Notice To Community
April 2020 Council Meeting

Please Attend by Livestream
or
View the Recorded Version

The Barossa Council meeting of 21 April 2020 shall be conducted as per the attached notice in the Council chamber, Nuriootpa.

Council is proceeding with the introduction of technology to hold electronic meetings. To ensure the technology and systems are adequately developed, tested and mature before using the mechanisms introduced by the Minister the introduction of full electronic meetings will start from the May meeting of Council.

The public are encouraged to attend the April meeting by linking into a livestream of the meeting. This will ensure Council meetings remain open to the public without having to travel and unnecessarily expose the public to non-essential travel and the COVID-19 virus risk.

Further Council will record the meeting and post the recording on its web site.

A link to the livestream will be placed on the agenda web page by Friday 17 April 2020:

To assist Council in complying with social distancing laws, non-essential travel and the management of the COVID-19 risks please attend the meeting through the livestream or by viewing the recorded version.

Bim Lange
Mayor

Martin McCarthy
Chief Executive Officer
NOTICE OF MEETING

Notice is hereby given that the next ordinary meeting of Council will be held on Tuesday 21 April 2020 in the Council Chambers, 43 – 51 Tanunda Road, Nuriootpa, commencing at 9.00am.

Martin McCarthy
CHIEF EXECUTIVE OFFICER
THE BAROSSA COUNCIL

AGENDA

1. THE BAROSSA COUNCIL
   1.1 Welcome by Mayor Lange - meeting declared open
   1.2 Present
   1.3 Leave of Absence
   1.4 Apologies for Absence
   1.5 Minutes of previous meetings including Confidential Items – for confirmation:
      Council meetings held on
      • Tuesday 17 March 2020 at 9.00am and
      • Special Council Meeting - Thursday 26 March 2020 at 6.30pm
   1.6 Matters arising from previous minutes
      Nil
   1.7 Petitions
      Nil
   1.8 Deputations
      Nil
   1.9 Notice of Motion –
      Councillor Wiese-Smith – Zero Percentage Rate Increase for 2020-21 in Response to COVID-19 and Drought
### 1.10 
Questions with or without Notice

Question on Notice - Councillor Angas – Impact of Nil Rate Increase for 2020-21

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### 2. MAYOR

2.1 Mayor’s report - *attached*

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### 3. COUNCILLORS’ REPORTS

3.1 Nil

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### 4. CONSENSUS AGENDA

#### 4.1 MAYOR

4.1.1 MAYOR

Nil

#### 4.2 EXECUTIVE SERVICES

4.2.1 CHIEF EXECUTIVE OFFICER

4.2.1.1 Quarter 3 Performance and Activity Report

#### 4.2.2 COMMUNICATION AND ENGAGEMENT OFFICERS

Nil

#### 4.3 CORPORATE & COMMUNITY SERVICES

4.3.1 DIRECTOR CORPORATE AND COMMUNITY SERVICES

4.3.1.1 Moculta Community Postal Agency

4.3.1.2 Congratulations – Barossa Fringe Event 2020

#### 4.3.2 MANAGER COMMUNITY PROJECTS


#### 4.4 WORKS AND ENGINEERING

4.4.1 DIRECTOR’S REPORT

Nil

#### 4.5 DEVELOPMENT & ENVIRONMENTAL SERVICES

4.5.1 DEVELOPMENT SERVICES

Nil

4.5.2 ENVIRONMENTAL SERVICES

4.5.2.1 South Para Biodiversity Project Inc

#### 4.5.3 HEALTH SERVICES

4.5.3.1 Food Recalls

4.5.3.2 Food Premises Inspections
4.5.4 REGULATORY SERVICES
Nil

4.5.5 WASTE SERVICES
Nil

5. CONSENSUS AGENDA ADOPTION
5.1 ITEMS FOR EXCLUSION FROM CONSENSUS AGENDA
5.2 RECEIPT OF CONSENSUS AGENDA
5.3 DEBATE OF ITEMS EXCLUDED FROM CONSENSUS AGENDA

6. VISITORS TO THE MEETING/ADJOURNMENT OF MEETING
6.1 VISITORS TO THE MEETING
Nil
6.2 ADJOURNMENT OF COUNCIL MEETING

7. DEBATE AGENDA
7.1 MAYOR
Nil
7.2 EXECUTIVE SERVICES
7.2.1 CHIEF EXECUTIVE OFFICER
7.2.1.1 Agenda Management System – Bringing Forward of Project
7.2.1.2 Move to Electronic Meetings and Variation of Associated Council Policies
7.2.1.3 Section 270 of the Local Government Act – Internal Review of Council Decision – Matter of Keil Estate Indenture Deed Execution
7.2.1.4 Section 270 Local Government Act – Internal Review of Council Decision – Matter of Big Project Prioritisation and Financial Modelling
7.2.2 FINANCE
7.2.2.1 Monthly Finance Report (as at 31 March 2020)

7.3 CORPORATE AND COMMUNITY SERVICES
7.3.1 DIRECTOR CORPORATE AND COMMUNITY SERVICES
Nil
7.3.2 MANAGER COMMUNITY PROJECTS
7.3.2.1 Consideration and Adoption of Barossa Regional Gallery Committee Resolutions
7.4 WORKS AND ENGINEERING

7.4.1 DIRECTOR’S REPORTS
Nil

7.5 DEVELOPMENT AND ENVIRONMENTAL SERVICES

7.5.1 DEVELOPMENT SERVICES
Nil

7.5.2 ENVIRONMENTAL SERVICES
Nil

7.5.3 HEALTH SERVICES
Nil

7.5.4 REGULATORY SERVICES
Nil

7.5.5 WASTE SERVICES
Nil

8. CONFIDENTIAL AGENDA

8.1 Legal Advice to Council for Council’s Consideration – Section 270 of the Local Government Act – Internal Review

9. URGENT OTHER BUSINESS
Nil

10. NEXT MEETING
Tuesday 19 May 2020 at 9.00am

11. CLOSURE
NOTICE OF MOTION

21 APRIL 2020

1.9 NOTICE OF MOTION – COUNCILLOR WIESE-SMITH – ZERO PERCENTAGE RATE INCREASE FOR 2020-21 IN RESPONSE TO COVID-19 AND DROUGHT

B10322

PURPOSE

To consider the notice of motion provided in accordance with the Local Government Act by Cr Wiese-Smith which is attached.

RECOMMENDATION

That Council instruct the Chief Executive Office to develop a budget, business plan and rate policy settings, excluding the impacts of valuation changes that achieve a zero percentage rate revenue increase for the 2020-21 financial year.

CHIEF EXECUTIVE OFFICER COMMENTS

As also outlined in the response to the question on notice from Cr Angas I provide the following initial considerations, and depending on the direction of Council, clarity of direction.

Firstly that any rates policy that excludes growth will have the effect of current ratepayers subsidising those who have sub-divided land or developed infrastructure (housing commercial and industrial) during the year.

If Council wishes to maintain the existing services, capital programs and The Big Project it will need to borrow additional funds equivalent to the impact in the above table. Otherwise it will need to reduce its expenditure and reduce services as the position is not affordable and would potentially impact the sustainability of Council long term finances and be at odds with Section 8(k) of the Local Government Act which is to ensure the sustainability of the Council’s long-term financial performance and position.

This notice of motion informs the construction of the budget and business plan for 2020-21 and further direction, should it be supported, to assist the Chief Executive Officer in shaping the financial and or service level response and it can be accurately modelled:

1. Are Council not proceeding with new initiatives this year?
2. What if some new initiatives need to be considered for efficiency and savings measures, legislative requirements or extreme or high risk matters?
3. Will Council borrow additional cash in 2020-21 to deliver the programs and projects if it is necessary?
4. How will Council in the long-term plan claw back the cash and operating deficit through:
   a. Reduction in services including capital?
   b. Increases in future years rates spread over the long-term finance plan?
   c. Or a combination of both a and b?
5. Will Council withhold all new initiatives unless they are delivering efficiency and savings measures, legislative requirements or addressing extreme or high risk matters as the long-term plan may not have sufficient capacity to pay for new projects (be they operating or capital)?

I would recommend that should the motion pass the Council suspend proceedings pursuant to Regulation 20 of the Local Government (Procedures and Meetings) Regulations and have a short discussion to address these and other points so that I am adequately informed as to the response want by Council.

The below resolution is required to be carried by at least two-thirds of the members present.

**RECOMMENDATION FOR SUSPENSION OF PROCEEDINGS**

That Council suspend proceeding pursuant Regulation 20 of the Local Government (Procedures and Meetings) Regulations so that Council and Officers can discuss the responses to a zero percentage based budget and provide direction to the Chief Executive Office to develop the budget and business plan accordingly and the suspension shall cease at the conclusion of discussion or 20 minutes whichever occurs first.
Mr Martin McCarthy  
Chief Executive Officer  
The Barossa Council

Via Email: mmccarthy@barossa.sa.gov.au

27 March 2020

Dear Martin

I propose at the ordinary meeting of Council of the 21 April 2020 to bring forward for debate the following motion.

Motion

The Council instruct the Chief Executive Officer to develop a budget, business plan and rate policy settings, excluding the impacts of valuation changes that achieves a zero percentage rate revenue increase for the 2020-21 financial year.

Rationale

The clear rationale is the significant impact of our local economy of drought and COVID-19 and the need to minimise financial burden in the community.

Having provided this notice of motion at least five days prior to the 21 April 2020 please place the notice on the agenda.

Yours sincerely

[Signature]

Carla Wiese-Smith  
Councillor
COUNCIL

QUESTION ON NOTICE

21 APRIL 2020

1.10 QUESTION ON NOTICE – COUNCILLOR ANGAS – IMPACT OF NIL RATE INCREASE FOR 2020-21

B10322

PURPOSE
To consider a question on notice provided in accordance with the Local Government Act by Cr Angas at the March 2020 ordinary meeting of Council.

RECOMMENDATION
That Council receive and note the response and that the question and response be placed in the minutes.

QUESTION AND RESPONSE

Question
Given the economic climate relating to the COVID-19 Pandemic and the drought, Cr Angas posed the question about what the impact of a nil increase on rates (including no growth) for 2020/21 would have on the budget?

Response
The current approved long term financial plan is the current basis upon which to respond to this question. Whilst the question is about no growth both scenarios have been provided.

A zero rate increase will have a revenue impact as follows:

<table>
<thead>
<tr>
<th></th>
<th>2020/21</th>
<th>9 Year Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Growth</td>
<td>$844,374</td>
<td>$8.719M</td>
</tr>
<tr>
<td>Growth</td>
<td>$584,566</td>
<td>$6.036M</td>
</tr>
</tbody>
</table>

The above analysis is an assessment of rates not service charges or NRM charges which are based on recovery of the cost.

I would also point out to Council that any policy that excludes growth will have the effect of current ratepayers subsidising those who have sub-divided land or developed infrastructure (housing commercial and industrial) during the year.

To fully analyse the impact the table at the attachment annual impact over current plus 9 years.

If Council wishes to maintain the existing services, capital programs and The Big Project it will need to borrow additional funds equivalent to the impact in the above
table, cut expenditure, or increase future years rates or a combination thereof. Otherwise the current financial projects indicate the position is not affordable in the long term and would potentially impact the sustainability of Council long term finances and be at odds with Section 8(k) of the Local Government Act which is to ensure the sustainability of the Council’s long-term financial performance and position.

To provide context the second table at the attachment provides a recovery position based on increasing future years rates or reducing expenditure or a combination thereof to return the Council budget to a stable cash and operating position (albeit the full zero rate impact would take a few more years to return to a surplus operating position). It would require the forward estimates in the long term plan to increase rates above the current base in the long term plan of 0.5% for 4 years or the equivalent is to reduce expenditure over a period of time or combination thereof.

This question on notice informs directly the notice of motion of Cr Wiese-Smith at agenda item 1.9 and should the instruction be provided to shape the budget on a zero rates increase then Council needs to be provided to the Chief Executive Officer some direction on the following matters so that impacts and financing responses can be accurately modelled:

1. Are Council not proceeding with new initiatives this year?
2. What if some new initiatives need to be considered for efficiency and savings measures, legislative requirements or extreme or high risk matters?
3. Will Council borrow additional cash in 2020-21 to deliver the programs and projects if it is necessary?
4. How will Council in the long-term plan claw back the cash and operating deficit through:
   a. Reduction in services including capital?
   b. Increases in future years rates spread over the long-term finance plan?
   c. Or a combination of both a and b?
5. Will Council withhold all new initiatives unless they are delivering efficiency and savings measures, legislative requirements or addressing extreme or high risk matters as the long-term plan may not have sufficient capacity to pay for new projects (be they operating or capital)?

**ATTACHMENT**

Initial Financial Model – once further direction is provided a detailed model can be produced as part of the budget deliberations.

### PROJECT YEARLY COST NET (GST Exclusive)

<table>
<thead>
<tr>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Year 8</th>
<th>Year 9</th>
<th>Year 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Settings</td>
<td>Project Cumulative - Surplus/(Deficit)</td>
<td>185,000</td>
<td>806,862</td>
<td>76,769</td>
<td>19,612</td>
<td>(545,524)</td>
<td>(315,581)</td>
<td>(101,559)</td>
<td>(29,840)</td>
</tr>
<tr>
<td></td>
<td>Cash Position</td>
<td>2,005,000</td>
<td>708,747</td>
<td>1,971,880</td>
<td>3,159,376</td>
<td>2,902,839</td>
<td>196,945</td>
<td>220,618</td>
<td>556,769</td>
</tr>
<tr>
<td></td>
<td>Current Total Increase - Growth + Base</td>
<td>3.25%</td>
<td>3.25%</td>
<td>3.25%</td>
<td>3.50%</td>
<td>3.50%</td>
<td>3.50%</td>
<td>3.50%</td>
<td>3.50%</td>
</tr>
<tr>
<td>Impact</td>
<td>Zero Rate Increase - but with growth</td>
<td>0</td>
<td>584,566</td>
<td>603,565</td>
<td>623,181</td>
<td>644,992</td>
<td>667,567</td>
<td>690,932</td>
<td>715,114</td>
</tr>
<tr>
<td></td>
<td>Revised Operating Position</td>
<td>185,000</td>
<td>222,296</td>
<td>(526,796)</td>
<td>(1,190,516)</td>
<td>(983,148)</td>
<td>(1,028,990)</td>
<td>(816,673)</td>
<td>(769,983)</td>
</tr>
<tr>
<td></td>
<td>Basic Revised Cash Position</td>
<td>2,005,000</td>
<td>124,181</td>
<td>1,368,315</td>
<td>2,536,195</td>
<td>2,257,847</td>
<td>998,012</td>
<td>1,032,943</td>
<td>1,069,096</td>
</tr>
<tr>
<td></td>
<td>Zero Rate Increase - complete</td>
<td>0</td>
<td>844,374</td>
<td>871,816</td>
<td>900,150</td>
<td>931,655</td>
<td>964,263</td>
<td>998,012</td>
<td>1,032,943</td>
</tr>
<tr>
<td></td>
<td>Revised Operating Position</td>
<td>185,000</td>
<td>(37,512)</td>
<td>(795,047)</td>
<td>(1,477,179)</td>
<td>(1,279,844)</td>
<td>(1,336,070)</td>
<td>(1,134,502)</td>
<td>(1,098,936)</td>
</tr>
<tr>
<td></td>
<td>Basic Revised Cash Position</td>
<td>2,005,000</td>
<td>(135,627)</td>
<td>1,100,064</td>
<td>2,259,226</td>
<td>1,971,184</td>
<td>(777,394)</td>
<td>(476,174)</td>
<td>950,822</td>
</tr>
</tbody>
</table>

### Funding The Deficits In Forward Years

<table>
<thead>
<tr>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Year 8</th>
<th>Year 9</th>
<th>Year 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Total Increase - Growth + Base</td>
<td>3.25%</td>
<td>3.25%</td>
<td>3.50%</td>
<td>3.50%</td>
<td>3.50%</td>
<td>3.50%</td>
<td>3.50%</td>
<td>3.50%</td>
<td>3.50%</td>
</tr>
<tr>
<td>Revenue Increase / Savings Target</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
</tr>
<tr>
<td>Increased Rates or Decreased Expenditure</td>
<td>0</td>
<td>584,566</td>
<td>-135,467</td>
<td>-278,723</td>
<td>-430,456</td>
<td>-591,049</td>
<td>-605,825</td>
<td>-620,971</td>
<td>-636,495</td>
</tr>
<tr>
<td></td>
<td>Revised Operating Position</td>
<td>185,000</td>
<td>222,296</td>
<td>(391,329)</td>
<td>(664,070)</td>
<td>(760,060)</td>
<td>(392,099)</td>
<td>(423,164)</td>
<td>(195,702)</td>
</tr>
<tr>
<td></td>
<td>Basic Revised Cash Position</td>
<td>2,005,000</td>
<td>124,181</td>
<td>1,503,782</td>
<td>2,688,303</td>
<td>2,814,918</td>
<td>1,242,627</td>
<td>135,512</td>
<td>462,626</td>
</tr>
<tr>
<td></td>
<td>Increased Rates or Decreased Expenditure</td>
<td>0</td>
<td>844,374</td>
<td>-135,467</td>
<td>-278,723</td>
<td>-430,456</td>
<td>-591,049</td>
<td>-605,825</td>
<td>-620,971</td>
</tr>
<tr>
<td></td>
<td>Revised Operating Position</td>
<td>185,000</td>
<td>(37,512)</td>
<td>(659,580)</td>
<td>(641,039)</td>
<td>(1,046,723)</td>
<td>(686,795)</td>
<td>(730,245)</td>
<td>(513,531)</td>
</tr>
<tr>
<td></td>
<td>Basic Revised Cash Position</td>
<td>2,005,000</td>
<td>(135,627)</td>
<td>1,235,531</td>
<td>2,537,949</td>
<td>2,401,640</td>
<td>(174,269)</td>
<td>(171,569)</td>
<td>144,797</td>
</tr>
</tbody>
</table>

Disclaimer and notes:

The above are estimates based on current budget settings as at 31 December 2019 for the current year and the long term financial plan updated in August 2019 and will therefore be subject to variation once the 2020-21 budgets are set and adopted.

The model above assumes no additional spending over and above what is in the long term plan for the next 9 years and achieving savings or revenue increases or combinations to achieve these targets.

The initial estimates based on the current draft budget are indicating the Council will move into ongoing operating deficits and cash deficits in the second half of the 10 year plan - however this is of course subject to further change at this early point in the budget cycle.
March

15/03/2020  Official Opening Barossa Cellar
16/03/2020  Meeting Brevet Sergeant Matt. Hale re Autism Nature Trail
23/03/2020  LGA hosted online COVID-19 briefing with Premier Steven Marshall
             and Minister Stephan Knoll
30/03/2020  Various Media Interviews - Corona Virus Impact
31/03/2020  LGA hosted online COVID-19 briefing with Senator Simon Birmingham
             (Minister for Trade, Tourism and Investment) and Senator Anne Ruston
             (Minister for Families and Social Services
             Radio Interview ABC Port Pirie

April

1/04/2020  Radio Interview FLOW
3/04/2020  LGA hosted COVID briefing with SA Police
5/04/2020  LGA hosted online COVID-19 briefing with Premier Steven Marshall
             and Minister Stephan Knoll
14/04/2020  Radio Interview ABC Port Pirie – Barossa Care Initiative

It has been and will continue to be a most interesting time with the Corona virus
restrictions across the state and the nation. Our community is faced with
unprecedented challenges. It is encouraging to see the community adhering to the
Premier’s and SA Health’s advice which now is evident with the reductions of
infection and the flattening of the curve.

I would like to acknowledge Premier Marshall and Minister Knoll making themselves
available through the LGA medium, enabling Mayors and CEOs to get first-hand
briefing on the current situation along with recovery strategies. Their collective
strong message is that local government has a critical role in the recovery phase to
stimulate the community.

I would like to acknowledge all of Council staff and thank them for the diligent work
that has been undertaken to positions Council in such a way that we do have "shovel
ready" capital projects which can possibly attract stimulus funding from the State and
Federal Government.

Further the manner in which staff has adapted to continue to provide essential
services to the community whether it be from a home office environment or from the
principal office with the closure of the branch offices is greatly appreciated
The entrepreneurial and flexibility of our business environment has enabled many businesses to still function albeit with significant reduction in cash flow. As we move into the recovery stage and into the future we will as a Council need to look closely at the services Council provides and also consider an entrepreneurial and flexibility to determine the best way to deliver services in our much changed digital environment.
4.2.1 CONSSENSUS AGENDA – CHIEF EXECUTIVE OFFICER

4.2.1.1 QUARTER 3 PERFORMANCE AND ACTIVITY REPORT
B3865

The April Council meeting would have in normal circumstances been provided the quarter 3 Performance and Activity Report. Due to the urgent need to divert relevant management, staff and information technology resources to the COVID-19 response I determined that the report not be produced due to lack of available resources. The report is a best practice activity and not legislatively required. The prioritisation of ensuring updates to our business continuity plans, corporate risk assessment, response to the changing restrictions and recommendation of governments, putting in place working at home arrangements and accountability processes and gearing up for recovery and supporting the community has been my focus. The quarter 4 report will be produced and available as per the normal reporting schedule.

RECOMMENDATION
That the report outlining the non-production of the quarter 3 Performance and Activity Report be received and noted.
4.3.1 CONSENSUS AGENDA – DIRECTOR’S REPORTS

4.3.1.1 MOCULTA COMMUNITY POSTAL AGENCY
B10608
Further to Consensus item 4.3.1.1 from the 17 March 2020 Council Meeting, relating to the relocation of the Moculta Community Postal Agency, a thank you has been received from local Moculta residents (copy attached).

RECOMMENDATION:
That report 4.3.1.1 be received.
Hi Annette.

Just wanted to let you know we are delight that our relocated community post office at Moculta is now up and running at the hall as of Monday and to sincerely thank you for the role you played in facilitating this.

After protracted negotiations, your involvement seems to have expedited this process which otherwise looked certain to fail and would have resulted in the loss of this important service to our small community.

So thank you once again for being instrumental in helping to negotiate a suitable outcome for all involved.

Kind regards,
Di and Lance Davidson.
4.3.1 CONSENSUS AGENDA – DIRECTOR’S REPORTS

4.3.1.2 CONGRATULATIONS – BAROSSA FRINGE 2020

B10283

A letter has been received, congratulating Council for supporting the Barossa Fringe 2020 event, with special thanks to Council’s Regional Live Music Coordinator for her input and dedication to the four day event held 14-17 February, which featured 13 acts, including music, cabaret, magic, comedy, art and wellness at venues across the Barossa. (Copy attached.)

Funding for this role was secured following a successful grant application in July 2019 with the Department of Innovation and Skills, (completed by The Barossa Council in partnership with RDA Barossa Gawler Light Adelaide Plains and Legatus Group), for a trial engagement of a Regional Live Music Coordinator position within our region, for 1.5 days per week for a 12 month period. This position comes to an end on the 30 June 2020.

The feedback regarding the Fringe event affirms Council’s focus in raising the profile and value of the arts for our community and the economic / tourism development impacts of investment in events.

RECOMMENDATION:
That report 4.3.1.2 be received.
Ms. Jo Thomas
Barossa Council
3-11-20

Dear Jo,

A Little after the event, but I felt compelled to write and Congratulate Council for supporting the Barossa Fringe 2020 Event.

I was involved with many of the events, mainly ‘The Songbirds’ evening, and have heard nothing but praise for all involved. I would like to make special mention of Leah Blankendaal’s Input and dedication.

Leah made sure that the Events for the Artists, ran smoothly, without the Artists having to be concerned greatly, about Logistics..(something that many ‘Artists’ are not very good at!)

This enabled the Performers to concentrate on providing First class Entertainment, and not worrying too much about Venues, Tickets, etc etc.

I know with an Artistic style position like Leah’s’ it’s often difficult to put a Dollar amount on the work she undertakes, as much of her work is ‘Intangible’ ...straight away...But I’m sure that without her, we would not have seen the standard of Performances we were delighted with.

I spoke with Many of the Interstate, City and Local Audiences, who had made some effort to be in the Barossa for the Fringe weekend, who would not have been here, if there was No Fringe planned.

Many of the businesses also stated how busy they were, and what a great weekend Financially it was.

This all started with the wonderful ‘Wanderlust’ in Greenock, with apparently ‘thousands ‘ of people attending..Again it was the LOCAL businesses who benefitted and certainly a great opener to the Fringe weekend. I hope this can become an Annual Event.

In closing, In a society that is very quick to criticize and slow to Applaud..I’d just like to Thanks Barossa Council, for the foresight in Creating a position, of which Leah Holds, and by doing that you are giving support to continuing, and growing ‘The Arts’ and Live Music in the Barossa.

Thank you for your time,

Steve Angel
Local Business owner and Muso!
4.3.2 CONSENSUS AGENDA – MANAGER, TOURISM SERVICES

4.3.2.1 TOURISM BAROSSA INC – 2018-2019 ANNUAL REPORT, AUDITED FINANCIAL STATEMENTS, 2019-20 BUDGET AND PERFORMANCE TARGET REPORT

B9054

In relation to Consensus item 4.3.2.1 presented to the 17 March 2020 Council Meeting regarding the above, Council resolved the following:

“MOVED Cr Wiese-Smith that the attachments to the report 4.3.2.1 Tourism Barossa Inc – 2018-2019 Annual Report, Audited Financial Statements, 2019-20 Budget and Performance Target Report be resubmitted with any other corrections that need to be made.

Seconded Cr Haebich

CARRIED 2018-22/58”

Officers are following up with Tourism Barossa Inc and will present a further report to the 19 May 2020 Council Meeting.

RECOMMENDATION:
That report 4.3.2.1 be received and noted.
4.5.2   CONSENSUS AGENDA – ENVIRONMENTAL SERVICES REPORT

4.5.2.1   SOUTH PARA BIODIVERSITY PROJECT INC.
B9070

Minutes of the South Para Biodiversity Project Inc. Committee Meeting held 14 February 2020 is attached for information.

RECOMMENDATION:
That report items 4.5.2.1 be received.
## Agenda Items:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong></td>
<td>Welcome and introductions</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>Confirmation of previous meeting minutes</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>Actions arising from previous meeting: 25th October 2019</td>
</tr>
<tr>
<td></td>
<td><strong>PREVIOUS ACTIONS ARISING:</strong></td>
</tr>
<tr>
<td></td>
<td>Jackie to organise someone to present from DEW about the western link.</td>
</tr>
<tr>
<td></td>
<td>Helen to invite – Matt Ackland – state wide trails officer to present to the SPBP. Helen to send enquiry letter to Matt to gain further information prior to taking it to the minister to voice concerns that there wasn’t an opportunity to be consulted.</td>
</tr>
<tr>
<td><strong>4.</strong></td>
<td>Chairpersons Report – Pleased to take on the new role</td>
</tr>
<tr>
<td><strong>5.</strong></td>
<td>Treasurer’s Report: Nothing to report – stable</td>
</tr>
<tr>
<td><strong>6.</strong></td>
<td>Firewood Collection on Roadside:</td>
</tr>
<tr>
<td></td>
<td>Under council by-laws. Advise of illegal collection to police and landholder – ie Council. Collect as much evidence as possible e.g. photographs, vehicle registration number.</td>
</tr>
<tr>
<td><strong>7.</strong></td>
<td>Assets:</td>
</tr>
<tr>
<td></td>
<td>• Proposal: Disposal of Goat trap and collar/antenna to NRM Grazing Pressure Management Project for agreed sum. Moved Bruce G, seconded Phil G. All in favour.</td>
</tr>
<tr>
<td></td>
<td>• Anabat is old and unusable, agreed to dispose of for parts, keep pelican case – <strong>ACTION:</strong> Alex E to arrange</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• <strong>ACTION:</strong> Veronica to update asset register and present to group</td>
</tr>
<tr>
<td><strong>8.</strong></td>
<td>Observations In the District:</td>
</tr>
<tr>
<td></td>
<td>• <strong>Grazing Pressure Management:</strong></td>
</tr>
<tr>
<td></td>
<td>o Lots of paperwork entering operational period in the South Para. Focussing most recently on the Barossa Parks starting in late February to June (1 week per month)</td>
</tr>
<tr>
<td></td>
<td>o Goat control continues to be undertaken in Montacute CP, Cudlee Creek area, SAW and Forestry SA</td>
</tr>
<tr>
<td></td>
<td>o Aerial survey being undertaken in Buckland Park</td>
</tr>
<tr>
<td></td>
<td>o Helen advised section215 has a lot of deer present</td>
</tr>
<tr>
<td></td>
<td>o SA Commercial Harvest zones changed – now legal in AMLR <strong>ACTION:</strong> Tom to supply kangaroo harvester contact details to Bruce</td>
</tr>
<tr>
<td></td>
<td>• <strong>NRM:</strong> Landscapes transition update – presiding members announced today, call for board members then will appoint.</td>
</tr>
<tr>
<td></td>
<td>• <strong>National Parks:</strong> Tammy Leggett Senior Ranger  – New Rep on committee</td>
</tr>
<tr>
<td></td>
<td>o Change of Northern Lofty district, mines project – prohibition order on tunnel, water project improved the</td>
</tr>
</tbody>
</table>
water quality, Para Wirra is ‘Park of the Month’. Glenburnie Block is new, restoration plan being developed awaiting gazetting, South Para River permanent pools are drying up resulting in acid sulphate soils, there are no environmental flows.

- **ACTION:** Tammy to provide regular updates on South Para Walking Links, East West Link Trail and send out a map.

- **Para Woodlands:** Good News Story - Sighting of Square-tailed Kite, busy watering plantings, horehound control across the district

- **Friends of Para Wirra:** AGM tomorrow

- **SA Water:** No report

- **Forestry SA:** No report

- **Barossa Council:** No report

- **City of Playford:**
  - Karwin Rd/Kersbrook Triangle – Cape Tulip – COP Council to liaise with AHC Council
  - Removal of dead standing olives along Humbug Scrub Rd and surrounding roadsides as well as follow-up control, future olive control in COP area will be total removal of the tree and follow-up spray
  - Discussions with council regarding roadside management, fire prevention, native vegetation management and Chilean Needle Grass
  - Jo is looking at planning and design code – issues with zoning changes that may impact the ongoing protection of “open space” in metro areas, removing the protection offered to native vegetation sites. Feedback is still being sought.

- **Adelaide Hills Council:**
  - Fire affected 25,000ha across the Adelaide Hills Council district
  - 70 roadside vegetation marker sites were burnt
  - Lobethal Bushland Park is regenerating
  - Fire Recovery meetings currently being run
  - Roadside Native Vegetation Management Plan is up for renewal this year

- **Trees for Life:** No report

- **Community Representatives**
  - **Phil G:** Cleared Boneseed from Western Boundary and supporting Langley property, working on Boneseed in Glenburnie and working bee tomorrow on Boneseed – Well done Phil!
  - **Kym S:** Grazing pressure concerns regarding deer providing higher grazing pressure than kangaroos, has seen an abundance.
  - **Bruce G:** Revegetated wetland dams on his own property but poor survivorship due to drought conditions, shared Arid Lands information regarding strategies of water fountains to support wildlife in drought conditions
  - **Helen B:** Concerned about Boneseed survivorship during drought conditions/hot weather, increasing populations of the weed in the district

---

### Workshop Opportunities:

Fire ecology and wildlife management. Strong interest within the group as well as broad acre restoration, possible site visits/field trip focussing on projects e.g. SA Water projects/Shaun Kennedy/Paddock Tree Project/Para Woodlands, indigenous history of the SP region, reptile/plant ID. **ACTION:** Alex to progress a field day

- Northern Foothills Landcare Group have an ‘Elusive Echidna’ Workshop on Tuesday 17th March
- Watercourse Management and Restoration Workshop being hosted by AMLR Gawler at Lower Hermitage on the 22nd March

### Committee Membership and forward planning

Indigenous representation at SPBP meetings also discussed but unknown who can attend or has time available to attend meetings

Any local farming group/association/organisation representatives?

**ACTION:**

- **Stephen Clayton (Trinity College)** – Bruce G to extend an invitation to join SPBP meetings
- **Amanda Pearce** – Jackie C to extend an invitation to join SPBP meetings
- **DPTI** – Steve B to invite to next meeting to discuss DPTI plans and future projects, works and issues in South Para region

### Actions Arising

- **Alex E** to arrange the disposal of Anabat for parts
- **Veronica** to update SPBP Inc. asset register and present to group
- **Tom** to supply kangaroo harvester contact details to Bruce
- **Jackie/Tammy** to provide regular updates on South Para Walking Links, East West Link Trail. Tammy to send out a map.
| **Bruce G** to extend an invitation to Stephen Clayton (Trinity College) join SPBP meetings |
| **Jackie C** to extend an invitation to Amanda Pearce to join SPBP meetings |
| **Steven B** invite Catherine Gray to a meeting to discuss DPTI plans and future projects, works and issues in South Para region |
| **Alex:** Progress a field trip for the committee to look at SP issues as identified SA Water projects/Shaun Kennedy/Paddock Tree Project/Para Woodlands/indigenous history of the SP region |

| 12. | **Next Meeting:** 17th April 2020 |
|     | **Meeting Close:** 11:20am |
4.5.3 CONSENSUS AGENDA – HEALTH SERVICES REPORT

4.5.3.1 FOOD RECALLS
B10499
Consumer Level recalls were monitored for:

- Shelby’s Chocolate Chip Cookies

RECOMMENDATION:
That the report item 4.5.3.1 be received.
4.5.3 CONSENSUS AGENDA – HEALTH SERVICES REPORT

4.5.3.2 FOOD PREMISES INSPECTIONS

B4573

During the month of March 2020 the following food businesses were inspected for their compliance with the Food Act 2001.

- Barossa Valley Brewing – Routine inspection
- Barossa Siam – Routine inspection
- Piers Hill – Routine inspection
- Vietnamese Food On The Go – Routine inspection
- Vietnamese Food On The Go – Re-inspection

RECOMMENDATION:

That the report items 4.5.3.2 be received.
COUNCIL MEETING
EXECUTIVE SERVICES
CHIEF EXECUTIVE OFFICER REPORT
21 APRIL 2020

7.2.1 DEBATE AGENDA - CHIEF EXECUTIVE OFFICER

7.2.1.1
AGENDA MANAGEMENT SYSTEM – BRINGING FORWARD OF PROJECT B10889

PURPOSE
To seek authorisation to proceed with the implementation of an agenda management system to manage Council and committee meetings, deliver efficiency gains, increase document quality, improved reporting tools, better manage risk and utilise the current resources to accelerate reform.

RECOMMENDATION
That Council:

1. Support the implementation of the InfoCouncil agenda management system and the budget transfer and adjustments made to deliver the efficiency reform utilising existing budget allocations for the change program and savings in the forward budget as outlined in the report.

2. Agree to waive the requirements for three quotes on the basis of urgency and fit for purpose solution is available and can commence immediately.

REPORT
Introduction
The implementation of an agenda management system has been considered at various times over the past decade. Recently an analysis was undertaken on the rate of effort to administratively manage the many agendas, minutes, action tracking and other activities that associated with the governance of Council and its committee structure.

Discussion
It was determined that the efficiency gain was significant and a new initiative was developed. With the intervention of COVID-19 we continue to provide many of the services into the community, some with different delivery models. But there is some level of slowing in activity demands and it is anticipated this will continue to the point that some staff may need to take leave or other arrangements depending on the length of restrictions.

The Corporate Management Team are developing projects that could be brought forward or accelerated to ensure the meaningful and productive use of capacity. Initially staff must provide core services but this opportunity allows us to consider other matters that get delayed simply because of work load, this includes (but not limited to):
1. Training and development program;
2. Development of new programs and services in areas like the library and visitor centre;
3. Attending to records management backlogs (which is also attending to risk);
4. Developing individual process improvements;
5. Accelerating the website refresh project which requires a rewrite to all content and bring it up to date with a customer focus;
6. Moving processes to electronic mechanism such as payroll, accounts payable, human resource practices;
7. Completing expanded business continuity planning;
8. Reform our risk and work health safety systems to make them simpler, more efficient and user friendly and address audit results;
9. Improving asset management system to move effort into proactive maintenance instead of reactive;
10. Accelerating the roll out of technological solutions for customer request management and workload management in the field.

The agenda management system is seen as another project we can bring forward and can fund from existing change program budget allocations. But as the program will require ongoing funding, which can also be funded from existing long term financial plan funding, Council’s approval to proceed is necessary.

Officers have investigated appropriate solutions and consulted with Playford Council. Quotes have been obtained to support the new initiative submission. The costs of the preferred solution, being InfoCouncil which is already used by a wide array of Australian and South Australian Councils, is:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customisation of Templates and Set Up</td>
<td>$28,680</td>
</tr>
<tr>
<td>Initial Licence Fee</td>
<td>$10,695</td>
</tr>
<tr>
<td>Total</td>
<td>$39,375</td>
</tr>
</tbody>
</table>

Plus some minor information technology consulting (which is already provisioned for) and internal staff support.

There are sufficient funds in the current allocations for the change program to support this project due to lower implementation costs incurred to date on other change program priorities.

The annual, ongoing licence and support fee is $9,245 and can be funded from a reallocation of annual funds from 454-864 which were funds allocated by the prior Council to support any additional work through Regional Development Australia such as China ready programs. These funds to date, over two years, have not been utilised and it is recommended they be reallocated to ensure the project is budget neutral and therefore Council can confidently proceed with supporting the project to obtain the efficiencies that are clearly evident in the work done to prepare the new initiative.

The preparation of the efficiency gain was based on a survey of staff and the time they spend on administration of Council, Barossa Assessment Panel, Audit Committee and other Section 41 agendas, minutes and action tracking. Further we engaged with Playford Council who have been running the system for some years to ascertain the functionality fit and efficiency saving they estimated they have received through the use of this product.
Based on the data collected over the cycle of a year staff involved with agendas and associated management estimate the administrative effort is 2158.50 hours which is the equivalent of 284 days’ work or 1.25 full time equivalent employees, remembering this is the administrative effort not the effort of researching and writing reports developing policy and the like as this work remains unchanged. Based on Playford’s estimate of 30% improvement (which we believe is conservative) in efficiency that equates to an efficiency saving of $37,817 per annum therefore giving a payback period of 1.04 years. Over the 10 year lifecycle of costs the estimated efficiency saving is outlined in the table below.

The above analysis shows the full cost and efficiency gains as a stand-alone project and it delivers a cost benefit ratio of 2.75, this is high and means it return $2.75 for each $1 invested.

With the project able to be funded from existing allocations and having been identified as a change program item this is a prime opportunity to proceed.

The preferred solution is InfoCouncil for a multitude of reasons.

Firstly they are a proven long term performer in the market and current provider to 240 Councils in Australia and New Zealand, in South Australia they current support:

1. Adelaide Plains Council
2. Coorong District Council
3. Town of Gawler
4. Kimba District Council
5. Mitcham City Council
6. Mount Gambier Council
7. Rural City of Murray Bridge
8. City of Playford
9. City of Salisbury
10. Southern Mallee District Council
11. Tatiara District Council
12. City of Tea Tree Gully
13. City of Unley
14. City of West Torrens
They have specialist knowledge and understanding of local government governance and legislative compliance and templates and functionality available that mirror that of Council including:

1. Agenda, report and minute templates to reflect our style and processes;
2. Integrates with Council's corporate records management system HPE;
3. Meeting processes that allow click and select technology for all manner of processes including conflicts of interest, people leaving the meeting, amendments, revocations and the like;
4. Unique and efficient way to manage attachments;
5. Builds an agenda in a matter of minutes rather than up two days it can currently take depending on size and complexity;
6. Internal development and approval processes for reports.

Importantly the system would result in uniform processes across the organisation and build redundancy into our staff network, decrease variation and reduce risk. There are inbuilt management of actions items, ability to track reports and generate a register which will make searching for past reports simple whereas at present depending how old a prior report may have been can take anywhere from 5 minutes to many hours to try and track.

The procurement requirements of Council policy in this case normally require at least three quotes. However, due to the following reasons I recommend they be waived:

1. This is a fit for purpose solution at a discounted price as we are being charged as a small Council even though one our fee indicator place us in the medium Council category (the fees are based on population, rates assessments and staff numbers);
2. There is an opportunity upon us through circumstance and budget performance where the project can be immediately supported and budget neutral;
3. The product is well advanced in other Councils and appropriately supported locally;
4. There is strong support to move forward with this project to gain the efficiencies and ensure sufficient meaningful work is immediately at hand during the management of COVID-19; and
5. The vendor has indicated it can commence immediately.

Summary and Conclusion
The management of one of our most critical functions is inefficient, exposed to higher risk due to its extensive manual processes, and needs investment. Council has many other systems to manage finances, customers, property records, rating, assets and the list goes on but this most important function is not properly supported to the requisite modern level. There is a window of opportunity to devote resources an accelerate reform. Through budget performance and reallocation it can be achieved with increasing current or future budgets.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES
Business Requirements Document

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS
Community Plan
Natural Environment and Built Heritage

Community and Culture

Infrastructure

Health and Wellbeing

Business and Employment

How We Work – Good Governance

All

Legislative Requirements
Local Government Act
Development Act
Planning Development and Infrastructure Act

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS
Outlined in the body of the report in summary:

Implementation costs $39,375

Plus internal resources.

Funding budget transfer from 462-654 (Executive Service contractors – to support the change program).

Ongoing licence fee and help desk fee $9,245.

Funding from budget transfer from 454-864 (RDA extra contributions not previously utilised).

Net additional cost to current and future budgets is $0.

COMMUNITY CONSULTATION
The agenda management system is to support the most critical of Council’s functions the management of the fundamental decision making processes and community engagement and transparency.
Agenda Management System
Business Requirements Document (BRD)

This document has been designed to document and gain approval for Enhancement and process improvement proposals. This document should be used for all Proposals that require technology solutions for new or improved processes and should accurately reflect the current understanding of business requirements. Following approval of this document, additional documentation may be required as part of the ongoing management of the approved project.

This document defines the high level requirements for [insert Proposal name]. It will be used as the basis for the following activities:

- Approval to proceed
- Solution Development
- Solution Implementation
- Solution Resourcing
- Solution Priority

**PROPOSAL DETAILS**

<table>
<thead>
<tr>
<th>Prepared by</th>
<th>Marisa South and Martin McCarthy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal Name</td>
<td>Agenda Management System</td>
</tr>
<tr>
<td>Proposal Stage</td>
<td>New Initiative</td>
</tr>
<tr>
<td>Proposed Start Date</td>
<td>May 2020</td>
</tr>
<tr>
<td>Proposed End Date</td>
<td>December 2020 – target to obtain efficiency gains utilising self-management and fully funded model (see notes in OMG agenda of February 2020)</td>
</tr>
<tr>
<td>Proposed Proposal Sponsor</td>
<td>Martin McCarthy</td>
</tr>
<tr>
<td>Primary Driver</td>
<td>Efficiency – see OMG agenda February 2020</td>
</tr>
<tr>
<td>Secondary Driver</td>
<td>Risk and governance compliance – see OMG agenda February 2020</td>
</tr>
<tr>
<td>Lead Directorate/Team</td>
<td>Executive Services</td>
</tr>
</tbody>
</table>
Overview

Overview and Background
Information contained in the new initiative bid as outlined in OMG agenda of February 2020.

Record number – 20/7532.

Dependencies
Current understood dependencies:

1. Integration with HPE noted.
2. Microsoft Word and macros.
3. Adobe.

Links to Change Program/Other Organisational Projects
Information contained in the new initiative bid as outlined in OMG agenda of February 2020.

This project is identified as a future stage change program initiative.

Current State
What are you doing to manage this currently?

Manual process.

What are the issues with the current process?

Inconsistencies.
Inefficient.
Significant variation across the units.
Risks not managed in accordance with contemporary practice.

The strategic risk register of the organization clearly articulates the following relevant strategic risk this initiative being a treatment for such risks:

1. Risk Number 8 - System and Process Inefficiencies – Current Risk Rating High – Target Rate Low.
2. Risk Number 13 – Legislative Compliance – Current Risk Rating High – Target Rate Medium
3. Risk Number 21 – Governance and Internal Control Assessment and Effectiveness – Current Risk Rating Medium – Target Rate Medium.

What is your current service level and are you meeting current obligations?

Legislative provisions require distribution and management of agenda and minutes. This is being achieved through significant administrative effort across a range of Council and committee meetings.
**What volume of work does this current process generate and will this be an ongoing requirement?**

Current processes devote to administrative effort of agenda, minutes, resolution registers, and action registers is estimated at $126,057 per annum. This is considered conservative as not all those involved in agenda production have responded to the request for information. Initial research indicates an efficiency factor of at least 30% (although this is being proofed with two Councils Gawler and Playford and this was not completed at the time of writing). The net 10 year cost and efficiency benefits see a net benefit of $257,066 or a cost benefit ratio of 1.8 being for every dollar invested it returns a return of 1.8 dollars. The efficiency improvement can also be equated to FTE’s and represents an efficiency benefit of 3.29 employees based on 2019/20 budget settings (average cost per FTE).

**What has prompted the desire for change? (i.e. efficiency improvement, legislative change, customer demand etc)**

All three mentioned in the question – efficiency benefit is outlined above, achieving legislative standards and supporting the customers being our Council and committee members and the community with better managed and more efficient processes providing a high level and more consistent product.

Data collected to date is in record number 20/8287.

**BUSINESS AREAS IMPACTED**
- It is important to consider all business units and users that will be impacted by this new or changed process. Please list all areas that will be impacted.

