mrs, my name
is Jamie from The Barossa Council
I have just observed you not picking
up after your dog.

MRS: Yeah I normally have bags
from the Tamara Dist but don't
have any. I was going to come back
and pick up.

JT: I saw you get a plastic bag out
of your pocket and go to pick it
up but you didn't.

MRS: Yeah its the wrong sort of bag.

JT: I don't believe you. We have
written to you about this before
I then noticed part of a dark grey
bag sticking out of the pocket/
of his shorts. It had distinctive
white markings. I knew it was a
doggy bag.

JT: You have a dog bag in your
pocket. I can see it.

MRS: ~~I know you can find me~~
so

I then asked him to remove
immediately. We both walked
30-40m back south and found
two spots where faeces remained
confirming my observations.

He then removed both.

MRS: I know you can find me
so I appreciate the warning.

JT: Consider this the final
warning. The community despises
this behaviour.

He acknowledged and thanked
me before walking off
Down Bridge St

APPENDIX 5

Reference: CRM 66510

9 January 2019

Antonio Santamaria
6 Kook Street
TANUNDA SA 5352

COPY

Dear Mr Santamaria,

Re: Failure to immediately remove and dispose of dog faeces in public places

I refer to our recent conversation on Wednesday 12 December 2018 and also our previous correspondence to you dated 27 June 2018 regarding this matter.

On Wednesday 12 December at 8:57am I personally observed you walking your two dogs along Murray Street in Tanunda. One of your dogs proceeded to defecate on the footpath and you failed to immediately remove the faeces from the ground. You continued walking in a Northerly direction and a short time later this behavior was repeated.

The Barossa Council and the community takes a stern approach regarding the matter. Dog faeces in public areas is a health hazard, a nuisance and detracts significantly from the amenity of the area.

The Dog and Cat Management Act 1995 states:

Section 45A(6)

A person who owns or is responsible for the control of a dog (not being an accredited assistance dog) is guilty of an offence if the dog defecates in a public place and the person responsible for the control of the dog does not immediately remove the faeces and dispose of them in a lawful and suitable manner.

Maximum penalty: \$1 250.

Expiation fee: \$210.

Following our conversation I have reviewed the matter further. Given that Council wrote to you about the matter previously and this behavior has continued, I have enclosed an expiation notice for the offence of failing to immediately remove and dispose of faeces in a lawful and suitable manner.

Should you require further information regarding this matter please contact me via the Nuriootpa office on 8563 8444.

Yours sincerely,


Jamie Turley
Manager, Regulatory Services



The Barossa Council



premium wine food tourism heritage lifestyle community

OUT OF CONFIDENCE



The Barossa Council

Antonio Santamaria
6 Kook Street
TANUNDA SA 5352

Expiation Notice

Expiation of Offences Act 1996
ABN 47749871215

Notice Number
10327

Date of Issue
9 January 2019

COPY

It is alleged that you committed the following offence according to the Dog & Cat Management Act 1995

OFFENCE	D45A6 - Fail to remove/dispose dog faeces - public place
DATE OF OFFENCE	12-Dec-2018
TIME	08:57:00
LOCATION	Murray Street, TANUNDA
DETAILS	

The Offence is expiable by payment to:
The Barossa Council on or before the pay-by date.

Issuing Officer - B2

AMOUNT PAYABLE	\$210.00
EXPIATION FEE	\$210.00
TOTAL	\$210.00
PAY BY DATE	6-February-2019

PENALTIES FOR LATE OR NON PAYMENT

May Include:

Reminder Notice Fee, Administration Fee if the offence is vehicle related, Expiation enforcement warning notice fee.

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YOU MUST READ ALL THE INFORMATION ON THE OTHERSIDE OF THIS NOTICE
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Branch Offices:

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29 Barossa Valley Way, Lyndoch

Angaston Library
Angaston Town Hall, Washington Street, Angaston

Mount Pleasant Library
130 Melrose Street, Mount Pleasant

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OUT OF CONFIDENCE

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If you require further information on the offence(s) or wish to dispute the offence(s) informally please contact the Council immediately at the address set out on the front of this notice.

If no choice is made for an offence within the expiation period, 1 reminder notice will be sent and a reminder fee will apply. After that, the outstanding amount may be referred to the Chief Recovery Officer who may take enforcement action against you which may involve entering into a payment arrangement or property that you own (including motor vehicles and land) being seized and sold. An additional amount will become payable if enforcement action is taken.

ELECTION TO BE PROSECUTED

Expiation Notice No. 10327

ELECTION TO BE PROSECUTED

I **Antonio Santamaria..**

of.....

.....Postcode.....

☐ elect to be prosecuted for the offence.

☐ I dispute the offence for the following reasons
(you do not have to, but may fill this in):

.....
.....
.....
.....
.....