<table>
<thead>
<tr>
<th>Name</th>
<th>Business Unit</th>
<th>How impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>All</td>
<td>Requirement to produce all agenda, minutes, registers and action items from Council and Committee processes to be managed through the agenda management system.</td>
</tr>
</tbody>
</table>

**BUSINESS REQUIREMENTS**

Please list the key requirements of the solution including elements such as:
- Inputs/Triggers (i.e. What initiates this activity)

Monthly and other periodic council and committee agendas the main ones being:

Council;
Barossa Assessment Panel;
Audit Committee;
Section 41 Committees.
• Outputs (i.e., Documents or emails to be generated as part of the process)
  
  Agenda, minutes, resolution indexes, action registers.

• Reporting requirements

  Same as outputs.

• Access /Privacy/ Security issues

  Required by the main the producers of agenda matters and the like being:

  • OMG
  • Planners
  • Governance Advisor
  • Communications and Engagement Officers
  • Executive support
  • Administrative support

• Transaction Volumes

  Council alone manages over 300 reports per annum with

• If this is a change to an existing Process please provide details of the change required

  All internal processes to produce the outputs will require change.

• Consideration of Service Level requirements – timeframes for tasks to be completed in

  Nil service level requirements over and above current requirements, pending legislative reform in 2020 which has been flagged by the Minister.

• What are the impacts on customers? Will it increase customer experience? Is the solution centric to our customer’s needs – allows for feedback etc

  The experience for customers will be more consistency and presentation of agenda. Efficiencies in the order of 30% will also release staff to support further change program reform and customer and process improvements thereby supporting customer outcomes across the organisation.

• How many people will be affected by the change and what frequency?

  That is difficult to tell as it will depend on complexity and breadth of monthly and period agenda. A conservative estimate is it will impact in the order of 30+people over each quarter when considering the extensive processes currently involved with the core production of agenda, minutes, resolution registers and action registers.
- Will there be training requirements.
  Yes
- What supporting documentation needs to be prepared i.e. Task Guidelines, Training Material, Forms, Checklists,
  System / task process guidelines
  Templates

**ICT Review (to be completed by ICT)**

This proposal has been reviewed and discussed with Chris Horsell, Manager KATS.

The following items have been considered

<table>
<thead>
<tr>
<th>Consideration</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can this request be met within an existing system or is a new solution required?</td>
<td>No</td>
</tr>
<tr>
<td>Are there any System impacts/considerations</td>
<td>Yes – new database and integration into systems.</td>
</tr>
<tr>
<td>Does this request currently exist on the Master change program list</td>
<td>Yes</td>
</tr>
<tr>
<td>Are there any anticipated additional costs</td>
<td>Yes – licensing and provision made for periodic upgrades every three years, see new initiative document. CH- May want to consider more frequent upgrades as most software companies release upgrades annually to keep pace with technology changes</td>
</tr>
<tr>
<td>What is the level of ICT involvement</td>
<td>Support – additional $3000 budgeted in set up to support resource costs and additional $6000 every three years to support upgrade costs if required. CH – Option to include upgrades in vendor support provision</td>
</tr>
<tr>
<td>What are the Integration implications</td>
<td>Understood to be minor and will result in significant efficiencies – the main systems to integrate are HPE and web site. CH- Once configured initially will just require review and testing post upgrade of either system. Integration from this solution will be just to HPE – Integration to Website will be driven by HPE</td>
</tr>
<tr>
<td>What are the Security Implications</td>
<td>Minimal – new database and system hosted within existing system.</td>
</tr>
<tr>
<td>What is the level of ICT Complexity</td>
<td>Low</td>
</tr>
<tr>
<td>Is there more than 1 potential solution</td>
<td>Yes</td>
</tr>
<tr>
<td>Recommended Approval body</td>
<td>OMG</td>
</tr>
</tbody>
</table>
**Additional Notes /Considerations**

This initiative is supported by ICT as it will deliver significant efficiency savings. It should be noted that the implementation by the vendor should be inclusive of installation and configuration and appropriate ongoing support to manage the solution would be advised.

From an implementation perspective other than build of the initial server to host application requirements, provision of technical advice, deployment of word add-ins and any necessary software it is envisaged that ICT involvement would be minimal.

Ongoing support by ICT should be low, however it is advised that an appropriate support model be documented and agreed within Council between ICT and key stakeholders prior to go live to ensure that the appropriate resources and knowledge is transferred.

It is noted that any specific application or process documentation required will be developed by the project team and ongoing management of this documentation should be managed by key users of the system.

**PROPOSAL APPROVALS**

<table>
<thead>
<tr>
<th>Approver Name</th>
<th>Role</th>
<th>Signature/Electronic Approval</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Martin McCarthy</td>
<td>CEO</td>
<td></td>
<td>17/2/20</td>
</tr>
<tr>
<td>Chris Horsell</td>
<td>MKATS</td>
<td></td>
<td>18/2/20</td>
</tr>
</tbody>
</table>

**APPENDIXES**

<table>
<thead>
<tr>
<th>Document Name</th>
<th>HPE Reference (Insert Link)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due Diligence Report</td>
<td>Outlined in body of report</td>
</tr>
<tr>
<td></td>
<td>20/7532</td>
</tr>
<tr>
<td>New Initiative Data</td>
<td>Outlined in body of report</td>
</tr>
<tr>
<td></td>
<td>20/8287</td>
</tr>
</tbody>
</table>
COUNCIL
EXECUTIVE SERVICES
CHIEF EXECUTIVE OFFICER REPORT
21 APRIL 2020

7.2.1 DEBATE AGENDA - CHIEF EXECUTIVE OFFICER

7.2.1.2
MOVE TO ELECTRONIC MEETINGS AND VARIATION OF ASSOCIATED COUNCIL POLICIES
B1485

Author: Governance Advisor

PURPOSE
Following publication of the Notice Pursuant to Section 302B of the Local Government Act 1999 – Public Health Emergency – Electronic Participation in Council Meetings (No 1) in the South Australian Government Gazette on Tuesday, 31 March 2020 (the “Notice”), it is necessary for Council to consider the various amendments and suspensions to the Local Government Act 1999, which allow Council meetings to be held electronically and consider variations to associated Council policies, including the Code of Practice for Access to Council and Committee Meetings and Associated Documents, and Informal Gatherings Policy.

RECOMMENDATION
That Council:

(1) receive and note the Notice Pursuant to Section 302B of the Local Government Act 1999 – Public Health Emergency – Electronic Participation in Council Meetings (No 1) (the “Notice”) attached to this Report at Attachment 1;

(2) alters its Code of Practice for Access to Council and Committee Meetings and Associated Documents (the “Code”) to facilitate participation by Elected Members in Council meetings by electronic means, by receiving, considering and adopting the draft Code attached to this Report at Attachment 2;

(3) alters its Informal Gatherings Policy to facilitate participation by Elected Members in informal gatherings by electronic means by receiving, considering and adopting the draft Informal Gatherings Policy attached to this Report at Attachment 3;

(4) That, as from the next Ordinary Council Meeting held on Tuesday, 19 May 2020, meetings of the Council will take place by electronic means at the following electronic location via Microsoft Teams as virtual online meetings.

REPORT

Background
As a response to COVID-19, a public health emergency was declared on 15 March 2020, by the Chief Executive of the South Australian Department of Health and Wellbeing pursuant to section 87, of the South Australian Public Health Act 2011. Further, on 22 March 2020, the South Australian State Co-ordinator declared a Major Emergency with respect to the COVID-19 outbreak, pursuant to section 23 of the Emergency Management Act 2004.

Based on the above, the Minister for Transport, Infrastructure and Local Government has determined to vary or suspect the operation of specific provisions of the Local Government Act 1999 (the “Act”), subject to conditions and alternative requirements, arrangements and procedures as set out in the Notice gazetted on Tuesday 31 March 2020 and attached as Attachment 2 to this report (the “Notice”).

Introduction

The effect of the Notice is to allow Elected Members to participate in Council meetings electronically and for meetings to be conducted publicly by electronic means, and be made available to the public via Live Stream or recording.

Subsequently, on advice from the Local Government Association, Council may also consider varying its Informal Gatherings Policy to allow Informal Gatherings to occur electronically, in the same way as Council meetings.

Discussion

Draft Code of Practice for Access to Council and Committee Meetings and Associated Documents (the “Code”)

The draft Code, with variations marked as track changes is presented at Attachment 2 to this Report.

Pursuant to the Notice, Council is not required to adopt any provision in the Code that would prevent or inhibit Elected Members from participating in Council meetings or Council Committee meetings by electronic means.

The Notice allows Council to alter the Code without the need for public consultation, and for Council to meet by electronic means to alter the Code, even if the existing Code prevents or inhibits public access to the meeting by electronic means.

Draft Informal Gatherings Policy

The draft Informal Gatherings Policy, with variations marked as track changes is presented at Attachment 3 to this Report.

Council Meetings to take place electronically

It is necessary for Council to consider and determine whether future meetings be conducted by electronic means at the following electronic location via Microsoft Team as virtual online meetings.

Summary and Conclusion

Council is asked to:

- receive and consider the Notice;
- receive, consider and adopt the draft Code and Informal Gatherings Policy, which have been varied in line with the Notice; and
• consider and determine that future meetings of Council starting from the next Council ordinary meeting held on 19 May 2020, be held by electronic means at the electronic location detailed in this Report.

**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**


**Attachment 2** – draft Code of Practice for Access to Council and Committee Meetings and Associated Documents (Ref: 13/34031[v3])

**Attachment 3** – draft Informal Gatherings Policy (Ref: 17/7208[v2])

**COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS**

**Community Plan**

- Community and Culture

2.8 Provide opportunities for the community to participate in local decision-making.

**Corporate Plan**

- How We Work – Good Governance

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

**Legislative Requirements**

- Electronic Participation in Council Meetings (No 1) published in the South Australian Government Gazette on Tuesday, 31 March 2020
- Local Government Act 1999
- Local Government (Procedures at Meetings) Regulations 2013

**FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS**

Council, at its Special Council meeting held on 26 March 2020 approved a budget increase for the initial response to COVID-19, which included ‘planning for the implementation of electronic meetings for Council and committees’. Reporting on these costs will occur via normal financial reporting measures.

Risk is mitigated by basing the variations to Council policies on model documents issued by the Local Government Association, which were developed by Norman Waterhouse Lawyers.

**COMMUNITY CONSULTATION**

Pursuant to Notice No 1, community consultation is not required prior to Council altering or substituting a new Code. There are no statutory community consultation requirements for setting the meeting place of Council, or adopting or altering the Informal Gatherings Policy.
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All instruments appearing in this gazette are to be considered official, and obeyed as such
STATE GOVERNMENT INSTRUMENTS

NOTICE PURSUANT TO SECTION 302B OF THE LOCAL GOVERNMENT ACT 1999

PUBLIC HEALTH EMERGENCY: ELECTRONIC PARTICIPATION IN COUNCIL MEETINGS (NO 1)

On 15 March 2020, the Chief Executive of the Department for Health and Wellbeing in the State of South Australia, pursuant to section 87 of the South Australian Public Health Act 2011, declared that an emergency which threatens to cause the death of, or injury or other damage to the health of any person is occurring or about to occur in relation to the transmission of COVID-19, and declared the emergency to be a public health emergency.

On 22 March 2020, the State Co-ordinator for the State of South Australia declared, pursuant to section 23 of the Emergency Management Act 2004, that a Major Emergency is occurring in respect of the outbreak of the Human Disease named COVID-19 within South Australia.

On the basis that a relevant declaration has been made in relation to a public health emergency and being satisfied that variation or suspension of the provisions specified in Schedule 1 to this notice is reasonably necessary as a result of the emergency, I, Stephan Karl Knoll, Minister for Transport, Infrastructure and Local Government, in the State of South Australia, in accordance with section 302B of the Local Government Act 1999 (“the Act”) hereby vary or suspend the operation of the specified provisions of the Act as set out in Schedule 1 to this notice, subject to any conditions specified in this notice including in accordance with any alternative requirements, arrangements or procedures as provided for in this notice.

1. Citation

This notice may be cited as the Electronic Participation in Council Meetings Notice (No 1) 2020.

2. Definitions

In this notice—

Act means the Local Government Act 1999;

electronic means includes a telephone, computer or other electronic device used for communication;

regulations means the Local Government (Procedures at Meetings) Regulations 2013.

3. Application

This notice applies to all councils constituted under the Act including, for the avoidance of doubt, the Adelaide City Council.
## Schedule 1—Provisions of the Act and regulations varied or suspended (section 302B(1) of Act)

<table>
<thead>
<tr>
<th>Provision of Act or regulations</th>
<th>Variation or suspension</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Local Government Act 1999</strong></td>
<td></td>
</tr>
<tr>
<td>Section 74</td>
<td>Delete subsection (1)(b) and substitute:</td>
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<tr>
<td></td>
<td>(b) leave the meeting (physically or by disconnecting electronic means) such that the member cannot view or hear any discussion or voting at the meeting about the matter; and</td>
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<tr>
<td></td>
<td>(c) not view or listen to the discussion or voting at the meeting about the matter via any live stream or recording of the meeting.</td>
</tr>
<tr>
<td>Section 74(2)</td>
<td>After “or being in the chamber where the meeting is being conducted,” insert:</td>
</tr>
<tr>
<td></td>
<td>or being connected to the meeting by electronic means,</td>
</tr>
<tr>
<td>Section 74(3)</td>
<td>After “or to be in the chamber where the meeting is being conducted,” insert:</td>
</tr>
<tr>
<td></td>
<td>or to be connected to the meeting using electronic means,</td>
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<tr>
<td>Section 74(5)</td>
<td>Delete subsection (5)(c) and substitute:</td>
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<tr>
<td></td>
<td>if the member took part in the meeting, or was in the chamber during the meeting, or was connected to the meeting by electronic means, under an approval under subsection (3), the fact that the member took part in the meeting, or was in the chamber during the meeting, or was connected to the meeting by electronic means (as the case requires).</td>
</tr>
<tr>
<td>Section 74</td>
<td>After subsection (6) insert:</td>
</tr>
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<td></td>
<td>(7) In this section—</td>
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<td></td>
<td><strong>connected to</strong> means able to hear and/or see the meeting, including via a live stream or recording of the meeting;</td>
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<tr>
<td></td>
<td><strong>disconnecting electronic means</strong> includes—</td>
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<td></td>
<td>(a) ending a telephone connection such that the discussion and voting at the meeting cannot be heard;</td>
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<tr>
<td></td>
<td>(b) ending a video conferencing connection such that the discussion and voting at the meeting cannot be seen or heard;</td>
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<td></td>
<td>(c) logging out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard;</td>
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<td></td>
<td>(d) signing out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; or</td>
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<tr>
<td></td>
<td>(e) disconnecting any other electronic means such that the discussion and voting at the meeting cannot be seen or heard;</td>
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<tr>
<td></td>
<td><strong>live stream</strong> means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;</td>
</tr>
<tr>
<td>Section 81</td>
<td>After subsection (3) insert:</td>
</tr>
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<td></td>
<td>(3a) If a place has been appointed for the holding of an ordinary meeting but the council is unable to meet at the designated place as a result of the public health emergency, the chief executive officer may appoint a different place at which the ordinary meeting is to be held.</td>
</tr>
<tr>
<td>Provision of Act or regulations</td>
<td>Variation or suspension</td>
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</tr>
<tr>
<td>Section 81</td>
<td>After subsection (7) insert:</td>
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<td></td>
<td>(8) In this section—</td>
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<tr>
<td></td>
<td><em>place</em> includes an electronic location (such as a virtual meeting room).</td>
</tr>
<tr>
<td>Section 83</td>
<td>After subsection (3) insert:</td>
</tr>
<tr>
<td></td>
<td>(3a) For the purposes of subsection (3)(c), the chief executive officer may sign the notice in hardcopy or electronically.</td>
</tr>
<tr>
<td>Section 83</td>
<td>After subsection (9) insert:</td>
</tr>
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<td></td>
<td>(10) In subsection (3)—</td>
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<td></td>
<td><em>place</em> includes an electronic location (such as a virtual meeting room).</td>
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<tr>
<td>Section 84(1a)(a)</td>
<td>Suspend subsection 84(1a)(a).</td>
</tr>
<tr>
<td>Section 84(3)</td>
<td>Delete subsection (3) and substitute:</td>
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<td></td>
<td>A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda published under subsection (1a)(b) on request.</td>
</tr>
<tr>
<td>Section 84(4)</td>
<td>Delete subsection (4) and substitute:</td>
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<tr>
<td></td>
<td>The notice and agenda must continue to be published on the website under subsection (1a) until the completion of the relevant meeting.</td>
</tr>
<tr>
<td>Section 84(5)</td>
<td>Delete subsection (5) and substitute:</td>
</tr>
<tr>
<td></td>
<td>The chief executive officer (or a person nominated in writing by the chief executive officer) must also ensure that any document or report supplied to members of the council for consideration at a meeting of the council is available for inspection by members of the public—</td>
</tr>
<tr>
<td></td>
<td>(a) in the case of a document or report supplied to members of the council before the meeting—on a website determined by the chief executive officer as soon as practicable after the time when the document or report is supplied to members of the council; or</td>
</tr>
<tr>
<td></td>
<td>(b) in the case of a document or report supplied to members of the council at the meeting—on a website determined by the chief executive officer as soon as practicable after the time when the document or report is supplied to members of the council.</td>
</tr>
<tr>
<td>Section 84(7)</td>
<td>After subsection (6) insert:</td>
</tr>
<tr>
<td></td>
<td>(7) In this section—</td>
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<tr>
<td></td>
<td><em>place</em> includes an electronic location (such as a virtual meeting room).</td>
</tr>
<tr>
<td>Section 85</td>
<td>After subsection (1) insert:</td>
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<td>(2) For the purposes of this section—</td>
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<td></td>
<td>(a) a member of the council participating in a council meeting by electronic means is taken to be present at the meeting provided that the member—</td>
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<td>(i) can hear all other members present at the meeting;</td>
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<tr>
<td>Provision of Act or regulations</td>
<td>Variation or suspension</td>
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<tr>
<td>(ii) can be heard by all other members present at the meeting; and</td>
<td></td>
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<tr>
<td>(iii) can be heard by the person recording the minutes of the meeting.</td>
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<tr>
<td>(b) A quorum is taken to be present even if 1 or more council members constituting the quorum is present by electronic means.</td>
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</tr>
</tbody>
</table>

Section 86  
After subsection (9) insert:  
(10) For the purposes of this section—  
(a) a member of the council participating in a council meeting is taken to be present at the meeting provided that the member—  
(i) can hear all other members present at the meeting;  
(ii) can be heard by all other members present at the meeting; and  
(iii) can be heard by the person recording the minutes of the meeting.  

Section 86  
After subsection (8) insert:  
(8a) For the purposes of subsection (8)(b), council members may meet by electronic means to alter a procedure determined by the council to be observed at a meeting of a council, even if the existing procedure prevents or inhibits the council members from meeting by electronic means.  

Section 90  
After subsection (1) insert:  
(1a) A council meeting will be taken to be conducted in a place open to the public for the purposes of this section even if 1 or more council members participate in the meeting by electronic means provided that—  
(a) the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a live stream of the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all council members present at the meeting via the live stream; or  
(b) if the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all council members present at the meeting via the recording.  

(1b) If the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to comply with subsection (1) but is unable to comply—  
(a) the chief executive officer (or a person nominated in writing by the chief executive officer) must publish on a website determined by the chief executive officer the steps taken to comply with subsection (1); and  
(b) subsection (1) is suspended.  

Section 90  
After subsection (2) insert:  

44
<table>
<thead>
<tr>
<th>Provision of Act or regulations</th>
<th>Variation or suspension</th>
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<tbody>
<tr>
<td><strong>(2a)</strong></td>
<td>A council or council committee must disconnect any live stream or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under subsection (2).</td>
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</tbody>
</table>

**Section 90(5)**
Delete subsection (5) and substitute:

A person who, knowing that an order is in force under subsection (2), enters or remains in a room in which a meeting of the council or council committee is being held, or connects to a meeting of the council or a council committee by electronic means, or fails to disconnect from a meeting of the council or council committee, is guilty of an offence and liable to a penalty not exceeding $500 and if such a person fails to leave the room on request it is lawful for an employee of the council or a member of the police force to use reasonable force to remove him or her from the room.

**Section 90(9)**
After “In this section—” insert:

- **connect** means able to hear and/or see the meeting, including via a live stream or recording of the meeting;
- **disconnect** means remove the connection so as to be unable to hear and see the meeting;
- **live stream** means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;

**Section 91(4)**
Delete subsection (4) and substitute:

A copy of the minutes of a meeting of the council must be placed on public display on a website determined by the chief executive officer within five days after the meeting and kept on display for a period of one month.

**Section 92**
Delete subsection (1) and substitute:

1. Subject to subsection (1a), a council must prepare and adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of Parts 3 and 4.

1a. A council is not required to adopt any provision in a code of practice that would prevent or inhibit members from participating in council meetings or council committee meetings by electronic means.

**Section 92**
After subsection (3) insert:

3a. For the purposes of subsection (3), council members may meet by electronic means in a place taken to be open to the public pursuant to section 90(1a) to alter the code of practice of the council, or substitute a new code of practice of the council, even if the existing code of practice prevents or inhibits public access to the meeting by electronic means.

**Section 92 (5)**
Suspend section 92(5).

*Local Government (Procedures at Meetings) Regulations 2013*

**Reg 3(4)**
Delete subregulation (4) and substitute:
### Provision of Act or regulations

<table>
<thead>
<tr>
<th>Provision of Act or regulations</th>
<th>Variation or suspension</th>
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</table>
| For the purposes of these regulations, a vote on whether **leave of the meeting** is granted may be conducted by—  
  (a) a show of hands; or  
  (b) where a member is participating in a meeting by electronic means which has audio only, a verbal indication of voting in the affirmative or voting in the negative,  
  (but nothing in this subregulation prevents a division from being called in relation to the vote). |  |
| Reg 3 | After subregulation (4) insert:  
  (5) For the purposes of subregulation (1), a reference to “appear personally” includes to appear by electronic means.  
  (6) For the purposes of these regulations, a member participating in a meeting by electronic means is taken to be present at the meeting provided that the member—  
  (a) can hear all other members present at the meeting;  
  (b) can be heard by all other members present at the meeting; and  
  (c) can be heard by the person recording the minutes of the meeting. |  |
| Reg 6 | After subregulation (3) insert:  
  (3a) Without limiting subregulation (3), a council may at any time, by resolution supported by the prescribed number of members of the council entitled to vote on the resolution, alter a code of practice to facilitate participation by council members in council meetings by electronic means.  
  (3b) For the purposes of subregulation (3a), the **prescribed number** of members of a council is a number ascertained by dividing the total number of members of the council for the time being in office by 2, ignoring any fraction resulting from the division, and adding one. |  |
| Reg 6(7) | Delete subregulation (7) and substitute:  
  Regulation 12(4) does not apply to a motion under subregulation (3) or subregulation (3a). |  |
| Reg 7(5)(b) | Delete subregulation (5)(b) and substitute:  
  give notice of the adjourned meeting to the public by causing a notice setting out the date, time and place of the meeting to be published on a website determined by the chief executive officer. |  |
| Reg 8 | After subregulation (3) insert:  
  (3a) For the purposes of subregulation (3), the presiding member may initial or sign the minutes in hardcopy or electronically. |  |
| Reg 8(4) | After subregulation (4)(b)(ii) insert:  
  (iii) the method of attendance by the person;  
  and |  |
<table>
<thead>
<tr>
<th>Provision of Act or regulations</th>
<th>Variation or suspension</th>
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<tbody>
<tr>
<td></td>
<td><strong>Example</strong>—</td>
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<tr>
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<td>The following are examples of methods of attendance:</td>
</tr>
<tr>
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<td>(a) physical attendance;</td>
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<td>(b) by an audio-visual link;</td>
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<td>(c) by an audio link;</td>
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<td>(d) by telephone.</td>
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<tr>
<td>Reg 10(1)(d)</td>
<td>Delete subregulation (1)(d) and substitute:</td>
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<td>be addressed to the council and delivered to the council by means determined by the chief executive officer.</td>
</tr>
<tr>
<td>Reg 11(1)</td>
<td>Delete subregulation (1) and substitute:</td>
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<td>A person or persons wishing to appear as a deputation at a meeting must deliver (to the council by means determined by the chief executive officer) a written request to the council.</td>
</tr>
<tr>
<td>Reg 16(3)</td>
<td>Delete subregulation (4) and insert:</td>
</tr>
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<td>(4) Subregulation (3)—</td>
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<td>(a) may be varied at the discretion of the council pursuant to regulation 6;</td>
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<td>(b) does not apply in relation to a member participating in a council committee meeting by telephone or electronic means approved in accordance with procedures determined by the council or council committee for the purposes of section 89 of the Act; and</td>
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<td>(c) is varied in relation to a member participating in a council meeting by electronic means such that the reference to “not in his or her seat” is taken to include a disconnection of the electronic means.</td>
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<td>(5) In this regulation—</td>
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<td><em>disconnection of the electronic means</em> includes—</td>
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<td>(a) ending a telephone connection such that the discussion and voting at the meeting cannot be heard;</td>
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<tr>
<td></td>
<td>(b) ending a video conferencing connection such that the discussion and voting at the meeting cannot be seen or heard;</td>
</tr>
<tr>
<td></td>
<td>(c) logging out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard;</td>
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<tr>
<td></td>
<td>(d) signing out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; or</td>
</tr>
<tr>
<td></td>
<td>(e) disconnecting any other electronic means such that the discussion and voting at the meeting cannot be seen or heard.</td>
</tr>
<tr>
<td>Reg 17(3)</td>
<td>Delete subregulation (3) and substitute:</td>
</tr>
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<td>(3) The division will be taken as follows:</td>
</tr>
<tr>
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<td>(a) subject to subregulation (3a), the members voting in the affirmative will, until the vote is recorded, stand in their places;</td>
</tr>
</tbody>
</table>
## CONDITIONS

The variation of the operation of sections 85 and 86 of the Act is subject to the following condition:

1. Where—
   (a) a council member is to participate in a council meeting by electronic means; and
   (b) the electronic means has the functionality to allow the council member to participate in the meeting by being heard but not seen or by being both seen and heard; and
   (c) the electronic means of the council has the functionality to allow the council member to be heard but not seen or to be both seen and heard,
   the member must participate by being both seen and heard.

This notice operates from the date of publication in the South Australian Government Gazette.

This notice has effect for the period specified in section 302B(2)(d)(ii) of the Act.

HON STEPHAN KNOLL MP
MINISTER FOR TRANSPORT, INFRASTRUCTURE AND LOCAL GOVERNMENT

Dated this day of 30 March 2020
1. Purpose

1.1 The Barossa Council ("Council") supports the principle that the processes to be observed at a meeting of Council or a Council Committee should contribute to open, transparent and informed decision-making and encourage appropriate community participation in the affairs of Council.

1.2 This Code is prepared pursuant to Section 92 of the Local Government Act 1999 which requires Council to prepare a Code of Practice relating to the principles, policies and processes for public access to Council and Committee meetings, and associated documents and minutes.

2. Scope

2.1 This Code sets out Council’s position for access to meetings and documents and includes information relating to:

- access to the agenda for meetings;
- public access to meetings;
- the process to exclude the public from meetings;
- matters for which the Council, or Council Committee, can order the public be excluded;
- how the Council will approach the use of the confidentiality provisions in the Act;
- public access to documents, including minutes;
- review of confidentiality orders;
- accountability and reporting to the community;
- complaints about the use of the Code by Council; and
- the availability of the Code.
2.2 This Code does not bind Council’s subsidiary as it is bound by its own Charter.

2.3 On 15 March 2020, the Chief Executive of the South Australian Department for Health and Wellbeing, pursuant to section 87 of the South Australian Public Health Act 2011, declared that an emergency which threatens to cause the death of, or injury or other damage to the health of any person is occurring or about to occur in relation to the transmission of COVID-19, and declared the emergency to be a public health emergency. On 22 March 2020, the South Australian State Co-ordinator declared, pursuant to section 23 of the Emergency Management Act 2004, that a Major Emergency is occurring in respect of the outbreak of COVID-19 within South Australia.

On 31 March 2020, the Minister for Transport, Infrastructure and Local Government issued a Notice pursuant to section 302B of the Local Government Act (the “Act”) (the “Notice No 1”) varying or suspending the operation of the specified provisions of the Act as set out in Schedule 1 to the Notice No 1. Notice No 1 commenced operation on 31 March 2020 and:

- provides that a Council is not required to adopt any provision in a code of practice that would prevent or inhibit Elected Members from participating in Council meetings or Council Committee meetings by electronic means;
- provides that Elected Members may meet by electronic means to alter the code of practice of the Council, or substitute a new code of practice of the Council, even if the existing code of practice prevents or inhibits the Elected Members from meeting by electronic means;
- suspends the requirement in section 92(5) that before a Council adopts, alters or substitutes a code of practice, it make copies of the proposed code, alternations or substitute code (as the case may be) available for inspection and purchase at the Principal Office of the Council and on a website determined by the Council and that the Council follow the steps set out in its Public Consultation Policy.

2.4 For the period that Notice No 1 has effect (as provided for in Notice No 1), this Code is altered in line with Notice No 1 as set out in this Code where indicated, and apply to all meetings of Council, and Council Committees where applicable. The alterations have effect notwithstanding any other provision in this Code to the contrary.

### 3. Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Agenda</td>
<td>The Agenda is a list of items of business to be considered at a meeting, it does not include, or require the inclusion of reports and attachments, only that they be described with reasonable particularity and accuracy. However, copies of any documents or reports that are to be considered at the meeting (so far as reasonably practicable) shall be provided to the members of the Council or Council Committee meeting.</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>Clear days</td>
<td>The time between the giving of the notice and the day of the meeting, but excluding both the day on which the notice was given and the day of the meeting, eg notice is given on a Friday for a following Tuesday meeting, the clear days are Saturday, Sunday and Monday.</td>
</tr>
<tr>
<td>Connect or Connected to</td>
<td>Able to hear and/or see the meeting, including via a Live Stream or recording of the meeting.</td>
</tr>
<tr>
<td>Council Committee</td>
<td>As defined by Section 41 of the Act.</td>
</tr>
</tbody>
</table>
**Attachment 2**

<table>
<thead>
<tr>
<th>Council’s Principal Office</th>
<th>Located at 43 – 51 Tanunda Road Nuriootpa.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council Branches / Libraries</td>
<td>Located at: 29 Barossa Valley Way Lyndoch; 130-132 Melrose Street Mt Pleasant; 79-81 Murray Street Tanunda; Town Hall Annex, Sturt Street Angaston.</td>
</tr>
<tr>
<td>Council Website</td>
<td><a href="http://www.barossa.sa.gov.au">www.barossa.sa.gov.au</a></td>
</tr>
</tbody>
</table>

**Disconnect or Disconnecting**

- ending a telephone connection such that the discussion and voting at the meeting cannot be heard;  
- ending a video conferencing connection such that the discussion and voting at the meeting cannot be seen or heard;  
- logging out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard;  
- signing out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; or  
- disconnecting any other electronic means such that the discussion and voting at the meeting cannot be seen or heard.

**Informal gatherings**

Including but not limited to and in accordance with Section 90(8) of the Act:
- planning sessions associated with the development of policies and strategies;  
- briefing or training sessions;  
- workshops; or  
- social gatherings to encourage informal communication between Elected Members or between Elected Members and staff.  
Refer to Council’s Informal Gatherings Policy.

**LGA Handbook**


**Live Stream**

The transmission of audio and/or video from a meeting at the time that the meeting is occurring.

**Meeting – Council**

Any meeting as defined in Sections 81 and 82 of the Act.

**Meeting – Committee**

Any meeting as defined in Section 87 of the Act but excluding the Barossa Assessment Panel established under the Planning Development and Infrastructure Act 2016.

**Notice No 1**


**Personal Affairs**

Including but not limited to a person’s financial affairs, criminal records, marital or other personal relationships, personal qualities, attributes or health status, or that person’s employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person, but does not include the personal affairs of a body corporate.

**Regulatory activity**

An activity which involves the making or enforcement of by-laws, orders, standards or other controls under the Act or another act.

**The Regulations**

Local Government (Procedures at Meetings) Regulations 2013 (the Regulations).
### 4. Policy Statement

#### 4.1 Public Access to the Agenda

**4.1.1** This clause 4.1 applies to meetings of Council and those Council Committees which serve a Regulatory function and any other Committee to which Council has determined it should apply (Appendix One lists those Council Committees to which this clause will apply).

**4.1.2** The community can gain information about the decision making governance of Council through the business matters listed on an agenda for Council and Council Committee meetings and the reports related to those matters, with the exception of any matters listed on an agenda by the CEO or authorised delegate seeking consideration in confidence.

**4.1.3** At least three (3) clear days before the Council or Council Committee meeting (unless it is a special meeting) the CEO must give written notice of the meeting to all Council or Committee members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.

**4.1.4** Subject to clause 4.1.8, the notice of the meeting and agenda will be placed on public display at the Principal Office of the Council and on Council’s website. Copies and internet access will also be available in the Council Principal Office at Nuriootpa. Access to Hard copy of Council the the meeting agenda will be provided at Council Branches through electronic means, however the notice provided at the Council Principal Office is that which is deemed to satisfy the Act.

**4.1.5** Items listed on the agenda will be described accurately and in reasonable detail, except for those items listed which are recommended to be considered in confidence, and subject to clause 4.1.8 will be kept on public display and continued to be published on Council’s website until the completion of the relevant Council or Council Committee meeting.

**4.1.6** Members of the public may attend at Council’s Principal Office or branches and obtain a copy of the agenda and any particular reports for a fee to cover the costs of photocopying, in accordance with Council’s Fees and Charges Register. Alternatively, they may download these documents privately without charge, from Council’s website at [www.barossa.sa.gov.au](http://www.barossa.sa.gov.au).

**4.1.7** Where the CEO or an authorised delegate believes that a document or report on a particular matter should be considered in confidence with the public to be excluded, the basis under which the order could be made in accordance with the confidentiality provisions in Section 90(3) of the Act will be specified.

**4.1.8** For the period of the operation of Notice No 1, the requirement that the Chief Executive Officer give notice to the public of the times and places of Council and Committee meetings by placing the notice of meeting and agenda on public display at each office of the Council that is open to the public for the general administration of Council business within its area is suspended.

**4.1.9** For the period of the operation of Notice No 1:

- (a) the requirement that the Chief Executive Officer must ensure that a reasonable number of copies of any document or report supplied to Elected Members for consideration at a Council or Committee meeting are available for inspection by members of the public at the principal office of Council or at the meeting is suspended.
Attachment 2

(b) the Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) will ensure that any document or report supplied to Elected Members for consideration at a Council or Committee meeting is available for inspection by members of the public–

(i) in the case of a document or report supplied to Elected Members before the meeting – on Council’s website as soon as practicable after the time when the document or report is supplied to Elected Members; or

(ii) in the case of a document or report supplied to Elected Members at the meeting – on Council’s website as soon as practicable after the time when the document or report is supplied to Elected Members.

4.2 Public Access to Meetings

4.2.1 Council and Council Committee meetings are open to the public and attendance is encouraged, except where the Council or the Council Committee believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, the decision) of a particular matter.

4.2.2 The public will only be excluded when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the principle of open decision-making.

4.2.3 Council meeting dates and times, and the schedule or frequency of Council Committee meetings are available on Council’s website.

4.2.4 For the period of operation of Notice No 1, a Council meeting will be taken to be conducted in a place open to the public even if one (1) or more Elected Members participate in the meeting by electronic means, provided that–

(a) the Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) makes available to the public a Live Stream of the meeting on Council’s website and ensures that members of the public can hear the discussion between all Elected Members present at the meeting; or

(b) if the Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) has taken reasonable steps to make available a Live Stream of the meeting, but is unable to make available a Live Stream of the meeting, the Chief Executive Officer (or person nominated in writing by the Chief Executive Officer) makes available to the public a recording of the meeting as soon as practicable after the meeting, on Council’s website and ensures that members of the public can hear the discussion between all Elected Members present at the meeting, via the recording.

If the Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) has taken reasonable steps to make available to the public a Live Stream of the meeting, or, (if unable to make available a Live Stream of the meeting) a recording of the meeting but is unable to comply, the Chief Executive Officer (or a person nominated in writing by the Chief Executive Officer) must publish on Council’s website, the steps taken to comply.

4.2.5 Pursuant to section 90(7a) of the Act, a Council Committee meeting will be taken to be conducted in a place open to the public for the purposes of section 90 even if 1 (one) or more Committee members participate in the meeting by telephone or other electronic means in accordance with any procedures prescribed by the Regulations or determined by
4.2.6 Elected Members, a Committee and staff members may participate in Informal Gatherings or discussion provided that a matter which would ordinarily form part of the agenda for a formal meeting is not dealt with in such a way as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of Council or Committee. Council’s Informal Gatherings Policy governs Elected Member and Staff behaviour and process in these situations.

4.3 Process to Exclude the Public from a Meeting

4.3.1 For the convenience of the public present at a Council or Council Committee meeting, where it is resolved to consider a matter in confidence, this matter may be deferred until all other business has been considered. This avoids asking the public to leave the room and having them wait until the matter is concluded and then allowing them to return with the possibility of the same process being repeated for a subsequent matter.

4.3.2 Before the Mayor, or the Chairperson as the case may be, of a meeting orders that the public be excluded to enable the receipt, discussion and consideration of a particular matter, the meeting must, in public, formally determine if this is necessary and appropriate, and then pass a resolution to exclude the public while dealing with that particular matter. If this occurs then the public must leave the room. This means that all members of the public (including staff), unless exempted by being named in the resolution as entitled to remain, are required to leave the room. In this clause, a member of the public does not include an Elected Member.

4.3.3 For the period of operation of Notice No 1, the Council or Council Committee must Disconnect any Live Stream or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under section 90(2) of the Act.

4.3.4 Once Council or a Council Committee has made the order, it is an offence for a person, who knows that an order is in force, to enter or remain in a room in which such a meeting is being held. It is lawful for an employee of Council or a member of the Police to use reasonable force to remove the person from the room if he or she fails to leave on request, however if any form of force is required, it is recommended that Council waits until Police attend to remove the person.

Further, for the period of operation of Notice No 1, it is also an offence for a person, knowing that an order under section 90(2) of the Act is in force, to Connect to a meeting of the Council or Council Committee by electronic means, or fail to Disconnect from a meeting of the Council or Council Committee.

4.3.4 Once the discussion surrounding the matter has concluded, the public are permitted to re-enter or re-Connect to the meeting. If there is a further matter that needs to be considered in confidence it is necessary to again undertake the formal determination process and to resolve to exclude the public as above.

4.4 Matters from which the Public can be Excluded [Section 90(3) of the Act]

4.4.1 Council or a Council Committee may order that the public be excluded in the following circumstances:

(a) information the disclosure of which would involve the unreasonable disclosure of
information concerning the Personal Affairs of any person (living or dead) (as defined in clause 3 above);

(b) information the disclosure of which—

(i) could reasonably be expected to confer a commercial advantage on a person with whom Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of Council; and

(ii) would, on balance, be contrary to the public interest;

(c) information the disclosure of which would reveal a trade secret;

(d) 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;

(e) matters affecting the security of Council, Elected Members or employees of Council, or Council property, or the safety of any person;

(f) 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;

(g) matters that must be considered in confidence in order to ensure that Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;

(h) legal advice;

(i) information relating to actual litigation, or litigation that Council or a Council Committee believes on reasonable grounds will take place, involving Council or an employee of Council;

(j) information the disclosure of which—

(i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of Council, or a person engaged by Council); and

(ii) would, on balance, be contrary to the public interest;

(k) tenders for the supply of goods, the provision of services or the carrying out of works;

(m) information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Development Plan amendment proposal relating to the amendment is released for public consultation under that Act;

(n) information relevant to the review of a determination of Council under the Freedom of Information Act 1991.
4.4.2 When considering whether a confidential order should be made, it is irrelevant that discussion of a matter in public may:

(a) cause embarrassment to the Council or Committee concerned, or to Elected Members or Employees of the Council; or

(b) cause a loss of confidence in the Council or Committee; or

(c) involve discussion of a matter that is controversial within the Council area; or

(d) make the Council susceptible to adverse criticism.

4.4.3 If a decision to exclude the public is made, the Council or Council Committee is required to make a note in the minutes of the making of the order and specifying:

(a) the grounds on which the order was made; and

(b) the basis on which the information or matter to which the order relates falls within the ambit of each ground on which the order was made; and

(c) if relevant, 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.

4.5 Public Access to Minutes

4.5.1 Minutes of a meeting of Council or a Council Committee will be available at Council’s Principal Office and on its website within five (5) days after the meeting.

4.5.2 For the period of the operation of Notice No 1, a copy of the minutes of a Council or Committee meeting must be placed on public display on Council’s website within five (5) days after the meeting and kept on display for a period of one (1) month. Further, the requirement for the minutes to be available at Council’s Principal Office is suspended.

4.6 Use of the Confidentiality Provisions

4.6.1 Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of an agenda item at a meeting will require the identification of all relevant grounds listed within Section 90(3) of the Act (sub-clause 4.4.1 of this Code) and the factual reasons for the application of the ground(s) weighted against the principles of open decision making.

4.6.2 Information on the grounds on which an order to exclude the public is made will be conveyed to the public at the time of them being ordered to leave the meeting - the public will not be excluded until after a confidentiality motion has been debated and passed and sufficient reasons for the need to exclude the public given.

4.6.3 The meeting will not consider a number of agenda items in confidence together. It will determine each item separately and consider the exemptions relevant to each item. Thus the public can be present for the debate on whether any subsequent item should be considered in confidence.

4.6.4 Once the confidential discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document, report, attachment, minute or other
4.6.5 If the meeting determines that it is proper and necessary to keep a document, report, attachment, minute or other associated information, confidential, then a resolution for an order to this effect is required to be resolved by the meeting in accordance with Section 91(7) of the Act.

4.6.7 When making an order, the meeting must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. If the Section 91(7) order is to apply for a period exceeding twelve (12) months, then this order must be reviewed every twelve (12) months from the date it was made and consideration given to delegating to the CEO or another relevant delegate the authority to review the order. This along with the making of the order pursuant to Section 90(2) and the grounds pursuant to Section 90(3) of the Act on which it was made are also to be recorded in the minutes.

4.6.8 In the case of an order of specified duration, the duration of the order cannot be extended after the order has ceased to apply and the power to do so cannot be delegated.

4.6.9 No formal resolution is required to come out of confidence and go back into public session.

4.6.10 Elected Members, former Members, Council Employees and former Council Employees are all prohibited from disclosing information or a document over which there is a Council or Committee confidentiality order under Section 90 of the Act. To breach such an order can result in pecuniary or imprisonment penalties.

4.6.11 In all cases the objective is that the information be made publicly available at the earliest possible opportunity once the confidential order ceases to exist and that the community is informed of any Council order and the associated implications.

4.6.12 Where a person provides information to the Council or Committee and requests that it be kept confidential, the Council or Committee is not able to even consider this request unless the matter is one that falls within sub-clause 4.4.1 above.

4.6.13 The use of all confidentiality provisions will be recorded in the Confidential Items Register and maintained by the CEO.

4.7 Public Access to Documents

4.7.1 Various documents required to be made publicly accessible pursuant to the Act can be viewed electronically at Council’s Principal Office and, where available, Council branches, during ordinary business hours, and copies can be obtained at those venues upon payment of a fixed fee in accordance with Council’s Fees and Charges Register. Many of these documents are also available for inspection on Council’s website, and may be provided electronically upon request.
4.7.2 The Council or the Council Committee will only order that a document associated with a discussion from which the public are excluded is to remain confidential if it is considered necessary in the broader community interest outlined in sub-clause 4.4 above.

4.7.3 Council or the Council Committee must not make an order to prevent:

(a) the disclosure of the remuneration or conditions of service of a Council employee after the remuneration or conditions have been set or determined; or

(b) the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by Council as to why a successful tenderer has been selected; or

(c) the disclosure of the amount or amounts payable by Council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, Council after the contract has been entered into by all parties to the contract; or

(d) the disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons adopted by Council as to why land has been acquired or disposed of by Council.

4.7.4 Requests to access Council and Council Committee documents can be made under the Freedom of Information Act 1991. Enquiries in relation to the process for seeking access to documents held by Council should be directed to Council’s Accredited Freedom of Information Officer.

4.8 Review of Confidentiality Orders

4.8.1 A confidentiality order made under Section 91(7) of the Act should specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed.

4.8.2 Any order that operates for a period exceeding twelve (12) months must be reviewed at least once in every year to ascertain whether the grounds for non-disclosure are still relevant and, if so, provide the relevant grounds and reasons for the minutes and/or documents remaining confidential.

4.8.3 If there are any items that require a revised or extended confidentiality order because the original order is about to expire or circumstances have changed, then the reviewing officer (usually the CEO or Director) will prepare a report to Council prior to the expiry date or event trigger about to be reached, making recommendations with respect to each item to be retained in confidence. Each item must then be addressed separately and assessed against Section 90(3) and Section 91(7) of the Act.

4.8.4 Council may delegate the power to undertake an annual review to the CEO or other officer (for matters where the CEO has a conflict of interest), but it cannot delegate the power to apply those matters in which the public can be excluded (Section 90(3) and 91(7) of the Act).
4.8.5 An order will lapse if the time or event specified has been reached or carried out. In that case, Council does not need to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public. Council will make such information publicly available on its website within a reasonable timeframe after it is available for inspection at the Principal Office of Council, and not being more than ninety (90) days after an order has lapsed.

4.8.6 Council may resolve to exclude the public from a meeting to discuss and undertake consideration of each of the recommendations arising from the review in confidence, subject to the application of the relevant ground under Section 90(3) of the Act, if those recommendations consider or refer to information or documents that are confidential, pursuant to a confidentiality order. This section must be applied separately to each item and not altogether.

4.8.7 If there is no longer any need for the confidentiality order then Council may delegate to the CEO or another officer (for matters where the CEO has a conflict of interest) the power to revoke an order made in accordance with Section 91(7) of the Act. Council or the Council Committee may also include in the resolution whether any delegation is given to the CEO or another officer to revoke the order and if relevant, any conditions associated with the delegation.

4.9. **Accountability and Reporting to the Community**

4.9.1 A report on the use of the confidentiality provisions in Sections 90(2) and 91(7) of the Act by Council and Council Committees will be included in Council’s Annual Report as required by Schedule 4 of the Act.

4.9.2 The report will include the following information, separately identified for both Council and Committees:

(a) Number of occasions each of the confidentiality provisions of Sections 90(2) and 90(3) were used;

(b) Number of occasions each of the confidentiality provisions of Sections 90(2) and 90(3) and Section 91(7) were used, expressed as a percentage of total agenda items considered;

(c) An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion;

(d) Number of occasions that information originally declared confidential has subsequently been made publicly available; and

(e) Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

4.10 **Complaints**

4.10.1 Should a person be aggrieved about public access to either a meeting or associated document then they should first raise their question or complaint in writing to the Chief Executive Officer - PO Box 867, Nuriootpa SA 5355 - who (in conjunction with the relevant officer who was responsible for the confidential report to Council) will provide an explanation of the application of the confidentiality provisions.
Attachment 2

4.10.2 Should this not resolve the matter then the aggrieved person may lodge an application for review of that decision under the Internal Review of Council Decisions Policy (see also Internal Review of Council Decisions Process). This Policy is available on Council’s website or from the Principal Office.

4.10.3 Additionally, any aggrieved person may also lodge a complaint with the Office of Public Integrity or the Ombudsman or any other relevant oversight body, who may carry out an investigation if it appears to the Ombudsman that Council or a Council Committee may have acted unreasonably to exclude members of the public from a meeting or prevented access to associated documents.

5. Supporting Process

Confidential Items Register
Register of Released Confidential Items

6. Related Policies and Codes

Internal Review of Council Decisions Policy and Process
Public Consultation Policy
Fees and Charges Register
Informal Gatherings Policy

7. Legislation and References

Freedom of Information Act 1991
Electronic Participation in Council Meetings (No 1) 2020 published in the South Australian Government Gazette on Tuesday, 31 April 2020
Local Government Act 1999
Local Government (Meeting Procedures) Regulations 2013
Local Government (Accountability and Governance) Amendment Act 2015
Local Government Association’s Model Code of Practice for Access to Council and Committee Meeting Documents
Local Government Association’s Confidentiality Guidelines
Meeting Procedures – Handbook for Council Members

8. Review

This Code shall be reviewed by Council, in consultation with the relevant stakeholders, within 12 months after the conclusion of each periodic election, and as required by legislation or Council need, to ensure that the principle of open government is being applied in a proper manner.

Prior to any alteration or substitution of this Code, Council must make copies available for inspection or purchase at its Principal Office and on its website and follow the relevant process set out in its Public Consultation Policy which is also available on Council’s website or from the Principal Office. However, noting that for the period of the operation of Notice No 1, the requirement for Council to consult with the public prior to adopting, altering or substituting the Code pursuant to section 92(5) of the Act is suspended. Further, Notice No 1 allows Elected Members to meet by electronic means in a place taken to be open to the public pursuant to section 90(1a) of the Act, to alter the Code or substitute a new Code, even if the existing Code prevents or inhibits public access to the meeting by electronic means.

9. Further Information
10. Policy Version History

<table>
<thead>
<tr>
<th>Version No</th>
<th>Approval Date</th>
<th>Description of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>20/08/2013</td>
<td>New Policy</td>
</tr>
<tr>
<td>1.1</td>
<td>21/07/2015</td>
<td>Terminology changes to reflect 2012 WHS act and Regulations.</td>
</tr>
<tr>
<td>1.2</td>
<td>13/06/2016</td>
<td>Changes from the Local Government (Accountability and Governance) Amendment Act 2015 to: Clause 3 definition: Informal Gatherings, clause 4.2.4 Public Access to Meetings; Matters from which Public can be excluded: clause 4.4.2 (c) and (d); clause 4.4.3 (a) (b) and (c); Use of Confidentiality Provisions: clause 4.6.8; 4.6.10; Review of Confidentiality Orders; clause 4.8.4 and 4.8.5.</td>
</tr>
<tr>
<td>1.3</td>
<td>20/08/2019</td>
<td>Policy reviewed and adopted, in accordance with section 92(2) of the Local Government Act 1999 – ie. within 12 months of the conclusion of the periodic election.</td>
</tr>
<tr>
<td>1.4</td>
<td>XX/XX/2020</td>
<td>Policy amended in line with the Notice Pursuant to Section 302(B) of the Local Government Act 1999 – Public Health Emergency – Electronic Participation in Council Meetings (No 1) gazetted on Tuesday 31 March 2020.</td>
</tr>
</tbody>
</table>

Appendix One  Regulatory Committees of Council

The following Committees provide a regulatory function of Council or it is appropriate in all the circumstances that they be bound and so are therefore bound under clause 4.1 of this Code:

- Audit Committee
- Strategic Planning and Development Policy Committee
1. **Purpose**

1.1 Section 90(8) of the Local Government Act allows informal gatherings or discussions to be held provided that the gathering or discussion does not obtain, or effectively obtain, a decision on a matter outside a formally constituted meeting of the council or council committee.

1.2 This Policy aims to ensure that the statutory requirements for openness and transparency in The Barossa Council’s (“Council’s”) decision-making are observed; while providing an opportunity for confidential discussions among Elected Members or Council committee members where this is warranted by the nature of the gathering or subject matter to be discussed.

1.3 On 15 March 2020, the Chief Executive of the South Australian Department for Health and Wellbeing, pursuant to section 87 of the South Australian Public Health Act 2011, declared that an emergency which threatens to cause the death of, or injury or other damage to the health of any person is occurring or about to occur in relation to the transmission of COVID-19, and declared the emergency to be a public health emergency. On 22 March 2020, the South Australian State Co-ordinator declared, pursuant to section 23 of the Emergency Management Act 2004, that a Major Emergency is occurring in respect of the outbreak of COVID-19 within South Australia.

On 31 March 2020, the Minister for Transport, Infrastructure and Local Government issued a Notice pursuant to section 302B of the Local Government Act (the “Act”) (the “Notice No 1”) varying or suspending the operation of the specified provisions of the Act as set out in Schedule 1 to the Notice No 1. Notice No 1 commenced operation on 31 March 2020.

1.4 For the period that Notice No 1 has effect (as provided for in Notice No 1), this Informal Gatherings Policy is altered as set out in this Policy where indicated, and apply to all informal gatherings of Council. The alterations have effect notwithstanding any other provision in this Informal Gatherings Policy to the contrary.

1.5 The alterations to this Policy are made in line with the Notice No 1 and Council’s Code of Practice for Access to Council and Committee Meetings and Documents.
Attachment 3

2.1 This Policy applies to informal gatherings of the Council or a Council committee, including designated informal gatherings or discussions.

2.2 An ‘informal gathering’ is a gathering or discussion to which all Council members or Council committee members (as the case may be) are invited, even if not all attend.

2.3 The Local Government (General) Regulations 2013 define a ‘designated informal gathering or discussion’ as:

   an event organised and conducted by or on behalf of the Council or Chief Executive Officer to which members of the Council or Council committee (as the case may be) have been invited and that involves discussion of a matter that is, or is intended to be, part of the agenda for a formal meeting of the Council or Council committee.

2.4 An informal gathering which does not involve discussion of a matter that is, or is intended to be, part of the agenda for a formal meeting of the Council or Council committee, is not a ‘designated informal gathering or discussion’.
3.1A Attendance at Informal Gatherings and Participation by Electronic Means

3.1A.1 For the period of operation of Notice No 1, Elected Members may participate in an informal gathering of the Council by electronic means. An Elected Member participating in an informal gathering by electronic means is taken to be present at the informal gathering provided that the Elected Member:

- can hear all other Elected Members present at the informal gathering; and
- can be heard by all other Elected Members present at the informal gathering.

3.1A.2 For the period of the operation of Notice No 1, where:

- an Elected Member is to participate in an informal gathering by electronic means; and
- the electronic means has the functionality to allow the Elected Member to participate in the informal gathering by being heard but not seen or by being both seen and heard; and
- the electronic means of the Council has the functionality to allow the Elected Member to be heard but not seen or to be both seen and heard,

the Elected Member must participate by being both seen and heard.

3.1B Public Access to Designated Informal Gatherings

3.1B.1 For the period of operation of Notice No 1, public access to designated informal gatherings may be provided in accordance with Sections 90(1a) and 90(b) of the Local Government Act 1999, as varied by Notice No 1, however, as outlined in this Policy, minutes will not be recorded.

3.1 Purpose of informal gatherings or discussions

3.1.1 The Local Government Act sets out the following examples of informal gatherings or discussions:

- planning sessions associated with the development of policies or strategies
- briefing or training sessions
- workshops
- social gatherings to encourage informal communication between Members or between Members and staff.

3.1.2 Informal gatherings of Elected Members or Council committee members (either with or without Council staff) are, by their nature, non-compulsory. However, all Elected Members and Council committee members are encouraged to attend relevant informal gatherings, particularly where the informal gathering or discussion is intended to provide history, context or additional information to Elected Members or Council committee members.

3.1.3 Section 90(8) of the Local Government Act allows informal gatherings or discussions to be held provided that the gathering or discussion does not obtain, or effectively obtain, a decision on a matter outside a formally constituted meeting of Council or Council committee.

3.2 Purpose of designated informal gatherings or discussions

3.2.1 Designated informal gatherings or discussions may be used to:
Attachment 3

- discuss issues that involve strategy or policy or other matters of Council administration
- brief Elected Members or Council committee members on issues relating to matters which will be included on the agenda of a formal meeting of the Council or Council committee.

3.2.2 Designated informal gatherings and discussions will be used solely for the purpose of information sharing and not for the purpose of determining, or effectively determining, matters which should be determined at a formally constituted meeting of the Council or Council committee.

3.3 Designated informal gatherings or discussions to be open to the public, except in special circumstances

3.3.1 Designated informal gatherings or discussions will be held at a place open to the public, except where the designated informal gathering or discussion has been declared by the Council or Chief Executive Officer to be a ‘confidential informal discussion’.

For the period of operation of Notice No 1, refer clauses 3.1A and 3.1B of this Policy.

3.3.2 The Council or Chief Executive Officer may, on a case-by-case, declare a designated informal gathering or discussion to be a ‘confidential informal discussion’ where the designated informal gathering or discussion is either a:

- planning session of a general or strategic nature; or
- briefing session relating to information or a matter of a confidential nature within the ambit of section 90(3) of the Local Government Act (see attachment).

3.3.3 An informal gathering or discussion of the Council or a Council committee which is not a designated gathering or discussion will not be open to the public, unless otherwise determined by the Council or Chief Executive Officer.

3.4 Processes applying to designated informal gatherings or discussions

3.4.1 Both the Chief Executive Officer and the Council are responsible for ensuring designated informal gatherings or discussions are conducted in accordance with the Local Government Act.

3.4.2 Designated informal gatherings or discussions are not subject to the procedural meeting requirements of the Local Government Act and Local Government (Proceedings at Meetings) Regulations 2013.

For the period of operation of Notice No 1, refer to the Notice for specific provisions that have been varied or suspended, and alternative requirements, arrangements, procedures and conditions.

3.4.3 Designated informal gatherings or discussions will be chaired by the Mayor, or in his absence, the Deputy Mayor or in his/her absence, an Elected Member appointed at the meeting by the Elected Members present. The Chair is responsible for ensuring that the purpose, intent and outcomes of the designated informal gatherings or discussions are consistent with section 90 of the Local Government Act.

3.4.4 Formal minutes of a designated informal gathering or discussion will not be recorded. Notes of a designated informal gathering or discussion may be tabled at the Council meeting following the designated informal gathering or discussion.
3.4.5 If a designated informal gathering or discussion has been declared to be a 'confidential informal discussion', then the designated informal gathering or discussion may be attended by Elected Members, the Chief Executive Officer and any other person invited to attend by the Council or the Chief Executive Officer.

3.4.6 If a confidential informal discussion declaration has been made in respect of only some of the matters to be discussed at a designated informal gathering or discussion, then these confidential matters will be scheduled to be discussed at the end of the agenda for the designated informal gathering or discussion. The designated informal gathering or discussion will be open to the public until immediately prior to the discussion on confidential matters commencing, unless visitors to the meeting form part of the confidential informal discussion and the Mayor or Chief Executive Officer has approved that the scheduled item can be undertaken earlier on the agenda.

For the period of operation of Notice No 1, refer clauses 3.1A and 3.1B of this Policy.

3.4.7 Should a matter be referred to the designated informal gathering for urgent discussion outside of the published agenda, it will be dealt with as an “Other Business” item.

3.5 Publication of information relating to designated informal gatherings or discussions

3.5.1 For all designated informal gatherings or discussions, the following information will be published on the Council’s website at www.barossa.sa.gov.au:

- the place, date and time at which the designated informal gathering or discussion will be held;
- the matter that is to be discussed at the designated informal gathering or discussion;
- whether or not the designated informal gathering or discussion is to be held at a place open to the public.

3.5.2 Where a confidential informal discussion declaration applies to a designated informal gathering or discussion, the reason for the designated informal gathering or discussion being held entirely or partially in confidence must be published on Council’s website.

4. Supporting Process

Complaint Handling under the Code of Conduct for Council Members

5. Related Policies and Codes

Code of Practice for Access to Council and Committee Meetings and Associated Documents
Code of Conduct for Council Members

6. Legislation and References

Local Government Act 1999 Section 90(8a)-(8e)
Local Government (General) Regulations 2013
Electronic Participation in Council Meetings (No 1) 2020, published in the South Australian Government Gazette on Tuesday, 31 March 2020

7. Review

This Policy will be reviewed by the Council in consultation with the relevant stakeholders, at the next periodic election or more frequently if legislation or Council’s need changes.
8. Further Information

This Policy is available on Council’s website at www.barossa.sa.gov.au. It can also be viewed electronically at Council’s principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

Any complaint in relation to this Policy or its application should be forwarded in writing addressed to the Chief Executive Officer, PO Box 867, Nuriootpa SA 5355 or barossa@barossa.sa.gov.au.

10. Policy Version History

<table>
<thead>
<tr>
<th>Version No:</th>
<th>Approval Date:</th>
<th>Description of Change:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>16/02/2016</td>
<td>New Policy, February 2016</td>
</tr>
<tr>
<td>3.0</td>
<td>24/01/2017</td>
<td>Policy revised following legal advice obtained by the Local Government Association on the definition of ‘informal gatherings’.</td>
</tr>
<tr>
<td>4.0</td>
<td>18/12/2018</td>
<td>Policy reviewed and adopted following general elections.</td>
</tr>
<tr>
<td>5.0</td>
<td>XX/XX/2020</td>
<td>Policy revised in line with the Electronic Participation in Council Meetings (No 1) 2020 published in the South Australian Government Gazette on Tuesday, 31 March 2020.</td>
</tr>
</tbody>
</table>

9. Definitions

| Electronic  | Includes a telephone, computer or other electronic device used for communication. |
| Notice No 1 | The Notice Pursuant to Section 302(B) of the Local Government Act 1999 – Public Health Emergency – Electronic Participation in Council Meetings (No 1) issued by the Minister for Transport, Infrastructure and Local Government and gazetted on Tuesday 31 March 2020. |
| The Regulations | Local Government (Procedures at Meetings) Regulations 2013. |

109. Attachment

Information and matters within the ambit of section 90(3) Local Government Act

(a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

(b) information the disclosure of which:

(i) 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; and

(ii) would, on balance, be contrary to the public interest;

(c) information the disclosure of which would reveal a trade secret;
Attachment 3

(d) 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;

(e) matters affecting the security of the Council, members or employees of the Council, or Council property, or the safety of any person;

(f) 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;

(g) matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;

(h) legal advice;

(i) information relating to actual litigation, or litigation that the Council or Council committee believes on reasonable grounds will take place, involving the Council or an employee of the Council;

(j) information the disclosure of which:
   (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council); and
   (ii) would, on balance, be contrary to the public interest;

(k) tenders for the supply of goods, the provision of services or the carrying out of works;

(l) information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Development Plan Amendment proposal relating to the amendment is released for public consultation under that Act;

(m) information relevant to the review of a determination of a Council under the Freedom of Information Act 1991.
COUNCIL
EXECUTIVE SERVICES
CHIEF EXECUTIVE OFFICER REPORT
21 APRIL 2020

7.2.1 DEBATE – CHIEF EXECUTIVE OFFICER

7.2.1.3
SECTION 270 OF THE LOCAL GOVERNMENT ACT – INTERNAL REVIEW OF COUNCIL DECISION - MATTER OF KEIL ESTATE INDENTURE DEED EXECUTION
B10682

Author: Governance Advisor

PURPOSE
Council is asked to receive and consider the CEO’s findings, applicants’ submissions and all other correspondence between Council officers and the applicants, as regards an application made to review Council’s decision of 28 January 2020 to authorise the Mayor and Chief Executive Officer to sign, seal and date the Indenture Deed associated with the Chateau Tanunda land swap.

RECOMMENDATION 1


Following consideration of the Confidential agenda item 8.1.1 titled ‘Legal Advice to Council for Council’s Consideration – Section 270 of the Local Government Act – Internal Review’:

RECOMMENDATION 2

That the matter relating to the Council meeting agenda of 21 April 2020 Item 7.2.1.3 – Section 270 Local Government Act – Internal Review of Council Decision – Matter of Keil Estate Indenture Deed Execution be lifted from the table for discussion.

RECOMMENDATION 3

Council having received and considered:

(i) Letter to the applicants dated 6 February 2020, from Council’s Governance Advisor providing clarification on the issues raised in the application letter (Attachment 1):
Letter dated 20 February 2020, from the Chief Executive Officer to the applicants setting out his findings and seeking comment from the applicants on his findings (Attachment 2);

The response from the applicants’ legal representative dated 4 March 2020 to the Chief Executive Officer’s letter dated 20 February 2020 (Attachment 3);

Further response from the Chief Executive Officer to the applicants’ legal representatives confirming that the matter will be presented at Council’s next available meeting on 21 April 2020; (Attachment 4);

The agenda and associated minutes relating to item 7.2.1.6 of the Council meeting of 28 January 2020, being the Chief Executive Officer Report titled ‘Indenture Deed – Keil Estate’ and all attachments (Attachment 5);

The agenda and associated minutes relating to item 7.2.1.2 of the Council meeting of 17 December 2019, being the Chief Executive Officer Report titled ‘Section 270 Local Government Act – Internal Review of Council Decision – Matter of Land Exchange with Chateau Tanunda – Basedow Road Tanunda’ and all attachments (Attachment 6);

The Ombudsman’s Report on Kangaroo Island Council dated 9 March 2018 (Ombudsman reference 2017/06921) (Attachment 7); and

Supreme Court Judgment: SB, MF v Minister for Education and Child Development & Anor [2017] SASC 161 (Attachment 8);

Council’s Internal Review of Council Decision Policy and Process (Attachment 9);

the application letter dated 4 February 2020 seeking a review, pursuant to section 270 of the Local Government Act 1999, of Council’s decision of 28 January 2020 to authorise the Mayor and Chief Executive Officer to sign, seal and date the Indenture Deed associated with the Chateau Tanunda land swap (Attachment 10); and

receive and note the applicants’ response dated 13 February 2020, to the Governance Advisor’s letter dated 6 February 2020 (Attachment 11);

and Council having given due consideration to whether the application for a review of Council’s decision at its meeting held on 28 January 2020 authorising the Mayor and CEO to execute the Keil Indenture Deed document, appears to be frivolous:

(1) That being satisfied that the application received on 4 February 2020 and made by Ms Shelley James and Mr Robbert Sennef appears to be frivolous, Council determines that the application be refused; and

(2) That the Chief Executive Officer notify the applicants of Council’s decision.

RECOMMENDATION 4

(1) That Council receive and note that there is a typographical error in the report and attachments associated with Council meeting agenda item 7.2.1.6 of 28
January 2020, being the Chief Executive Officer Report titled ‘Indenture Deed – Keil Estate’ (Attachment 5), the error being that the Certificate of Title reference to the land owned by Chateau Tanunda (Ivivi Pty Ltd) was incorrectly stated and should have been described as a portion of Allotment 74 in Deposited Plan 85229 and described in Certificate of Title 5962 Folio 946;

(2) That Council direct the Chief Executive Officer to correct the typographical error in any documents associated with the land swap that have not been executed to-date, noting that any attachments to those documents containing copies of the Certificate of Title or plan contain an accurate description of the land being referred to in the documents.

REPORT

Background
On 20 August 2019, Council resolved to dispose of Council Land (being Allotments 11 and 12 Basedow Road, Tanunda – Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824) in exchange for a portion of land owned by Chateau Tanunda (being a portion of Allotment 74 in Deposited Plan 85229 and described in Certificate of Title 5962 Folio 946) and proceed with commercial arrangements:

(1) Being satisfied with the Valuation Report approves the draft Contract for the Exchange of Land as presented at Attachment 2 and authorise the Chief Executive Officer to make further changes and authorise the Agreement on condition that:

a. Chateau Tanunda (Ivivi Pty Ltd) shall at least transfer the portion of land being certificate of title volume 5962 folio 146 of approximately 8,241 square metres and $25,000 to Council to balance the market values of the land; and

b. Any stamp duty costs shall be borne by Chateau Tanunda (Ivivi Pty Ltd);

(2) Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

(3) Authorise the Chief Executive Officer to proceed with settlement of the land exchange after completion of the Contract for the Exchange of Land under resolution 1, and that the said land be excluded from community land status pursuant to Section 193(4) of the Local Government Act, until the Indenture Deed is settled under resolution 2 and that a final report be brought to Council for rededication of the land under Section 193(5) of the Local Government Act and application to an appropriate community land management plan.

Seconded Cr Hurn

CARRIED 2018-22/279
However, due to a procedural error, the Indenture Deed referred to in paragraph (2) of the above Council resolution was presented to Council at its 28 January 2020 meeting, and Council resolved as follows (hereinafter referred to as the “Decision”):

**MOVED** Cr de Vries that Council authorise the Mayor and Chief Executive Officer to sign, seal and date the Deed to finalise the matter, as presented at Appendix 1.

**Seconded** Cr Johnstone **CARRIED 2018-22/436**

On 4 February 2020, Council administration received a request from the applicants, Ms Shelley James and Mr Robbert Sennef, to conduct an internal review of this decision, exercising their right to do so under Council’s *Internal Review of Council Decision Policy* and *Process* (the “Policy” and “Process” respectively). The application letter is presented at [Attachment 10](#) to this report.

During the preliminary assessment of the application by the Internal Review Contact Officer (Council’s Governance Advisor) in accordance with the Policy and Process, the following was noted:

- The matter to which the application relates has been reviewed multiple times, with the most recent application having been considered and determined by Council at its meeting on 17 December 2019;
- The main grounds for why the applicants believe the Decision is wrong were addressed by the Mayor in a letter to the applicants dated 30 January 2020;

Subsequently, prior to proceeding with the application, the Governance Advisor wrote to the applicants to provide further clarification on the issues raised in the application, with a view to assisting the applications to document their reasons for seeking an internal review, and to ensure that the right avenue for resolution was explored. The letter from the Governance Advisor to the applicants is attached hereto as [Attachment 1](#).

The applicants responded by letter received 13 February 2020 ([Attachment 11](#))

**Introduction**

The Policy and Process provide for applications pursuant to section 270 of the *Local Government Act 1999*, to be refused if they appear to be frivolous or vexatious ([Attachment 9](#)).

The term ‘frivolous’ is defined by the Ombudsman in report on the Kangaroo Island Council dated 9 March 2018 ([Attachment 7](#) - refer page 9 of the document - footnote) to mean not warranting serious attention. The Supreme Court decision to which the Ombudsman referred when interpreting ‘frivolous’ is attached hereto as [Attachment 8](#).

**Discussion**

By letter dated 20 February 2020, the Chief Executive Officer wrote to the applicants notifying them that in his view, the application is frivolous, and that the application and correspondence between Council officers and the applicants would be presented to Council for consideration of his findings. As a matter of procedural fairness, the applicants were provided an opportunity to provide submissions on the Chief Executive Officer’s findings, as to why they think the application should be refused.
In his letter at Attachment 2, the Chief Executive Officer sets out the reasons why he views the application to appear frivolous:

- The matter to which the application related has been reviewed multiple times - the ‘key decision’ that the Application relates to is the decision made by Council at its Special meeting on 26 April 2018 to revoke the community land classification over Allotments 11 and 12 Basedow Road. This ‘key decision’ was reviewed under section 270 of the Act and was subject to a complaint to the Ombudsman. Since then, several review applications have been lodged by the applicants and their advocate, in respect of decisions relating to the land swap and Barossa Culture Hub;

- Council had not contravened the Local Government Act 1999 in relation to meeting agenda notification periods – this had been addressed in the Governance Advisor’s letter (Attachment 1) and in a letter by the Mayor to the applicants dated 30 January 2020.

- The applicants’ allegation that their previous review application has not concluded is factually wrong, as it was considered by Council at its meeting on 17 December 2019 (Attachment 6). Further use of public funds in this matter is unreasonable, given the circumstances and that the application does not raise any new matters.

By letter dated 4 March 2020, the applicants’ legal representative made a submission on the applicants’ behalf in response to the Chief Executive Officer’s findings as to why the application should be refused. The submission is attached for Council’s consideration at Attachment 3 to this report.

The Elected Body should note that it has been identified that there was a typographical error made in the report and attachments associated with Council meeting agenda item 7.2.1.6 of 28 January 2020, being the Chief Executive Officer Report titled ‘Indenture Deed – Keil Estate’, the being error being that one digit in the Certificate of Title reference to the land owned by Chateau Tanunda (Ivivi Pty Ltd) was incorrectly stated and should have been described as a portion of Allotment 74 in Deposited Plan 85229 and described in Certificate of Title 5962 Folio 946. The Folio number was typed as ‘146’ instead of ‘946’.

During the course of this matter, the Elected Body has proceeded on a clear understanding of the location of the land and respective sizes of the parcels in question. The information that the Elected Body has received and considered has included site maps and copies of the relevant Certificates of Title, which correctly identified the subject land.

The Elected Body is also asked to take into account that the issue of land size raised in the applicants’ submission at Attachment 3 was addressed in the external reviewer report and considered by Council at its meeting on 20 August 2019.

Should Council consider that the application is not frivolous, it should instruct the Chief Executive Officer appropriately with the following recommendation to be considered in that case in place of the recommendation in the report:

(1) That the Council is not satisfied that the application is not frivolous;
(2) That Council directs the Chief Executive Officer to appoint an external reviewer to carry out a review of the Decision, in accordance with Council’s Internal Review of Council Decision Policy and Process; and

(3) That the Chief Executive Officer notify the applicants of Council’s decision.

Summary and Conclusion
Council is asked to receive and consider the Chief Executive Officer’s findings, the applicant’s submission and all other attachments to this report and either determine that the application is frivolous and refuse the application, or that the application is not frivolous and direct the Chief Executive Officer to proceed with the application pursuant to the Policy and Process.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1 – Letter to the applicants dated 6 February 2020, from Council’s Governance Advisor (20/19421);

Attachment 2 – Letter dated 20 February 2020, from the Chief Executive Officer to the applicants (20/19423);

Attachment 3 – Letter from the applicants’ legal representative dated 4 March 2020 (20/19311);

Attachment 4 – Letter from the Chief Executive Officer to the applicants’ legal representatives dated 12 March 2020 (20/13442);

Attachment 5 – The agenda report and associated minutes relating to item 7.2.1.6 of the Council meeting of 28 January 2020, being the Chief Executive Officer Report titled ‘Indenture Deed – Keil Estate’ and all attachments (20/19249 and 20/19252);

Attachment 6 – The agenda report and associated minutes relating to item 7.2.1.2 of the Council meeting of 17 December 2019, being the Chief Executive Officer Report titled ‘Section 270 Local Government Act – Internal Review of Council Decision – Matter of Land Exchange with Chateau Tanunda – Basedow Road Tanunda’ and all attachments (19/74366 and 19/75502);

Attachment 7 – The Ombudsman’s Report on Kangaroo Island Council dated 9 March 2018 (20/19424);

Attachment 8 – Supreme Court Judgment: SB, MF v Minister for Education and Child Development & Anor [2017] SASC 161 (20/19425)

Attachment 9 – Council’s Internal Review of Council Decision Policy and Process (20/19427 and 20/19429)

Attachment 10 – Application letter dated 4 February 2020 seeking a review, pursuant to section 270 of the Local Government Act 1999, of Council’s decision of 28 January 2020 (20/19312);

Attachment 11 – Applicants’ letter dated 13 February 2020 (20/19422).
How We Work – Good Governance

Corporate Plan
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, Sections 270, 201(2) and 49(a1)

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

The total cost of the review will be reported via the annual reporting requirements.

COMMUNITY CONSULTATION
Community consultation for the revocation of community land status over the Council Land occurred in accordance with Section 194 of the Local Government Act 1999 and Council’s Public Consultation Policy and was further validated by an Independent Assessment conducted by Kelley Jones Lawyers. Approval to proceed with final consideration by Council was also received from the Minister’s delegate.

The Barossa Regional Culture Hub draft Master Plan also underwent public consultation, and the results of the consultation were presented to Council at its meeting on 27 June 2018, whereupon Council endorsed the Draft Master Plan subject to amendment and budget considerations, and determined to move ahead with the next stages of the project.

Both Council decisions relating to the revocation of community land status and Barossa Culture Hub matters, made by Council at its Special Meeting of 26 April 2018 and 27 June 2018 respectively, have previously been reviewed pursuant to Section 270 of the Local Government Act 1999, with the current applicants initiating the review of the community land status revocation decision of 26 April 2018. An external reviewer was appointed to conduct an investigation and present their recommendations to Council, in both cases. In both instances, Council resolved that the original decision made by Council was the best and/or preferable decision and reaffirmed the original decisions.

It should also be noted that the Ombudsman’s office received complaints in relation to those matters, and made an assessment that:

- the conclusion reached in relation to the section 270 review was reasonably open to the reviewer;
- in relation to the complaints received, based on the evidence available, it did not appear that Council had acted in a way that was unlawful, unreasonable or wrong within the meaning of the Ombudsman Act 1972.

Since then, the applicants have made a number of further review applications with respect to Council decisions relating to the land swap and Culture Hub matters, with the applicants’ most recent review being considered by Council at its meeting on 17 December 2019.
6 February 2020

Shelley James and Robbert Sennel

Dear Shelley and Bob,

SECTION 270 INTERNAL REVIEW – KEIL ESTATE INDENTURE DEED

I refer to, and acknowledge receipt of your application to review a decision of Council pursuant to section 270 of the Local Government Act 1999 (the “Act”), received at the Nuriootpa Council office on 4 February 2020. The decision you are seeking a review of is the decision of Council at its meeting on Tuesday, 28 January 2020 relating to the meeting agenda item 7.2.1.6 – Indenture Deed – Keil Estate (the “Decision”), the Decision being:

MOVED Cr de Vries that Council authorise the Mayor and Chief Executive Officer to sign, seal and date the Deed to finalise the matter, as presented at Appendix 1.

Seconded Cr Johnstone CARRIED 2018-22/436

Preliminary assessment of your application

Internal reviews under section 270 of the Act are governed by Council’s Internal Review of Council Decision Policy and Process (the “Policy” and “Process” respectively - copies enclosed). I am the Internal Review Contact Officer (IRCO) for The Barossa Council. Pursuant to clauses 4.2.3 and 4.4.1 of the Process, upon receipt of an application for internal review, I am required to assess whether the application falls under the scope of the Policy and Process, and ‘what actions have already been taken to try and resolve the matter’.

Upon assessing your application, I have noted that the matter to which your application relates has been reviewed multiple times, with your most recent review application having been considered and determined by Council at its meeting on Tuesday, 17 December 2019. Further, I also note that the main grounds for why you believe the Decision is wrong, have already been addressed by the Mayor in his letter of 30 January 2020.

Based on the above and the nature of the matters you have raised, prior to proceeding your application in accordance with the Policy and Process, I have provided further clarification on the matters raised in your application, with a view to assisting you in documenting your reasons for seeking an internal review, and to ensure that we explore the right avenue for resolution of the matter.

Clarification of matters raised in your application

In your application letter, you have set out nine grounds for why you believe the Decision is wrong. Below, I have addressed and provided further information on those issues you have raised.
1. The Period of Notice Provided for the Addendum Agenda Item 7.2.1.6 – Indenture Deed – Keil Estate

In your application letter, you allege that the Addendum Agenda Item 7.2.1.6 – Indenture Deed – Keil Estate (the “Addendum”) was published as a late agenda item on The Barossa Council website on the morning of Thursday, 23 January 2020, in contravention of the minimum notice requirements of the Local Government Act 1999.

Section 84 of the Act requires the Chief Executive Officer to publicly display and publish the notice and agenda for a Council meeting on the website at least three clear days before the date of an ordinary Council meeting. The Local Government (Procedures at Meetings) Regulations 2013 (“Regulations”), at Regulation 3(2) defines a “clear day” to include Saturdays, Sundays and public holidays, but exclude the day on which the notice is given and the day on which the meeting occurs. According to the Act and Regulations, “clear day” does not refer to business days. Please find enclosed an extract of the relevant sections of the Act and Regulations for your information.

I also note that our records show that the Addendum was publicly displayed on Wednesday, 22 January 2020, and uploaded to our website on Thursday, 23 January 2020 at 8.19 am. If we go by the latest publication date of Thursday, 23 January 2020, the resulting notification period is still 4 clear days, which satisfies the minimum notification period of the Act and Regulations.

2. Conclusion of the internal review of the Council decision of 20 August 2019 on a related matter

Your previous application relating to a decision of the Council at its meeting on 20 August 2019 was considered by Council at its meeting on 17 December 2020. A determination letter dated 20 December 2019 was provided to you.

The Policy and Process do not consider or treat the investigation of a complaint by the Ombudsman, or any other external agency, as a part of Council’s internal review mechanism. The right for an applicant to make a complaint to the Ombudsman is available at any time, and is an independent process to Council’s internal review mechanism.

3. Letter to the Mayor

I note that the matters raised in your letter to the Mayor were addressed in his response to you dated 30 January 2020. I have also provided further clarification with respect to the definition of “clear days” in item 1, above.

4. Execution of the Indenture Deed

With respect to the conclusion of the previous internal review, please refer to item 2 above.

I also note that the Decision you seek to have reviewed relates to Council approving the execution of the Indenture Deed by the Mayor and Chief Executive Officer under seal. It does not relate to the witnesses used in executing the document. It is not clear how the concerns you have raised in this respect presents a ground for why you believe the Decision is wrong nor is the execution of the document by the independent party a Council decision.

5. Mayor’s Response

The matters you have raised at item 5 of your application letter are addressed at items 1, 2, and 3 above.

6. Valuation Report

The Decision you seek to have reviewed is the decision of Council at its meeting on 28 January 2020, with respect to approval for the execution of the Keil Indenture Deed. The Valuation Report you have referred to was an attachment to the Council meeting agenda item of 20 August 2019, a matter you have previously sought review of. If you are unhappy with the determination of your previous internal review, you are entitled to make a complaint at any time to the Ombudsman.

7. The size of the land subject to the land swap

43-51 Tanunda Road (PO Box 867) Nuriootpa SA 5355 Phone (08) 8563 8444
Email: barossa@barossa.sa.gov.au | www.barossa.sa.gov.au | ABN: 47 749 871 215
The matter you have raised with respect to the sizes of the land subject to the land swap was part of your previous internal review application (i.e. August meeting decision). The issue was addressed by the external reviewer who conducted the review of your last application, Ms Felice D’Agostino of Norman Waterhouse Lawyers, in her external review report. This report is publicly available as part of the agenda for the 17 December 2019 Council meeting, a copy of which was provided to you with the determination letter of your last matter, dated 20 December 2019.

8. Discussion or Debate at Council meeting

Following the determination of your internal review application of a decision of Council of 26 April 2018, you made a complaint to the Ombudsman regarding the outcome of the determination. In your complaint, you raised concerns regarding the level of discussion by Elected Members and was addressed in the Ombudsman’s report. In his report, which was presented to Council at its meeting on 18 September 2018, the Ombudsman states ‘[y]ou complain that only one elected member spoke in the meeting regarding this item and there was no debate... I comment that the fact that there was no debate is not sufficient to substantiate a finding that each individual council member failed to have due consideration of the material which was provided to them for consideration’. The Ombudsman’s report is available in the Council agenda associated with that meeting.

9. Appeal avenues

It is not clear how this item sets out why you believe the Decision was wrong.

Having provided the above clarification and additional information, I ask whether you wish to pursue your internal review application. In the event that you do wish to pursue the matter, in accordance with the Policy and Process, it will be necessary for the Chief Executive Officer to consider whether your application is frivolous or vexatious.

I ask that you please respond to me in writing, or in the event that you have any questions.

Sincerely,

[Signature]

Rugiyya Martin
Governance Advisor
Internal Review Contact Officer
The Barossa Council

Enc. Internal Review of Council Decision Policy
Internal Review of Council Decision Process
Extract of the Act and Regulation relating to definition of "clear days"
THE BAROSSA COUNCIL
INTERNAL REVIEW OF COUNCIL DECISION POLICY

<table>
<thead>
<tr>
<th>Corporate Plan Link:</th>
<th>6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements.</th>
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<td>Chief Executive Officer Previous Approval Date(s): 20/11/2012; 21/10/2015; 17/10/2017</td>
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<td>HPE Content Manager Ref:</td>
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1. Purpose

1.1 The Barossa Council ("Council"), which includes its committees, employees, contractors and Elected Members, make decisions which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

1.2 Council is committed to open, responsive and accountable government. This includes providing processes by which those who believe they have been adversely affected by a Council decision can have their complaints considered.

1.3 Section 270 of the Local Government Act 1999 ("the Act") requires Council to maintain policies, practices and procedures for dealing with requests for service and complaints including a procedure about "the review of decisions of:

- the council;
- employees of the council;
- other persons acting on behalf of the council."

Accordingly, this Policy provides for a procedurally fair, consistent and structured review for any person alleging adverse impact as a result of a decision made by Council or its delegates.

2. Scope

2.1 When decisions are subject to review under this Policy

2.1.1 This Policy and its supporting Internal Review of a Council Decision Process commence where a written application for an internal review of a decision, pursuant to Section 270 of the Act is received by Council, or a complaint

Internal Review of Council Decision Policy approved by Council on 20 August 2019

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escalates in accordance with Council’s Customer Service Policy and supporting Processes.

2.1.2 Decisions of Council, employees of Council and other persons acting on behalf of Council, may be subject to review under this Policy.

2.1.3 A decision is made when a matter, issue or query is actually determined. Once a matter, issue or query is determined, the decision may be open to review in accordance with this Policy.

2.1.4 The nature of this review is both a merits review and process review which could lead to the original decision being affirmed, varied or revoked.

2.2 When decisions are not subject to review under this Policy

2.2.1 Council action not a decision

Not all actions by Council, its employees or another person acting on behalf of Council will be a decision - and therefore cannot be reviewed. For example, actions taken during the process of decision-making (i.e. investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions.

2.2.2 Other legislation governs review of specific type of decision

Some decisions made by Council, its employees or on behalf of Council are subject to other review or appeal processes set out in legislation. This Policy cannot override or operate inconsistently with those legislative processes. So where legislation provides for the review of, or appeal from, a type of decision, a decision of that type will not be reviewed under this Policy.

Examples include:

a) objections to valuations made by the Council;

b) appeals against orders made pursuant to Section 254 of the Local Government Act 1999;

c) appeals against the issuing of litter abatement notices under the Local Nuisance and Litter Control Act 2016;

d) appeals against destruction and control orders issued under the Dog and Cat Management Act 1995;

e) review of an expiation notice under the Expiation of Offences Act 1996; and


2.2.3 Other legislation requires specific internal review process

Where legislation provides for a specific way to conduct an internal review process, that process will apply rather than this Policy.

For example, internal review of a determination under the Freedom of Information Act or withdrawal of an expiation notice issued by the Council
under Section 16 of the Expiation of Offences Act will be conducted in accordance with those legislative processes.

2.2.4 Review cannot occur in the circumstances

Some decisions made by Council, its employee or on behalf of Council are not subject to any review according to either express legislation or by necessary implication where a decision has an immediate effect under legislation from the time the decision is made.

For example, some development approvals under the Development Act are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by Council.

2.2.5 Other Council processes govern review

In the absence of legislation, where other Council protocols require certain appeal processes, those processes will apply rather than this Policy and supporting process. For example:

- Employment related matters which are conducted in accordance with the Council’s Enterprise Agreement and Human Resources Framework
- Commonwealth Home Support Program Services, where complaint processes are defined in relevant contracts.

2.2.6 Matters that are frivolous or vexatious, related to employment, or where the applicant does not have sufficient interest in the matter

In accordance with section 270(4) of the Local Government Act 1999, Council or a person assigned to consider the application may refuse to consider an application for review if:-

- The application is made by an employee of Council and relates to an issue concerning his or her employment – these types of matters will be managed in accordance with Council’s Human Resource Management Policy, and associated policies and processes; or
- It appears that the application is frivolous or vexatious; or
- The applicant does not have a sufficient interest in the matter.

2.3 Alternative methods of resolution

While Council prefers to work with applicants to resolve requests for internal review promptly and effectively, an applicant will always retain the right to seek other forms of resolution, such as to contact the Ombudsman or the Office for Public Integrity, or to take legal action at any time.
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4. Policy Statement

4.1 This Policy is based on five key principles:

- **Fair treatment**: which requires impartiality, confidentiality and transparency at all stages of the process;
- **Accessibility**: through broad public awareness about Council’s policies and processes and a range of contact options, any person can contact Council;
- **Responsiveness**: through the provision of sufficient resources, well trained staff and ongoing review and improvement of Council’s system;
- **Efficiency**: through prompt resolution at an organisational level that reflects the level of complexity; and
- **Co-ordinated approach across Council teams** where the matter under internal review overlaps the responsibilities of various teams.

4.2 Additionally, Council encourages Alternative Dispute Resolution where appropriate and such methods will be undertaken in accordance with Section 271 of the Local Government Act.

4.3 Application under this Policy relating to Rates

If Council receives an application for an internal review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with promptly. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the Local Government Act (e.g. remission or postponement of payment, issuing of fines and interest, particular land use categorisation).

Council cannot review its decision relating to the settling and declaration of rates.

4.4 Remedies

4.4.1 Where the internal review upholds the applicant’s complaint, a remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy chosen will be proportionate and appropriate to any issues identified and take account of what the applicant is seeking as an outcome.

4.4.2 As a general principle, the applicant will, so far as reasonably practicable, be put in the position he or she would have been in, had the original decision not been made.

4.4.3 Only the Elected Body itself and / or the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial and this will only occur after consultation with the Local Government Association’s Mutual Liability Scheme.
5. **Supporting Process**

Internal Review of Council Decision Process

6. **Related Policies**

Customer Service Policy

7. **Legislation and References**

Sections 270 and 271 Local Government Act 1999
Ombudsman SA: Right of Review: A Guideline Policy and Procedure for Councils (June 2017)

8. **Review**

8.1 This Policy will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council’s need changes.

9. **Further Information**

9.1 This Policy is available on Council’s website at [www.barossa.sa.gov.au](http://www.barossa.sa.gov.au). It can also be viewed electronically at Council’s principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

9.2 Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate officer according to Council’s Complaints Handling Policy (see clause 9.1 above for availability).

Signed: ..................................  Dated: 20 August 2019

Mayor Michael Lange
THE BAROSSA COUNCIL
INTERNAL REVIEW OF COUNCIL DECISION PROCESS

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1. Overview

This Process specifically outlines:

- how and when an applicant can request an internal review of a Council decision; and
- the roles and responsibilities of the Council administration, the Internal Review Contact Officer, the Reviewer and the Elected Members to affect a fair, consistent and structured approach in dealing with each request.

2. Core Components

Complaints Handling Framework and when to use the Internal Review Process
Applying for an Internal Review
Acknowledging an Internal Review Application
Commencing the Preliminary Investigation
Assignment of Application to Reviewer
Review Considerations
After the Review

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  a) a hearing appropriate to the circumstances;  
  b) lack of bias;  
  c) evidence to support a decision; and  
  d) inquiry into matters in dispute. |
| **Reviewer** | The delegate responsible for conducting a review of a Council decision. |
| **Worker** | A person is a Worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:  
  a) An employee; or  
  b) A contractor or sub-contractor; or  
  c) An employee of a contractor or sub-contractor; or  
  d) An employee of a labour hire company who has been assigned to work in the person's business or undertaking; or  
  e) An outworker; or  
  f) An apprentice or trainee; or  
  g) A student gaining work experience; or  
  h) A volunteer of Council; or  
  i) A person of a prescribed class.  
[as defined in the WHS Act 2012 (7)]. |
4. **Process**

4.1 **Complaints Handling Framework and when to use this Internal Review Process**

Wherever practicable, customer complaints regarding a Council decision should be referred for immediate resolution to Council’s Customer Service Policy and Complaint Handling Process.

The Complaint Handling Process consists of three tiers to manage and resolve complaints:

4.1.1 **Immediate response to resolve the complaint**
All Workers are empowered to handle complaints in the first instance and it is preferable that a complaint is dealt with promptly at the initial point of contact and at the appropriate Worker level.