(If insufficient space please attach further sheets)

- If you were not driving at the time of the offence or were not the principal littering or nuisance offender do not complete this form but instead complete the statutory declaration on the other side of this form.
- **You may, before electing to be prosecuted, dispute the offence informally in writing.** (Contact the Council on 85638444 for further information.)

Signed.....

Date.....

PAYMENT ADVICE

Expiation Notice No. 10327

PAYMENT SLIP ONLY

I wish to expiate the offence by payment in full
(including any reminder notice fee).

Payment by cheque or money order to be address to
The Barossa Council
PO Box 867
Nuriootpa SA 5355

Name **Antonio Santamaria**

Signature

Amount Payable: \$210.00

APPENDIX 6

OUT OF CONFIDENCE

Sarah Mercuri

From: Antonio Mia <pizza.head@outlook.com>
Sent: Sunday, 20 January 2019 6:57 PM
To: MBX Inspect
Subject: Re-Expiation Notice

To whom it may concern;

As stated on the 12th of December in the letter from the Barossa council to myself, Jamie Turley approached me on Murray street, Tanunda in regards to dog feces that were not picked up immediately. In my conversation with James, I had told him that I didn't have a bag with me and was going to pick it up on the way back from the Tanunda oval, where I knew there were dog bags. James told me that he didn't believe me, but if I went and picked it up now, he would give me one more chance before issuing me an expiation notice. He followed me to make sure it was picked up and I thanked him for his understanding in this matter. He went on to say that this was my last chance, and that next time he'll issue me with a expiation notice. I went on to thank him, and we parted ways. Two or three days after this incident I had given Mr Turley a finger gesture after he failed to give way on Murray street, Tanunda. I put it to Mr Turley that this is a retaliatory gesture, having issued me with this expiation notice after he assured me he was not going to do so. I further note that Mr Turley wrote in his letter that he reviewed this matter and after consideration he chose to issue me with the fine given that the council wrote to me previously about this issue. But in our conversation on the 12th of December, he mentioned this previous issue and still only gave me a warning. So to write in his letter that under further review of this matter, given that the council had wrote to me, is a untrue statement. I find the explanation in his letter as Mr Turley states that he had reviewed the matter further, to be not truthful and purely retaliatory on his behalf. It is upsetting for me to think that someone in this council could act without candor. I put it to Mr Turley that he witnessed me picking up the dog defecates and furthermore he was aware that he had written to me previously. I also put it to Mr Turley that he did state he was not going to fine me this time, and that it was my last warning and this is purely a retaliation on a private road rage incident.

Kind regards,
Antonio

OUT OF CONFIDENCE

Sarah Mercuri

From: Antonio Mia <pizza.head@outlook.com>
Sent: Tuesday, 22 January 2019 10:09 AM
To: MBX Inspect
Subject: RE: Re-Expiation Notice

Yes, I am I should have asked on my email that I am asking for a review. Thanks regards Antonio

On 22/01/2019 9:49 AM, MBX Inspect <MBXInspect@barossa.sa.gov.au> wrote:

Hi Antonio, I acknowledge receipt of your email, can I please confirm that you are requesting a review of your expiation notice?

Regards,

Sarah

From: Antonio Mia [mailto:pizza.head@outlook.com]
Sent: Sunday, 20 January 2019 6:57 PM
To: MBX Inspect <MBXInspect@barossa.sa.gov.au>
Subject: Re-Expiation Notice

To whom it may concern;

As stated on the 12th of December in the letter from the Barossa council to myself, Jamie Turley approached me on Murray street, Tanunda in regards to dog feces that were not picked up immediately. In my conversation with James, I had told him that I didn't have a bag with me and was going to pick it up on the way back from the Tanunda oval, where I knew there were dog bags. James told me that he didn't believe me, but if I went and picked it up now, he would give me one more chance before issuing me an expiation notice. He followed me to make sure it was picked up and I thanked him for his understanding in this matter. He went on to say that this was my last chance, and that next time he'll issue me with a expiation notice. I went on to thank him, and we parted ways. Two or three days after this incident I had given Mr Turley a finger gesture after he failed to give way on Murray street, Tanunda. I put it to Mr Turley that this is a retaliatory gesture, having issued me with this expiation notice after he assured me he was not going to do so. I further note that Mr Turley wrote in his letter that he reviewed this matter and after consideration he chose to issue me with the fine given that the council wrote to me previously about this issue. But in our conversation on the 12th of December, he mentioned this previous issue and still only gave me a warning. So to write in his letter that under further review of this matter, given that the council had wrote to me, is a untrue statement. I find the explanation in his letter as Mr Turley states that he had reviewed the matter further, to be not truthful and purely retaliatory on his behalf. It is upsetting for me to think that someone in this council could act without candor. I put it to Mr Turley that

OUT OF CONFIDENCE

he witnessed me picking up the dog defecates and furthermore he was aware that he had written to me previously. I also put it to Mr Turley that he did state he was not going to fine me this time, and that it was my last warning and this is purely a retaliation on a private road rage incident.

Kind regards,

Antonio