4.1.2 **Complaint escalated to a more senior Worker**
A complaint will be directed to a senior Worker in the Council, where the complaint would be better handled at that level. This may occur, for example, where a Worker has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council team.

4.1.3 **Internal review of a Council decision**
An internal review will generally apply when matters cannot be resolved under the other two tiers.

Internal review of a Council decision enables the Council to reconsider all the evidence relied on to make the original decision, and additional available evidence if relevant.

However, a referral directly to this third tier will occur when a decision was:

- made by the Elected Body; or
- referred by the applicant directly to the Ombudsman and the Ombudsman has referred the decision back to the Council for an internal review under Section 270 of the Local Government Act 1999 (“the Act”).

In such cases, the complaint must be dealt with in accordance with this Process.

However, subject to Council’s Internal Review of Council Decisions Policy and this Process, applicants may use the section 270 Internal Review mechanism at any time to review a decision made by Council or on behalf of Council.

4.2 **Applying for a review**

4.2.1 **Who can apply for a review**
A person with a sufficient interest in a decision of Council, or its delegate, may make a written application for a review of that decision.

A person who is not the direct subject of a decision may still have a sufficient interest in the decision to seek a review under this Process. For example, a person may...
have a sufficient interest in a Council decision regarding the number of dogs which may be kept within a neighbour’s property.

4.2.2 Timeframe to apply
An application for a review of a decision must be made within 6 months of that original decision being made.

However, in exceptional circumstances an application for internal review which is lodged outside of this 6 months may still be considered for internal review by the Council or CEO, as the case may be.

4.2.3 Assistance for the applicant – Internal Review Contact Officer
It is essential that no one is excluded from lodging an application for internal review because of difficulties they may have representing themselves.

An Internal Review Contact Officer (IRCO) is appointed by the CEO as the initial point of contact for applicants. The IRCO will be the Governance Advisor or in their absence, a delegate appointed by the CEO.

The IRCO may assist an applicant document their reasons for seeking an internal review, in addition to arranging access to interpreters, aids or advocates to ensure that an applicant is treated equitably.

A person seeking review of a Council decision who attends at the Council’s offices personally or by telephone call, and all written applications for review should be immediately referred to the IRCO.

The role of the IRCO is to:
- explain the process to the applicant and explore alternative options to resolve the matter, such as mediation or conciliation prior to an application for review where possible;
- acknowledge the receipt of an application for review;
- maintain a register of all applications for review received and the outcomes of the applications;
- outline the timeframes involved and the action to be taken in the first instance;
- undertake a preliminary investigation to determine whether the matter falls within the scope of the Policy and Process and what actions have already been taken to try to resolve the matter;
- keep the applicant informed of progress;
- if the matter does not fall within the scope of the Policy and Process, to inform the applicant, and provide alternative avenues of review or appeal, where applicable;
- ensure adequate records are maintained; and
- report to Council at prescribed intervals on all applications lodged for review.
4.2.4 How to apply for a review

While there is no standard template that the applicant needs to use, he or she must set out in writing:

- the decision they are seeking to have reviewed and their interest in that decision;
- the reasons why they believe the decision is wrong;
- what outcome is sought; and
- their daytime contact details.

Although Council can be expected to have information relevant to the matter under internal review, an application may also include new evidence to support the application.

Applications must be made in writing and addressed to the Internal Review Contact Officer and forwarded marked confidential via:

- post to: The Barossa Council, PO Box 867, Nuriootpa SA 5355
- email to: barossa@barossa.sa.gov.au
- fax to: 8563 8461
- in person at the Nuriootpa Office at 48-51 Tanunda Road, Nuriootpa SA 5355 or any of the Council branches at Angaston, Lyndoch, Mount Pleasant and Tanunda.

4.2.4 Cost to apply for a review

There is no fee charged to apply for an internal review.

4.3 Acknowledging an Application for Review

The IRCO will confirm receipt of the internal review application within 5 business days and also advise the applicant of the expected timeframe for processing the matter where possible.

4.4 Commencing the Preliminary Investigation

4.4.1 Within 5 business days of receipt of the internal review application, the IRCO will:

- establish an EDRMS container with agreed restricted access;
- assess whether the application falls within the scope of the Policy and Process and if the matter does not fall within the scope of the Policy and Process, inform the applicant, and provide alternative avenues of review or appeal;
- meet with the CEO to determine a reviewer or if the decision under review was made by the CEO, then with the Mayor or in his/her absence, the Deputy Mayor, to advise of the process (see paragraph 4.5 below);
- create a summary report using the Section 270 Review Record of Investigation template to provide to the appointed reviewer; and
- outline the resources expended to date within the Section 270 Assessment of Resources Schedule.

4.4.2 The IRCO and reviewer will use their best efforts to finalise an internal review within 21 business days. However, if the decision is to be reviewed by the Elected Body, a committee, or an external panel or party there may be delays caused by meeting cycle timelines. In more complex cases, an internal review may take longer.

4.4.3 Except where an external party has been appointed as reviewer, the IRCO will regularly inform the applicant of progress, either by email, letter or telephone. The IRCO will record all such contact in the Section 270 Review Record of Investigation.
and Assessment of Resources templates. Where an external party has been appointed as the reviewer, the external party must inform the applicant of progress either directly (preferred) or if this is not possible, via the IRCO.

4.5 Assignment of Application to Reviewer

4.5.1 CEO, Director or Manager as reviewer
Where the decision was made by an Employee of Council (excluding the CEO), the IRCO and CEO will together determine who will be the reviewer. In this case, the reviewer will generally be one of the Directors who have no conflict or previous dealings with the complaint. If this is not possible, a member of the Organisational Management Group will be appointed as the reviewer.

Alternatively but not ordinarily, the CEO may be the reviewer, however, the CEO cannot review a decision he or she has made and such would be referred to the Elected Body.

Also see special circumstances at paragraph 4.5.3 below where an external party would be appropriate.

The IRCO will meet with the reviewer as soon as possible after his or her appointment to discuss the initial investigation, completion of the Assessment of Resources Schedule and Summary Investigation Report and Findings and refer the reviewer to the overarching Policy and this Process. In special circumstances or where an external reviewer is appointed, the IRCO may brief the external reviewer by email and, instead of using the Summary Investigation Report and Findings, refer to the external reviewer’s report.

4.5.2 Elected Body as reviewer
The Elected Body will be the reviewer when the decision being reviewed:

- was made by a Council Committee or the CEO and;
- relates to civic and ceremonial matters and/or;
- can potentially impact a significant proportion of people and/or stated policy positions of Council and/or;
- would be assigned for internal review to an entity or person who would be otherwise conflicted and/or;
- in other circumstances as determined by the CEO or resolution of Council.

In this situation, the IRCO will undertake the practical steps of the internal review regarding facilitation and investigation and complete the supporting documentation outlined in paragraph 4.4 above, to present to the Elected Body for its consideration and decision as reviewer. Where the original decision was made by the Council or a Council Committee, the IRCO will do this in conjunction with the CEO.

Where a request for review has been referred to Council, the applicant will be advised of the date that the report will be presented to the Council and will be given the opportunity to provide a written or verbal submission in relation to the report for Council’s consideration.

4.5.3 External Party as reviewer
Where the decision:

- is a decision of the Elected Body: and/or
- has industry-wide policy impact: and/or
- requires specialist knowledge but employees with the specialist knowledge have an identified conflict of interest in the matter; and/or
- has significant political controversy

The IRCO will make a recommendation to the CEO to refer the application to an expert party / panel together with an estimate of costs. The CEO at his or her discretion will determine whether it is appropriate in the circumstances to appoint an external party / panel as reviewer, and approve the estimate of costs in accordance with Council’s Procurement Policy and supporting processes. Once the CEO has determined that this should occur, and confirmed the IRCO is authorised the necessary expenditure to brief the experts, the IRCO can provide the necessary documentation to brief the expert party / panel.

The IRCO will be seeking a recommendation(s) from the expert party / panel which will then be referred back to the Elected Body for a final determination on the review.

The IRCO may consult with the Local Government Association to obtain the name or names of a recommended expert party or expert parties or panel and refer such for approval by the CEO or Elected Body.

The budget line to fund the expert party / panel will be paid from the budget of the Directorate which made the decision under review and where necessary, a budget adjustment made to cover unbudgeted costs.

4.6 Review Considerations

4.6.1 In carrying out an internal review of a decision, 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.

4.6.2 The reviewer will consider whether the original decision is legally and procedurally correct having regard to the following (where relevant and not restricted to), that the original:

- decision maker had the power to make the decision;
- 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;
- 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;
- decision maker had no conflict of interest, bias or perceived bias;
- decision maker ensured that the findings of fact were based on evidence;
- decision was reasonable; and
- decision maker considered any relevant legislation, policies or processes.

The reviewer will also consider whether a different decision based on the evidence available or new evidence provided or found provides an improved outcome.

4.6.3 Refusal to consider an application

In addition to those matters which fall outside of the scope of the overarching Internal Review of Council Decision Policy, Council or the CEO as the case may be is entitled under the Local Government Act to refuse to consider an application for review if:
a) the application is made by a Council Employee and relates to an issue concerning his or her employment;

b) it appears that the application is frivolous or vexatious; or

(Note that where a matter has been referred to the Local Government Association Mutual Liability Scheme [LGAMLS] in respect to a claim or potential claim against the Council or in response to a threat of legal action against the Council, an application for review of a decision in connection with that claim or action (including the decision to refer the matter to the LGAMLS) will be vexatious).

c) the applicant does not have a sufficient interest in the matter; or

d) the application for an internal review has been made later than 6 months from when the applicant was advised of the original decision - unless there are exceptional circumstances for Council, or the CEO as the case may be, to allow an internal review process.

Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.

4.6.4 Providing Procedural Fairness
The reviewer will observe the principles of procedural fairness when undertaking the review so that:

- an applicant is entitled to put forward information and materials in support of the application for review;

- an applicant is informed of the proposed outcome of the review, has the opportunity to make submissions to the reviewer on the outcome and have these submissions taken into account; and

- the reviewer must not have a bias or perceived bias when undertaking the review.

4.6.5 Determination of review
When the reviewer is:

- the Elected Body – it should determine whether to affirm, vary or revoke the original decision;

- a Council Employee - they may determine whether to affirm, vary or revoke the original decision if authority to make the decision has been delegated to them. If the reviewer does not have a delegation enabling the making of the decision, then the reviewer should report the outcome of the review to the Elected Body (or delegate) for a determination as to whether the decision should be affirmed, varied or revoked;

- an external person or body –

  o if the original decision was made by the CEO, Council Committee
  Elected Body, then the external person or body should report their recommendation(s) from the review to the Elected Body for a determination as to whether the decision should be affirmed, varied or revoked.
If the original decision was made by an Employee or a person acting on behalf of Council who is not the CEO, and the power to make the original decision has been delegated by the Elected Body to the CEO, then the external person or body should report their recommendation(s) from the review to the CEO for a determination as to whether the decision should be affirmed, varied or revoked.

In the event that the power to make the original decision has not been delegated to the CEO (i.e. if it has been delegated to an Employee or Council officer directly etc.), or the CEO has a conflict of interest in the matter then the external person or body should report their recommendation(s) from the review to a senior Worker who has been delegated the power to make the original decision for a determination as to whether the decision should be affirmed, varied or revoked.

Note: an external reviewer cannot vary or revoke a decision made by or on behalf of Council.

4.6.6 Remedies
Remedies are available to the reviewer, if it is determined that the original decision was incorrect either legally, procedurally or meritoriously, or that an improved outcome can be determined, in terms of one or more as follows:

- an explanation
- an admission of fault and, where reasonably practicable, a change of decision
- a recommended change to policy, process or practice*
  *note: any changes are ultimately a decision for the Council or CEO, depending on the relevant delegations. The reviewer should liaise with the CEO and/or CMT at the earliest opportunity to make them aware of any potential recommendation and discuss the impact on Council resources should the change be implemented.
- a correction of misleading records
- financial compensation including a refund of any fees**
  **note: only the Elected Body and the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial. This will only occur after consultation by the IRCO with the Local Government Association Mutual Liability Scheme at the earliest possible opportunity in the investigation.
- the waiving of a debt
- the remission of a penalty
- disciplinary action under the relevant Code of Conduct, where appropriate
- referral of a matter to an external agency for further investigation or prosecution if it involves allegations of fraud / corruption
- apology***
  ***note: where circumstances are such that it is not reasonably practicable to return the applicant to his/her original situation, or to rectify the outcome of the decision through application of the above remedies, it may only be possible for the reviewer to recommend that an apology be offered.
  If an apology is required and then approved in a resolution by the Elected Body (as reviewer) or by the CEO (if a Director or Manager is the reviewer), it will be included within the determination letter and the applicant will be advised that appropriate action will be taken to
prevent the problem from being repeated.

To support development of a potential remedy, the reviewer may recommend mediation, conciliation or neutral evaluation.

4.6.7 Reporting decision of review to the applicant
Where the Elected Body is the reviewer, the IRCO on its behalf will:

- prepare the Summary Investigation Report and Findings and determination letter to reflect the resolution and forward it to the applicant within 5 days of the Council meeting and
- provide information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an Employee, including the CEO is the reviewer:

- the reviewer will use the relevant content of the Summary Investigation Report and Findings to draft a provisional determination letter and provide this to the IRCO to forward to the applicant with a request for a response for further feedback / new information within 10 business days; and
- if the applicant provides a response, the reviewer must take into consideration any new information, response or feedback provided.
- if the applicant provides no further information within that time, the IRCO will advise the reviewer so that they can confirm the provisional determination in writing, along with information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an external panel / body is the reviewer, the reviewer must provide their full draft report of their provisional determination to the applicant and allow a reasonable opportunity for the applicant to provide a response to the draft report, further feedback or any new information. Any response, further feedback or new information provided by the applicant should be considered by the external panel / body prior to issuing their final report.

Where there are legal or other reasons that warrant confidentiality in relation to the full draft report or Summary of Investigation Report and Findings, either in part or full, the reviewer will ensure that appropriate measures are taken including (but not limited to):

- redacting parts of the full draft report of the provisional determination, or the Summary Investigation Report and Findings (as the case may be) before providing it to the applicant;
- providing the full draft report of the provisional determination, or the Summary Investigation Report and Findings (as the case may be) to the applicant in confidence;
- not providing the full draft report of the provisional determination, or the Summary Investigation Report and Findings (as the case may be) to the applicant. However, the applicant must be informed of the provisional determination of their internal review application and allowed a reasonable
opportunity to respond and/or provide further information in response to the provisional determination.

However, in taking appropriate measures, the reviewer must ensure that procedural fairness is observed in accordance with this Process and the Policy (see in particular paragraph 4.6.4 of this Process).

4.7 After the Review

4.7.1 Updating the Register
The IRCO will update the Register of Section 270 Internal Reviews in Council’s EDRMS to include details of the application and the outcome of the review.

4.7.2 Reporting to the Corporate Management Team
Any recommendations for service improvement agreed by the Council or CEO arising from an internal review process will be actioned by the IRCO to the relevant Director or CEO for implementation.

4.7.3 Reporting to the Elected Body
The Governance Advisor or delegate will prepare and submit to the Elected Body an annual report each July which includes the following information about internal review applications requested within the previous 12 months:

a) the number of applications for review made;
b) the kinds of matters to which the applications relate;
c) the outcome of applications;
d) a statement to quantify the resources used for each review and associated costs with an attached Assessment of Resources Schedule;
e) a summary of how the outcomes have been used to improve Council’s customer service, policies and processes; and
f) such other matters as may be prescribed by the Regulations.

4.7.4 Reporting to the Community
The information outlined in paragraph 4.7.3 above will also be included in Council’s Annual Report as required under the Local Government Act.

5. Training

5.1 Elected Members, Directors and Managers will receive training in this process during their induction and refresher training as required.

6. Documents to Implement Process

Written application to request an Internal Review
Letter to applicant confirming receipt of application
Section 270 Review of Investigation Template (B3812)
Section 270 Assessment of Resources Schedule (B3812)
Section 270 Summary Investigation Report and Findings (B3812)
Determination letter (B3812)
Annual report compiling Section 270 applications and determinations
7. Legislation and References

Local Government Act Section 270

8. Review

8.1 This Process will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council's need changes.

SIGNED: ..............................................
Mayor Michael Lange

DATE: 20 August 2019
84—Public notice of council meetings

(1) The chief executive officer must give notice to the public of the times and places of meetings of the council.

(1a) The chief executive officer must give the notice required under subsection (1) in the following manner:

(a) by causing a copy of the notice and the agenda for the meeting to be placed on public display at each office of the council that is open to the public for the general administration of council business within its area; and

(b) by publishing the notice and the agenda for the meeting on a website determined by the chief executive officer.

(2) The notice required under subsection (1) must be given—

(a) in the case of an ordinary meeting—at least three clear days before the date of the meeting; or

(b) in the case of a special meeting—as soon as practicable after the time that notice of the meeting is given to members of the council.

(2a) Without derogating from subsection (1a), the chief executive officer may also give notice to the public of the time and place of a meeting of the council in such other manner as the chief executive officer considers appropriate after taking into account—

(a) the characteristics of the council's community and area; and

(b) the best ways to bring notice of a meeting of the council to the public's attention; and

(c) such other matters as the chief executive officer thinks fit.

(3) A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda on display under subsection (1a)(a).

(4) The notice and agenda must be kept on public display, and continue to be published on the website, under subsection (1a) until the completion of the relevant meeting.

(5) The chief executive officer must also ensure that a reasonable number of copies of any document or report supplied to members of the council for consideration at a meeting of the council are available for inspection by members of the public—

(a) in the case of a document or report supplied to members of the council before the meeting—at the principal office of the council as soon as practicable after the time when the document or report is supplied to members of the council; or

(b) in the case of a document or report supplied to members of the council at the meeting—at the meeting as soon as practicable after the time when the document or report is supplied to members of the council.

(6) However, subsection (5) does not apply to a document or report—

(a) that is subject to the operation of section 83(5); or

(b) that relates to a matter dealt with by the council on a confidential basis under Part 3.
Local Government (Procedures at Meetings) Regulations 2013—1.1.2014

Contents

27 Voting at committee meetings
28 Points of order
29 Interruption of meetings by members
30 Interruption of meetings by others

Schedule 1—Revocation of Local Government (Procedures at Meetings) Regulations 2000

Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the Local Government (Procedures at Meetings) Regulations 2013.

2—Commencement

These regulations will come into operation on 1 January 2014.

3—Interpretation

(1) In these regulations, unless the contrary intention appears—

Act means the Local Government Act 1999;

clear days—see subregulations (2) and (3);

deputation means a person or group of persons who wish to appear personally before a council or council committee in order to address the council or committee (as the case may be) on a particular matter;

formal motion means a motion—

(a) that the meeting proceed to the next business; or
(b) that the question be put; or
(c) that the question lie on the table; or
(d) that the question be adjourned; or
(e) that the meeting be adjourned;

Guiding Principles—see regulation 4;

member means a member of the council or council committee (as the case may be);

point of order means a point raised to draw attention to an alleged breach of the Act or these regulations in relation to the proceedings of a meeting;

presiding member means the person who is the presiding member of a council or council committee (as the case may be) and includes any person who is presiding at a particular meeting;

written notice includes a notice given in a manner or form determined by the council.

2 This version is not published under the Legislation Revision and Publication Act 2002 [2.1.2014]
(2) In the calculation of clear days in relation to the giving of notice before a meeting—
   
   (a) the day on which the notice is given, and the day on which the meeting 
       occurs, will not be taken into account; and
   
   (b) Saturdays, Sundays and public holidays will be taken into account.

(3) For the purposes of the calculation of clear days under subregulation (2), if a notice is 
    given after 5 p.m. on a day, the notice will be taken to have been given on the next 
    day.

(4) For the purposes of these regulations, a vote on whether leave of the meeting is 
    granted may be conducted by a show of hands (but nothing in this subregulation 
    prevents a division from being called in relation to the vote).

Note—

1 See regulation 12 for specific provisions about formal motions.

4—Guiding Principles

The following principles (the Guiding Principles) should be applied with respect to 
the procedures to be observed at a meeting of a council or a council committee:

(a) procedures should be fair and contribute to open, transparent and informed 
    decision-making;

(b) procedures should encourage appropriate community participation in the 
    affairs of the council;

(c) procedures should reflect levels of formality appropriate to the nature and 
    scope of responsibilities exercised at the meeting;

(d) procedures should be sufficiently certain to give the community and 
    decision-makers confidence in the deliberations undertaken at the meeting.

Part 2—Meetings of councils and key committees

Division 1—Preliminary

5—Application of Part

The provisions of this Part apply to or in relation to—

(a) the meetings of a council; and

(b) the meetings of a council committee performing regulatory activities; and

(c) the meetings of any other council committee if the council has, by resolution, 
    determined that this Part should apply to that committee.

6—Discretionary procedures

(1) Subject to the requirements of the Act, if a provision of this Part is expressed to be 
    capable of being varied at the discretion of the council pursuant to this regulation, then 
    a council may, by a resolution supported by at least two-thirds of the members of the 
    council entitled to vote on the resolution, determine that a code of practice prepared or 
    adopted by the council that establishes its own procedures for the relevant matter or 
    matters will apply in substitution for the relevant provision (and such a determination 
    will have effect according to its terms).
Shelley James and Robbert Sennef

Dear Shelley and Bob,

SECTION 270 INTERNAL REVIEW – KEIL ESTATE INDENTURE DEED

I refer to previous correspondence and your application, pursuant to section 270 of the Local Government Act 1999 and received on 4 February 2020, for a review the Council decision at its meeting on 28 January 2020, relating to the Keil Estate Indenture Deed (the “Decision”).

This matter has been referred to me, pursuant to Council’s Internal Review of Council Decision Policy and Process (the “Policy” and “Process” respectively). I confirm that I have obtained legal advice on this matter to assist me in my decision-making.

The grounds for your application

Based on your most recent correspondence received at the Nuriootpa office on 13 February 2020, the relevant grounds for your application can be condensed as follows:

1. that the Council agenda report relating to the Decision was published without proper notice;

2. that the previous section 270 review application lodged by yourselves and considered by Council at its 17 December 2019 meeting has not concluded.

In your application you also raised a number of other concerns. However, as per our correspondence to you dated 6 February 2020 and that of Mayor Lange on 30 January 2020, the other matters raised by you have either been already addressed in previous applications, do not constitute a decision made by or on behalf of Council that is/are within the conspectus of section 270, or that can be relevantly, linked to (1) and (2) above. Therefore, I have proceeded to assess your application on the basis that grounds (1) and (2) are the actual grounds for your application.

Assessment of your application

The Policy, at clause 2.2.6 and the Process, at clause 4.6.3, provide for applications that appear to be frivolous or vexatious to be refused.

The term ‘frivolous’, in this context is defined by the Ombudsman in his report on the Kangaroo Island Council dated 9 March 2018 (copy enclosed), to mean not warranting serious attention. Please also find enclosed a copy of the Supreme Court decision to which the Ombudsman refers when interpreting ‘frivolous’.

Reasons for proposed refusal

In your application, you have acknowledged that the decision made by Council at its Special meeting on 26 April 2018, to revoke the community land classification over Allotments 11 and 12 Basedow Road, was the “key decision” that your application relates to. This 26 April 2018 decision was reviewed under section 270 of the Act and was also
subject to a complaint to the Ombudsman. There have been subsequent review applications lodged by yourselves, and your advocate, Ms Helen Szuty, in respect of decisions related to the land swap and the Barossa Culture Hub, the most recent having been determined by Council at its meeting on 17 December 2019.

With respect to (1) above and, as you have acknowledged in your most recent letter, Council has not contravened the requirements of the Local Government Act with respect to minimum notification time periods for Council meeting agendas and, in particular, for Agenda Item 7.2.1.6 at the Council meeting on 28 January 2020. The notification periods are not contingent on public interest. We have also provided clarification on what these notification periods [for both elected members and the public] are and you have been provided with extracts of the Act and Regulations that set out the legal position, for information. It is my finding that, when all the circumstances of this aspect of your application are considered, your application is frivolous, in particular in the context of seeking a review of a matter that you have clearly misunderstood/misinterpreted and which, subsequently, you have agreed with. It is unreasonable and would be an unacceptable use of public funds to proceed any further with your application.

With respect to (2) above, section 270 of the Act sets out a requirement for Council to establish, amongst other things, procedures for the review of decisions made by or on behalf of Council. While there are avenues for reviewing the outcome of a review under section 270 by external agencies, any review by the Ombudsman, or another external reviewer is not part of the review process either contemplated by section 270 or part of the Council Policy and Procedure. For these reasons it is my view that it is frivolous to misstate the factual position for the purposes of seeking a review of a matter which you know has been and which is, legally, concluded in accordance with the Local Government Act. Further, this position has previously been explained to you. In the circumstances, your option now is to complain to an oversight agency or, seek recourse through the courts. The matter has been concluded and addresses your current and prior application. It is my finding that the further use of public funds in this matter is unreasonable, given both the above circumstances and that your request for review does not raise any new matters.

Proposal to refuse

Based on the reasons set out above, it is my position that your application is one that has no serious purpose or value. It is, on the basis of the facts known and as previously presented to you, without any merit or substance, has no reasonable prospect of success and further investigation would be disproportionate in terms of time and cost. Accordingly, I propose to present your application to Council for consideration of my findings with a recommendation that it be refused on the basis that it is frivolous, presents no new matters and, if continued with, would result in an irregular and unreasonable use of public funds that, might be considered to amount to substantial mismanagement in the performance of official functions. As a matter of procedural fairness, before doing so, I seek any submission you wish to make, limited to my findings and recommendation, as to why you think the application should not be refused. Please provide your response in writing at the very latest by 5pm Wednesday 4 March 2020.

Once received, your response will be presented to Council at its next available meeting for consideration, along with your application and correspondence to date on this matter. Of course, upon consideration, if Council determines to allow your application to proceed in accordance with the Policy and Process, we will notify you accordingly.

Sincerely,

[Signature]

Martin McCarthy
Chief Executive Officer
The Barossa Council

Encl. Copy of Ombudsman SA Final Report on Kangaroo Island Council dated 9 March 2018
Copy of SB, MF v Minister for Education and Child Development & Anor [2017] SASC 161 (10 November 2017)
43-51 Tanunda Road (PO Box 867) Nuriootpa SA 5355 Phone (08) 8563 8444
Email: barossa@barossa.sa.gov.au | www.barossa.sa.gov.au | ABN: 47 749 871 215
Final Report
Full investigation - *Ombudsman Act 1972*

Complainant  Mr John Ayliffe
Council       Kangaroo Island Council
Ombudsman reference  2017/06921
Agency reference   E2017/6954
Date complaint received  6 July 2017
Issue Whether the council undertook its review of Mr Ayliffe's complaint in accordance with its Code of Conduct for Elected Council Members Procedure.

Jurisdiction
The complaint is within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*.

Investigation
My investigation has involved:
- assessing the information provided by the complainant
- seeking a response from the council
- seeking more particulars from the council
- considering:
  - the *Local Government Act 1999*
  - the *Code of Conduct for Council Members*
  - the council's *Code of Conduct for Elected Council Members – Procedure*
- preparing a provisional report, and seeking response from the interested parties
- preparing this final report.

Standard of proof
The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ It is best summed up in the decision as follows:

> The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ... ²

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at 449-450 per Mason CJ, Brennan, Deane and Gaudron JJ.
² *Briginshaw v Briginshaw* at pg381-382, per Dixon J.
Response to my provisional report

The complainant, Mr John Ayliffe, wrote to me on 7 January 2018 in response to my letter of 15 December 2017 inviting comment on my provisional report. In summary, Mr Ayliffe endorsed the content, findings and foreshadowed recommendations of my report.

He made one 'small point', requesting that I consider making a further recommendation to request an apology to be issued by the Deputy Mayor as well as by the council for the incorrect handling of his Code of Conduct complaint.

I have maintained my recommendation that the council only apologise as the council bears the responsibility for the administration of the complaint handling procedure. As such, the council is the respondent to this complaint rather than the Deputy Mayor.

The council did not provide a response to my provisional report by the notified due date of 12 January 2018. However, after checking with council to ensure that no response was to be forwarded, I received a request for an extension of time to prepare a response. I received that response on 22 January 2018. In summary, the council has submitted:

- that item 24 of my provisional report has not included a reference to dot point 4 in clause 4.1.5 of the council’s Code of Conduct for Council Members Procedure
- that the advice sought from Mr Harris QC does form part of the Code of Conduct Process because the Procedure also states that in making a determination pursuant to clause 4.1.5 'the mayor may seek advice and guidance from any source in relation to the best course of action to pursue'
- that the referral of the matter to the Local Government Association Mutual Liability Scheme (LGAMLS) was separate to the Code of Conduct Process
- that Clause 4.1.5 of the Code of Conduct Procedure does not require the council to employ a formal mediation process as this is only one of the options available at the preliminary assessment stage
- that the Deputy Mayor made a determination that the complaint was considered frivolous and/or vexatious and therefore a referral to a formal mediation process was not required
- that at no stage was Mr Ayliffe denied the opportunity to have his allegations assessed as part of the Code of Conduct procedure and in any event a determination in regards to this had already been made
- that the assessment of the complaint by the Deputy Mayor does not appear to systematically address any of the six Code of Conduct breaches alleged against Mayor Clements 'nor do we believe that it is required to do so'
- that as the complaint had been determined to be frivolous and/or vexatious there was no case to answer and therefore no need to provide a detailed assessment on any of the six alleged breaches
- that although the Procedure does require the Deputy Mayor to refer the matter to the Local Government Governance Panel if the matter cannot be resolved, council considers that the matter was resolved when the complaint was deemed frivolous and/or vexatious - therefore no referral was necessary
- that despite considering the matter resolved, the council offered an informal meeting in a genuine attempt to satisfy Mr Ayliffe’s grievance
- that the Deputy Mayor was permitted to seek advice and guidance from any source in relation to the best course of action to pursue
- that because there had already been a determination by the Deputy Mayor that there was no breach of the Code of Conduct, advice regarding civil liability protection was not part of the Code of Conduct investigation
- that the deputy Mayor did not hand the entire Code of Conduct matter to the LGAMLS

The timing and implications of this determination by the council are discussed in detail at 30.
for resolution as a determination had already been made. The matter referred to the LGAMLS was one of civil liability

- that the wording of the Special Council Meeting resolution carried on 29 July 2017 stating that Mayor Clements had no case to answer ‘based on advice’ [my emphasis] sought from Mr Harris QC contradicted the earlier statement that the Deputy Mayor relied on ‘his assessment alone’ and, perhaps, should have read was ‘confirmed by advice’ [my emphasis] from Mr Harris QC

- that council believes it has taken all decisions in this matter in accord with the council’s Code of Conduct for Elected Council Members - Procedure

- that with the benefit of hindsight the council considers that the invitation to attend an informal meeting with Mayor Clements was an offer made in error - and for that the council apologises

- that the council does not apologise for an incorrect handling of the Code of Conduct complaint

- that the council stands by the determination made by the Deputy Mayor that the complaint was frivolous and/or vexatious and there was no breach of the Code and the Mayor had no case to answer.

I have considered the substantive submissions of the council and responded to them where necessary in the body of this report. However, none of the submissions has persuaded me to change my findings. I have made only minor changes to my provisional recommendations.

Background

1. The complainant, Mr John Ayliffe, is a small business person who has run a pelican feeding show at Kingscote for residents and tourists for approximately 20 years. He is known locally as ‘The Pelican Man’.

2. Mr Ayliffe has referred to an article which ran on the ABC news website on or about 28 May 2017. The article stated:

   A major tour operator has dropped Mr Ayliffe’s pelican show from its itinerary. At the end of April, Mr Ayliffe stepped off the feeding platform and has not been back since - a move he never wanted to make.

   “You don’t work at something for that long to just walk away for the fun of it”, he said. It was not the birds which beat him, he said, but the tourists who were watching and not paying the $5 fee which covers the cost of the fish.

   “When you have a lot of people you’ll see some of them jumping through the rails and out the back. You might lose 15 per cent”, he said. Those losses were compounded by a major tour operator dropping him from one of their itineraries.

   Kangaroo Island Mayor Peter Clements said while Mr Ayliffe’s act had become a major part of the island, the pelican man had put some people offside by being rude to customers who did not pay at the end of the show.

   He’s got quite hostile, [Tour operator] Sealink pulled out of sending people there because some people were being abused”, Mr Clements said.

   But Mr Clements said he was willing to help Mr Ayliffe develop the site if the Government approved it. “He’s good for the island. He’s good for Kingscote and I hope we can make it work for him,” he said.

3. The complaint alleged that the comments made by the Mayor of Kangaroo Island Council (the council) Mr Peter Clements constituted breaches of clauses 2.2-2.5, 2.6 and 2.8 of Part 2 of the Code of Conduct for Council Members (the Code of Conduct).
4. The complaint alleged, *inter alia*, that there is no basis in truth to the Mayor’s comments and that because they had been circulated on ABC media outlets and on social media they have damaged Mr Ayliffe’s reputation and caused distress to him and his family.

5. On 31 May 2017, Mr Ayliffe sent an email to the council’s Deputy Mayor Graeme Ricketts setting out a formal complaint against Mayor Clements for the Part 2 Code of Conduct breaches.

6. On 1 June 2017 Mr Ricketts acknowledged receipt of the Code of Conduct complaint to Mr Ayliffe and advised him that he would be attending to the matter as required by the council’s Code of Conduct for Elected Members - Procedure *(the Procedure)*.

7. In response to further evidence of the content of the ABC media article provided by Mr Ayliffe, Mr Ricketts contacted him again on 1 June 2017 to confirm that he was in the preliminary stages of his investigation and advising Mr Ayliffe that he may seek further clarification of the allegations prior to making an initial determination.

8. On 6 June 2017 Mr Ricketts rang Mr Ayliffe to confirm that he had conducted an assessment of the complaint and then proposed mediation between Mr Ayliffe and Mayor Clements to resolve the matter. Mr Ayliffe indicated that he was reluctant to attend a mediation session. He suggested that he had suffered damage to his reputation and asked what Mayor Clements was prepared to do to resolve the damage to himself and his family.

9. At this point Mr Ricketts concluded that Mr Ayliffe was intimating that he was likely to make a claim for damages once he had confirmation of the outcome of the Code of Conduct inquiry. As a consequence, he sought external legal advice in relation to the matter and, on 8 June 2017, also referred the matter to the LGAMLS for their consideration.

10. Given the seriousness of the allegations the council considered it had an obligation pursuant to LGAMLS Rules to notify them of the potential threat of a defamation claim.

11. On 20 June 2017, the LGAMLS wrote to Mr Ayliffe confirming that the matter was now being managed by the LGAMLS, on behalf of council and Mayor Clements, and that it would be inappropriate for Mr Ricketts in the circumstances, to attempt to resolve the issue between the parties.

12. On 22 June 2017, Mr Ayliffe sent an email addressed to Mr Ricketts stating his:

   disappointment that the Code of Conduct process had not been able to consider his claims...to bring about a resolution...

   My Code of Conduct claim clearly requested the council to consider my claims and to have the elected members of council arbitrate on the matter to bring about a resolution to the disagreement between the mayor and myself. This disagreement is a result of publicly made untruths made by the mayor acting in his capacity of mayor; on the ABC radio and repeated on various commercial media and the internet.

13. Mr Ayliffe asked Mr Ricketts to:

   ...in good faith, to follow the procedures spelt out in the Kangaroo Island Council's procedure guide to resolving Code of Conduct complaints.

14. Also on 22 June 2017, the LGAMLS wrote to Mr Ayliffe noting that:

   The Council has now considered these comments [allegedly made by Mayor Clements] using their internal Code of Conduct process to determine, if in the course of Mayor
Clements undertaking his role, duties, functions as the Mayor, was in breach of any protocols.

The Council has determined that in this case Mayor Clements was not in breach of any protocols.

15. A report covering the above facts was tabled before the council during a confidential session of the 29 June 2017 Special Council Meeting.

16. The council's minutes concerning this meeting record the following:

3.3 Code of Conduct 2017/02

Moved Cr S Kauppila Seconded Cr L Turner

1.14pm That Council approves under the provisions of Section 90 (2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting, excluding CEO, in order to consider, in confidence, a matter on the grounds of Section 90 (3) -

   a) Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

This matter relates to a code of conduct (sic) and as such represents private interest that should not be divulged in the public realm.

CARRIED. Minute: SC16:2017

Moved Cr S Kauppila Seconded Cr L Turner

1. That the Code of Conduct complaint from Mr John Ayliffe against Mayor Peter Clements for breaches of multiple provisions of the Code is assessed as having no case to answer based on advice sought from Mr Harris QC.

2. Endorse the provisions of Section 39 of the Local Government Act 1999 apply to the Mayor, Mr Peter Clements, in the case of all statements made by him pertaining to Mr John Ayliffe and his conduct in business.

3. Note that, based on the implied threat of litigation against the Mayor, the matter has been referred to the LGAMLS for their action if required.

CARRIED. Minute: SC17: 2017

Moved Cr S Kauppila Seconded Cr L Turner

1:27pm That Council approves:

   a. That all documentation and reports relating to the above matter be kept confidential, pursuant to Section 91(7)(b) of the said Act.

   b. Further, that pursuant to Section 91(9)(a) of the said Act, that part ‘a’ of this resolution shall cease from 30 June 2018.

The reports relating to a code of conduct (sic) and as such represents private interest that should not be divulged in the public realm.

CARRIED. Minute: SC18: 2017

17. As part of the initial assessment of Mr Ayliffe's complaint, my Office wrote to the council's Chief Executive Officer, Mr Andrew Boardman to ask if an Internal Review of Council Decision (under section 270 of the Local Government Act) had been considered at any stage of the handling of the complaint. My Office also requested details of the reasons for the decision made by Deputy Mayor Ricketts that 'there was no case to answer' with regard to the Code of Conduct complaint.
18. Mr Boardman responded that the matter had not been considered for a section 270 Internal Review of Decision: 'given Mr Ayliffe has already complained to the Ombudsman I do not see any benefit in this process being followed...'. In response to the request for the reason given for the decision not to pursue the matter, Mr Boardman enclosed an email from Mr Ricketts to Mr Ayliffe dated 5 July 2017. It read as follows:

Dear Mr Ayliffe,

Thank you for your email dated 4 July 2017.

You are correct in that it was my assessment alone that determined that there was no case to answer with regards your Code of Conduct Complaint against Mayor Clements.

It is clear in Council's Code of Conduct - Policy and Procedures that as the Deputy Mayor I have the ability to seek advice / opinion while undertaking my assessment. The advice I received assisted in my determination of no case to answer.

In this circumstance Council does not debate on a Code of Conduct but simply notes the result of the assessment.

If my assessment determined that an independent investigation was required (which it wasn't), Council would only debate on a CoC if recommended as a result of an investigative report... this was not the case.

As noted in the letter dated 30 June 2017 this decision cannot be appealed however you have the right to refer the matter to the Ombudsman should you feel the procedure has not been followed correctly.

Sincerely,

Graeme Ricketts
Deputy Mayor
KI Council

19. After deciding to commence an investigation of the matter, I wrote to the council to seek an explanation of what consideration was given by the council to assessing Mr Ayliffe's complaint against the cited Code of Conduct provisions. I also sought an explanation of the decision by Mr Ricketts to conclude an investigation of the complaint under the council's Procedure.

20. By letter dated 2 November 2017, Mr Ricketts advised my investigation:

In response to the complaint and request, I conducted an internal Code of Conduct investigation in accord with the Council's complaint procedures. [..]

As a result of my investigation, I was unable to identify any breach of the provisions of the Code of Conduct... It was my decision that Clements was acting at all times in accord with the Code of Conduct and was not in breach of any of the Code's provisions. [..]

At that point, I sought legal advice in relation to personal immunity protection for Mayor Clements on the premise that Ayliffe had intimated a damages claim on the basis of defamation, allegedly impacting on his wife, his business and himself. [..]

Mr Harris QC dictated a letter to me over the phone for sending to Ayliffe which reflected his advice that in the light of the complaint of reputational damage and loss being complained of by Mr Ayliffe this was a matter appropriate for notification to the LGA Mutual Liability Scheme. Mr Harris QC also confirmed his advice to me on the telephone that, on the facts as he had been given them, any statements made by Clements were protected by the statutory immunity attaching to public statements made by the Mayor in the exercise or purported exercise of his powers, duties and functions and for that same reason this disposed of any suggestion of a Code of Conduct breach as well.
21. In response to my request to provide documentation received from and sent to the LGAMLS in relation to the Code of Conduct complaint against Mayor Clements, Mr Ricketts responded in the same letter as follows:

The LGAMLS is a local government indemnity scheme established pursuant to Schedule 1, Part 1(2) of the Local Government Act 1999. It is owned by the Local Government Association of South Australia and governed by a set of Rules, overseen by a Board with delegated authority from the LGA. It is an exempt agency for the purpose of the Ombudsman's jurisdiction. Council is therefore not in a position to provide all correspondence however, the LGAMLS is willing to meet and discuss its file with you in order to support Council's position.

Relevant law

22. The relevant clauses of the Code of Conduct are:

Part 2 - General behaviour

2.2 Act in a way that generates community trust and confidence in the Council.

2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.

2.4 Show respect for others if making comments publicly.

2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

2.6 Comply with all Council policies, codes and resolutions.

2.8 Endeavour to provide accurate information to the Council and to the public at all times.

23. The relevant sections of the Local Government Act are:

39 - Protection of members

(1) No civil liability attaches to a member of a council for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or council's powers, functions or duties under this or other Acts.

(2) A liability that would, but for this section, attach to a member of a council attaches instead to the council.

63 - Code of conduct for members

(2) Council members must observe the code of conduct.

Whether the council undertook its review of Mr Ayliffe's complaint in accordance with its Code of Conduct for Elected Council Members Procedure.

24. The council's Code of Conduct Procedure, current at the time the complaint from Mr Ayliffe was received, states at clause 4.1.5:

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4 Clause 4.1.1 of the council's Procedure notes that the 'complainant should report the allegation to the Council, addressed to the Mayor (or in the case of the Presiding Member being the subject of the complaint, the Deputy Mayor)...'
Preliminary Assessment of Complaint

Upon receiving a complaint the Mayor will make a preliminary assessment of the complaint to determine whether the complaint:

- is frivolous and/or vexatious, in which case, no further action will be taken in relation to the complaint; or
- has the potential to be adequately resolved informally between the Member who is the subject of the complaint and the complainant (for example, such as where constructive discussion is facilitated between the parties); or
- should be referred for a formal mediation process, such as the Local Government Governance Panel, etc; or
- warrants referral to an independent assessor, such as the Office of Public Integrity, SAPOL, etc., for a formal investigation and report to the Council (which may occur immediately or in circumstances where any mediation of informal discussion did not adequately resolve the matter).

25. The council’s Procedure states at clause 5.1.2 that:

   The Principal Member must ensure that the principles of natural justice and procedural fairness are observed.

26. The council’s Procedure states at clause 5.1.4 that:

   Where the matter cannot be resolved, the Principal Member will refer the original complaint to the Local Government Governance Panel. Neither the Principal Member nor the CEO will investigate a complaint.

27. The Procedure also states that in making a determination pursuant to clause 4.1.5:

   - the Mayor may seek advice and guidance from any source in relation to the best course of action to pursue;

28. In this instance the Deputy Mayor was handling the complaint and in the process sought external professional advice from Mr Andrew Harris QC. However, as noted above, he did so only after [my emphasis] making the decision that there was no Code of Conduct breach.

29. The issue of Deputy Mayor Ricketts’ decision to seek external legal advice and the subsequent referral of the matter to the LGAMLS to manage is related to but separate to my examination of the question of procedural propriety in the council’s handling of the complaint.

30. For the following reasons, I consider that the Deputy Mayor’s handling of Mr Ayliffe’s complaint against the Code of Conduct was not undertaken in accordance with the council’s Procedure:

   (a) Clause 4.1.5 of the Procedure requires the complaint to be assessed and dealt with in one of four ways: no further action if the complaint is frivolous and/or vexatious; resolve informally; referral for formal mediation; referral to an independent assessor. In this case, the council has recently submitted to me that the Deputy Mayor considered the complaint to be frivolous and/or vexatious from the outset of his assessment.\(^5\) There is no evidence that the Deputy Mayor made this determination and conveyed this decision to Mr Ayliffe. Indeed, the council has conceded that they ‘perhaps should have’. Instead, the Deputy Mayor spoke to Mr Ayliffe and later confirmed to him in an email dated 9 June 2017 that he had

\(^5\) The submission has been made for the first time in the council’s response to my provisional report. The claim that the complaint was considered ‘frivolous and/or vexatious’ was made only in response to my provisional report, not at any of the earlier stages of my enquiry.
conducted an investigation and proposed informal mediation with the Mayor. I consider this action to be clear evidence that Mr Ayliffe's complaint had not been deemed to be frivolous and/or vexatious and that a version of the 'second option' in the process had been assessed as appropriate for resolving the matter. Moreover, no opportunity was given to Mr Ayliffe to respond to the alleged determination that the matter was considered frivolous and/or vexatious. If that was the determination at the time, no heed was paid to observing the principles of natural justice and procedural fairness as required at 5.1.2 of the Procedure. In any event, I do not consider that Mr Ayliffe's complaint can be reasonably described as being either frivolous or vexatious. I note that the report to the council dated 29 June 2017 states that Mr Ayliffe objected to Mayor Clements' alleged comments on ABC radio on or about 28 May 2017 when he said about Mr Ayliffe:

_He's got quite hostile. (Tour Operator) Sealink pulled out of sending people there because some people were being abused._

This statement was made in a very public domain and circulated widely in the media. It does not appear that the Mayor has denied making these comments. Plainly, the comments have the potential to be hurtful and damaging and were the basis for the Code of Conduct complaint Mr Ayliffe brought against Mayor Clements. There is nothing to suggest that the complaint was other than a genuine grievance. On these facts, I cannot see how the complaint could be assessed as frivolous or vexatious.

(b) The assessment of the complaint by Mr Ricketts did not systematically address any of the six Code of Conduct breaches alleged against Mayor Clements. Mr Ayliffe identified the individual breaches and made comment on each in his complaint. Mr Ricketts provided no detailed assessment on any of the alleged breaches. The council submission is that the Procedure did not require this, but in my view the commitment of clause 5.1.2 to apply the principles of natural justice did require this.

(c) This recent council submission contradicts the Deputy Mayor's statement in his 30 June 2017 letter that: 'I have assessed your complaint against Mayor Peter Clements for breaches of multiple provisions of the Code as having no case to answer'. This indicates such an assessment was done and that the complaint had been taken seriously. However, the council now maintains that because the Deputy Mayor had determined that the complaint was frivolous and/or vexatious, and that there was no case for the Mayor to answer, there was 'no need to provide a detailed assessment on any of the six alleged breaches'. This strikes me as a reconstruction of events.

(d) As Mr Ayliffe declined the offer of an informal resolution process, clause 5.1.4 required the Deputy Mayor to refer the matter to the Local Government Governance Panel or to 'an independent assessor' because it had not been resolved. The clause further prohibited the Deputy Mayor from investigating the complaint himself. The matter was not referred to the Panel and it was investigated by the Deputy Mayor. In my view, these actions are in clear breach of the Procedure.\[8\]

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\[8\] In _S v Minister for Education and Child Development_ [2017] SASC 161 the SASC has referred to previous authorities and interpreted 'frivolous' and 'vexatious' quite simply:

- a frivolous proceeding is one which does not warrant serious attention.
- a vexatious proceeding is one which is pursued in order to harass a party.

\[9\] Whilst the council's Code of Conduct Procedure at 5.1.4 refers to the 'Principal Member' not being eligible to investigate the complaint, in this instance the Deputy Mayor was acting in his position for the purposes of the Investigation as per clause 4.1.1.
31. The council’s decision to absolve Mayor Clements of any breach of the council’s Code of Conduct was apparently confirmed on the strength of advice of Mr Andrew Harris QC. The report made to the council Special Meeting held on 29 June 2017 states that Mr Harris advised that Mayor Clements had ‘no case to answer’ on the Code of Conduct breaches alleged. The report rejected the allegation with the assertion that:

at no point had Mayor Clements:

- Intentionally or maliciously shown disrespected (sic) towards Mr Ayliffe
- acted in a manner during the interview that generated breach of community trust and confidence in the council or
- made personal comment during the interview that it was a private view and not that of the council.

The report then notes the further advice of Mr Harris ‘that any remedy for the allegations made by Mr Ayliffe could not be found via the council’s Code of Conduct process’.

32. Whilst I consider that Deputy Mayor Ricketts had good cause to seek external legal advice regarding what he considered a likely threat of defamation action, a problem arose with the advice also dealing with the Code of Conduct allegations outside the processes laid down in the council’s Procedure.

33. I observe that insofar as the report dismissed the complaint because the Mayor did not intentionally or maliciously show disrespect, the report is misguided because a breach of the Code can occur unintentionally. I further observe that reliance on section 39 of the Local Government Act for dismissing the complaint is also misguided. Section 39 only provides council members with protection from civil liability for an honest act or omission in the exercise of their duties. It is not a defence to a complaint about a breach of the Code.

34. In addition, the Deputy Mayor’s decision to refer the matter to the LGAMLS for resolution created a new layer of authority for the complainant to deal with. This is so because the LGAMLS appeared to take on the role of communicating with the complainant on the Code of Conduct issue as well as the separate civil liability issue within its authority.

35. I note also that while the Deputy Mayor wrote to Mr Ayliffe on 5 July 2017 to assert that ‘it was my assessment alone that there was no case to answer with regards your Code of Conduct Complaint against Mayor Clements’ - Mr Ricketts later relied on the advice given to him by Andrew Harris QC to explain his decision and advance reasons for rejecting the allegations. This is also confirmed in the earlier letter to Mr Ayliffe dated 30 June 2017, where the Deputy Mayor states that he ‘determined to seek professional advice from Mr Andrew Harris QC and based on his advice I have assessed your complaint...’.

36. Mr Ricketts’ statement stands in contrast to the first point in the resolution of the council made at the Special Meeting on 29 June 2017. The resolution dismisses the complaint from Mr Ayliffe citing: ‘no case to answer based on advice sought from Mr Harris QC’. The council now argues that the Special Meeting resolution should have read ‘confirmed by advice’. I consider the wording of the meeting resolution and the same phrase used in the letter of 30 June 2017 to be the intended meaning.

37. In my view, the assessment of the complaint should have been undertaken as a separate exercise and kept distinct from addressing concerns about a potential defamation action.
38. In summary, my view is that:
- the council’s Procedure was not followed in that upon Mr Ayliffe declining the offer of informal resolution, the complaint should have been referred for independent investigation as required by the Procedure
- if, as asserted by the council, the complaint was dismissed for being frivolous and/or vexatious (which I don’t accept it was), Mr Ayliffe should have been given reasons for that assessment and an opportunity to respond before the final decision to dismiss was made (as required by principles of procedural fairness which the council Procedure adopts)
- Mr Ayliffe had clearly and appropriately outlined his complaint with reference to six provisions of the Code and he was entitled to receive a more detailed explanation for it being dismissed than that there was no case to answer.

Opinion

In light of the above, my final view is that, by not undertaking its review of Mr Ayliffe’s complaint in accordance with its Code of Conduct for Elected Members Procedure, the council acted in a manner that was unreasonable and wrong within the meaning section 25(1)(b) and (g) of the Ombudsman Act.

Recommendations

I recommend under section 25(2) of the Ombudsman Act that, within two months from the date of my final report, the council:

1. Issue a public written apology to Mr Ayliffe for the incorrect handling of his Code of Conduct complaint.

2. The council reconsider the assessment of the complaint and either provide Mr Ayliffe with proper reasons for it being dismissed or refer it for independent investigation.

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by 30 March 2018 on what steps have been taken to give effect to my recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

Wayne Lines
SA OMBUDSMAN

9 March 2018
SB, MF v MINISTER FOR EDUCATION AND CHILD DEVELOPMENT & ANOR [2017] SASC 161 (10 November 2017)

SUPREME COURT OF SOUTH AUSTRALIA

(Appeals to a Single Judge: Civil)

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SB, MF v MINISTER FOR EDUCATION AND CHILD DEVELOPMENT & ANOR

[2017] SASC 161

Judgment of The Honourable Justice Hinton

10 November 2017

FAMILY LAW AND CHILD WELFARE - CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION - CHILDREN IN NEED OF PROTECTION - PROCEEDINGS RELATING TO CARE AND PROTECTION - OTHER MATTERS

On 1 August 2016, a single Judge of the Supreme Court allowed SB’s appeal against an order made by the Youth Court transferring to the State of Queensland an order that M be under the guardianship of the South Australian Minister for Families and Communities until
he attains the age of 18. The appeal Judge set aside the order and restored ancillary orders that allowed SB and his mother access to M on certain terms. A number of unrelated grounds of appeal were dismissed as were four interlocutory applications filed by SB.

SB filed a Notice of Appeal on 19 August 2016 complaining of the appeal Judge’s decision to dismiss the unrelated grounds and the interlocutory applications. The Minister subsequently filed an application seeking to dismiss the Notice of Appeal on the basis that it was an abuse of process, or in the alternative, staying the application until further order.

Subsequently, SB also filed a number of interlocutory applications dated 19 August 2016, 28 October 2016, 25 November 2016, 21 December 2016, 25 July 2016 and a Notice of Appeal dated 25 August 2017. A further Notice of Appeal dated 7 September 2017 was received by the Registrar but not filed.

Held:

1. The Minister’s application seeking to dismiss the Notice of Appeal dated 19 August 2016 as an abuse of process is granted.

2. The Notice of Appeal dated 19 August 2016 is dismissed pursuant to rules 193(b), 295(1)(c) and 295(1)(h) of the Supreme Court Civil Rules 2006.


4. Pursuant to rule 53(3) of the Supreme Court Civil Rules 2006, the Registrar is directed to reject the Notice of Appeal dated 7 September 2017.


SB, MF v MINISTER FOR EDUCATION AND CHILD DEVELOPMENT & ANOR

[2017] SASC 161

Civil

115
HINTON J.

Introduction

1. On 16 November 2011, Judge Prescott, sitting in the Youth Court, made an order (the Care and Protection Order) under s 38(1)(d) of the Children’s Protection Act 1993 (SA) (the Protection Act) placing M, a boy then nine years old, under the guardianship of the Minister for Families and Communities[1] until such time as M attains the age of 18 (the primary order[2]). That order was made with the consent of M’s mother and maternal grandmother, SB. Ancillary orders granting SB and M’s mother supervised access as agreed with the Minister and subject to M’s wishes (the ancillary orders[3]) were also made.

2. On 10 August 2015, the Senior Judge of the Youth Court made an order under s 54F of the Protection Act transferring the Care and Protection Order to the State of Queensland (the Variation Order). The intention of the Variation Order was to facilitate M’s placement with relatives who lived in Brisbane and for them to qualify for assistance from the Queensland Department of Communities, Child Safety and Disability Services (the Queensland Authority).

3. On 13 August 2015, SB instituted an appeal to this Court against the Variation Order. That appeal was heard by a single Judge of the Court. On 1 August 2016, judgment on the appeal was delivered in SB’s favour. The appeal Judge set aside the Variation Order and restored the ancillary orders for access to M that were made with the Care and Protection Order on 16 November 2011. All other unrelated grounds of appeal were struck out and four interlocutory applications[4] that had been filed by SB were dismissed.

4. Subsequently, on 19 August 2016, SB filed a Notice of Appeal to the Full Court[5] complaining of the appeal Judge’s decision to dismiss the balance of the grounds of appeal and the four interlocutory applications. The Minister has since filed an application seeking the dismissal of the Notice of Appeal on the basis that it is an abuse of process, or, in the alternative, staying the action until further order.[6] I grant the Minister’s application and dismiss the Notice of Appeal. My reasons are set out below.

5. Five further interlocutory applications[7] instituted by SB since 1 August 2016 have been referred to me by the Supreme Court Registry in addition to two further Notices of Appeal. I would dismiss each of the additional interlocutory applications and the Notice of Appeal dated 25 August 2017.[8] In addition I would direct the Registrar to reject the Notice of Appeal dated 7 September 2017.[9]

Background and the appeal to this Court

6. M was relocated to Queensland by the Minister prior to the making of the Variation Order. The Variation Order was subsequently sought to facilitate support by the Queensland Authority for M and his carers. A transfer order, which the Variation Order was in the main, can only be made under s 54F of the Protection Act if, amongst other things, “the relevant
interstate officer has consented in writing to the transfer and to the proposed terms of the order*. The Queensland Authority provided its consent by letter dated 23 July 2015. That consent was made conditional upon:

1. obtaining a child protection order in accordance with s 61 of the Child Protection Act 1999 (Qld) (the Queensland Act);
2. receipt of a court order to effect judicial transfer of the child protection order to Queensland;
3. M’s placement remaining viable, stable and appropriate at the point of transfer; and
4. M’s carer being granted a certificate of approval as foster carers under the Queensland Act.

7. The Variation Order, to which reference has already been made, stated:
1. the Care and Protection Order be varied to its primary order only; and
2. the ancillary orders be removed on the basis of procedural necessity to facilitate the transfer of the file to the Queensland Authority.

8. In her judgment on the appeal to this Court the appeal Judge noted:[10]

... over the course of the proceedings in the Youth Court, it was noted that the carers struggled at times with the care of M. The Queensland Authority had been given casework tasks which assisted in facilitating access but they were unable, without registration of the Order in Queensland, to provide support services or intervention to work with the family.

To assist K and her partner [the relatives of M to whom his care in Queensland was entrusted], the Department contracted a private agency, HOPE, to work with the family and specifically with M. In October 2015, despite working with HOPE, K and her partner advised they could no longer care for M on a full time basis but would assist with respite and have M in the school holidays.

At that time, M was to remain in Queensland. The Department originally sought a home placement through the Queensland Authority, however as none was available, on 26 January 2016, M became a boarder at a boys’ college in Queensland.

Due to the breakdown of M’s placement, the Queensland Authority has advised that it needs to reconsider accepting the transfer of the Order due to the instability of the placement and costs associated with M boarding at a private college.

The Queensland Authority has advised that the Department would
need to make a new request for the transfer of the Order and again seek conditional consent from the Queensland Authority. The Department considers it unlikely that the required consent will be forthcoming given the Queensland Authority’s intimation that the Department needs to retain case management and responsibility for the costs of the placement.

9. Subsequently M expressed a desire to attempt reunification with his mother who lives in Victoria. His mother had expressed a similar desire. This possibility was to be explored by the Minister. The appeal Judge was advised that it was highly unlikely that M would remain in Queensland and that given the fluidity of M’s situation the South Australian Department for Education and Child Development was best placed to administer the Care and Protection Order.[11]

10. On 13 August 2015, SB, who is unrepresented, filed a Notice of Appeal against the Variation Order. The grounds of appeal were as follows:
1. My access order deleted 10-8-15
2. Transfer of file to Queensland 10-8-15
3. The whole of the order 10-8-15
4. The order and judgment has not been printed and is not available as yet because
5. I was not served a document in trial booklet and
6. Was served kinship care initial assessment report on 10-8-15 just before hearing of 10-8-15 and
7. Not sufficient time

11. The Notice of Appeal was called on for the purposes of directions on 11 February 2016. The directions hearing was conducted by the Judge who ultimately heard the appeal. She made orders joining M as a party. At the same time the Judge intimated that it was her view that the appeal was against an interlocutory order and that as such, the appeal lay to a single Judge. Subsequently, the respondent advised the Court that notices had been issued under s 78B of the *Judiciary Act 1903* (Cth) as her appeal involved a matter arising under or involving the interpretation of the Constitution.

12. On 9 May 2016, the Minister filed an interlocutory application seeking orders:
1. declaring that the appeal filed on 13 August 2015 was interlocutory in nature;
2. dismissing the respondent’s interlocutory applications of 20, 22 and 25 January 2016 (being FDNs 2, 9, 12 and 13);[12]
3. dismissing the appeal insofar as it relates to everything other than the deletion of the access order and the order transferring the file to Queensland;
4. allowing the appeal insofar as it was not summarily dismissed; and
5. setting aside the Variation Order.

13. That application was supported by M’s legal representative.[13]

14. As will be seen, SB’s constitutional argument involves s 109 of the Constitution. The appeal Judge rejected that argument. Her dispositive orders reflect an acceptance of the
Minister’s submissions. She recorded those submissions as follows: [14]

Counsel for the Minister submitted that, in light of the breakdown of M’s placement in Queensland and the fact that the Queensland Authority has indicated it is no longer prepared to take on the administration of the Order, for the administration of the Order to return to the Department it would first have to be registered in Queensland. The Department would then have to issue proceedings in the Queensland Children’s Court to have the matter transferred back to South Australia.

It was submitted that whilst the Order cannot be registered in Queensland the Queensland Children’s Court has no jurisdiction because there is no child protection order or proceeding in Queensland to transfer back to South Australia.

Counsel proposed that in these unusual circumstances, in order to overcome the difficulty or lacuna, the Minister and the appellant can achieve a mutually satisfactory result if the appeal is allowed on a limited basis so that the Variation Order can be quashed or set aside pursuant to s 22(3) of the Youth Court Act.

During the hearing on 24 June 2016, in supporting the Minister’s application, counsel for M stated that in view of the significant change in M’s circumstances it was in M’s best interest for the Order to be administered in South Australia.

An order quashing/setting aside the Variation Order will return the parties to the position they were in prior to the Chief Executive Officer’s application to transfer the Order to Queensland. This means the ancillary orders made by Judge Prescott on 16 November 2011 including the appellant’s supervised access order, will be restored.

Bearing in mind the objects of the Act prescribed by s 3, and noting that M is not receiving any care and support from the Queensland Authority the approach suggested by the Minister is in M’s best interests.

(footnotes omitted.)

15. As indicated the appeal was successful in part. The Judge ordered: [15]
As I have determined the appeal against the Variation Order is interlocutory in nature within the meaning of s 22(2)(b) of the Youth Court Act, I make the following orders allowing the appeal and setting aside the Variation Order in light of the change in M's circumstances since the Variation Order and the legal difficulty/lacuna created by the interaction of the Act and the Qld Act:

1. The appellant's interlocutory applications FDN 2, 9, 12 and 13 are dismissed.
2. The appeal is allowed for the purposes of setting aside the Variation Order made by the Youth Court on 10 August 2015 thereby restoring the ancillary orders for access to the Order made by Judge Prescott on 16 November 2011.
3. The remaining grounds of the appeal are struck out on the basis that they are incompetent and/or disclose no appealable error for which appellate remedy is available and/or seek relief which this Court cannot give.
16. If the Minister succeeds on his application to dismiss the Notice of Appeal filed 19 August 2016 no need arises to consider the interlocutory applications subsequently filed by SB because those applications could only be ancillary, procedural or adjetival to the Notice of Appeal. Accordingly, I deal with the Minister's application first. Before doing so, however, I set out the grounds of appeal which SB seeks to pursue in the Full Court.

The Grounds of Appeal in the Notice of Appeal to the Full Court[16]

17. As indicated, in her Notice of Appeal filed 19 August 2016, SB appeals the orders dismissing the interlocutory applications subject of FDNs 2, 9, 12 and 13 in SCCIV-15-959 and the dismissal of the balance of her grounds of appeal. She advances 17 grounds of appeal. I reproduce those grounds verbatim:
1. Discrimination
2. Criminal matters in a Civil Court
3. Dispensing with parliamentary legislation
4. Ministerial breaches of the Children’s Protection Act 1993
5. Unresolved Constitutional Matter
6. Senior Judge McEwen said that my appeal would have to go to the Full Court
7. Illegal proceedings
8. No Section 38 investigation
9. A complex file cannot be transferred to another state
10. A conflict of interest in the Office of the Attorney-General
11. Disputes between the arguments of Crown Solicitor Teresa Scott and Crown Solicitor TN Golding about who is the applicant of 24-2-2015 and whether or not I am guardian of the child
12. [M] is not a child under any Family Law Order
13. Crown Solicitor TN Golding presenting nonsense to Justice Bampton because he does not know the case or the story or the scenario
14. I am not a child
15. Crown Solicitor TN Golding disputes the only fact established that [M] has 2 guardians, his mother and me
16. Families SA a failure in the public arena
17. Other

The power vested in a single Judge to reject, stay or dismiss a Notice of Appeal to the Full Court

18. SB’s appeal from the single Judge of this Court lies to the Full Court under s 50(1)(a) of the Supreme Court Act 1935 (SA). The Minister’s application, however, relies upon a different source of power. In this regard the Minister points to rules 53, 131, 192, 193 and 295(1)(h) of the Supreme Court Civil Rules 2006 (SA) (the 2006 Rules) as supplying a single Judge of this Court with power to dismiss the Notice of Appeal. These rules, made in the exercise of the rule making power contained in s 72 of the Supreme Court Act 1935, are supported, at least in part, by the inherent power this Court possesses to protect its processes from abuse.¹¹

19. Rule 192 expressly provides this Court with power to stay proceedings if the justice of the case requires, and rule 193(b), to dismiss proceedings if they are frivolous, vexatious or an abuse of process. Proceeding is defined in rule 4 and includes appellate proceedings. It is tempting to consider what each of frivolous, vexatious and abuse of process mean in isolation in determining the ambit of the power provided by rule 193(b), but in reality the frivolous proceeding – one which does not warrant serious attention¹² – and the vexatious proceeding – one pursued in order to harass a party¹³ – may be considered examples of the broader concept of an abuse of process. That concept is not susceptible to concise definition. In fact it is often said that the categories of abuse of process are not closed.¹⁴

Here, however, in considering the ambit and nature of the power contained in rule 193(b) I think it sufficient to refer to the judgment of Deane J in Staats v United States of America where, in relation to a power that similarly permitted the High Court to refuse to accept or exercise jurisdiction, his Honour said:¹⁵

The rule of law which permeates our system of government requires that all persons have access to the courts of the land...

 Nonetheless, considerations of justice, the interests of plaintiffs themselves and the public interest combine to require that there be procedures for insuring that a court can prevent the institution or maintenance of frivolous or vexatious proceedings. The interests of justice demand that a defendant (and those who are alleged to have acted unlawfully on behalf of a defendant) be protected from the cost, time and personal stress involved in defending such proceedings. The experience of those involved in the administration of justice in this country is that a plaintiff who persists in bringing hopeless proceedings is commonly convinced...
of the righteousness of his or her cause and will suffer increased stress, damage to health and, commonly, financial ruin if proceedings which are clearly foredoomed to fail are not halted at the outset. The public interest demands that court time and facilities, particularly the very limited time and facilities of this Court, are not devoted to pointless and misconceived litigation to the detriment of genuine disputes.

20. The question arises as to whether a single Judge of the Court may exercise the power contained in either rule 192 or rule 193 in relation to an appeal to the Full Court.

21. To answer this question, the starting point is rule 295(1) of the 2006 Rules which enumerates a number of powers which the Court may exercise in relation to an appeal or an application for permission to appeal. Importantly rule 295(3) provides:

(3) The powers conferred by this rule and any other power which is incidental to the conduct or determination of an appellate proceeding or of an application for permission to appeal, including applications for stays of execution under rule 300 or section 17 of the Enforcement of Judgments Act 1991, may be exercised:

(a) in relation to appeals to be heard by the Full Court, on the hearing of the appeal or application by the Full Court or in interlocutory proceedings before a single judge;

(b) in relation to all other appeals, on the hearing of the appeal or application or in interlocutory proceedings before a single Judge or Master.

22. The chapeau to rule 295(3) picks up any other power which is incidental to the conduct or determination of an appellate proceeding. In my view, the powers contained in rules 192 and 193 and the inherent power possessed by the Court are powers incidental to the conduct of an appellate proceeding. In Harris v Caladine, in a paragraph repeatedly quoted in the High Court, Toohey J described the inherent powers possessed by courts such as this as "incidental and necessary to the exercise of the jurisdiction or the powers so conferred". [22] Here the powers contained in rules 192 and 193 and the inherent power possessed by the Court may be exercised in subordinate conjunction with the appellate jurisdiction conferred by s 50 of the Supreme Court Act 1935.

23. Mention may also be made of rule 295(1)(h) which includes a power to summarily dismiss the appeal if it is obvious that it cannot succeed and of rule 295(1)(c) which provides that the Court may make, vary or reverse interlocutory orders in relation to the appeal or application for permission to appeal, or vary or reverse interlocutory orders of the court or tribunal from which the appeal arises. In South Australia v Lampard-Trevorrow White J observed that an "order for the stay of proceedings, even a permanent stay, is generally regarded as interlocutory in nature."[23] Whilst White J does not appear to have decided this issue, as the parties agreed he had the power, he nonetheless proceeded to entertain the application made to him, sitting alone, to permanently stay an appeal to the Full Court. I do not understand White J as simply adhering to the parties' agreed view as opposed to being satisfied that such view was correct.[24] I proceed on the same basis. In my view an order
staying proceedings is an order about the course or conduct of an appellate proceeding in that it is an order that the proceeding shall not proceed – it is an order to the effect that the court refuses to exercise jurisdiction.

24. I proceed on the basis that the power conferred by rules 192 and 193(b) are picked up by rule 295(3), and thus, like the powers contained in rule 295(1), may be exercised by a single judge.

25. Before leaving rule 295(1)(h) I note that in Russell v Polites Investments Pty Ltd Stanley J said:[25]

6SCR 295(1)(h) provides that the Court may summarily dismiss an appeal or an application for permission to appeal if it is obvious that it cannot succeed.

In an application for summary dismissal the onus is on the applicant to prove that it is obvious the appeal cannot succeed. The power is to be exercised cautiously and only where it is obvious that the appeal is without merit. Ultimately, the test is fixed by the language of the rule. The court must be satisfied that it is obvious that the appeal cannot succeed before it will make an order for summary dismissal. Generally a judge would not exercise the power unless it is clear beyond argument that the appeal must fail. While some previous judgments of this Court suggest that the power would not be exercised unless the appeal is so defective in form and substance it must be struck out either as failing to invoke the jurisdiction of the Full Court or clearly as an abuse of process, those authorities appear to be informed by the terms of the old r 95.08. The power conferred by that rule was more limited and confined to dismissing appeals which were incompetent. The terms of 6SCR 295(1)(h) are wider. The power conferred is similar to the power conferred by 6SCR 232 which confers power on the Court to grant summary judgment. That power must be exercised with caution and should not be exercised unless it is clear that there is no real question to be tried. In O’Brien v Bank of Western Australia Ltd the Court of Appeal of New South Wales summarised those principles as follows:

The High Court decision in Spencer v The Commonwealth [2010] HCA 28; 241 CLR 118 was concerned with s 31A(2) of the Federal Court Act 1976 (Cth) but the following principles stated in it are of general application:

(a) On a summary judgment application, the real issue is whether there is an underlying cause of action or defence, not simply whether one is pleaded (at [23]).
(b) The critical question can be expressed as whether there is more than a “fanciful” prospect of success (at [25]) per French CJ and Gummow J or whether the outcome is so certain that it would be an abuse of the process of the Court to allow the action to go forward (at [54] in the judgment of the plurality). Demonstration of the outcome of the litigation is required, not an assessment of the prospect of its success (ibid).

(c) Powers to summarily terminate proceedings must be exercised with exceptional caution (ibid at [55]; see also French CJ and Gummow J at [24]).

The power conferred by the rule may be exercised by a single Judge of the Court.

(footnotes omitted.)

26. The text of rule 192 is different to that of rule 295(1)(h). This is not the case in which to explore the difference. Whatever it may be, I think it obvious that any case falling within rule 295(1)(h) would also fall within the ambit of rule 192.

27. Rule 117 is a further source of power. Relevantly, it provides:

117-Power to make orders controlling conduct of litigation

(1) The Court may make any order it considers necessary for the proper conduct of a proceeding or otherwise in the interests of justice.

Note-

In addition to the powers specifically mentioned in this rule, the Court’s powers to enforce compliance with the rules (rule 12) and the Court’s powers to penalise procedural irregularities in costs (rule 13) should be noted.

(2) The Court may (for example)-

... 

(e) strike out a document or proceeding if the Court considers it frivolous, vexatious or an abuse of the process of the Court;

...

28. The breadth of this power was also considered by Stanley J in Russell v Polites Investments Pty Ltd where he said: [26]

Pursuant to 6SCR 117(2)(e) the court may strike out a document or proceeding if the court considers it frivolous, vexatious or an abuse of the process of the court. The definition of “proceeding” in 6SCR 4 includes appeals. "Frivolous" is generally understood to mean
something not worthy of serious attention. In *Slinko v Guardianship and Administration Tribunal* de Jersey CJ held that an appeal is frivolous or vexatious where it is paltry, not warranting serious attention and manifestly futile. The categories of abuse of process are manifold and not closed. They include where a party responsible for prosecuting a matter does not diligently prosecute their claim, where there is no arguable case in fact or in law, or where the claim is certain to fail.

(footnotes omitted.)

29. In *Kronen v Commercial Motor Industries Pty Ltd* the Full Court referred to rule 117(2)(e) and stated:[27]

It is common for court rules to provide for the dismissal of proceedings which are an abuse of process without a hearing and determination of the merits. SCR 117(2) empowers this Court, in the management and control of actions, to strike out documents or proceedings which have been filed if the Court considers them frivolous, vexatious or an abuse of process of the Court.

...

The powers conferred by SCR 117(2) and IPR 60(1) do not finally resolve a controversy by the exercise of judicial power but they confer interlocutory powers which must be exercised judicially. The obligation to proceed judicially includes giving the parties an opportunity to be heard.

Both SCR 117(2) and IPR 60(1) apply to documents that initiate a proceeding, that is to say the substantive proceeding, and an interlocutory step filed in that proceeding...

(footnote omitted.)

30. The Full Court having confirmed the power contained in rule 117(2)(e) as interlocutory in nature, it may be exercised by the Court constituted of a single Judge.[28]

31. Lastly, resort may also be had to rule 53 which, amongst other things, empowers a Judge of this Court to direct the Registrar to strike from the Court file any filed document if it contains matter that is scandalous, frivolous or vexatious. In *Westwill Pty Ltd & Anor v The Barossa Council* I had occasion to consider rule 53.[29] I said:[30]
In this Court in *Westwill Pty Ltd v Byrt* Gray J touched upon the question of when a document would amount to an abuse of process within the meaning of Rule 53. He said:

Rule 53(1) as extracted, provides that a document is an abuse of the process of the Court if it contains matter that is scandalous, frivolous or vexatious. It is apparent from the terms of Rule 53 that the Rule does not operate to limit what may amount to an abuse of the process of the Court. The terms “scandalous, frivolous or vexatious” in this context should be given a wide meaning. It is to be observed that Masters of this Court will generally direct the Registrar to reject a document where pleadings do not disclose an intelligible cause of action, or no intelligible grounds for appeal. Such documents fall within the wide meaning referred to above.

I agree. The rule is made in support of this Court’s inherent power to protect its processes. It is now well settled that a superior court has all control over its own processes, including an ability to prevent or protect itself from abuse or misuse of its processes. In *Assistant Commissioner Condon v Pompano Pty Ltd* French CJ quoted with approval the following passage from Jacob, “The Inherent Jurisdiction of the Court”:

*[T]he essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused. Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute.*

The inherent power of a superior court to combat abuse of its processes derives from its fundamental responsibility to administer justice. Given the end that the power serves, it necessarily extends to categories of cases where the processes and procedures of the court, which exist to administer justice with fairness and impartiality, may be converted into instruments of injustice or unfairness. As early as 1883, in *R v Burns*, Higginbotham J, with whom Stawell CJ and Holroyd J agreed, noted:

... Every court of justice has an inherent power – a duty as well as a power – to take care that the machinery of justice is not abused in such a manner as to prevent justice being done, or allow a scandal to take place...
The High Court has similarly acknowledged this “duty”, noting that “every court is in duty bound to protect itself against an abuse of its process”.

Thus, whilst it is axiomatic that all members of the community have access to the courts, that right is not absolute. This Court is clothed with all power necessary to ensure that it is able to fulfil its functions including the taking of appropriate steps to prevent the “persistent advancing of hopeless applications that are abusive and scurrilous and that unnecessarily take up the time of the court to the prejudice of the community in general, and other litigants in particular.” As Deane J indicated, the effective administration of justice is undermined where individuals abuse the processes of the Court by diverting resources from meritorious actions to repeated hopeless applications, devoid of any merit, that do not comply with the rules, and result in the unnecessary incursion of time and expense and the occasioning of unnecessary anxiety. Having said that, sight can never be lost of the fact that it is fundamental to the rule of law that all members of the community have access to the courts. I refer again to Deane J in *Staats v United States of America*:

One effect of that rule is to empower a Justice of the Court effectively to prevent the institution of proceedings which are vexatious in the sense that it can be seen that they cannot succeed. It is a power which must be exercised with great care and in only a clear case.

Care must be taken in the exercise of the power contained in Rule 53 and it may only be used in a clear case.

(footnotes omitted.)

32. I remain of this view.
33. I turn to consider the application of these powers to the Notice of Appeal filed on 19 August 2016.

**Consideration**

34. I commence with the observation that the appeal heard by the judge of this Court was confined to complaints relating to the making and existence of the Variation Order. Consistent with this all of the grounds of appeal in the Notice of Appeal before the appeal Judge were aimed in one way or another at the Variation Order or the process resulting in its making. The orders made by the Judge in disposing of the appeal set aside that order
and restored the ancillary orders for access to M. The Care and Protection Order was not appealed against. Thus, SB succeeded, obviating the need to consider the interlocutory applications made.

35. No costs order was made.

36. The fact that SB succeeded and the Variation Order was set aside suggests, without more, that her appeal to the Full Court is moot and thus the Notice of Appeal filed 19 August 2016 is an abuse of process.

37. Meaning no disrespect to SB, who clearly has M’s best interests at heart, she does not appear to understand that an appeal is against an order and once such order is set aside, on whatever basis, it ceases to be of any force and effect.

38. Many of the submissions made by SB before me may be described as complaints regarding the supervision and execution of the Care and Protection Order, including the investigation of possibilities that M reside with certain family members who SB considered were better suited to caring for him. None of these complaints can be entertained on an appeal to the Full Court from the judgment of the single Judge. If there is any forum in which they may be aired, it is the Youth Court on an application under the Protection Act, or, possibly, as part of an application for judicial review.

39. It may also be said that SB appeared to consider that the powers of this Court on appeal were not circumscribed, but that relief in any respect could be granted if this Court, whether constituted by a single judge or otherwise, was of a different opinion to the judicial officers of the Youth Court or, indeed, the Minister. The appeal being instituted under ss 22(1) of the Youth Court Act 1993 (SA), the appeal Judge was limited to the exercise of the powers contained in ss 22(3) and then, only in relation to the judgment, within the meaning of ss 22(1), appealed against.

40. I turn to the individual grounds of appeal.

41. Grounds one to four, seven and nine to 17, as reproduced above and contained in the Notice of Appeal filed 19 August 2016, may be considered together. Content and meaning to one side, they do not merit serious consideration by the Full Court. None of those grounds can have any consequence for the outcome of the appeal before the appeal Judge such that it is arguable that they might conceivably cause the Full Court to interfere with the orders made by the single Judge. None could result in any different order bearing in mind that the appeal before the single Judge was instituted only in relation to the Variation Order. They may be considered frivolous in that they do not merit serious consideration.

42. Ground five complains of an “Unresolved Constitutional Matter”. Indeed, in relation to the appeal before the appeal Judge the respondent issued notices as required by ss 78B of the Judiciary Act 1903 (Cth). The appeal Judge summarised the constitutional argument as follows:[31]

The appellant argues that, as she was the recipient of social welfare payments on M’s behalf while he was in her custody, she was recognised as his guardian in the federal jurisdiction. Her contention appears to be that ss 38(2)(a) of the Act is inconsistent with the A New Tax System (Family Assistance) Act 1999 (Cth).
43. If fresh notices were required to be issued under s 78B in relation to the Minister’s application, that did not occur. In my view, it was unnecessary. In ACCC v CG Berbatis Holdings Pty Ltd French J, as he then was, said:[32]

Section 78B does not impose on the court a duty not to proceed pending the issue of a notice no matter how trivial, unarguable or concluded the constitutional point may be. If the asserted constitutional point is frivolous or vexatious or raised as an abuse of process, it will not attach to the matter in which it is raised the character of the matter arising under the Constitution or involving its interpretation: Nikolic v MGIC Ltd [1999] FCA 849; cf Australian Securities and Investments Commission v White (Fed C of A, Drummond J, 16 July 1998, unreported).

44. I understand SB’s argument to be to the effect that because she was M’s guardian for the purposes of receiving benefits under the A New Tax System (Family Assistance) Act 1999 (Cth) she was the guardian of M for all legal purposes. Consequently, a law of a State that empowered a judge to attribute to her any different status altered, impaired or detracted from the intention of the Commonwealth law and was, under s 109 of the Constitution, inoperable. I do not think the argument has merit. More importantly, and even if I am wrong, it is an argument that, the Variation Order having been set aside, could only result in the setting aside of the Care and Protection Order and yet that order was not subject of the appeal before the single Judge. Further, and more to the point, before me SB made plain that she did not quibble with the Care and Protection Order.

45. In the circumstances it was unnecessary to stop the hearing of the Minister’s application pending the issue of s 78B Notices. Ground five is frivolous in the sense that it does not merit consideration. For the same reasons I would reject SB’s application, if it were necessary to consider that application (and assuming power to provide the relief sought exists), that the matter be removed in to the High Court.

46. Ground six complains that the appeal ought to have proceeded before the Full Court, as opposed to the single Judge. It is a challenge to the Judge’s determination that the appeal was against an interlocutory order and thus a matter that a single Judge could hear. I do not pause to consider whether the question is arguable. SB wants to pursue the argument but only in relation to the grounds of appeal dismissed and her interlocutory applications. She does not claim that the error infects the order setting aside the Variation Order. What she asks then is that the Full Court determine incidental and subsidiary matters arising in the course of pursuing the substantive relief sought despite that relief being obtained and without it being interfered with. In such circumstances the ground of appeal does not warrant serious consideration.

47. The eighth ground of appeal contends that “no s 38 investigation” has taken place. The respondent articulated the issue as follows:[33]
There is a problem because my grandson is an illegal prisoner under the Minister because Justice Prescott made an agreement with me and he explained to me that before [M] can be taken off my eldest son, there would have to be an investigation, and when I looked at the Act, he was correct, there has to be a s.38 investigation before the Minister has any power in relation to a child. She can't hold a child in care without a s.38 order.

48. I take the respondent to contend that had there been a “section 38 investigation”, M would not have been taken from the care of her son and may have been placed in her care. [34] Further, certain unfortunate events in M’s life may also not have occurred had he been in the care of someone different.[35] I appreciate that these issues are of particular importance to the respondent due to the nature of her relationship with M.

49. The reference to s 38 is a reference to s 38 of the Protection Act. It is pursuant to the power contained in that section that the Youth Court may make a care and protection order. However, where an order is made under s 38(1)(d) placing the child under the guardianship of the Minister until the child attains the age of 18, the powers vested in the Minister by s 51 are enlivened. Amongst other things, those powers permit the Minister to place the child in the care of a family member, an approved foster parent or other suitable person. My understanding is that it is in the exercise of the power contained in s 51 that the Minister has made the arrangements for M to reside and go to school in Queensland and which permits the Minister to explore the possibility of M going to his uncle.

50. The point is that the Care and Protection Order being in place, no further exercise of the power contained in s 38 is required as a matter of course, unless an application to vary the Care and Protection Order were made. Further, and in any event, any failure to comply with a condition precedent to the exercise of the power contained in s 38 can no longer be of any consequence if such failure is said to infect the Variation Order. That order has been set aside. If it is said that such failure has infected the Care and Protection Order, then that order was not the subject of appeal. Accordingly, the eighth ground of appeal does not warrant the attention of the Full Court.

51. For the reasons given above, in my view, the Notice of Appeal filed 19 August 2016 should be dismissed pursuant to the powers contained in rules 193(b), 295(1)(c) and 295(1)(h). In the event that I am wrong, I nonetheless consider that the said Notice of Appeal should be struck out under rule 117(1)(e) as an abuse of process.

52. I turn to the interlocutory applications and Notices of Appeal received subsequent to the Notice of Appeal filed 19 August 2016.

**Subsequent Interlocutory Applications and Notices of Appeal**

53. Pursuant to rule 193(b) I dismiss the following interlocutory applications for the reasons given:

1. The interlocutory application, filed 19 August 2016.[36] The application relates to the transfer that was intended under the Variation Order. That order has been set aside.
2. The interlocutory application, filed 28 October 2016.\textsuperscript{37} In this application SB seeks an order removing the matter into the High Court and ancillary orders in addition to orders regarding M’s future care. For the reasons given above the constitutional argument does not warrant consideration by the Full Court. The remaining orders sought are not relief that the Full Court is empowered to provide.

3. The interlocutory application filed 25 November 2016.\textsuperscript{38} This application concerns matters relevant to the conduct of the hearing before me. I gave SB every opportunity to raise all arguments in response to the Minister’s application and in support of her Notices of Appeal and interlocutory applications. Events have overtaken this application. To the extent that SB also seeks legal representation of her choice and requests it occur through Legal Aid, this Court has no power to assist.

4. The interlocutory application filed 21 December 2016.\textsuperscript{39} In this application SB seeks an order “to be allowed a verbal argument” and an order “to protect [M] from being returned to South Australia”. I do not understand SB ever to have been denied procedural fairness. As for the second order, it is not relief that can be granted on any appeal from the orders made by the appeal Judge.

5. The interlocutory application of 25 July 2017.\textsuperscript{40} In this document the respondent, inter alia, seeks the setting down of “my review”; her August 2016 appeal to the Full Court and the interlocutory application of 19 June 2017 (being the application filed on 25 July 2017) and ancillary orders. In view of my order regarding the Notice of Appeal of 19 August 2016 and the absence of any power vested in this Court on appeal to conduct a review, this application does not warrant serious consideration and should be dismissed.

54. With respect to the two additional Notices of Appeal:

1. The Notice of Appeal filed on 25 August 2017.\textsuperscript{41} In this document the respondent, amongst other things, appeals against “[a]ll of the Orders of the Youth Court and the Supreme Court of 2015, 2016 and 2017, including the Order of Judge Roder in his judgment whereby he directs that FDN23 and FDN26 be struck from the file.”

Judge Roder ordered pursuant to rule 53 that FDN 23 and FDN 26 be struck from the file. In truth such order should have been that the Registrar reject FDNs 23 and 26. I have viewed FDNs 23 and 26. But for Judge Roder’s order, I would have exercised the power vested in this Court by rule 53(4) and directed that both documents be struck from the file.

The grounds of appeal articulated in support of this Notice of Appeal are many and traverse a vast array of topics including complaints as to the delay in providing these reasons, the refusal of the Court to accept a neuropsychological assessment of SB, the rejection of the constitutional argument and claims of this Court being in rebellion against the Parliament. My understanding of the grounds and orders sought is that they are focussed upon the Variation Order and the actions of the Minister and not the Care and Protection Order itself. All grounds remain focused on the Variation Order. As I have said, that order has been set aside and no longer exists. This Notice of Appeal does not merit serious consideration. It is frivolous and should be dismissed pursuant to rule 193(b).
2. The Notice of Appeal received on 8 September 2017 received but not filed.[42] The orders sought are set out in the following terms:

(a) Leave for the affidavit lodged against the order of Judge Roder in August 2017 to be filed;

(b) Leave for Notice of Appeal lodged against the order of Judge Roder in August 2017 to be filed.

(c) Leave for a date set for hearing of my appeal of August 2017.

The fate of this Notice of Appeal is inextricably linked to that filed on 25 August 2017. In view of my conclusion on the Notice of Appeal filed 25 August 2017, pursuant to rule 53(3) of the 2006 Rules I direct the Registrar to reject this Notice of Appeal.

55. For completeness I note that I have received a voluminous amount of correspondence from the respondent throughout the course of managing this matter. I have had regard to all of that material, including the submissions put by her and the concerns she addresses.

Conclusion

56. I order:

1. The application of the Minister filed 23 December 2016[43] as amended is allowed.


3. The interlocutory application filed 19 August 2016[45] is dismissed.

4. The interlocutory application filed 28 October 2016[46] is dismissed.

5. The interlocutory application filed 25 November 2016[47] is dismissed.


9. I direct the Registrar to reject the Notice of Appeal received on 8 September 2017.

[1] Now the Minister for Education and Child Development (the Minister).


SCCIV-16-1135 FDN33.

Date stamped as received on 8 September 2017.


SB, MF v Minister for Education & Child Development [2016] SASC 116 at [30]-[34].

In file SCCIV-15-959.

M’s legal representative was appointed as an independent children’s lawyer pursuant to s 48(1) of the Act.

SB, MF v Minister for Education & Child Development [2016] SASC 116 at [41]-[46].

SB, MF v Minister for Education & Child Development [2016] SASC 116 at [69].

FDN 1 in 1135 of 2016.


Staats v United States of America (1992) 66 ALJR 793 at 793. Order 58 r 4(3) was not materially different to rule 53(3) of the 2006 Rules which provides power to strike out documents where they are an abuse of process.


After all it is the first duty of a court to decide if it has jurisdiction to decide an issue; Federated Engine-Drivers and Firemen’s Association of Australasia v Broken Hill Pty Co Ltd [1911] HCA 31; (1911) 12 CLR 398.

[2016] SASC 129 at [28]-[30].
[26] [2016] SASC 129 at [31].

[27] (2016) 124 SASR 427 at [23]-[26].


[29] [2016] SASC 189.


[34] See for example Transcript, 6 February 2017, pp 28, 32-33.

[35] See for example Transcript, 6 February 2017, p 49.


[38] SCCIV-16-1135 FDN 14.


[40] SCCIV-16-1135 FDN 30.

[41] SCCIV-16-1135 FDN 33.

[42] This document was not accepted for filing as it post-dated Orders made by me which directed that no further documents were to be filed without the permission of a Judge of this Court.

[43] SCCIV-16-1135 FDNs 6 and 12.


[50] SCCIV-16-1135 FDN 33.
4 March 2020

Mr Martin McCarthy  
Chief Executive Officer  
The Barossa Council  
PO Box 867  
NURIOOTPA SA  5355  

By email: barossa@barossa.sa.gov.au

Dear Mr McCarthy

Section 270 Internal Review – Keil Estate - Indenture Deed

I act for Ms James and Mr Senneff.

My clients have instructed me in relation to your letter dated 20 February 2020.

In that letter, you invited my clients to make any submissions in relation to the section 270 internal review made under the Local Government Act (the Act) regarding the Keil Estate and the proposed execution of an Indenture Deed.

Background/understanding

I have a general understanding of the matter. Essentially it involves a land swap between the Council in relation to land that was owned by the late Elma Keil, who passed away pre-1987. Ms Keil, according to her will, wished to effectively bequeath certain land to the Council (then the District Council Tanunda) to be used for parks, gardens or sporting facilities. The land was transferred to the Council (the council land or the Keil land).

Château Tanunda is nearby. It is effectively owned by Mr John Geber, or his associated entities, including Ivivi Pty Ltd (Mr Geber) or (Ivivi).

Mr Geber/Ivivi own land in close proximity to the Keil land.

It is understood Mr Geber initiated the process, this has resulted in the Council & Mr Geber pursuing a process of a land swap involving the transfer of the Keil Land currently owned by the Council to Ivivi and in return Ivivi will transfer nearby land to the Council.

As part of that process, Council consulted the public, said to have been undertaken in accordance with the Act.

My clients (and others) have lodged a series of concerns/complaints with the Council in relation to the proposed land swap including the revocation of the Keil Land as community land pursuant to the Act. The complaints and concerns have also been lodged with the Ombudsman and other government agencies.
In response to those concerns, Council engaged its lawyers, first Kelledy Jones, and next Norman Waterhouse to undertake the "section 270 internal review". Those reviews have largely expressed the view that the Council has correctly followed the Act.

With respect, those views are not sustainable on the evidence.

**Discussion**

The land swap process seems to have commenced a number of years ago. It has been considered by the elected members of Council on a number of occasions. It is not proposed to recite all the occasions when that has taken place. However critically the issue was considered at a meeting on 19 December 2017. It appears that the first internal review prepared by Kelledy Jones (Kelledy Jones) dated 13 December 2017 was considered at that meeting.

The minutes of that meeting reads as follows:

*MOVED Cr Lange*

1. That the Council note and consider the feedback from community members and the Kelledy Jones Lawyers’ Independent Assessment of the consultation and proposed disposal process, which are attached to this report.

2. That, further to the Independent Assessment at page 1, as the proposed disposal of land is via an exchange of land of the same or similar size and value, and the land currently has little or no market value due to the restrictions of the Dedication of the Keil Trust and the community land classification, the Council dispenses with the requirement of its Disposal of Land and Other Assets Policy at paragraph 4.4.1(i) to obtain any independent valuations in this matter.

3. Pursuant to Section 194 of the Local Government Act 1999, that Council continue the process to revoke the Community Land classification for Allotments 11 and 12 Basedow Road, Tanunda, which are respectively contained in Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824.

4. That the Chief Executive Officer prepare a report and submit it to the Minister for Planning seeking approval to revoke the Community Land classification of the said land parcels.

5. That should the revocation be approved by the Minister for Planning, the matter be referred back to Council for final resolution in accordance with section 194(3)(b) of the Local Government Act 1999.

6. That the Chief Executive Officer then proceed with the necessary steps to affect the proposed land exchange in accordance with the Council’s resolution of 19 September 2017.

Seconded Cr de Vries CARRIED 2014-18/1269

(my emphasis)

I will return to that minute below.
Issues raised in your letter of 23 February 2020

I understand a large number of issues have been the subject of concerns expressed by my clients but in your letter you have effectively only responded to two issues.

The first issue relates to whether the Council Agenda Report for the meeting on 27 January 2020 was published in accordance with the Act i.e., was proper notice given? I do not propose to address that issue.

The next issue relates to the section 270 review and follows consideration of the latest "internal review" at the Council meeting on 17 December 2019. It is understood that, at that time, the Council had before it a report from Norman Waterhouse entitled “Section 270 final report – matter of land exchange” (the Norman Waterhouse Report). That report was sent to Council on 5 November 2019. As noted above both the Kelley Jones letter and the Norman Waterhouse report effectively suggest that Council has complied with its policies within the terms of the Act. I take strong issue with that.

In this letter I address two matters. First I deal with the error in the legal description of the land. I will then deal with the minute of the meeting in 19 December 2017.

Error in legal description of land affected by land swap

The documentation reveals that reference has being made to the land in Certificate of Title 5962/146. My clients have repeatedly pointed out that it is an incorrect title reference, the correct title reference is Certificate of Title 5962/946. The land referred to in CT 5962/146 is land at Fisher Street, Fullarton! However, the documentation including, it is understood, the Indenture Deed, which is proposed to be executed between the Council and Mr Homburg as the Executor of the Estate of Elma Keil, incorporates the erroneous description.

This is not a situation where it is simply an error that can be cured under the so-called "slip rule". The Council and the other party to the Indenture Agreement need to ensure that the land to be transferred is in accordance with the proper legal description. The process has failed. The process cannot be continued because of that most important defect in the legal description of the land.

The resolution on 19 December 2017

On 19 December 2017 the (then) Council resolved (item 7.2.1.1) to continue the process to revoke the community land classification of allotments 11 and 12 Basedow Road so as to facilitate the land swap. The minute relevantly reads:

    Moved Cr Lange

(1) That the Council note and consider the feedback from community members.....

(2) That, further to the independent assessment at page 1, as the proposed disposal of land is via an exchange of land of the same or similar size and value, and the land is little or no market value due to the restrictions of the ……., the Council dispenses with the requirements of its … Policy...

(my emphasis added)

That minute in sub-paragraph (2) is erroneous in a most important and substantial way. The valuation report prepared by Land Services SA details that the Council land at the present has an area of 13,716 m².
The Ivivi land is only 8,241 m². It is beyond argument that the minute, insofar as it records that the exchange of land "of the same or similar size …" is erroneous. Currently, the Council owns 13,716 m² and should the land swap continue, it will only have some 60% of that area. That is not in either the interest of the Council nor the Council's community, the Council being the custodian of the land on behalf of its community.

Thus in resolving to proceed further, there was fundamental misunderstanding as to the basis on which the land swap should take place. That is a significant error and that error has been perpetuated ever since. Critically, it was not properly addressed by Kelledy Jones nor by the Norman Waterhouse report.

Before discussing that further it is noted that as regards the valuation, the valuation numbers are more closely aligned but, nonetheless, there are some differences and in one instance by about 20%! However it is noted that because of the difference in the value, Mr Geber's interest will pay to the Council an additional $25,000.

However, the issue of the land value does not address the detail in relation to the 'similar size land parcels'. Kelledy Jones touched on this issue. In its review dated 13 December 2017 at para 42 the following statement appears:

"… The land exchange will not result in a reduction of Council land assets, with land of the same or similar value and size being exchanged and, as we understand it, being community land being located in a more accessible location."

Two brief comments about that statement:

1. clearly the land is not of a similar size. The statement is thus wrong.
2. the two parcels of land are (virtually) adjacent one another and hence it is difficult to see how it can be said that the land is in a more accessible location, to the extent that the location of the land makes it more 'attractive' to the Council to proceed. Rather it is more attractive to Mr Geber so as to facilitate his publicly expressed desire to establish a new hotel in association with Chateau Tanunda. To achieve that Mr Geber requires the council land ie to facilitate his personal desire whereby he not only acquires land adjacent to the existing Chateau Tanunda land but also he will receive an additional 40000 m² of land, at the expense of the community.

I now turn to the internal review undertaken by Norman Waterhouse, which was considered by the Council at its meeting on 17 December 2019. That report did not specifically address the issue of land size although it was mentioned. Rather, the following was said.

Para 7.2.2. - Ground 2

7.2.2.1 - whilst the Chateau Land is smaller in size than the Council land, the valuation report values the Chateau Land and the Council land at $660,000 and $685,000 (unfettered by restrictions) respectively. Accordingly, they are not too dissimilar in value notwithstanding the differences in their sizes.

(my emphasis added)

Thus whilst there is an acknowledgement that there is a 'size difference' there has been no discussion/acknowledgment that the size difference is substantial. It clearly is. That is beyond argument as the land to be transferred to the Council is only 60% in size of its current holding. That will have an effect on the community that currently use the Council land for parking for a number of events given its proximity to the main street and other facilities in Tanunda. The community will suffer.
As to this point, I repeat the issue of the value does not come into play. It is a question of what use the land can be put to. The community will be denied the opportunity to use and ultimately to develop land which is substantially smaller than its current land holding as intended by the late Mrs Keil. For example a park or reserve (or even a carpark) on the new land can only be 60% of a park or reserve on the land currently owned by the Council. That is contrary to the express desire of the late Ms Keil.

A Frivolous Complaint

In your letter of 20 February 2020 you use the term “frivolous”. That term is sometimes read in conjunction with the term “vexatious”.

In my opinion, the matters raised are neither frivolous or vexatious. There is a clear error in the legal description of the land affected by the land swap, and the elected members resolved to proceed clearly on an erroneous basis. As appears and is embedded in the resolution of 19 December 2017 - that as a result of the land swap the Council would only hold 60% of the area of land that it currently holds but that was not referred to in the resolution. The very essence of the resolution is erroneous.

It cannot be said that this point is frivolous i.e., one that does not warrant serious attention and nor can it be said to be vexatious i.e., that my clients are pursuing this issue to harass a party. Rather it is a case of ensuring that the terms of the legislation have been complied with and that there was a full and proper disclosure of what the land swap involves. That process clearly has proceeded on a false premise in terms of the area of the land. It simply cannot be said that the areas are similar in size – to repeat, the Ivivi Land which is to be transferred to the Council is only 60% of the land currently owned by the Council.

The public confidence in the Council will be lost if errors such as these are allowed to continue when they have correctly been raised and go to the very heart of the decision of the Council to continue with the land swap.

Action required

Given the matters discussed herein, it is necessary for the Council to immediately cease progressing the revocation of the community land and not enter into the proposed Indenture with Mr Homburg due to the:

1. errors in the legal description of the land which errors are most significant because the Council has wrongly been involving itself with land in Fullarton ie it has not correctly and legally identified the land;

2. elected members who resolved to proceed with the revocation of the community land status of the Keil land as at December 2017 were not given proper and accurate information and proceeded on an erroneous basis that the land holdings in question were of 'similar size'. That clearly is not the case and that issue, which is a most important one, has simply not been addressed in the review by Norman Waterhouse, nor the review conducted by Kelledy Jones dated 13 December 2017.

Thus, it is clear that both of the internal reviews undertaken by Kelledy Jones and Norman Waterhouse fail to correctly identify that the land size is substantially different. To proceed further is not in the community interest and the processes must stop.
Should the Council wish to undertake the land swap, it must re-start the process and must accurately present to the elected members and the community at large the true situation in terms of the size of the areas to be swapped, and of course correctly identify the land. Mr Geber’s hotel plans should be specifically identified.

My clients fully reserve their rights should the council continue with the land swap when clearly there are significant errors in the Council processes.

Yours faithfully

George Manos
BOTTEN LEVINSON
Email: gm@bllawyers.com.au
12 March 2020

Attention: Mr George Manos
Batten Levinson Lawyers
GPO Box 1042
ADELAIDE SA 5001

By email: gm@bllawyers.com.au

Dear Mr Manos,

SECTION 270 INTERNAL REVIEW – KEIL ESTATE – INDENTURE DEED

I refer to your letter of 4 March 2020, sent for and on behalf of your clients, Ms Shelley James and Mr Robbert Sennef, (together ‘the Applicants’).

Your letter constitutes a response to my invitation of 20 February 2020, that the Applicants provide a response to the Council’s proposal to refuse to undertake a further review pursuant to section 270 of the Local Government Act 1999, in relation to its decision regarding a land exchange with Chateau Tanunda.

As noted in my letter of 20 February 2020, any response received will be presented to the Council for its consideration, together with the application received and correspondence to date in this matter.

Please note that this matter will be presented to Council for consideration at its meeting on 21 April 2020 at 9.00am at The Barossa Council Chambers, 43 – 51 Tanunda Road, Nuriootpa. Following the Council’s consideration of this matter, I will advise you of the outcome.

Sincerely,

[Signature]

Martin McCarthy
Chief Executive Officer
The Barossa Council
ADDENDUM REPORT
COUNCIL
EXECUTIVE SERVICES
CHIEF EXECUTIVE OFFICER REPORT
28 JANUARY 2020

7.2.1 CHIEF EXECUTIVE OFFICER - DEBATE

7.2.1.6
INDENTURE DEED – KEIL ESTATE
B7081

PURPOSE
Council is asked to finalise the Deed (known as the Keil Estate Deed) being the last process to re-establish a Deed over new land to be transferred to Council (in the near future) as part of the Chateau Tanunda land transfer.

RECOMMENDATION
That Council authorise the Mayor and Chief Executive Officer to sign, seal and date the Deed to finalise the matter, as presented at Appendix 1.

REPORT
Council received a report in August 2019 outlining the final draft Deed. Council approved the final engagement with the executor. This has been completed with no variation to the Deed presented to Council in August 2019. The resolution of August 2019 is:

Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

With Council now having concluded the internal review of that August 2019 decision I have written to the executor outlining that all conditions have been satisfied. The executor is satisfied with the agreement and executed it. The Deed remains unchanged (other than of course the year now being 2020) from that provided in August 2019.

As a Deed to finalise the matter, in accordance with part 2 of the resolution 2018-22/279, the report is now tabled and final authorisation to sign, seal and date the document is required.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES
Attachment 1 - Final Undated Deed (prepared for finalisation)
Attachment 2 - Deed Presented in August 2019
COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Natural Environment and Built Heritage
Community and Culture
Health and Wellbeing
Business and Employment

1.4 Develop and maintain streetscapes that reflect the character and heritage of the region.
1.6 Support tourism development that is sensitive to the natural environment and sustainable.
2.1 Initiate and support activities which encourage participation and pride in the Barossa Council area.
2.2 Support the development of activities that celebrate the history and culture of the Barossa and its people.
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.
4.6 Ensure that community members can participate in cultural, recreational, sporting and learning opportunities.
5.1 Work closely with State Government, Federal Government and stakeholders to support economic growth, development and job creation.
5.4 Attract investment for new and innovative industries, such as creative industries and cultural tourism.
5.13 Support economic development through events.

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

There are no financial, resource and risk management consideration with proceeding that haven’t already been outlined to Council in prior reports on this matter.

COMMUNITY CONSULTATION

Engagement and regular updates (when relevant information was available) have been held with the executor/s throughout the process of the land swap.
THIS DEED is made the day of 2020

BETWEEN:

THE BAROSSA COUNCIL of 43-51 Tanunda Rd, Nuriootpa, SA ("Council");

AND:

ROBERT JOHN HOMBURG of 7 Park Street Tanunda, SA as the Executor of the Estate of the late Elma Linda Keil ("Mrs Keil") ("Executor");

BACKGROUND

A. The Council and the Executor entered into an indenture deed dated 28 June 1996 ("Previous Deed") with respect to land contained in Certificates of Title Volume 5133 Folio 408, Volume 5902 Folio 824 and Volume 5133 Folio 408 adjacent to the Tanunda Railway Station (together, "Previous Land").

B. The Executor has previously made funds available by way of a public benefaction under the terms of the will of Mrs Keil in the sum of sixty five thousand dollars ($65,000.00);

C. The funds provided by Mrs Keil were specifically provided on the condition contained in her will that the Previous Land was to be purchased for purposes of parks gardens or sporting facilities within the area of the District Council of Tanunda and that that council give an undertaking that, pursuant to the Previous Deed the Previous Land the Previous Land would be used in the perpetuity for that purpose and not sold at any time in the future thus preserving the said land for such purposes.

D. The Council wishes to undertake a land swap whereby the Previous Land, being the land contained in Certificates of Title Volume 5133 Folio 408, Volume 5902 Folio 824 are exchanged for a portion of the land contained in Certificate of Title Volume 5962 Folio 146, with a view that the terms and conditions set out in this Deed will apply to portion of land contained in Certificate of Title Volume 5962 Folio 146 as per the attached land division ("Land") in substitution for the Previous Land.

E. The parties enter into this Deed to set out the terms and conditions of their agreement in relation to the Land.

TERMS

1. The parties acknowledge the accuracy of the Background to this Deed.

2. The parties agree that the Previous Deed is hereby terminated and of not further effect including, without limitation, in respect of the land contained in Certificate of Title Volume 5902 Folio 824 and Volume 5133 Folio 408.

3. In consideration of the benefit given to the Council by the estate of Mrs Keil, the Council agrees in perpetuity:
3.1 that the Council will ensure that the Land remains classified as community land under the *Local Government Act* 1999 or any future legislation in substitution therefor.

3.2 that the Council will exercise all due care and diligence in the ongoing maintenance preservation and improvement of the Land for the purposes of its use as a public park lands and a recreation area.

3.3 that the Council will not erect any notices buildings or structures on the Land which are not aesthetically in sympathy and in keeping with the overall concept of a park land garden or recreation area.

4. Notwithstanding clause 3, the Council may develop the Land or part of it to enhance its future use either:

4.1 in conjunction and in sympathy with the railway station facilities and complex and adjoining Gallery; or

4.2 its use for some other commercial or public purpose provided that it retains its primary character as park lands and a recreation area for the public; or

4.3 to provide public infrastructure such as car parks, public areas for recreational use or public facilities and amenities to facilitate or improve access to, and use of the Land, and adjacent parcels of land and developments, provided that the Land retains its primary character as park lands and a recreation area for the public.

5. If the Council is in breach of this Deed then the Executor and his successors and assigns and anyone lawfully claiming through or under the Executor will be entitled to an order restraining the Council from any breach of this Deed or to remedy such breach within a reasonable time and to damages to be paid to the Executor as the Trustee of the Estate of Mrs Keil of a sum equivalent to sixty five thousand dollars ($65,000.00) with interest thereon at the rate of ten percent (10%) per annum calculated from the date of the breach or such other amount as a Court of competent jurisdiction shall determine if such breach is not remedied within a reasonable time to the satisfaction of the Executor.

6. Nothing in this Deed affects the powers that the Council has in relation to the Land under the *Local Government Act* 1999 to the extent that the Land is community land for the purposes of that act.

7. It is agreed between the parties that any breach or suspected breach of any of the obligations under this Deed will be capable of giving rise to a Caveat being lodged on all or any of the titles to the Land and the Council hereby pledges the Land as security to the Executor for such purpose.

8. In addition to any other method by which the Executor may give notice or make any demand under this Deed, such notice or demand may be in writing executed by the Executor or by the solicitors for the Executor and may be either served upon the Council personally or sent by prepaid post under cover addressed to the Council at the last known place of business or abode in South Australia of the Council and every such notice or demand shall take effect and be in force from the day next after the day upon which the same shall have been served or posted.
9. It is expressly agreed between the Executor and the Council that the Executor reserves the right to modify waive or release wholly or in part all or any of the covenants conditions and restrictions herein relating to the Land and the performance by the Council.

Executed as a Deed

SIGNED by

[Signature]

ROBERT JOHN HOMBURG

in the presence of:

[Signature]

PHILLIS AUDREY HOMBURG

Name

The Common Seal of THE BAROSSA COUNCIL
was affixed in the presence of:

[Stamp]

[Signature]

Mayor

[Signature]

Chief Executive Officer

Executed in error.

MARTIN MCCARTHY
CHIEF EXECUTIVE OFFICER
THE BAROSSA COUNCIL

22/1/20
NOT YET APPROVED

PURPOSE: DIVISION AND REDENomination OF PARCELS
AREA NAME: TANUNDA

MAP REF: 6628/05A, 6629/05/F
COUNCIL: THE BAROSSA COUNCIL

LAST PLAN: 
DEVELOPMENT NO: 9630/021/03/001/56816

AGENT DETAILS: CIVIL SURVEYS & DESIGN PTY LTD
14 SUNBEAM ROAD
GLYNDE SA 5070
P.O. 59213060
FAX: 83329109

SURVEYORS CERTIFICATION:
LYALL BRUCE BARNES, a licensed surveyor do hereby certify - 1) That this plan has been made from surveys carried out by me or under my personal supervision and in accordance with the Survey Act 1992. 2) That the field work was completed on the 29th day of September 2019
29th day of October 2016 Lyall Barnes Licensed Surveyor

AGENT CODE: CSD31P
REFERENCE: 16685160

SUBJECT TITLE DETAILS:
PREFIX VOLUME FOLIO OTHER PARCEL NUMBER PLAN NUMBER HUNDRED / IA / DIVISION TOWN REFERENCE NUMBER

| CT | 5902 | 54 | ALLOTMENT(S) | 74 | D | 58229 | MOOROOO | SECTION 12 |
| CT | 6203 | 319 | ALLOTMENT(S) | 72 | D | 58229 | MOOROOO | SECTION 12 |
| CT | 5905 | 4 | ALLOTMENT(S) COMPRISING PIECES | (911.922") | F | 203905 | MOOROOO | SECTION 12 |
| CT | 5902 | 822 | ALLOTMENT(S) | 73 | D | 58229 | MOOROOO | SECTION 12 |

OTHER TITLES AFFECTED:

EASEMENT DETAILS:
STATUS LAND BURDENED FORM CATEGORY IDENTIFIER PURPOSE IN FAVOUR OF CREATION

EXISTING 256" LONG EASEMENT(S) JK FOR WATER SUPPLY PURPOSES SOUTH AUSTRALIAN WATER CORPORATION 223LG RPA
EXISTING 256".256" SHORT RIGHT(S) OF WAY L 252.254 (ALL MARKED X) 256"
EXISTING 252 SHORT FREE AND UNRESTRICTED RIGHT(S) B.D OF WAY
EXISTING 252 SERVICE EASEMENT(S) H 254
EXISTING SHORT FREE AND UNRESTRICTED RIGHT(S) A OF WAY
EXISTING 250" SHORT FREE AND UNRESTRICTED RIGHT(S) G OF WAY

1 of 7
EASEMENT DETAILS:

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ANNOTATIONS: ALLOTMENT 254 (CT9029/822) DOES NOT FORM PART OF THE DIVISION PROCESS
NO OCCUPATION ON SURVEYED BOUNDARIES OF SUBJECT LAND UNLESS NOTED OTHERWISE
AUTHORITY FOR PIECE 250" DATA VIDE D33882
THIS DEED is made the day of 2019

BETWEEN:

THE BAROSSA COUNCIL of 43-51 Tanunda Rd, Nuriootpa, SA (“Council”);

AND:

ROBERT JOHN HOMBURG of 7 Park Street Tanunda, SA as the Executor of the Estate of the late Elma Linda Keil (“Mrs Keil”) (“Executor”);

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4.1 in conjunction and in sympathy with the railway station facilities and complex and adjoining Gallery; or

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4.3 to provide public infrastructure such as car parks, public areas for recreational use or public facilities and amenities to facilitate or improve access to, and use of the Land, and adjacent parcels of land and developments, provided that the Land retains its primary character as park lands and a recreation area for the public.

5. If the Council is in breach of this Deed then the Executor and his successors and assigns and anyone lawfully claiming through or under the Executor will be entitled to an order restraining the Council from any breach of this Deed or to remedy such breach within a reasonable time and to damages to be paid to the Executor as the Trustee of the Estate of Mrs Keil of a sum equivalent to sixty five thousand dollars ($65,000.00) with interest thereon at the rate of ten percent (10%) per annum calculated from the date of the breach or such other amount as a Court of competent jurisdiction shall determine if such breach is not remedied within a reasonable time to the satisfaction of the Executor.

6. Nothing in this Deed affects the powers that the Council has in relation to the Land under the Local Government Act 1999 to the extent that the Land is community land for the purposes of that act.

7. It is agreed between the parties that any breach or suspected breach of any of the obligations under this Deed will be capable of giving rise to a Caveat being lodged on all or any of the titles to the Land and the Council hereby pledges the Land as security to the Executor for such purpose.

8. In addition to any other method by which the Executor may give notice or make any demand under this Deed, such notice or demand may be in writing executed by the Executor or by the solicitors for the Executor and may be either served upon the Council personally or sent by prepaid post under cover addressed to the Council at the last known place of business or abode in South Australia of the Council and every such notice or demand shall take effect.
and be in force from the day next after the day upon which the same shall have been served or posted.

9. It is expressly agreed between the Executor and the Council that the Executor reserves the right to modify waive or release wholly or in part all or any of the covenants conditions and restrictions herein relating to the Land and the performance by the Council.

**Executed as a Deed**

**SIGNED by**

..........................................................  
Signature  

**ROBERT JOHN HOMBURG**

in the presence of:

..........................................................  
Signature  

..........................................................  
Name  

The Common Seal of **THE BAROSSA COUNCIL**  
was affixed in the presence of:

..........................................................  ..........................................................  
Mayor  Chief Executive Officer
7.2.1.6 INDENTURE DEED – KEIL ESTATE
B7081

MOVED Cr de Vries that Council authorise the Mayor and Chief Executive Officer to sign, seal and date the Deed to finalise the matter, as presented at Appendix 1.

Seconded Cr Johnstone  CARRIED 2018-22/436

PURPOSE
Council is asked to finalise the Deed (known as the Keil Estate Deed) being the last process to re-establish a Deed over new land to be transferred to Council (in the near future) as part of the Chateau Tanunda land transfer.

REPORT
Council received a report in August 2019 outlining the final draft Deed. Council approved the final engagement with the executor. This has been completed with no variation to the Deed presented to Council in August 2019. The resolution of August 2019 is:

Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

With Council now having concluded the internal review of that August 2019 decision I have written to the executor outlining that all conditions have been satisfied. The executor is satisfied with the agreement and executed it. The Deed remains unchanged (other than of course the year now being 2020) from that provided in August 2019.

As a Deed to finalise the matter, in accordance with part 2 of the resolution 2018-22/279, the report is now tabled and final authorisation to sign, seal and date the document is required.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES
Attachment 1 - Final Undated Deed (prepared for finalisation)
Attachment 2 - Deed Presented in August 2019

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan
- Natural Environment and Built Heritage
- Community and Culture
- Health and Wellbeing
- Business and Employment

1.4 Develop and maintain streetscapes that reflect the character and heritage of the region.
1.6 Support tourism development that is sensitive to the natural environment and sustainable.
2.1 Initiate and support activities which encourage participation and pride in the Barossa Council area.
2.2 Support the development of activities that celebrate the history and culture of the Barossa and its people.
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.
4.6 Ensure that community members can participate in cultural, recreational, sporting and learning opportunities.
5.1 Work closely with State Government, Federal Government and stakeholders to support economic growth, development and job creation.
5.4 Attract investment for new and innovative industries, such as creative industries and cultural tourism.
5.13 Support economic development through events.

**FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS**

There are no financial, resource and risk management consideration with proceeding that haven’t already been outlined to Council in prior reports on this matter.

**COMMUNITY CONSULTATION**

Engagement and regular updates (when relevant information was available) have been held with the executor/s throughout the process of the land swap.

**7.2.2.1 MONTHLY FINANCE REPORT (AS AT 31 DECEMBER 2019)**

B411

Author: Senior Accountant

**MOVED** Cr Boothby that the Monthly Finance Report as at 31 December 2019 be received and noted.

**Seconded** Cr Johnstone

CARRIED 2018-22/437

**PURPOSE**

The Uniform Presentation of Finances report provides information as to the financial position of Council, including notes on material financial trends and transactions.

**REPORT**

**Discussion**

The Monthly Finance Report (as at 31 December 2019) is *attached*. The report has been prepared comparing actuals to the Original adopted budget 2019/20 and incorporating the Revised Budget for September.

**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**

Attachment 1: Monthly Finance Report 31 December 2019

**Policy**

Budget & Business Plan and Review Policy

**COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS**

Corporate Plan

How We Work – Good Governance

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

6.3 Align operational strategy to strategic objectives and measure organisational performance to demonstrate progress towards achieving our goals.

6.4 Ensure that decisions regarding expenditure of Council’s budget are based on an assessment of whole of life costs, risks associated with the activity and advice contained within supporting plans.
7.2.1 CHIEF EXECUTIVE OFFICER - DEBATE

7.2.1.2
SECTION 270 LOCAL GOVERNMENT ACT – INTERNAL REVIEW OF COUNCIL DECISION – MATTER OF LAND EXCHANGE WITH CHATEAU TANUNDA – BASEDOW ROAD, TANUNDA B10114

Author: Governance Advisor

PURPOSE
Council is asked to receive and consider the report and recommendation given by Ms Felice D'Agostino of Norman Waterhouse Lawyers in her external party review report entitled ‘The Barossa Council - Section 270 Final Report - Matter of Land Exchange’, which was received by officers on 5 November 2019 as regards an application made to review Council’s decision of 20 August 2019 to approve the final commercial and valuation documents for the land exchange between Chateau Tanunda (IVIVI Pty Ltd) and Council.

RECOMMENDATION
Council having received and considered:

(i) the independent external party review report and attachments which were received by officers on 5 November 2019 from the external reviewer, Ms Felice D’Agostino or Norman Waterhouse Lawyers as regards an application made to review Council’s decision of 20 August 2019 to approve the final commercial and valuation documents for the land exchange between Chateau Tanunda (IVIVI Pty Ltd) and Council at Attachment 1;

(ii) the agenda and associated minutes relating to agenda item 7.2.1.7 of the Council meeting of 20 August 2019, being the Chief Executive Officer Report titled ‘Final commercial and valuation documents for land exchange between Chateau Tanunda (IVIVI Pty Ltd) and Council’ and all attachments at Attachment 2;

(iii) the agenda and associated minutes relating to agenda item 2.1.2 of the Special Council meeting of 26 April 2019, being the Chief Executive Officer Report titled ‘Barossa regional Culture Hub – Draft Master Plan’ and all attachments at Attachment 4;
(v) the agenda and associated minutes relating to agenda item 7.2.1.1 of the Council meeting of 19 December 2017, being the Chief Executive Officer Report titled ‘Revocation of community land classification – Basedow Road, Tanunda’ and all attachments at Attachment 5;

(vi) the agenda and associated minutes relating to agenda item 7.2.1.4 of the Council meeting of 19 September 2017, being the Chief Executive Officer Report titled ‘Chateau Tanunda – Community Land Proposal’ and all attachments at Attachment 6;

(vii) letter to the Minister for Planning from the Council’s Governance Advisor dated 21 December 2017 and all attachments to the letter;

and Council having given due consideration to whether the original decision of 20 August 2019 was legally, procedurally and meritoriously correct:

Option A

(1A) that being satisfied that the decision of 20 August 2019 was legally, procedurally and meritoriously correct, Council determines that the decision was the best and/or preferable decision, and reaffirms its decision of 20 August 2019, the decision being:

(1) Being satisfied with the Valuation Report approves the draft Contract for the Exchange of Land as presented at Attachment 2 and authorise the Chief Executive Officer to make further changes and authorise the Agreement on condition that:

a. Chateau Tanunda (Ivivi Pty Ltd) shall at least transfer the portion of land being certificate of title volume 5962 folio 146 of approximately 8,241 square metres and $25,000 to Council to balance the market values of the land; and

b. Any stamp duty costs shall be borne by Chateau Tanunda (Ivivi Pty Ltd);

(2) Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

(3) Authorise the Chief Executive Officer to proceed with settlement of the land exchange after completion of the Contract for the Exchange of Land under resolution 1, and that the said land be excluded from community land status pursuant to Section 193(4) of the Local Government Act, until the Indenture Deed is settled under resolution 2 and that a final report be brought to Council for rededication of the land under Section 193(5) of the Local Government Act and application to an appropriate community land management plan.

(2A) that having considered Council’s Disposal of Land or Other Assets Policy (“DLOA Policy”) and notwithstanding Council’s resolution at its meeting of 19 December 2017 to dispense with the requirement to obtain valuations of the land pursuant to clause 4.4.1(i) of the DLOA Policy:

(i) Council is satisfied that it is appropriate to dispense with the DLOA Policy’s requirement at clause 4.4.1(i) to obtain a minimum of two valuations of the
Council-owned land made up of Allotments 11 and 12 Basedow Road, being Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824 (the “Council Land”) and the land owned by Ivivi Pty Ltd (trading as Chateau Tanunda) being a portion of Allotment 74 in Deposited Plan 85229 being Certificate of Title Volume 5962 Folio 146 (the “Chateau Tanunda Land”), and

(ii) that the disposal of the Council Land in exchange for the Chateau Tanunda Land proceed with only one valuation, being the valuation that was presented to Council at its meeting on 20 August 2019.

OR

Option B

(1B) that Council is not satisfied that the decision of 20 August 2019 was legally, procedurally and/or meritoriously correct and revokes its decision of 20 August 2019.

OR

Option C

(1C) That Council affirms its decision of 20 August 2019 with the following variations:

(i) …

(ii) …

(2C) That having considered Council’s Disposal of Land or Other Assets Policy (“DLOA Policy”) and notwithstanding Council’s resolution at its meeting of 19 December 2017 to dispense with the requirement to obtain valuations of the land pursuant to clause 4.4.1(i) of the DLOA Policy:

(i) Council [is / is not] satisfied that it is appropriate to dispense with the DLOA Policy’s requirement at clause 4.4.1(i) to obtain a minimum of two valuations of the Council-owned land made up of Allotments 11 and 12 Basedow Road, and being Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824 (the “Council Land”) and the land owned by Ivivi Pty Ltd (trading as Chateau Tanunda) being a portion of Allotment 74 in Deposited Plan 85229 and described in Certificate of Title Volume 5962 Folio 146 (the “Chateau Tanunda Land”), and

(ii) the disposal of the Council Land in exchange for the Chateau Tanunda Land proceed in the following manner: …

REPORT

Background

Following Council’s decision at its Special Meeting on 26 April 2018 to revoke the community land status over Allotments 11 and 12 Basedow Road, Tanunda being Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824 (the “Council Land”), Council further resolved at its meeting on 20 August 2019 to dispose of the Council Land in exchange for a portion of land owned by Chateau Tanunda (IVIVI Pty Ltd) being a portion of Allotment 74 in Deposited Plan 85229 and described in
Certificate of Title Volume 5962 Folio 146 (the “Chateau Tanunda Land”), and proceed with commercial arrangements:

(1) Being satisfied with the Valuation Report approves the draft Contract for the Exchange of Land as presented at Attachment 2 and authorise the Chief Executive Officer to make further changes and authorise the Agreement on condition that:

a. Chateau Tanunda (Ivivi Pty Ltd) shall at least transfer the portion of land being certificate of title volume 5962 folio 146 of approximately 8,241 square metres and $25,000 to Council to balance the market values of the land; and

b. Any stamp duty costs shall be borne by Chateau Tanunda (Ivivi Pty Ltd);

(2) Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

(3) Authorise the Chief Executive Officer to proceed with settlement of the land exchange after completion of the Contract for the Exchange of Land under resolution 1, and that the said land be excluded from community land status pursuant to Section 193(4) of the Local Government Act, until the Indenture Deed is settled under resolution 2 and that a final report be brought to Council for rededication of the land under Section 193(5) of the Local Government Act and application to an appropriate community land management plan.

Seconded Cr Hurn

CARRIED 2018-22/279

On 4 September 2019 Council administration received a request from the applicants, Mr Robbert Sennef and Ms Shelley James, to conduct an internal review of this decision, exercising their right to do so under Council’s Internal Review of Council Decision Policy (the “Policy”).

Internal review of a Council decision enables Council to reconsider all the evidence relied on to make the original decision, and additional available evidence if relevant.

On 16 September 2019, the Chief Executive Officer notified the applicants that, due to the decision of which review is sought being a decision of the Elected Body, he had determined to appoint an external reviewer to provide an independent investigation and recommendation, in accordance with the Policy and the supporting Internal Review of Council Decision Process (the “Process”). The external reviewer appointed to conduct the review was Ms Felice D’Agostino of Norman Waterhouse Lawyers.

Introduction
Ms D’Agostino has finalised her investigation, and subsequently her report and recommendations are presented for Council’s consideration, at Attachment 1 to this report.

In accordance with clause 4.6.5 of the Process, an external reviewer cannot vary or revoke a decision made by or on behalf of Council. They must report their
recommendation(s) from the internal review to the Elected Body for a determination as to whether the relevant decision should be affirmed, varied or revoked.

**Discussion**

In accordance with clause 4.6 of the Process, Ms D’Agostino has considered the merits of all the materials and information that were before the Council at the time of the decision on 20 August 2019, and any additional relevant information or material provided by the applicant or which has become available during the course of the review.

Ms D’Agostino considered whether the original decision of 20 August 2019 was legally, procedurally and meritoriously correct having regard to the following, that Council:

- 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 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 and processes;

and that the decision was reasonable in all the circumstances.

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

Procedural fairness was observed throughout this review so that the applicants were given the opportunity to put forward information and materials in support of the application for review, they were informed of the proposed outcome of the review, and had the opportunity to make submissions to Ms D’Agostino on the outcome and have these submissions taken into account, and Ms D’Agostino did not have a bias or perceived bias when undertaking the review.

For full transparency it should be noted that as per clause 4.6.4 and 4.6.7 of the Process and to ensure that procedural fairness is observed, prior to issuing her final report, Ms D’Agostino prepared a provisional report and provided the applicants with the opportunity to comment on the said provisional report. The deadline for comments was extended at the request of the applicants. However, the applicants then notified Ms D’Agostino in writing that they would not be providing submissions on the provisional report, as they had made a complaint to the Ombudsman regarding Ms D’Agostino’s appointment.

In spite of this, upon Ms D’Agostino issuing her final report, the applicants notified Ms D’Agostino that they ‘did wish to make submission on the draft provisional report but would not do so until their further correspondence to the Ombudsman was answered’ (paragraph 3.1.6 of the report at Attachment 1).

Originally, officers had intended for the matter to be presented to Council at its November meeting for consideration, however, to ensure procedural fairness was observed and that the applicants were given every opportunity to present information relevant to their application, the applicants were given an additional two weeks to provide submissions, which resulted in the matter being deferred to the December Council meeting. As noted in Ms D’Agostino’s report, the applicants did
not provide submissions on her report by the extended deadline. Further detail can be found at paragraphs 3.1.4 – 3.1.7 and Appendix B and C of the external reviewer’s report at Attachment 1.

In her report, Ms D’Agostino has concluded that ‘based on all the matters outlined in [the external reviewer’s] report and having regard to the [Process] and in particular the matters set out at Clause 4.6.2 therein, the Decision is the best and preferable decision’ (paragraph 8.1 of the external reviewer’s report at Attachment 1). Further, Ms D’Agostino has recommended that ‘the Council reconsider all the information before it at the time it made the Decision, the information submitted by the Applicants and this report and determine if the Decision is the best and/or preferable decision’ (paragraph 9.1 of the external reviewer’s report at Attachment 1).

Furthermore, in her report, Ms D’Agostino considered whether it was appropriate that only one valuation of the Council Land and Chateau Land was obtained by Council as part of the land disposal process. She noted that Council’s Disposal of Land and Other Assets Policy (“DLOA Policy”) requires that a minimum of two valuations be obtained, unless Council resolves to dispense with the requirement.

Ms D’Agostino concluded that ‘it is appropriate that only one valuation of the Council Land and Chateau Land has been obtained’ (paragraph 8.2) and ‘the circumstances of this matter are such that it is not necessary or appropriate to obtain more than one valuation’ (paragraph 7.2.2.3 of the external reviewer’s report at Attachment 1). Thus, she has recommended that in addition to reconsidering the original decision, that ‘Council consider if one valuation of the Council Land and Chateau Land is appropriate and resolve accordingly’ (paragraph 9.2 of the external reviewer’s report at Attachment 1).

After carefully considering Ms D’Agostino’s report and recommendations, and giving due consideration to all the evidence relied on to make the original decision and any additional available evidence if relevant, the Elected Body must:

- make a decision to affirm, vary or revoke its decision of 20 August 2019; and
- decide whether or not it is appropriate to proceed with the land transfer with only one valuation of the Council and Chateau Land i.e. dispense with the requirement to obtain a minimum of two valuations of the Council and Chateau Tanunda Land when disposing of land, as per the DLOA Policy.

Following Council’s decision, further appeal rights remain available to the Ombudsman SA should the applicants wish to escalate their concerns.

Summary and Conclusion
Council is asked to consider Ms D’Agostino’s Internal Review Report and recommendation(s) and either affirm, vary or revoke its decision of 20 August 2019, and to consider whether or not it is appropriate to dispense with the requirement of the DLOA Policy to obtain a minimum of two valuations of the Council Land and Chateau Tanunda Land.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

<table>
<thead>
<tr>
<th>Attachment 1</th>
<th>External Reviewer, Felice D’Agostino of Norman Waterhouse Lawyers received by officers on 5 November 2019 and titled ‘Section 270 Final Report – Matter of Land Exchange’ (19/71094)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment 2</td>
<td>Extract of the agenda and associated minutes relating to agenda item 7.2.1.7 of the Council meeting of 20 August 2019,</td>
</tr>
</tbody>
</table>
being the Chief Executive Officer Report titled ‘Final commercial and valuation documents for land exchange between Chateau Tanunda (IVIVI Pty Ltd) and Council’ and all attachments (19/64873 and 19/64875)

**Attachment 3** - Extract of the agenda and associated minutes relating to agenda item 2.2.1 of the Special Council meeting of 26 April 2018, being the Chief Executive Officer Report titled ‘Approval to proceed with final consideration of revocation of community land classification – Basedow Road, Tanunda’ and all attachments (19/66082 and 19/66085)

**Attachment 4** - Extract of the agenda and associated minutes relating to agenda item 2.1.2 of the Special Council meeting of 26 April 2019, being the Chief Executive Officer Report titled ‘Barossa regional Culture Hub – Draft Master Plan’ and all attachments (18/27200 and 19/66087)

**Attachment 5** - Extract of the agenda and associated minutes relating to agenda item 7.2.1.1 of the Council meeting of 19 December 2017, being the Chief Executive Officer Report titled ‘Revocation of community land classification – Basedow Road, Tanunda’ and all attachments (19/66072 and 19/66074)

**Attachment 6** - Extract of agenda and associated minutes relating to agenda item 7.2.1.4 of the Council meeting of 19 September 2017, being the Chief Executive Officer Report titled ‘Chateau Tanunda – Community Land Proposal’ and all attachments (19/71121 and 19/71122)

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**COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS**

- Community and Culture
- How We Work – Good Governance

**Corporate Plan**

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

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, Sections 270, 201(2) and 49(a1)

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**FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS**

Pursuant to the Chief Executive Officer’s appointment of an external reviewer to review the Council decision of 20 August 2019, the total cost will be reported in the annual reporting requirements.

COMMUNITY CONSULTATION
Community consultation for the revocation of community land status over the Council Land occurred in accordance with Section 194 of the Local Government Act 1999 and Council’s Public Consultation Policy and was further validated by an Independent Assessment conducted by Kellyd Jones Lawyers. Approval to proceed with final consideration by Council was also received from the Minister’s delegate.

The Barossa Regional Culture Hub draft Master Plan also underwent public consultation, and the results of the consultation were presented to Council at its meeting on 27 June 2018, whereupon Council endorsed the Draft Master Plan subject to amendment and budget considerations, and determined to move ahead with the next stages of the project.

Both Council decisions relating to the revocation of community land status and Barossa Culture Hub matters, made by Council at its Special Meeting of 26 April 2018 and 27 June 2018 respectively, have previously been reviewed pursuant to Section 270 of the Local Government Act 1999, with the current applicants initiating the review of the community land status revocation decision of 26 April 2018. An external reviewer was appointed to conduct an investigation and present their recommendations to Council, in both cases. In both instances, Council resolved that the original decision made by Council was the best and/or preferable decision and reaffirmed the original decisions.

It should also be noted that the Ombudsman’s office received complaints in relation to those matters, and made an assessment that:

- the conclusion reached in relation to the section 270 review was reasonably open to the reviewer;
- in relation to the complaints received, based on the evidence available, it did not appear that Council had acted in a way that was unlawful, unreasonable or wrong within the meaning of the Ombudsman Act 1972.
THE BAROSSA COUNCIL

SECTION 270
FINAL REPORT

MATTER OF LAND EXCHANGE

Felice D’Agostino
Norman Waterhouse Lawyers
1. **SECTION 270 APPLICATION**

1.1 The Council has received from Mr Robbert Sennef and Ms Shelley James (the Applicants) a request pursuant to Section 270 of the *Local Government Act 1999* (the Act) for a review of the Council’s decision made at its meeting of 20 August 2019 regarding a land exchange with Chateau Tanunda (the Land Exchange Matter). A copy of the Applicants’ request is attached at Appendix A (the Review Application).

1.2 The Council has engaged Norman Waterhouse to assist it with its consideration and determination of the Review Application.

2. **SECTION 270 LOCAL GOVERNMENT ACT 1999**

2.1 Section 270 of the Act requires the Council to, amongst other things, establish procedures for the review of decisions of the Council, employees of the Council and other persons acting on behalf of the Council.

2.2 The then Ombudsman stated in 2011:

> ‘Internal review is a key accountability mechanism for local government. It enables people to test the merits of decisions that affect them.’

2.3 The current Ombudsman has confirmed that Section 270 of the Act requires councils to consider the merits of the decision under review.

2.4 A merits review requires all aspects of a decision to be reviewed and a determination to be made as to the correct and preferable decision. All the evidence is considered as well as any new evidence.

2.5 Accordingly, a review of a decision under Section 270 of the Act encompasses a review of the legality of the decision as well as whether the decision was the best or preferable decision.

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2.6 In reviewing the merits of a decision, the Council ought to reconsider all the information that it considered in making the original decision from a fresh perspective as well as any new information to determine the best or preferable decision. This may result in the Council affirming, varying or setting aside the original decision.

3. REVIEW - PROCESS

3.1 Process of Review

3.1.1 The decision the subject of the Review Application is the following decision made by the Council at its meeting of 20 August 2019:

‘That Council:

(1) Being satisfied with the Valuation Report approves the draft Contract for the Exchange of Land as presented at Attachment 2 and authorise the Chief Executive Officer to make further changes and authorise the Agreement on condition that:

(a) Chateau Tanunda (Ivivi Pty Ltd) shall at least transfer the portion of land being certificate of title volume 5962 folio 146 of approximately 8,241 square metres and $25,000 to Council to balance the market values of the land; and

(b) any stamp duty costs shall be borne by Chateau Tanunda (Ivivi Pty Ltd);

(2) Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

(3) Authorise the Chief Executive Officer to proceed with settlement of the land exchange after completion of the Contract for the Exchange of Land under resolution 1, and that the said land shall be excluded from community land status pursuant to Section 193(4) of the Local
Government Act, until the Indenture Deed is settled under resolution 2 and that a final report be brought back to Council for rededication of the land under Section 193(5) of the Local Government Act and application to an appropriate community land management plan.’

(referred to as the Decision).

3.1.2 The effect of the Decision is that the Council agrees to exchange land owned by the Council comprised in Allotments 11 and 12 Basedow Road, Tanunda being respectively Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824 (the Council Land) with land owned by Ivivi Pty Ltd (trading as Chateau Tanunda) being a portion of Allotment 74 in Deposited Plan 58229 being Certificate of Title Volume 5962 Folio 146 (the Chateau Land) on certain terms and conditions.

3.1.3 The Council’s Internal Review of Council Decision Process (the Review Process) provides:

‘Internal review of a Council decision enables the Council to reconsider all the evidence relied on to make the original decision, and additional available evidence if relevant.

...

In carrying out an internal review of a decision, 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.

The reviewer will consider whether the original decision is legally and procedurally correct having regard to the following (where relevant and not restricted to), that the original:

- decision maker had the power to make the decision;
- 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;
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;

decision maker had no conflict of interest, bias or perceived bias;

decision maker ensured that the findings of fact were based on evidence;

decision maker was reasonable; and

decision maker considered any relevant legislation, policies or process.

The reviewer will also consider whether a different decision based on the evidence available or new evidence provided or found provides an improved outcome.

3.1.4 The Review Process provides that an external party may be appointed and in such cases the Internal Review Contact Officer will be seeking a recommendation(s) from the external party ‘which will then be referred back to the Elected Body for a final determination on the review’. The Review Process further quite rightly provides that an external reviewer cannot vary or revoke a decision made by or on behalf of the Council.

3.1.5 We prepared a provisional draft report which was provided to the Applicants for their consideration. The Applicants originally sought an extension of time within which to make submissions on the provisional draft report. Subsequently Ms James advised us that the Applicants would not be making any submissions and had referred this matter to the Ombudsman who was assessing our appointment to assist the Council in this matter. We attach at Appendix B a copy of the Applicants’ letter to us.

3.1.6 We were subsequently advised by Ms James that in fact the Applicants did wish to make submissions on the draft provisional report but would not do so until their further correspondence to the Ombudsman was answered. We attached at Appendix C a copy of our letter to the Applicants which sets out our understanding of the
Applicants’ position. As at the date of providing this final report to the Council, we have not received any submissions from the Applicants to our provisional draft report.

3.1.7 Our engagement is limited to, in accordance with the Review Process, considering the legality and merits of the Decision and preparing a report to assist the Council to make a determination in relation to the Review Application. We are accordingly, and as envisaged by the Review Process, not the decision-maker in relation to the Review Application.

3.2 Documents and Information Considered

3.2.1 We have considered the following documents and information:

3.2.1.1 report of the Chief Executive Officer for the Council meeting of 20 August 2019 in relation to agenda item 7.2.1.7 titled ‘Final Commercial and Valuation Documents for Land Exchange Between Chateau Tanunda (Ivivi Pty Ltd) and Council’ (the August Report), the four attachments to the August Report and the associated minutes of that meeting;

3.2.1.2 report of the Chief Executive Officer for the Special Council meeting of 26 April 2018 in relation to agenda item 2.2.1 titled ‘Approval to proceed with final consideration of revocation of community land classification – Basedow Road, Tanunda’ (the April Report) and the associated minutes of that meeting;

3.2.1.3 report of the Chief Executive Officer for the Special Council meeting of 26 April 2018 in relation to agenda item 2.1.2 titled ‘Barossa Regional Culture Hub – Draft Master Plan’ (the Culture Hub Report) and the associated minutes of that meeting;

3.2.1.4 report of the Chief Executive Officer for the Council meeting of 19 December 2017 in relation to agenda item 7.2.1.1 titled ‘Revocation of community land classification – Basedow Road, Tanunda’ (the December Report) and the associated minutes of that meeting;
3.2.1.5 report of the Chief Executive Officer for the Council meeting of 19 September 2017 in relation to agenda item 7.2.1.4 titled ‘Chateau Tanunda – Community land Proposal’ (the September Report) and the associated minutes of that meeting;

3.2.1.6 letter to the Minister for Planning from the Council’s Governance Advisor dated 21 December 2017 and the attachments to that letter;

3.2.1.7 letter from Chief Development Officer, Department of Planning, Transport and Infrastructure (DPTI) to the Chief Executive office of the Council dated 19 April 2018;

3.2.1.8 Disposal of Land and Other Assets Policy;

3.2.1.9 Review Application.

4. LEGISLATIVE REQUIREMENTS

4.1 Policy

4.1.1 Section 49(1) of the Act requires the Council to adopt policies on contracts and tenders, including policies on the following:

   (a) the contracting out of services; and
   (b) competitive tendering and the use of other measures to ensure that services are delivered cost-effectively; and
   (c) the use of local goods and services; and
   (d) the sale or disposal of land or other assets.’

4.2 Disposal of Land

4.2.1 Section 201(2) of the Act provides the Council may dispose of community land after revocation of its classification as community land.
5. **BACKGROUND**

5.1 **Other Relevant Council Meetings**

5.1.1 At the Council meeting of 17 September 2017 the Council resolved as follows:

‘That Council, being satisfied the proposal has extensive community benefit and can be managed in accordance with the Disposal of Land and Other Assets Policy:

(1) Agrees to undertake a six week community consultation process on a proposal to revoke the community land classification of Allotments 11 and 12 Basedow Road, Tanunda being Certificates of Title 5133/408 and 5902/824.

(2) Instructs the Chief Executive Officer to develop and release the consultation document outlining the proposal to transfer land on a commercial basis, subject to receiving legal advice that the proposal and process is compliant with Council's asset disposal policy and legal responsibilities.

(3) Appoints a small working group of Mayor Sloane and Cr Lange to support the Chief Executive Officer and Governance Advisor in formulating the consultation document and commercial negotiation of subsequent commercial arrangements for any approved land swap, should the revocation of community land classification be approved by the relevant Minister.

(4) Require the proprietor to pay all reasonable external legal, consultant and advertising and other costs arising from the community consultation and subsequent commercial arrangements should the revocation of community land be approved by the relevant Minister.’

5.1.2 At the Council meeting of 19 December 2017 the Council resolved as follows:
‘(1) That the Council note and consider the feedback from community members and the KelleyJones Lawyers’ Independent Assessment of the consultation and proposed disposal process, which are attached to this report.

(2) That, further to the Independent Assessment at page 1, as the proposed disposal of land is via an exchange of land of the same or similar size and value, and the land currently has little or no market value due to the restrictions of the Dedication of the Keil Trust and the community land classification, the Council dispenses with the requirement of its Disposal of Land and Other Assets Policy at paragraph 4.4.1(i) to obtain any independent valuations in this matter.

(3) Pursuant to Section 194 of the Local Government Act 1999, that Council continue the process to revoke the Community Land classification for Allotments 11 and 12 Basedow Road, Tanunda, which are respectively contained in Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824.

(4) That the Chief Executive Officer prepare a report and submit it to the Minister for Planning seeking approval to revoke the Community Land classification of the said land parcels.

(5) That should the revocation be approved by the Minister for Planning, the matter be referred back to Council for final resolution in accordance with section 194(3)(b) of the Local Government Act 1999.

(6) That the Chief Executive Officer then proceed with the necessary steps to affect the proposed land exchange in accordance with the Council’s resolution of 19 September 2017.’

5.1.3 At the Council at its meeting of 26 April 2018 the Council resolved as follows:
‘(1) That pursuant to Section 194(3)(b) of the Local Government Act 1999, Council revokes the Community Land classification over Allotment 11 Basedow Road, Tanunda described in Certificate of Title Volume 5133 Folio 408, and Allotment 12 Basedow Road, Tanunda described in Certificate of Title Volume 5902 Folio 824.

(2) That the Chief Executive Officer excludes Allotments 11 and 12 Basedow Road, Tanunda from the Council’s Community Land Register.

(3) That the Chief Executive Officer advises adjacent landowners of the Council’s decision from the Special Council meeting held 26 April 2018.

(4) That the Chief Executive Officer proceeds with negotiating the commercial arrangements for the proposed land exchange in accordance with the Council resolution of 19 September 2017 (2014-18/1168).

(5) That the Chief Executive Officer facilitates the cancellation of the existing Indenture Deed with the trustees of the Elma Keil Trust, dated 28 June 1996 and replaces it with a new Indenture Deed to reflect the same restrictions with respect to the incoming land from Chateau Tanunda.’

5.2 Processes Undertaken

5.2.1 Revocation of Community Land Classification of Council Land

5.2.1.1 A report was prepared for the purposes of Section 194(2)(a) of the Act in relation to the revocation of the community land classification of the Council Land titled Consultation Report (the Consultation Report).

5.2.1.2 The Consultation Report disclosed the following information which is relevant to the Decision:

- the proprietor of Chateau Tanunda (Chateau Tanunda) has developed a concept for a five-star hotel, short term
villa accommodation and a culinary institute with associated small scale student accommodation (the Proposed Chateau Development);

- to facilitate the Proposed Chateau Development, Chateau Tanunda has approached the Council to undertake a land exchange whereby the Chateau Land would be transferred to the Council in exchange for the Council Land;

- the Council Land is zoned tourism accommodation land in accordance with the current Development Plan pursuant to the Development Act 1993, and therefore has already been strategically determined as an appropriate location for tourism accommodation development;

- the Council Land is encumbered pursuant to an Indenture Deed.

5.2.1.3 The Minister granted approval to the Council to revoke the community land classification of the Council Land.

5.3 Relevant Council Documents

5.3.1 Disposal of Land and Other Assets Policy

5.3.1.1 The Disposal of Land and Other Assets Policy (the Disposal Policy) provides:

‘Any decision to dispose of Land or Other Assets will be made after considering (where applicable):

a) the usefulness of the Land or Other Asset;

b) the current market value of the Land or Other Asset;

c) the annual cost of maintenance;

d) any alternative future use of the Land or Other Asset;

e) any duplication of the Land or Other Asset or the service provided by the Land or Other Asset;
f) any impact the disposal of the Land or Other Asset may have on the community;

g) any cultural or historical significance of the Land or Other Asset;

h) the positive and negative impacts the disposal of the Land or Other Asset may have on the operations of the Council;

i) the long term plans and strategic direction of the Council;

j) the remaining useful life, particularly of an Asset;

k) a benefit and risk analysis of the proposed disposal;

l) the results of any community consultation process;

m) any restrictions on the proposed disposal;

n) the content of any community land management plan; and

o) any other relevant policies of the Council, including:
   • Prudential Management Policy;
   • Asset Accounting Policy;

5.3.1.2 The Disposal Policy also provides that the Council must have regard to the following principles when disposing of land and other assets:

   a) Encouragement of open and effective competition;

   b) Obtaining Value for Money (this is not restricted to price alone).

   An assessment of value for money must include consideration of (where applicable):

   i. the contribution to Council’s long term financial plan and strategic management plans;

   ii. any relevant direct and indirect benefits to Council, both tangible and intangible;

   iii. efficiency and effectiveness;

   iv. the costs of various disposal methods;

   v. internal administration costs;

   vi. risk exposure; and

   vii. the value of any associated environmental benefits.

   c) Ethical Behaviour and Fair Dealing
i. Council is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations.

d) Probity, Accountability, Transparency and Reporting

i. Council will demonstrate accountability in the sale of Land or Other Assets by ensuring that decisions are appropriately documented taking account of the considerations of this Policy and evidence provided to ensure that an independent third party can clearly see that the principles of this Policy have been followed or an appropriate waiver authorised.

e) Ensuring compliance with all relevant legislation (see Section 7 of this Policy).

5.3.1.3 In relation to the method of disposal of land the Disposal Policy provides for a number of options. If land is to be disposed of through a select tender, open tender or direct negotiation, then (unless the Council resolves otherwise) a minimum of two independent valuations must be obtained.

6. REVIEW - SUBMISSIONS

6.1 Applicant’s Submissions

6.1.1 The Applicants make the following submissions as part of the Review Application:

6.1.1.1 a Certificate of Title for Allotment 74 Volume Pt 5962 Folio 946 Deposited Plan 58229 is not intended to be made available prior to the proposed land swap (Ground 1);

6.1.1.2 the portions of land to be swapped are not comparable (Ground 2);

6.1.1.3 there are disclaimers in the Valuation Report prepared by Land Services SA (the Valuation Report) and the Environment Protection Authority has not been asked to undertake an assessment of the land (Ground 3);
6.1.1.4 Allotment E shown on the plan at page 176 of the August Report does not represent the Chateau Land (Ground 4);

6.1.1.5 Annexure A of the draft Contract for Exchange of Land attached to the August Report (the draft Contract) was blank (Ground 5);

6.1.1.6 it is not in the interests of the Council or the Barossa community for the Council to agree to the Special Conditions set out at Annexure B of the draft Contract (Ground 6);

6.1.1.7 the Council has done nothing with Allotments 11 and 12 bequeathed by Elma Keil, there have been consistent calls by the Barossa community to reinstate passenger train services from Adelaide to the Barossa and the Council has not realised the vision of Elma Keil (Ground 7);

6.1.1.8 the land exchange is not in the interests of the Tanunda or the Barossa community and would amount to the loss of community land (Ground 8);

6.1.1.9 the Applicant is critical of the assessment of proposed land swap – Chateau Tanunda – under the Disposal Policy undertaken by the Chief Executive Officer (Ground 9).

7. REVIEW – ANALYSIS

7.1 Process – Legislative Requirements

7.1.1 Based on the information available to us:

7.1.1.1 the Decision was made at a lawfully convened meeting of the Council at which a quorum of members of the Council were present;

7.1.1.2 the Council complied with the legislative requirements relating to the disposal of community land namely it has first undertaken the statutory process in the Act to revoke the community land classification of the Council Land.

7.1.2 Accordingly in our opinion based on the information provided to us and set out in this report, the Decision is a lawful decision of the Council.
7.2 Review Application – Consideration of and Response to Applicants’ Submissions

7.2.1 Ground 1

7.2.1.1 As the Chateau Land represents a portion of Allotment 74 Deposited Plan 58229 being Certificate of Title Volume 5962 Folio 146 a plan of division will need to be prepared and subsequently a certificate of title will be issued. There is nothing, in our view, of concern in relation to this.

7.2.1.2 Whilst it is not clear what the Applicant’s contention is with respect to this ground, the Decision clearly states it is a portion of Allotment 74 Deposited Plan 58229 that constitutes the Chateau Land and further the Decision specifies the size of the Chateau Land.

7.2.2 Ground 2

7.2.2.1 Whilst the Chateau Land is smaller in size than the Council Land, the Valuation Report values the Chateau Land and Council Land at $660,000 and $685,000 (unfettered by restrictions) respectively. Accordingly they are not too dissimilar in value notwithstanding the difference in their sizes.

7.2.2.2 Further the Decision requires Chateau Tanunda to also pay $25,000 to the Council and all stamp duty as part of the land exchange.

7.2.2.3 The Council only obtained one valuation for the land and the Disposal Policy appears to provide for two valuations to be obtained (unless the Council resolves otherwise). We note the Council had previously resolved not to obtain any valuations. We consider obtaining at least one valuation is appropriate. In our opinion the circumstances of this matter are such that it is not necessary or appropriate to obtain more than one valuation. We consider it was open to the Council to only obtain one valuation. We note that whilst the Council Land is being disposed of, the Council is receiving the Chateau Land in exchange. Further, we note that the
Chateau Land can accommodate the requirements of the executors of the estate of Elma Keil. This is not a simple matter of the Council merely disposing of the Council Land. The requirement of the executors of the estate of Elma Keil are such that the Council Land can only be disposed of in circumstances in which other land is exchanged for it which can accommodate their requirements. The Chateau Land does that. Accordingly there are unique circumstances in this matter that in our opinion justify one valuation being obtained for the purposes of ensuring the land exchange is fair and represents equivalent or close to equivalent (in value) land parcels.

7.2.3 Ground 3

7.2.3.1 The Applicants highlight the disclaimers in the Valuation Report.

7.2.3.2 Disclaimers such as those appearing in the Valuation Report are not unusual or, in our view, matters to be concerned about. Whilst it is not clear what the Applicants' contention is in so highlighting the disclaimers in the Valuation Report we do not consider they diminish the weight to be given to the Valuation Report. The Applicants do not provide any evidence or information that the Valuation Report is based on inaccurate or incomplete information.

7.2.3.3 The Applicants point to that part of the Valuation Report that states:

‘At the time of inspection, we did not observe any signs or evidence of contamination or potential contamination. This valuation is prepared assuming the subject properties are free of contamination and reserve the right to review this report should further information be presented.’

7.2.3.4 The Applicants do not provide evidence of contamination or potential contamination to displace the inspection undertaken for the purposes of the preparation of the
Valuation Report which found no signs or evidence of contamination or potential contamination.

7.2.4  Ground 4

7.2.4.1 Allotment E shown on the plan at page 176 of the August report is portion of Allotment 74 Deposited Plan 58229 being Certificate of Title Volume 5962 Folio 146. The Applicants assert otherwise without providing any basis for their assertion.

7.2.5  Ground 5

7.2.5.1 Annexure A to the draft Contract as attached to the August Report is blank and will contain the plan of division for Allotment 74 Deposited Plan 58229 once it has been prepared. The Council has by way of the Decision approved the land exchange on the basis of a portion of this land of a specific size being transferred to the Council.

7.2.5.2 The Council has authorised the Chief Executive Officer to make further changes to the draft Contract and proceed with the settlement of the land exchange based on the Decision.

7.2.6  Ground 6

7.2.6.1 The Applicants assert it is not in the interests of the Council or the Barossa community for the Council to agree to the special conditions to the draft Contract but do not articulate the basis for their assertion.

7.2.6.2 The special conditions to the draft Contract are necessary and appropriate in light of the fact that the Chateau Land is a portion only of Allotment 74 Deposited Plan 58229 and accordingly a plan of division must be prepared.

7.2.6.3 Indeed the special conditions protect the Council’s interests and we note in particular the following special conditions:

(a) clause 1.1.1 – settlement will not take place until a plan of division is approved;
(b) clause 1.1.2 – Chateau Tanunda must, at its own cost, obtain all consents and approval for the plan of division to be deposited;

(c) clause 1.1.3 - Chateau Tanunda must not vary the plan of division in any material way without the Council’s consent;

(d) clause 1.2.2 – if the plan of division is not approved by a certain date either party may terminate the agreement.

7.2.7 Ground 7

7.2.7.1 The matters in this ground have been raised in previous reviews under Section 270 of the Act relating to other decisions connected with the Proposed Chateau Development.

7.2.7.2 There is in our view no new information to cause this issue to be revisited. For the sake of completeness we note as has been noted in previous reviews that the executors of the estate of Elma Keil, parties to the Indenture Deed, have agreed to ‘cancel’ the Indenture Deed and ‘establish’ a new Indenture Deed on the same terms in relation to the Chateau Land. The Council has agreed to apply the same restrictions to the Chateau Land and the executors are satisfied that it is appropriate to release the restrictions applying to the Council Land subject to the Council applying the same restrictions to the Chateau Land. It is a matter entirely for the executors of the estate of Elma Keil to consider the appropriateness or otherwise of agreeing to terminate the Indenture Deed and applying the same terms and conditions as set out in the Indenture Deed to the Chateau Land.

7.2.8 Ground 8

7.2.8.1 The Applicants do not articulate the basis for their assertion that the Decision is not in the best interests of the Tanunda and Barossa community.
7.2.8.2 The Decision facilitates the Proposed Chateau Development and we note that previous reviews under Section 270 of the Act relating to other decisions connected with the Proposed Chateau Development have made reference to the benefits articulated by the Council of the Proposed Chateau Development.

7.2.8.3 We note that the Council has stated that the Chateau Land will in the future be classified as community land.

7.2.9 Ground 9

7.2.9.1 Whilst the Applicants are critical of the assessment undertaken by the Chief Executive Officer of the land exchange under the Disposal Policy, the Applicants do not elaborate on their criticism.

7.2.9.2 We do not share the Applicants’ criticism of the assessment undertaken by the Chief Executive Officer and consider it to be comprehensive.

7.3 Merits Assessment

7.3.1 The Council has at all times been transparent that the Decision is to facilitate the Proposed Chateau Development including when seeking the Minister’s approval to revoke the community land classification of the Council Land.

7.3.2 The Council has articulated on a number of occasions the benefits to the community of the Proposed Chateau Development. The Council has also assessed the land exchange against the Disposal Policy.

7.3.3 The Council is receiving the Chateau Land in exchange for transferring the Council Land and therefore there is still community land of close to equivalent value that will be held by the Council notwithstanding the loss of the Council Land. Therefore is little net loss of community land. In any event, in our opinion, any loss of community land is outweighed by the benefits to the community of the Proposed Chateau Development.

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4 See in particular discussion in the September Report and the Consultation Report.
7.3.4 The Council Land has remained undeveloped for many years and contrary to the Applicants’ assertion there is no information to suggest that there has been any need or desire expressed by the community for the Council Land to be developed.

8. **CONCLUSION**

8.1 In our view based on all the matters outlined in this report and having regard to the Review Process and in particular the matters set out at Clause 4.6.2 therein, the Decision is the best and preferable decision.

8.2 In our view it is appropriate that only one valuation of the Council Land and the Chateau Land has been obtained.

9. **RECOMMENDATIONS**

9.1 That the Council reconsider all the information before it at the time it made the Decision, the information submitted by the Applicants and this report and determine if the Decision is the best and/or preferable decision.

9.2 That the Council consider if one valuation of the Council Land and Chateau Land is appropriate and resolve accordingly.
3 September 2019.

Internal Review Contact Officer,
The Barossa Council,
43 – 51 Tanunda Road,
Nuriootpa SA 5355.

To whom it may concern,

We are applying for a review of a council decision in accordance with The Barossa Council’s Internal Review of Council Decision Policy and Process under Section 270 – Procedures for review of decisions and requests for services under the Local Government Act 1999.

The decision we are seeking to review is the decision taken by the Elected Body at the Ordinary Council Meeting of the 20th of August 2019 7.2.1.7 Final commercial and valuation documents for land exchange between Chateau Tanunda (ivivi Pty Ltd) and Council B7081.

"MOVED Cr Miller that Council:

(1) Being satisfied with the Valuation Report approves the draft Contract for the Exchange of Land as presented at Attachment 2 and authorise the Chief Executive Officer to make further changes and authorise the Agreement on condition that:
   a. Chateau Tanunda (ivivi Pty Ltd) shall at least transfer the portion of land being certificate of title volume 5962 folio 146 of approximately 8,241 square metres and $25,000 to Council to balance the market values of the land; and
   b. Any stamp duty costs shall be borne by Chateau Tanunda (ivivi Pty Ltd);

(2) Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed.
principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

(3) Authorise the Chief Executive Officer to proceed with settlement of the land exchange after completion of the Contract for the Exchange of Land under resolution 1, and that the said land be excluded from community land status pursuant to Section 193 (4) of the Local Government Act, until the Indenture Deed is settled under resolution 2 and that a final report be brought to Council for rededication of the land under Section 193 (5) of the Local Government Act and application to an appropriate community land management plan.

Seconded Cr Hunt

CARRIED 2018-22/279"
the subject properties are free of contamination and reserve the right to review this report should further information be presented.

The Environment Protection Authority (EPA) advised on Monday the 2nd of September 2019 that Barossa Council Environmental Officers have the capacity to assess the land. A reference number E60273 was referred to and the EPA said that they would contact the Council. To our knowledge no assessment of the land has been made to date.

(4) On Page 172 of the Agenda for the 20th of August 2019 Council Meeting in the Valuation Report by Valuation Services Land Services SA there is an Environmental Disclaimer:

"The Valuation Report is not an environmental audit and no advice is given in any way relating to environmental or pollution matters. Any comments made on environmental or pollution factors in relation to the property are not given in the capacity of an expert. This valuation advice is provided on the basis that the property is free of contamination. In the event that the property is found to contain contamination, the matter should be referred to this Office for comment. Given contamination issues can have an impact on the value of a property, the right is reserved to review, and if necessary, vary the valuation if any contamination or other environmental hazard is found to exist. The valuation has been based on the assumption that there is no actual or potential environmental issues impacting the property."

(5) Also on Page 172 of the Agenda for the Council Meeting of the 20th of August 2019 in the Valuation Report by Valuation Services Land Services SA there is a Full Disclosure Disclaimer:

"Whilst attempts were made to confirm the veracity of information supplied, the scope of work did not extend to verification of all information supplied or associated due diligence. The Valuation Report has been prepared on the assumption that the instructions and information supplied were provided in good faith and represent full disclosure of all information that is relevant. No responsibility or liability is accepted in the event that the Valuer has been provided with insufficient, false or misleading information."

(6) On Page 176 of the Agenda for the Council Meeting of the 20th of August 2019 in the Valuation Report by Valuation Services Land Services SA, Appendix 1: Copy Of Client Instructions – RFQ Market Values for Proposed Disposal/Land Exchange it is stated:

"A land exchange between The Barossa Council and Chateau Tanunda has been proposed to facilitate the development of an international hotel...that will create a new major tourism destination in Tanunda."
This information was provided to the Barossa community from late October 2017 and included in the community consultation documents which were prepared by The Barossa Council for formal consultation on the proposed community land swap with Chateau Tanunda. In October 2018, a $64 million grant application to the Federal Government's Growth Fund for the Barossa Global Wine and Food Project by The Barossa Council in partnership with Chateau Tanunda was unsuccessful.

(7) Also on Page 176 of the Agenda for the Council Meeting of the 20th of August 2019 in the Valuation Report by Valuation Services Land Services SA is a copy of the maps included in the community consultation documents which were prepared by The Barossa Council for formal consultation on the proposed community land swap with Chateau Tanunda from late October 2017.

(8) Allotment C as depicted on the map was not owned by Chateau Tanunda at the time of public consultation in October 2017. Chateau Tanunda purchased Allotment C in 2018. Allotment E in no way represents Allotment 74 Volume Pt. 5962 Folio 946 Deposited Plan 58229 (portion of) proposed to be swapped with Allotments A and B. Allotment 13 also bequested to The Barossa Council by Elma Keil and situated adjacent to the Tanunda Soldiers Memorial Hall is not depicted although it forms part of the plans proposed for the Barossa Regional Culture Hub.

(9) Annexure Plan A is not included on Page 209 of the Council Agenda for the Council Meeting of the 20th of August 2019. We believe that it is unacceptable that Annexure Plan A was not included in the Council documents publically released on Friday the 16th of August 2019 prior to the Council Meeting of the 20th of August 2019.

(10) Annexure B – Special Conditions on Page 211 of the Council Agenda for the Council Meeting of the 20th of August 2019 states:

"1.4 Council’s acknowledgements

The Council acknowledges that:
1.4.1 in order to ensure the deposit of the Plan of Division by the Registrar-General it may be necessary to create easements in favour of Government, statutory or other authorities for the purpose of drainage, water supply, telephone connections and electricity (including any transformers and other equipment required to be located on Land A for the distribution of electricity to other land adjoining or neighbouring Land A);
1.4.2 the Council is aware that the creation of such easements may affect the Council’s interest in and use of Land A;
1.4.3 where easements are required over Land A, such easements will vest upon the deposit of the Plan of Division pursuant to the provisions of the Real Property Act 1886 (SA) (as amended) or in the event that such easements do not vest in
the governmental or statutory or other body intended as grantee, then Chateau Tanunda may execute such documents as may be required for the easement to be registered on the Certificate of Title for Land A;
1.4.4 the creation of an easement affecting Land A does not entitle the Council to claim compensation, to terminate this Agreement or to refuse or delay settlement;
1.4.5 the dimensions of Land A may be subject to minor variation between the date of this Agreement and the date of deposit of the Plan of Division by the Registrar-General; and
1.4.6 any such variation does not entitle the Council to claim compensation, to terminate this Agreement or to refuse or delay settlement."

We strongly assert that it is not in the interests of The Barossa Council, nor the Barossa community for the Council to agree to these terms.

(11) The proposed deed outlined at pages 212 – 214 of the Council Agenda for the Council Meeting of the 20th of August 2019 between The Barossa Council and Robert John Homburg (Executor of the Estate of Elma Linda Keil) contains the following terms:
3. In consideration of the benefit given to the Council by the estate of Mrs Keil, the Council agrees in perpetuity:
3.1 that the Council will ensure that the Land remains classified as community land under the Local Government Act 1999 or any future legislation in substitution therefore.
3.2 that the Council will exercise all due care and diligence in the ongoing maintenance preservation and improvement of the Land for the purposes of its use as a public park lands and a recreation area.
3.3 that the Council will not erect any notices buildings or structures on the Land which are not aesthetically in sympathy and in keeping with the overall concept of a park land garden or recreation area.
4. Notwithstanding clause 3, the Council may develop the Land or part of it to enhance its future use either:
4.1 in conjunction or in sympathy with the railway station facilities and complex and adjoining Gallery; or
4.2 its use for some other commercial or public purpose provided that it retains its primary character as park lands and a recreation area for the public; or
4.3 to provide public infrastructure such as carparks, public areas for recreational use or public facilities and amenities to facilitate or improve access to, and use of the Land, and adjacent parcels of land and developments, provided that the Land retains its primary character as park lands and a recreation area for the public.
The Barossa Council has done nothing with Allotments 11 and 12 bequeathed by Elma Keil in the Indenture Deed in 1996. The envisaged public use of parks and gardens has never materialised. These Allotments were removed from The Barossa Council’s Community Land Register in recent times. How can the Tanunda and Barossa community have any confidence in The Barossa Council complying with the terms of the proposed deed? When The Barossa Council was offered the former Tanunda Railway Station to purchase in 2015, they declined the invitation. The former Tanunda Railway Station and associated land, Allotment C, was subsequently purchased by Chateau Tanunda. There have been consistent calls by the Barossa community to reinstate passenger train services from Adelaide to the Barossa to service the ever growing needs of the rapidly growing population. The opportunity to realise the vision of Elma Keil and the former District Council of Tanunda, prior to amalgamation with The Barossa Council has not been realised to date, over twenty years later.

(12) The proposed deed between The Barossa Council and Robert Homburg (Executor of the Estate of Elma Keil) outlined at pages 212 – 214 of the Council Agenda for the Council Meeting of the 20th of August 2019 also states: “5. If the Council is in breach of this Deed then the Executor and his successors and assigns and anyone lawfully claiming through or under the Executor will be entitled to an order restraining the Council from any breach of this Deed or to remedy such breach within a reasonable time and to damages to be paid to the Executor as the Trustee of the Estate of Mrs Keil of a sum equivalent to sixty five thousand dollars ($65,000.00) with interest thereon at the rate of ten percent (10%) per annum calculated from the date of the breach or such other amount as a Court of competent jurisdiction shall determine if such breach is not remedied within a reasonable time to the satisfaction of the Executor.”

$65,000.00 was the value of Allotments 11 and 12 in 1996, it is not the value of the land proposed to be swapped today which according to the Valuation Report by Valuation Services Land Services SA as stated on Page 171 is: “Market Value of Pl. Allotment 74 (proposed Allotment 252 with restrictions and dedications - $165,000 (One Hundred and Sixty-Five Thousand Dollars).

(13) The proposed deed between The Barossa Council and Robert Homburg (Executor of the Estate of Elma Keil) outlined in pages 212 – 214 of the Council Agenda for the Council Meeting of the 20th of August 2019 also states: “9. It is expressly agreed between the Executor and the Council that the Executor reserves the right to modify waive or release wholly or in part all or any of the
covenants conditions and restrictions herein relating to the Land and the performance by the Council."

It is not in the interests of the Tanunda or the Barossa community for this to occur and would amount to the loss of Community Land. It is worth noting that Tanunda does not have a village green, where other Barossa communities do for example Lyndoch, Nuriootpa and Angaston. Elma Kell and the former District Council of Tanunda envisaged this for Tanunda in 1996 and the Estate of Elma Kell generously made the bequest at the request of the Council at the time.

(14) The Assessment of Proposed Land Swap – Chateau Tanunda – Under the Disposal of Land or Other Assets Policy included in the Council Agenda for the Council Meeting of the 20th of August 2019 pages 215 – 219 was conducted prior to the public consultation process on the Proposed Land Swap between The Barossa Council and Chateau Tanunda from October to December 2017. It was subsequently discovered through a Freedom of Information application that the author of this Assessment was the Chief Executive Officer of The Barossa Council, Mr. Martin McCarthy. We were critical of the Assessment at the time of the public consultation and remain critical of it.

The elected members of The Barossa Council are required by law under the Local Government Act 1999 to act in the best interests of their community. The Code of Conduct for Council Members states in PART 1 – PRINCIPLES 1. Higher Principles – Overarching Statement: “Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times”. We continue to strongly assert that the Proposed Land Swap between The Barossa Council and Chateau Tanunda is not in the best interests of the Tanunda and broader Barossa community, on the basis of the documents referred to in this application for a review of a Council decision.

We wish to nominate Botten Lexinton Lawyers to undertake the Section 270 Review.

We look forward to hearing from you.

Yours sincerely,

Shelley James

Robbert (Bob) Bennef

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APPENDIX B
30 October 2019.

Ms. Felice D’Agostino,
Principal,
Norman Waterhouse Lawyers,
GPO Box 639,
Adelaide SA 5001.

Dear Ms. D’Agostino,

The Barossa Council – Section 270 Review –

Land Exchange between Chateau Tanunda and the Council

As discussed on the phone yesterday, I confirm that I will not be considering and commenting on your provisional draft report by Thursday the 31st of October 2019 as I had originally intended.

The Ombudsmans Office is currently in the process of considering your appointment as external reviewer by The Barossa Council and I am waiting to receive the outcome of the assessment.

Yours sincerely,

Shelley James.
PRIVATE AND CONFIDENTIAL
Ref: FXDW00206000F060362167.DOCX

15 November 2019

Mr Robert Sennef and Ms Shelley James

Dear Mr Sennef and Ms James

The Barossa Council - Section 270 Review - Land Exchange Between Chateau Tanunda and the Council

We refer to Ms Shelley’s telephone conversation on 14 November 2019 with the writer and write to outline the writer’s understanding of your position with respect to your application under Section 270 of the Local Government Act 1999 seeking a review of the Council’s decision made at its meeting of 20 August 2019.

We understand that you have taken issue with the Council appointing Norman Waterhouse to assist it in dealing with your application and have made a complaint to the Ombudsman. You have advised Ms D’Agostino the Ombudsman responded to your complaint on or about 30 October 2019. We do not know the precise nature of the Ombudsman’s response however we understand from your telephone conversation with Ms D’Agostino the Ombudsman was not going to be investigating your complaint. However, we apologise if we have misunderstood.

You have however today advised Ms D’Agostino that you have responded to the Ombudsman and do wish to make any submissions on the draft provisional report in this matter until you have had a further response from the Ombudsman. Whilst you have suggested you may be able to provide comments on the draft provisional report by the first week of December, this will depend on when you receive a response from the Ombudsman.

This matter was due to be considered by the Council at its November meeting until your discussion last week with Ms D’Agostino when you indicated you did in fact wish to provide submissions on the draft provisional report and could do so within a week.
15 November 2019

The Council has advised us that this matter will be considered by the Council at its meeting in December. Accordingly, should you wish to make any submissions on the draft provisional report you will need to provide them to us by no later than Friday, 29 November 2019 so that they can be considered in the final report.

Yours faithfully
Norman Waterhouse

Felice D'Agostino
Principal
7.2.1.7 FINAL COMMERCIAL AND VALUATION DOCUMENTS FOR LAND EXCHANGE BETWEEN CHATEAU TANUNDA (IVIVI PTY LTD) AND COUNCIL

B7081

PURPOSE

To seek final approval of the commercial agreement to exchange land with Chateau Tanunda as previously contemplated by Council.

RECOMMENDATION

That Council:

(1) Being satisfied with the Valuation Report approves the draft Contract for the Exchange of Land as presented at Attachment 2 and authorise the Chief Executive Officer to make further changes and authorise the Agreement on condition that:

   a. Chateau Tanunda (Ivivi Pty Ltd) shall at least transfer the portion of land being certificate of title volume 5962 folio 146 of approximately 8,241 square metres and $25,000 to Council to balance the market values of the land; and

   b. Any stamp duty costs shall be borne by Chateau Tanunda (Ivivi Pty Ltd);

(2) Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

(3) Authorise the Chief Executive Officer to proceed with settlement of the land exchange after completion of the Contract for the Exchange of Land under resolution 1, and that the said land be excluded from community land status pursuant to Section 193(4) of the Local Government Act, until the Indenture Deed is settled under resolution 2 and that a final report be brought to Council for rededication of the land under Section 193(5) of the Local Government Act and application to an appropriate community land management plan.

REPORT

Background and Introduction

Following approval of the Minister’s delegate dated 19 April 2018 and Council of 26 April 2018 to revoke the classification of Council land as community land officers have been liaising with representatives of Chateau Tanunda to proceed with the land exchange.
Discussion
To ensure proper process and having considered matters of probity and Council’s Asset Disposal Policy I did engage an independent firm to undertake a valuation of the land to aid negotiation processes. In October 2018 this report was undertaken by Land Services SA after undertaking a request for quotation process. The valuation was concluded and provided as at 8 November 2018. Since that time I have been undertaking periodic discussions with the owner and also liaising with planning to facilitate the land division, utilising this report as the basis of a fair commercial arrangement.

The land division is now practically complete, with administrative processes for registration and issuing of the approved deposited plan currently underway.

The valuation report highlights that the estimated market value of Council’s land (unfettered, which it will be with the removal of the legislative community land matters and the Keil Deed) is $685,000. Conversely the portion of land to be provided to Council has an estimated market value of $660,000. Among other things therefore I have negotiated a position that ensures Council and thereby the community receives a value of the land plus $25,000. The valuation report is attached at Attachment 1.

Other than the matter above the other key outcomes of the commercial agreement are:

1. Each shall bear their own costs in negotiating and delivering the agreement;
2. Any stamp duties shall be the responsibility of Chateau Tanunda;
3. Manages the application of GST;
4. Manages the issues of default;
5. All costs associated with the land division are the responsibility of Chateau Tanunda.

Further, and as agreed in principle with the Executors of the Keil Deed, a revised Deed has been drafted and predominantly reflects the prior agreement, bar the acknowledgement by the Executors that the use of the land for a cultural, artistic and heritage development is understood and supported. The Cultural Hub project could utilise a small area of the land to support public use however the vast majority of the land will remain in some way open space such as an open air performance area. Of course the final designs remain a work in progress, but the working group and Director are aware of the prominent need to ensure public access and provision of recreational and park land areas. A preliminary briefing has been scheduled with the Executor/s should Council agree to the draft documentation.

Summary and Conclusion
The Council is asked to endorse the Commercial Land Exchange Agreement and Deed and authorise the Chief Executive Officer to make final arrangements consistent with the documents provided and conclude the land exchange. Once the land exchange has concluded and at an appropriate juncture the entering into the Deed and rededication of the land for community land purposes will be made.

<table>
<thead>
<tr>
<th>ATTACHMENTS OR OTHER SUPPORTING REFERENCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment 1 - Valuation Report</td>
</tr>
<tr>
<td>Attachment 2 – Land Exchange Contract - Draft</td>
</tr>
<tr>
<td>Attachment 3 – Indenture Deed – Draft</td>
</tr>
<tr>
<td>Attachment 4 – Assessment against Council Asset Disposal Policy</td>
</tr>
</tbody>
</table>
COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

- Natural Environment and Built Heritage
- Community and Culture
- Health and Wellbeing
- Business and Employment

1.4 Develop and maintain streetscapes that reflect the character and heritage of the region.
1.6 Support tourism development that is sensitive to the natural environment and sustainable.
2.1 Initiate and support activities which encourage participation and pride in the Barossa Council area.
2.2 Support the development of activities that celebrate the history and culture of the Barossa and its people.
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.
4.6 Ensure that community members can participate in cultural, recreational, sporting and learning opportunities.
5.1 Work closely with State Government, Federal Government and stakeholders to support economic growth, development and job creation.
5.4 Attract investment for new and innovative industries, such as creative industries and cultural tourism.
5.13 Support economic development through events.

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

There are no other risk or resourcing matters not explored by prior considerations or outlined in this report. Strategically Council has identified the land as highly supportive of the ongoing benefit for the community and releasing land which remains undeveloped to potentially develop a 5 star accommodation offer is of further economic and social benefit. Should the accommodation not proceed there still remains a strong benefit in the land being received by Council as it is located closer to the main street and interacts with other Council land and assets.

The financial impacts of this decision are presently within existing budget and either already paid for such as legal advice and the valuation analysis and in transacting of the settlement process existing resources will support it and costs of conveyancing and adjustments will be incurred.

Further the risk matters previously addressed in the Asset Disposal Policy are represented for Council’s review, at Attachment 4, there is no further update than that previously provided. It is reiterated the only person in the market than can assist in meeting the principles of the Indenture Deed is Chateau Tanunda and therefore it is somewhat questionable that a market truly exists, in any case the independent valuation and negotiations to date also address this issue.
COMMUNITY CONSULTATION
Community consultation for this entire revocation of community land process and culture hub has been extensive. Further both matters have been challenged under Section 270 of the Local Government Act and the Ombudsman and found to be proper or the best or preferable decision. At appropriate times the Mayor and or Chief Executive have met with the Executor/s to keep them up to date as was committed.
Valuation Report

Market Value

Allotments 11 and 12 and Portion of Allotment 74 Basedow Road
Tanunda

For The Barossa Council

Prepared by:

Valuation Services
Land Services SA
Executive Summary

Purpose: The purpose of this report is to provide The Barossa Council with a market value to facilitate a land exchange between the Council and the proprietors of Chateau Tanunda of Allotments 11 and 12 in DP 33882 and portion of Allotment 74 in DP 58229, Basedow Road Tanunda.

Interest Valued: 1. Fee Simple on a vacant possession basis
2. Fee Simple (with existing and proposed restrictions and dedications)

Registered Owner/s: Allotments 11 and 12 – The Barossa Council
                        Allotment 74 - Ivivi Pty Ltd

Brief Property Description: The properties comprise vacant land being:
1. Allotments 11 and 12 are irregular in shape with a slight slope from north east to south west and a combined land area of some 13,716m² with a frontage to Basedow Road of 24.3 metres.
2. Portion of Allotment 74 is irregular in shape with a slope from north to south having a frontage to Basedow Road of 22.70 metres and a land area of some 8,241m².

Zoning: Tourist Accommodation as defined under The Barossa Council Development Plan.

Date of Valuation: 8th November 2018
Date of Inspection: 8th November 2018
Valuation Methodology: Direct Comparison

Market Value (Ex GST): 1. Allotments 11 and 12 unfettered by restrictions and dedications $685,000
2. Portion of Allotment 74 unfettered by restrictions and dedications $660,000
3. Allotments 11 and 12 encumbered by restrictions and dedications $205,000
4. Portion of Allotment 74 encumbered by restrictions and dedications $165,000.

Valuers: Colin Eldridge
FAPI Certified Practising Valuer
Chief Valuer – Valuation Services

Darren Rasmus
Chief Valuer Valuation Services

Qualifications: As the Endorsing Valuers we are satisfied that subject to the overriding stipulations contained within the body of the report the market values are supported by market evidence.

Further, we confirm that neither valuer has a pecuniary interest that could conflict with the proper valuation of the property and we advise that this position will be maintained until the purpose for which this valuation is being obtained, is completed.
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Introduction

INSTRUCTIONS

Instructing Parties: Mr Martin McCarthy  
Chief Executive Officer  
The Barossa Council  

Mr Mark Kay – Chief Valuer  
Office of the Valuer-General

Instructions and Purpose: Acting on written instructions received on 29th October 2018 from The Barossa Council we have determined the market value of the freehold interest both unencumbered and encumbered with existing and proposed restrictions and dedications of the properties known as Allotments 11 and 12 and portion of Allotment 74, Basedow Road Tanunda, to facilitate a land exchange between The Barossa Council and the proprietors of Chateau Tanunda.

We confirm that the subject properties have been inspected and all relevant information considered enabling the following report to be prepared:

This report has been prepared for the private and confidential use of the Barossa Council. It should not be reproduced in whole or in part or relied upon for any other purpose or by any other party.

A copy of the instructions is included as Appendix 1 in this report

Information Sources: The information provided by the instructing party which has been relied upon for the purposes of this Valuation Report, is as follows:

• Valuation Instructions
• Copies of Certificates of Title
• Copies of Deposited Plans
• Copy of proposed division of land to identify the portion of Allotment 74 to be exchanged
• Property Details
• Confirmation of zoning
• Consultation Report (undated)

Market Value Definition: For the purpose of this valuation the definition of “Market Value” is in accordance with the International Valuation Standards and has been adopted in the Australian Property Institute’s Code of Professional Practice as being:

“The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion”

Date of Valuation: 8th November 2018

Date of Inspection: 8th November 2018
Legal Details

Title Details: The subject properties are legally described as whole or part of the land contained within the following Certificates of Title:

<table>
<thead>
<tr>
<th>Volume</th>
<th>Folio</th>
<th>Allotment</th>
<th>Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>5133</td>
<td>408</td>
<td>11</td>
<td>DP 33882</td>
</tr>
<tr>
<td>5902</td>
<td>824</td>
<td>12</td>
<td>DP 33882</td>
</tr>
<tr>
<td>Pt. 5962</td>
<td>146</td>
<td>74</td>
<td>DP 58229</td>
</tr>
</tbody>
</table>

Note – Pt Allotment 74 is described in a proposed Land Division (Plan no. 18083L-PRP-01-V1) as Allotment 252.

Copies of the Certificates of Title, Deposited Plan and proposed Plan of Division are included as Appendix 2.

Registered Proprietor:

Allotments 11 and 12 – The Barossa Council.
Allotment 74 - Ivivi Pty Ltd.

Endorsements and Encumbrances:

Allotment 11 CT 5133/408
Subject to easement(s) 5713/409 over the land marked D to Australian National Railways Commission (re 7505372a).
Together with free and unrestricted right(s) of way over the land marked C.

Easement 5713/409 is issued pursuant to Section 6 of the Non-Metropolitan Railways Transfer Act 1977 and does not extinguish the interests (if any) which a third party may have in the land. Section 6 refers to the transferring of SAR and Commonwealth Railways Land to the State and its vesting in the Minister. As the adjoining property, Allotment 72 DP 58229 is no longer vested in the State Section 6 would no longer apply.

Allotment 12 CT 5902/824
Subject to easement(s) over the land marked E to Australian National Railways Commission (re 7505372a).
Subject to free and unrestricted right(s) of way over the land marked C.

Easement 5713/409 is issued pursuant to Section 6 of the Non-Metropolitan Railways Transfer Act 1977 and does not extinguish the interests (if any) which a third party may have in the land. Section 6 refers to the transferring of SAR and Commonwealth Railways Land to the State and its vesting in the Minister. As the adjoining property, Allotment 72 DP 58229 is no longer vested in the State Section 6 would no longer apply.

Part Allotment 74 CT 5962/146 (Proposed Allotment 252)
Subject to free and unrestricted right(s) of way over the land marked B and D.

Subject to service easement(s) over the land marked H for water supply purposes to South Australian Water Corporation (2231G RPA).
Together with free and unrestricted right(s) of way over the land marked A appurtenant only to the land marked X.

We are of the opinion that these rights of way do not detrimentally affect the value of the properties.
In addition to the above, Allotments 11 and 12 are encumbered in two ways

1. The land is formally classified as Community Land pursuant to section 193 of the Local Government Act 1999.
2. The land has an indenture deed dedication applied to it. These parcels of land were donated to the Council by way of trust from the Keil Estate for the purposes of Open Space and Recreation.

These additional encumbrances form the basis of our valuation of the land with “restrictions and dedications”.

Identification

The properties have been identified by reference to the Deposited Plan, cadastral mapping and the physical inspection, 8 November 2018, and appear to conform substantially to the identified features shown on the Deposited Plans and the proposed Plan of Division.

Site Particulars

Location

Site Areas: Allotments 11 and 12 are elongated, having a depth of some 338.14 metres and a maximum width at approximately the mid depth point of 59.76 metres, resulting in an overall area of 13,716m². These allotments have a combined frontage to Basedow Road on the northern boundary of 24.30 metres.

Portion of Allotment 74 (Proposed Allotment 252) is a hammer head shape with the elongated handle having a depth of some 166.72 metres and a maximum width at the Basedow Road frontage of 22.7 metres. The head of the hammer is irregular in shape with an estimated depth of 155 metres along the western boundary and a maximum width of approximately 52.16 metres along the southern boundary. The overall area is 8,241m² of which the handle is approximately 22% and the head 78%.

Site Description: Allotments 11 and 12 comprise vacant Tourist Accommodation zoned land being elongated with a maximum width to depth ratio of 1:5.6. The site has a slight fall from north to south and east to west and has some strand wire fencing along the eastern boundary. In addition, there are some mature native eucalypts and other species of tree scattered across the property, particularly Allotment 11.

Photo 1 - Allotments 11 and 12 facing south from Basedow Road
Proposed Allotment 252 (portion of Allotment 74) is vacant with the exception of both mature and juvenile trees scattered across the site. The site has access from Basedow Road and whilst portion of the property (the handle), has an unrestricted right of way over A (the continuation of Bushman Street) it appears from the site inspection that this right of way has been built upon. The site has a slight fall from north to south and east to west and some fencing of mixed materials along the western boundary with the neighbouring residential properties. The southern portion of the site has the potential for development under the existing planning regulations and guidelines.
Photo 4 - Allotment 74 facing south from Basedow Road

Photo 5 - Portion of Allotment 74 facing North

Photo 6 - Portion of Allotment 74 facing North
It is noted that the storage shed (partly obscured in photo 3 and to the left in photo 4) does not form part of the proposed Allotment 252.

Both sites have limited exposure to Basedow Road and abut the disused rail corridor.

**Street and Services:**

Basedow Road is a single lane carriageway being a fully constructed bitumen sealed road with concrete kerbing, channelling and part sealed footpaths. In addition, all roads within the surrounding area are fully constructed and bitumen sealed, with concrete kerbing and associated water drainage services installed.

Services that are currently available for connection to the properties are:

- Electricity - 240-volt
- Reticulated mains water
- Septic Tank Effluent Disposal (STED)
- Telephone

**Planning**

**Town Planning:**

The subject property is located in the Barossa Council whereby the sites have a Tourist Accommodation zoning classification within the Development Plan Consolidated, 1st November 2018.

The main objectives of the Tourist Accommodation zone as contained in the Development Plan are:

**Objective 1** - Provision of tourist accommodation and service facilities for visitors and holiday-makers on short and long-term visits to the area.

**Objective 2** - Development that contributes to the desired character of the zone.

The following forms of development are envisaged in the zone:

- bed and breakfast accommodation
- entertainment, cultural and exhibition facility
- guest house
- hotel
- motel
- nature of health retreat.

Expansion of existing winery activities should only occur where they do not compromise the intent of the zone for tourist accommodation, or impact on surrounding residential development by way of their scale, location or intensity.

**Existing Use:**

The properties are currently vacant land with Allotments 11 and 12 being classified as community land, consequently under this classification and the open space and recreation dedication it is considered that the current use is the highest and best use. The portion of Allotment 74 currently has no such classification and/or dedication and could be developed in accordance with the current Tourist Accommodation zoning.

Should a land exchange eventuate between the Barossa Council and the proprietors of Chateau Tanunda the classification and dedication will be removed from Allotments 11 and 12 and applied to the portion of Allotment 74.
Environmental Issues: No environmental issues have been reported or identified.

At the time of inspection, we did not observe any signs or evidence of contamination or potential contamination. This valuation is prepared assuming the subject properties are free of contamination and reserve the right to review this report should further information be presented.

Heritage: A search of the Development Plan, the Certificates of Title and the SA Heritage Register indicates that neither of the subject properties are heritage listed.

Statutory Valuations

The Valuer-General undertook a general valuation within the Barossa Council as at 1st January 2018, which came into force at midnight 30th June 2018 and determined values for rating and taxing purposes as they relate to the subject property as:

Site Values:
- Allotment 11 $199,000
- Allotment 12 $199,000
- Allotment 74 $1,375,000 Note this includes some 14.9ha of land which includes the Chateau Tanunda.

Capital Values:
- Allotment 11 $199,000
- Allotment 12 $199,000
- Allotment 74 $2,800,000 Note this includes some 14.9ha of land and improvements which includes the Chateau Tanunda.
Valuation Considerations

Considerations: There are numerous considerations for discussion and each point below contains factors that affect the valuation.

In arriving at opinion of value, the Valuer has adopted accepted methodologies that are appropriate in the circumstance and for which sufficient data is available to determine the market value to facilitate the land exchange.

The valuation takes into account the following considerations:

Primary Considerations:

1. The current and proposed classification as Community Land pursuant to Section 193 of the Local Government Act 1999
2. The current and proposed indenture deed dedication as open space and recreation
3. Highest and Best Use: One of the primary considerations in determining the Market Value is its highest and best use. In considering the most appropriate value to be determined for the subject property, we have considered the specific characteristics exhibited by the property. The most notable market considerations include sales of vacant land or properties advertised as vacant land within as close a proximity as possible of the subject properties and ideally with the same or similar zoning as the subject properties
4. Likely Selling Period
5. Purchaser Profile
6. The valuation is based upon relevant comparable sales evidence
7. Property attributes: including the physical shape and access
8. The valuation assumes that the property is not affected by any easements, encumbrances or covenants that have not been disclosed by a search of the Title/s that may otherwise detrimentally affect the value of the property
9. The valuation assumes that the property complies with all regulating authorities in respect to its current use.

Primary Method:

The valuation method used in considering the valuation to facilitate a land exchange is:

- **Direct Comparison with the market**: This method is where market evidence is analysed having regard to sales of other comparable properties in the area and adjusting for various factors such as differences in size, location and condition etc., to arrive at a market value for the subject property based on comparison with recently sold properties.
Market Commentary

Market Commentary: The property markets in the Barossa region have experienced varying levels of growth over the past twelve months. The most notable is the wine sector which is benefitting from a strong wine export market, particularly to China. High levels of demand for established viticultural properties is also being experienced with Chinese foreign investors being a major player in the market. The purchase of vineyards enables the investors to secure their grape supply and the Barossa branding of the wine. This demand has resulted in vineyard values significantly increasing over the previous four years with some premium vines commanding well in excess of $150,000 per hectare.

Tourism continues to be significant industry in the region with in excess of 1,000 beds available from a variety of short-term accommodation styles. The occupancy levels for hotel, motel and apartment accommodation in the region is approximately 60%.

In regard to the Tanunda residential property market it has seen moderate increases to value levels with the median sale price currently at $375,000 (source CoreLogic RP Data). The number of sales transactions have remained relatively stable over the past twelve months. Good demand particularly exists for renovated character homes in the town.

The commercial property market in Tanunda has remained relatively strong over the past twelve months with low vacancy numbers and good demand being experienced. Net rentals in the town are generally in the range of $220 and $280/m² per annum with low levels of incentives being required.

Demand for vacant sites across the Barossa region with development potential continues to remain healthy.
Sales Evidence

In assessing a suitable market value for the properties, we have had regard to sales and market evidence across a broad spectrum of the real estate place. The most relevant sales are summarised in the sales schedule and commentary below.

Summary of Comparable Sales:

<table>
<thead>
<tr>
<th>No.</th>
<th>Property Address</th>
<th>Site Area (approx.)</th>
<th>Zoning</th>
<th>Plan Parcel</th>
<th>Sale Price Ex GST</th>
<th>Sale Date</th>
<th>Analysis $/M²</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Allotment 72 Basedow Rd Tanunda</td>
<td>3,936</td>
<td>Tourist Accommodation</td>
<td>A72 DP58229</td>
<td>$225,000</td>
<td>12/1/2018</td>
<td>$57</td>
</tr>
<tr>
<td>2</td>
<td>Allotment 11 Goodman Road Elizabeth</td>
<td>14,050</td>
<td>Regional Centre – Recreation</td>
<td>A102 DP65969</td>
<td>$406,250</td>
<td>21/3/2016</td>
<td>$29</td>
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<tr>
<td>3</td>
<td>Allotment 10 Lady Ruthven Drive North Haven</td>
<td>177,000 (17.7ha)</td>
<td>Metropolitan Open Space System</td>
<td>A10 F10200</td>
<td>$1,500,000</td>
<td>8/4/2008</td>
<td>$8.50</td>
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<tr>
<td>4</td>
<td>53 Panter Street, Willaston 5118</td>
<td>24,200</td>
<td>Special Use</td>
<td>A32 DP94749</td>
<td>$600,000</td>
<td>24/7/2016</td>
<td>$15</td>
</tr>
<tr>
<td>5</td>
<td>17 Edith St Gawler East</td>
<td>14,500</td>
<td>Special Use</td>
<td>A12 F112810 and Fs.10 and 11 F112809</td>
<td>$500,000</td>
<td>22/3/2013</td>
<td>$34</td>
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<td>6</td>
<td>167-169 Murray Street Nuriootpa</td>
<td>2,220</td>
<td>Commercial</td>
<td>A3 and 4 DP 7950</td>
<td>$445,000</td>
<td>16/2/2017</td>
<td>$200</td>
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<td>7</td>
<td>23-25 Magnolia Street Tanunda</td>
<td>3,982</td>
<td>Light Industry</td>
<td>A21 DP53837</td>
<td>$400,000</td>
<td>12/6/2014</td>
<td>$100</td>
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<td>SALE 1</td>
<td>Sale Details</td>
<td>Legal Particulars</td>
<td>Property Description</td>
<td>Analysis</td>
<td>Comparison</td>
<td>Comments</td>
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<tr>
<td>Property Address:</td>
<td>Allotment 72 Basedow Rd Tanunda SA 5352</td>
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<td>Location:</td>
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<td>Sale Price:</td>
<td>$225,000 (excl. GST)</td>
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<td>Sale Date:</td>
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<tr>
<td>Legal Description:</td>
<td>CT 6203/119 - Allotment 72 in Deposited Plan 58229</td>
<td></td>
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<tr>
<td>Site Area:</td>
<td>3,936m²</td>
<td></td>
<td></td>
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<tr>
<td>Zoning:</td>
<td>Tourist Accommodation</td>
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</tr>
<tr>
<td>Policy Area:</td>
<td>Not Applicable</td>
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</tr>
<tr>
<td>Analysis (Rounded):</td>
<td>$57/m² of Site Area</td>
<td></td>
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</tr>
<tr>
<td>Comparability:</td>
<td>Adjacent to and similar shape to A11 and 12</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parties:</td>
<td>Transferor: Minister for Transport and Infrastructure</td>
<td></td>
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<tr>
<td></td>
<td>Transferee: Lionize Group Pty Ltd</td>
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</tr>
<tr>
<td>Comments:</td>
<td>Comprises an elongated, irregular shaped, parcel on the southern side of Basedow Road between Allotment 12 (portion of the subject properties) and the rail corridor. The improvements on the site include the Local Heritage Listed former Tanunda Railway Station, currently utilised as a community-based radio station. It is considered that these improvements provide limited utility due to the average condition and functionality of the building.</td>
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<tr>
<td>Comparison:</td>
<td>Overall, a sale of a slightly smaller parcel with similar attributes to the subject properties and having the same zoning. The site has a slight slope from north to south. Considered slightly inferior overall due to the site area.</td>
<td></td>
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### SALE 2

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<tr>
<th>Property Address:</th>
<th>Lot 11 Goodman Road Elizabeth</th>
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<tr>
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<tr>
<td>Sale Price:</td>
<td>$406,250 (exc. GST)</td>
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<tr>
<td>Sale Date:</td>
<td>21/3/2016</td>
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<tr>
<td>Transfer Document:</td>
<td>T 12506088</td>
</tr>
<tr>
<td>Legal Description:</td>
<td>CT 6170/425 – Allotment 11 in Deposited Plan 90239</td>
</tr>
<tr>
<td>Site Area:</td>
<td>14,050m²</td>
</tr>
<tr>
<td>Zoning:</td>
<td>Regional Centre</td>
</tr>
<tr>
<td>Policy Area:</td>
<td>Recreation</td>
</tr>
<tr>
<td>Analysis (Rounded):</td>
<td>$29/m² of Site Area</td>
</tr>
<tr>
<td>Comparability:</td>
<td>Overall superior due to location, shape and potential utility</td>
</tr>
<tr>
<td>Parties:</td>
<td>Transferor: Central Districts Football Club Inc</td>
</tr>
<tr>
<td></td>
<td>Transferee: City of Playford</td>
</tr>
<tr>
<td>Comments:</td>
<td>The property is adjacent the existing lawn bowls facility and was purchased from the adjoining Central District Football Club to expand the recreational facilities as part of the City of Playford plan to transform the area into a passive and non-passive recreation area. The site is also in close proximity to the Elizabeth City Centre development, with immediate surrounding development being predominantly of a recreation nature. The site is irregular in shape, level at road grade and a frontage to Goodman Road of approximately 46 metres offering good exposure. The property was sold off-market at a consideration based on market evidence. An easement to South Australian Water Corporation for Sewerage purposes exists along the western and southern boundaries.</td>
</tr>
<tr>
<td>Comparison:</td>
<td>Overall, a larger site that has limited commercial development potential and generally reflects a value attributable to land of a recreational use. Similar size to Allotments 11 and 12, larger than proposed allotment 252 (portion of allotment 74). Generally superior to the subject property in relation to a value with restrictions and dedications.</td>
</tr>
<tr>
<td>Sale Details</td>
<td>Property Address: Allotment 10 Lady Ruthven Drive North Haven</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Sale Price:</strong></td>
<td>$1,500,000 (exc. GST)</td>
</tr>
<tr>
<td><strong>Sale Date:</strong></td>
<td>8th April 2008</td>
</tr>
<tr>
<td><strong>Transfer Document:</strong></td>
<td>T 10936649</td>
</tr>
<tr>
<td><strong>Legal Description:</strong></td>
<td>CT 5351/598 – Allotment 10 Filed Plan 1021</td>
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<tr>
<td><strong>Site Area:</strong></td>
<td>17.70ha (approx.)</td>
</tr>
<tr>
<td><strong>Zoning:</strong></td>
<td>Metropolitan Open Space System (MOSS)</td>
</tr>
<tr>
<td><strong>Policy Area:</strong></td>
<td>16 - Buffer</td>
</tr>
<tr>
<td><strong>Analysis ( Rounded):</strong></td>
<td>$8.50/m² of Site Area</td>
</tr>
<tr>
<td><strong>Comparability:</strong></td>
<td>Overall superior in size with very limited development potential</td>
</tr>
<tr>
<td><strong>Parties:</strong></td>
<td>Transferee: Belair Management Services Ltd</td>
</tr>
<tr>
<td></td>
<td>Transferee: Poal Properties Pty Ltd</td>
</tr>
<tr>
<td><strong>Comments:</strong></td>
<td>A nine-hole Golf Course, the site was purchased by the developer to provide a buffer between residential development and the industrial pursuits associated with the Outer Harbour shipping terminals. The site is located on the LeFevre Peninsula abutting Victoria Road and the Outer Harbour rail corridor some 20 kilometres north west of the Adelaide CBD in an area of predominantly residential development.</td>
</tr>
<tr>
<td><strong>Comparison:</strong></td>
<td>Overall, a significantly larger site, however the site is to remain as a buffer. This sale reflects the value placed on land that has very limited development potential.</td>
</tr>
<tr>
<td>SALE 4</td>
<td>Sale Details</td>
</tr>
<tr>
<td>--------</td>
<td>--------------</td>
</tr>
<tr>
<td>Property Address:</td>
<td>53 Panter Street, Willaston 5118</td>
</tr>
<tr>
<td>Location:</td>
<td></td>
</tr>
<tr>
<td>Sale Price:</td>
<td>$600,000 (exc. GST)</td>
</tr>
<tr>
<td>Legal Description:</td>
<td>CT 6156/504 - Allotment 33 in Deposited Plan 94749</td>
</tr>
<tr>
<td>Site Area:</td>
<td>24,200 m²</td>
</tr>
<tr>
<td>Policy Area:</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Comparability:</td>
<td>Overall Inferior on a rate per square metre of site area</td>
</tr>
<tr>
<td>Parties:</td>
<td>Transferor: S and D Pierotti</td>
</tr>
</tbody>
</table>
| Comments: | Comprises an irregular shaped, sloping parcel located approximately 1.6 kilometres north-west of the Gawler main commercial centre. Access to the property is from its northern boundary off Panter Street in Willaston. The southern boundary of the property is formed by the North Para River. All usual services are connected.

The property comprised the former Gawler Par 3 Golf Course. At date of sale improvements on the land included a three-bedroom rendered stone dwelling in good condition and an adjoining addition being the former clubhouse. Total building area is calculated at approximately 289 m² plus a substantial veranda area. The purchaser has converted the building to a church and meeting area.

Surrounding development to the north includes residential related uses with light industrial to the west.

A value of some $240,000 has been applied to the improvements resulting in a land component of $15/m².

The entire property is included within the ‘Special Use’ zone which is generally restrictive in nature. In addition, the majority of the property is included within the ‘High Risk’ area of the Gawler River flood zone. | Overall, a sale of a larger parcel with in an inferior location in comparison to the subject property given the high flood risk. The subject properties would reflect a similar rate per square metre of site area with the restrictions and a higher rate per square metre unfettered by the restrictions. | | | | | |
<table>
<thead>
<tr>
<th>Property Address:</th>
<th>17 Edith Street, Gawler East 5118</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location:</strong></td>
<td><img src="" alt="Map of Property" /></td>
</tr>
<tr>
<td><strong>Sale Price:</strong></td>
<td>$500,000 (exc. GST)</td>
</tr>
<tr>
<td><strong>Sale Date:</strong></td>
<td>22/03/2013</td>
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<tr>
<td><strong>Transfer Document:</strong></td>
<td>T 11910430</td>
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</tbody>
</table>
| **Legal Description:** | CT 5312/762 - Allotment 12 in File Plan 112510  
CT 5312/763 – Pieces 10 and 11 in File Plan 112809 |
| **Site Area:**   | 14,500 m²                       |
| **Zoning:**      | Special Use                      |
| **Policy Area:** | Not Applicable                   |
| **Analysis (Rounded):** | $34/m² of Site Area         |
| **Comparability:** | Overall Inferior on a rate per square metre of site area |
| **Parties:**     | Transferor: JF and DK McMurray  
Transferee: The Salvation Army (South Australia) Property Trust |
| **Comments:**    | Located approximately 600 metres north-east of the Gawler Post Office in the suburb of Gawler East. The parcel is irregular in shape with an uneven contour and has a frontage of 82 metres to Edith Street, being a kerbed and sealed local road. The western boundary of the parcel is formed by the North Para River.  
The site has relatively poor exposure and has both a local residential outlook and views over the adjacent Clonlea Park reserve.  
At the date of sale improvements on the land comprised a modest dwelling which has since been demolished.  
The entire site is included within the Special Use zone with a large portion also being within the High Flood Risk area as detailed in the Development Plan. The prime purpose of the Special Use zoning is to provide for community use with business related uses generally not envisaged. |
<p>| <strong>Comparison:</strong>  | Overall, a sale of a larger parcel with in an inferior location in comparison to the subject property given the high flood risk. The subject properties would reflect a lower rate per square metre of site area with the restrictions and a higher rate per square metre unfettered by the restrictions. |</p>
<table>
<thead>
<tr>
<th>SALE 6</th>
<th>Sale Details</th>
<th>Legal Particulars</th>
<th>Property Description</th>
<th>Analysis</th>
<th>Comparison</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Address:</td>
<td>167-169 Murray Street, Nuriootpa 5355</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location:</td>
<td><img src="image" alt="Location Image" /></td>
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<tr>
<td>Sale Price:</td>
<td>$445,000 (exc. GST)</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Sale Date:</td>
<td>16/02/2017</td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Transfer Document:</td>
<td>T 12689332</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
| Legal Description: | CT 5550/272 - Allotment 4 in Deposited Plan 7950  
CT 5550/273 – Allotment 3 in Deposited Plan 7950 | | | | | |
| Site Area: | 2,220m² | | | | | |
| Zoning: | Commercial | | | | | |
| Policy Area: | Not Applicable | | | | | |
| Analysis (Rounded): | $202/m² of Site Area | | | | | |
| Comparability: | Overall superior on a rate per square metre of site area | | | | | |
| Parties: | Transferor: KA Marschall  
Transferee: Community Helpers Inc. | | | | | |
| Comments: | Located toward the northern fringe of the Nuriootpa township being approximately 1.4 kilometres north of the town centre. The property comprises two rectangular shaped allotments being purchased together as a whole.  
The generally level parcel is regular in shape having a 43.9 metre frontage to Murray Street which is a main access road into the town and carries significant levels of traffic. All usual services are available to the site.  
The property is considered to have good exposure.  
Surrounding development comprises light industrial and car yard related uses with residential being located on the eastern side of Murray Street.  
The workshop located on the allotment immediately north of this property, previously encroached onto Allotment 3. This portion of the workshop has been removed and did not form part of the sale. | | | | | |
| Comparison: | Overall, a sale of a smaller parcel being superior in respect of shape and zoning in comparison to the subject. The subject property would reflect a lower rate per square metre of site area. | | | | | |
**SALE 7**

<table>
<thead>
<tr>
<th>Sale Details</th>
<th>Legal Particulars</th>
<th>Property Description</th>
<th>Analysis</th>
<th>Comparison</th>
<th>Comments</th>
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<tbody>
<tr>
<td><strong>Property Address:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>23-25 Magnolia Street, Tanunda 5352</td>
</tr>
<tr>
<td><strong>Location:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sale Price:</strong></td>
<td><strong>$400,000 (exc. GST)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sale Date:</strong></td>
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<td></td>
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<td></td>
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<tr>
<td><strong>Transfer Document:</strong></td>
<td>T 12160451</td>
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<tr>
<td><strong>Legal Description:</strong></td>
<td>CT 5743/396 - Allotment 21 in Deposited Plan 53837</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Site Area:</strong></td>
<td>3,982 m²</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Zoning:</strong></td>
<td>Light Industrial</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Policy Area:</strong></td>
<td>Not Applicable</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Analysis (Rounded):</strong></td>
<td><strong>$100/m² of Site Area</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Comparability:</strong></td>
<td>Overall superior on a rate per square metre of site area</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Parties:</strong></td>
<td>Transferee: CR Lindner Nominees Pty Ltd</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Transferee: CR Lindner Nominees Pty Ltd</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Comments:</strong></td>
<td>Located approximately 1.5 kilometres north-east of Tanunda's main centre and situated on the northern fringe of a light industrial area. The property is regular in shape with a generally level topography. The allotment has 55.4 metre frontage to Magnolia Street being a kerb and sealed road which carries moderate amounts of traffic. Surrounding development comprises industrial related uses to the south and residential properties to the north. Mains water and power are available. Since purchase the property has been developed to three warehouses/workshops.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Comparison:</strong></td>
<td>Overall, a sale of a smaller parcel being superior in respect of shape and zoning in comparison to the subject. The subject property would reflect a lower rate per square metre of site area.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Sales Commentary

To assess the Market Value of the properties we have utilised the Direct Comparison methodology.

Market evidence is analysed having regard to sales of other comparable properties across a broad spectrum of the market place and adjusting for various factors such as differences in zoning, size, location and topography, to arrive at a market value for the properties both with and without the current or proposed restrictions as described earlier.

The schedule of sales evidence exhibits the value levels for properties with the following restrictions

1. The land is formally classified as Community Land pursuant to Section 193 of the Local Government Act 1999.
2. The land has an indenture deed dedication applied to it. These parcels of land were donated to the Council by way of trust from the Keil Estate for the purposes of Open Space and Recreation.

In addition, the sales also indicate the value levels unfettered by these restrictions.

With regard to a level of value with the restrictions in place, it is understood that there is very little market evidence that provides a clear understanding of the market appeal of the subject properties. Properties being subject to such restrictions are generally in the ownership of Government agencies and are rarely traded without the prior removal of the restrictions. To ascertain a value level with these restrictions in place we have considered sales 2-5 inclusive.

Sale 2 is considerably larger at 14,050m² than the portion of Allotment 74 and similar in size to Allotments 11 and 12 and whilst it has been purchased for recreational use it is not restricted to a passive/open space use. The property has greater utility than the subject properties and consequently we would expect a lower rate to be applied than the $29/m² represented by this sale.

Sale 3 is a dated sale and comprised the North Haven nine-hole golf course of some 177,000m² (17.7 ha.) in a restrictive zone and limited potential use. We would consider the subject properties would have a higher rate per square metre than the $8.50 represented by this sale due predominantly to the size of this property.

Sale 4 is the ex-Gawler Par 3 Golf Course of 24,200m² being larger than the subject properties. An analysis of the sale, which included a house now converted to a church, provides a land value of $15/m². It is noted that the property is in the “High Risk” area of the Gawler River flood zone and consequently there is limited potential development to the majority of the land. We would expect the subject properties to reflect a similar rate to this property.

Sale 5 in Gawler East with an area of 14,500m² has a large portion of the land in the “High Risk” area of the Gawler River Flood zone, consequently this property, along with the Special Use zone, has limited development potential. The purchaser demolished the existing dwelling and replaced this with a new community facility. The property is similar in size to subject property, Allotments 11 and 12 and larger than portion of Allotment 74. The location is considered inferior and has minimal exposure. The analysed land value equates to $34/m² which reflects the limited commercial development potential.
These 4 sales range in area from 14,050m² (1.405ha) to 17.7ha with analysed rates of $8.50 - $34/m². It is considered that sale 2 at $29/m² is superior to the subject properties and that the dated sale 3 at $8.50/m² is below what would be considered a realistic value for the subject properties.

The nature of the current and proposed restrictions would negate, to a large degree, any potential utility due to shape, consequently any difference in land value on a rate per square metre basis would be attributable to the difference in size of the respective parcels.

We therefore consider that the subject properties should reflect rates in the range $15 to $20/m².

In assessing a value for the subject properties unfettered by the restrictions but having consideration to the Tourist Accommodation zone and other attributes such as shape and topography, we have considered sales 1, 6 and 7.

Sale 1 represents the most comparable being adjacent the subject properties and in the same zone. Whilst the sale was off-market we consider the sale price represents a fair market level. The improvements, being the heritage listed Tanunda railway station and surrounds, are in basic condition, consequently any uplift in value for the improvements would be negated by the diminished development utility of the site as a result of the listing. The sale represents $57/m².

Sale 6 is a regular shaped commercial site located in the main street of Nuriootpa some 1.4 kilometres north of the main town centre. The site of 2,220m² is considerably smaller than the subject properties, therefore the analysed rate of $200/m² is greater than what could be attributable to the subject properties.

Sale 7 is a regular shaped, light industry allotment of 3,982m² located approximately 1.5 kilometres northeast of the Tanunda town centre. The site has superior development utility than the subject properties due to access and shape. The analysed rate of $100/m² is reflective of these attributes and is considered to be greater than what could be attributable to the subject properties.

We therefore consider that the subject properties should reflect rates in the range $50 to $80/m².
Valuation Calculation

**Primary Method:** By direct comparison, and considering available market evidence, zoning, shape, topography and location of the subject properties, the subject property’s market value in accordance with the primary method outlined in the Valuation Considerations section of this report is as follows:

Market value Allotments 11 and 12 subject to the restrictions and dedications as outlined in this report:
13,716m² x $15/m² = $205,740
Say
Market Value (rounded) $205,000 exclusive of GST

Market value part Allotment 74 (proposed Allotment 252) subject to the proposed restrictions and dedications as outlined in this report:
8,241m² x $20/m² = $164,820
Say
Market Value (rounded) $165,000 exclusive of GST

Market value Allotments 11 and 12 unfettered by the restrictions and dedications as outlined in this report:
13,716m² x $50/m² = $685,800
Say
Market Value (rounded) $685,000 exclusive of GST

Market value part Allotment 74 (proposed Allotment 252) unfettered by the proposed restrictions and dedications as outlined in this report:
8,241m² x $80/m² = $659,280
Say
Market Value (rounded) $660,000 exclusive of GST
Valuation Conclusion

Certification: Therefore, subject to the overriding stipulations contained within the body of the report, we are of the opinion that the Market Value of the subject properties as at 8th November 2018, established to facilitate a land exchange between The Barossa Council and the proprietors of Chateau Tanunda exclusive of GST is;

Value:

- Market Value of Allotments 11 and 12 with restrictions and dedications $205,000 (Two Hundred and Five Thousand Dollars)
- Market Value of Allotments 11 and 12 unfettered by restrictions and dedications $685,000 (Six Hundred and Eighty-Five Thousand Dollars)
- Market Value of Pt. Allotment 74 (proposed Allotment 252) with restrictions and dedications $165,000 (One Hundred and Sixty-Five Thousand Dollars)
- Market Value of Pt. Allotment 74 (proposed Allotment 252) unfettered by restrictions and dedications $660,000 (Six Hundred and Sixty Thousand Dollars)

Valuers: This property has been inspected by the Valuer in preparing this valuation submission:

Colin Eldridge FAPI
Chief Valuer
Land Services SA

Verifying Valuer: This Valuation has been verified by:

Darren Rasmus
Chief Valuer
Land Services SA

15th November 2018
**Disclaimer**

**Additional Information:** In the event that additional information becomes available, this may affect the opinion expressed by the Valuer. Nevertheless, the valuation is based on information and market evidence reasonably available to the Valuer at the date of the valuation in accordance with usual valuation practices.

**Approvals Compliance:** The valuation has been prepared on the assumption that the improvements comply with the approvals, conditions and requirements of all appropriate authorities (i.e. fire, health, occupational health and safety, licensing etc., where appropriate) unless stated otherwise.

**Encroachments:** The valuation is made on the basis that there are no encroachments (unless otherwise noted) by or upon the property and this should be confirmed by a current survey report and/or advice from a land surveyor. If any encroachments are noted by the survey report the Valuer should be consulted to assess any effect on the value reported.

**Environmental Disclaimer:** The Valuation Report is not an environmental audit and no advice is given in any way relating to environmental or pollution matters. Any comments made on environmental or pollution factors in relation to the property are not given in the capacity of an expert. This valuation advice is provided on the basis that the property is free of contamination. In the event that the property is found to contain contamination, the matter should be referred to this Office for comment. Given contamination issues can have an impact on the value of a property, the right is reserved to review, and if necessary, vary the valuation if any contamination or other environmental hazard is found to exist. The valuation has been based on the assumption that there is no actual or potential environmental issues impacting the property.

**Full Disclosure Disclaimer:** Whilst attempts were made to confirm the veracity of information supplied, the scope of work did not extend to verification of all information supplied or associated due diligence. The Valuation Report has been prepared on the assumption that the instructions and information supplied were provided in good faith and represent full disclosure of all information that is relevant. No responsibility or liability is accepted in the event that the Valuer has been provided with insufficient, false or misleading information.

**GST:** All amounts and values expressed are exclusive of the Goods and Services Tax (GST), unless otherwise specified.

**Industry Standards:** The Valuation has been prepared in accordance with the Australian Property Institute (API) Valuation and Property Standards (January 2012).

**Unregistered Instruments:** If there are any encumbrances, encroachments, restrictions, leases or covenants which are not noted in the Valuation Reports for whatever reason, there is a possibility that such items may affect the assessment of value. If any such matters become known, the right is reserved to review the valuation.

**Market Evidence Information Availability:** In preparing the valuation, the respective Valuer has undertaken those investigations reasonably expected of a professional Valuer having regard to normal industry practice to obtain the most relevant, available and comparable market evidence. Whilst the market evidence provided is believed to be accurate, not all details have necessarily been formally verified due to privacy laws, confidentiality agreements and other circumstances beyond the control of the Valuer.

**Pecuniary Interests:** Further, we confirm that the appointed Valuer does not have a pecuniary interest that could conflict with the proper valuation of the property.
Pests Disclaimer: The appointed Valuer is not an expert in this field and therefore the valuation is made on the assumption that there is no pest infestation or associated damage to any building caused by such infestation. Should it subsequently transpire that an expert report establishes that there are pest concerns and associated implications the right is reserved to review the valuation.

Professional Standards: The valuation has been completed in accordance with reference to the Australia and New Zealand Valuation and Property Standards - jointly published by the Australian Property Institute (API) and Property Institute of New Zealand (PINZ), applicable Australian Accounting Standards and International Valuation Standards and Department of Treasury and Finance Accounting Policy Statements.

Publication of Report: The publication of this Report in whole or part, including any reference thereto, or the names and professional affiliations of the said Valuers is prohibited without the prior written approval as to the form and context in which it will appear.

Purpose of Report: The purpose of this report is to provide the Registrar, Valuation Review Panel with a submission in support of the Site Value in regard to the subject property, more particularly described herein.

Land Services SA accepts no responsibility for any statements herein other than for the stated purpose.

Qualified Valuers: The appointed Valuer is appropriately qualified pursuant to the requirements of the South Australian Division of the Australian Property Institute (API), to practice as a Valuer.

Qualifications: This valuation is subject to the assumptions and qualifications contained within and appended to this Report.

Significant Events: It is assumed that no significant event occurs between the date of inspection and the date of valuation that would impact on the value of the property.

Site Survey Disclaimer: This Report is not a site survey and no advice is given in any way relating to survey matters. Any comments given in relation to any property are not given in the capacity of an expert, but are based on inspection of the property and review of the Certificate of Title plans and other records. Should any clarification be required, it is recommended that a surveyor be engaged to provide appropriate advice and a survey if considered necessary. In the event there are any fundamental inconsistencies between any site survey undertaken and site details otherwise accepted as being correct for the purposes of this valuation, the survey should be referred to the Valuer for comment and review, if necessary.

Third Party Disclaimer: This Report has been prepared for the private and confidential use of the State Valuation Office for the purpose specified herein. It should not be reproduced in whole or part without the express written authority of Land Services SA relied upon by any other party for any purpose. Further, the appointed Valuer shall not have any liability to any party who does so.
Appendices

- Appendix 1: Copy of Client Instructions and RFQ
- Appendix 2: Copy of Certificates of Title and Deposited Plans
- Appendix 3: Zoning Plans and Particulars
Appendix 1: Copy of Client Instructions

Colin Eldridge

From: Martin McCarthy <mmccarthy@barossa.sa.gov.au>
Sent: Monday, 19 October 2018 9:07 AM
To: Colin Eldridge; Kay, Mark (DPTI);
CC: Stephen O’Loughlin; Darron Rasmus
Subject: RE: RFQ - Valuation Services – Market Value for Proposed (Land Exchange) Purposes - Allotments 11 & 12 Basedow Road, Tanunda DP83882 (CT5133/408 & CT5902/824) and Portion of Allotment 74 DP82219 (Pt CT 5962/946)
Attachments: Template - New Creditor Request Form.docx

Good morning Colin

Thank you for the quote. Based on my assessment of the two quotes received I accept your quotation. To engage your services I will have an order raised for the work.

Firstly I need to get you on our system as it is the first time we will have engaged Land Services SA.

Could you please return the attached form as soon as possible and I will have the order raised to engage you for the services enclosed in the RFQ.

Please contact me in 0415 787 886 or this email address if you have any questions.

Kind regards
Martin
RFQ – Market Values for Proposed Disposal / Land Exchange

- Proposed disposal/land exchange between The Barossa Council & Château Tanunda
  - Allotments 11 & 12 Basedow Road, Tanunda - DP 33882 - CT 5133/408 and CT 5902/824
  - Portion of Allotment 74 Basedow Road, Tanunda – DP88229 – Pt CT 5962/946

Subject Property: The Barossa Council – Market Valuation to inform a proposed Land exchange

Request: Could you please confidentially examine this documentation and provide your submission to undertake this assignment. In addition to your fee, the submission should detail any other factors you may wish to consider.

- i.e. staff profile – who will be performing the valuations and their experience in valuing for this purpose

Due Date for Quote: Your quote is to be delivered to mmccarthy@barossa.sa.gov.au and mark.kay@sa.gov.au by COB Wednesday 24 October 2018.

Due Date for Report: Your report is to be delivered to mmccarthy@barossa.sa.gov.au and mark.kay@sa.gov.au by COB Friday 16 November 2018.

Client: Martin McCarthy
Chief Executive Officer
T. 08 8563 8399
The Barossa Council 45-51 Tanunda Road, Nuriootpa, SA 5355 PO Box 847
T. 08 8563 8444 | F. 08 8563 8461 | www.barossa.sa.gov.au | visit us on Facebook

Property Details:

The Barossa Council Land
Allotments 11 & 12 in Deposited Plan 33882, Hundred of Moorooroo.

Certificates of Title:
Volume 5133 Folio 498 & Volume 5902 Folio 824

Area: 6244m² + 7477m²
Totaling 13,721m²

Château Tanunda Land
Portion of Allotment 74 in Deposited Plan 88229, Hundred of Moorooroo.

Portion of certificate of Title
Volume 5962 Folio 946

Area: Proposed 8241m²

A land exchange between the Barossa Council and Château Tanunda has been proposed to facilitate the development of an international hotel together with education and culinary institute facilities that will create a new major tourism destination in Tanunda.

Château Tanunda own the majority of lots zoned for Tourist Accommodation, with the exception of the reserve owned by The Barossa Council including the old railway station with access from Basedow Road.

The current land holdings are outlined below by lot (plan / parcel number) and current ownership and highlighted on the plan.
A. Lot 11 CT 5133/408 D33882 The Barossa Council - 6244m² – Zoned Tourist Accommodation
B. Lot 12 CT5902/824 D33882 The Barossa Council - 7477m² – Zoned Tourist Accommodation
C. Lot 72 CT5902/821 DS8229 Château Tanunda
D. Lot 75 CT 5902/822 DS8220 SA Government - Rail reserve easement
E. Pt Pt 74 PT CT 5962/946 DS8279 Château Tanunda – 8241m² – Zoned Residential
## RFQ – Market Values for Proposed Disposal / Land Exchange

- **Proposed disposal/land exchange between The Barossa Council & Chateau Tanunda**
  - Allotments 11 & 12 Basedow Road, Tanunda - DP 33882 - CT 513/408 and CT 5902/824
  - Portion of Allotment 74 Basedow Road, Tanunda - DP88229 – Pt CT 5962/946

### Background:

A land exchange has been proposed between The Barossa Council and Chateau Tanunda to facilitate the development of an international hotel together with an education and culinary institute. The following information is provided as way of an introduction.

1. **Proposed land for Transfer and Assessment of its Strategic Purpose**
   - The following proposal is subject to Council achieving extinguishment of the encumbrances on the community land as outlined by the indenture Deed.
   - The proposed land for transfer to Council being offered by Chateau Tanunda in exchange for the community land is land adjacent to the car park at the Tanunda Soldiers' Memorial Hall which traverses south behind residential development and concludes at or near the rear of the Tanunda Hospital. The proposed land that Council would receive is highlighted at “E” on the map at Attachment 2.
   - The land that Council proposes to exchange is highlighted at “A” and “B” on the map at Attachment 2. However before the proposed land can be transferred to Council, it would need to undergo a land division so as to retain access to the rear of the Chateau and oval area. The balance of the proposed land would then be made available for the land exchange.
   - The proposed land that would be transferred by Chateau Tanunda to Council, would be redefined for community land purposes which is consistent with the terms of the Keil Estate donation, so the open space remains for the benefit of the people of Tanunda.
   - The proposed land from Chateau Tanunda to Council would be limited to that expected of open space and recreational use and the restrictions placed on the land through the re-dedication of land under the principles of the Keil Estate Trust and establishment of the land as community land under the Local Government Act 1999 (the Act).

2. **Reservation/Dedication/Trust**
   - The Council’s community land parcels are Allotments 11, Basedow Road, Tanunda, Certificate of Title Volume 333 Folio 408 and Allotment 12, Basedow Road, Tanunda, Certificate of Title Volume 5902 Folio 824. They are identified on the map at Attachment 2 as parcels “A” and “B”. The community land parcels are currently encumbered in two ways:
     1. The land was formally classified as Community Land pursuant to Section 193 of the Local Government Act 1999 (the Act), Council has undertaken and received the necessary approvals to remove this encumbrance and has passed the necessary legal resolutions to achieve the rezoning.
     2. The land also has an indenture deed (described herein as a Trust) dedication applied to it. The parcels of land were donated to Council by way of trust from the Keil Estate for the purposes of open space and recreation.

   Council has been in discussions with the trustees of the Keil Estate and they have provided in principle written support for the land exchange on condition the proposed land that would be transferred to Council be redefined under a similar deed.

3. **Future use of Land**
   - It is anticipated that this:
     1. An agreed negotiated commercial agreement be reached for exchange of land parcels as described above, in essence disposing of community land via direct transfer to Chateau Tanunda.
     2. A land division of Chateau Tanunda’s land (as outlined at Attachment 2 and marked parcel “E”) and development approval is approved.
     3. Development approval for the hotel is approved; the land transferred to Chateau Tanunda would be utilised to provide tourism accommodation.

   The land which is transferred to Council by Chateau Tanunda as part of the land exchange proposal will provide open space and recreational space, as the current community land parcels provided, but are of increased community benefit as they are located closer to existing Council assets and the main street of Tanunda. The land is currently not used for community purpose.
## RFQ – Market Values for Proposed Disposal / Land Exchange

- **Proposed disposal/land exchange between The Barossa Council & Chateau Tanunda**
  - Allotments 11 & 12 Basedow Road, Tanunda - DP 33882 - CT 5133/408 and CT 5902/824
  - Portion of Allotment 74 Basedow Road, Tanunda – DP 88229 – PT CT 5962/946

### Required:
To determine the Market Values for disposal (land exchange) purposes and associated valuation advice.

Market Value is defined as: “The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion...” [VS 1]

### Date of Valuation:
The date of valuation relevant to this valuation advice is date of inspection.

### Basic of Valuation:
The Market Values of the properties contained within:
1. CT 5133/408 – CT 5902/824 (A + B) = 13,715m² in entirety
2. Pt CT 5902/946 (E) - Proposed 8,241m² (assumed separate Certificate of Title)

To best inform the Barossa Council we require a Market Value for each property (1 & 2 above) based on existing zoning on the basis of:
- (a) the properties on an unencumbered basis (with no restrictions/dedications), and
- (b) the properties on an encumbered basis (with existing & proposed restrictions/dedication)

### Valuation Required:
The determination of the Market Value of the properties to be disposed (exchanged) on the open market.

### Considerations:
The valuation should be undertaken by Valuers from your company who are familiar with market value methodologies for the specialist property type within. The valuer should be a member of the Australian Property Institute with a certified Practising Valuer (CPV) designation who will complete the valuation in accordance with the current API and IUSC (2017) Valuation Standards and Guidelines.

The Office of the Valuer-General and the Barossa Council reserves the right to:
- (a) vary the process and timetable relating to this process in its absolute discretion;
- (b) vary the terms of the RFQ;
- (c) cease the RFQ process;
- (d) accept or reject any Quotations whether or not they are compliant;
- (e) seek additional information or clarification from respondents;
- (f) select and negotiate with more than one Respondent; or
- (g) cancel, add to or amend the information, requirement, terms, procedures or processes set out in this RFQ.

Neither the issue of this RFQ by Office of the Valuer-General and The Barossa Council or any response to it by any respondent commits, obligates or otherwise creates a legal relationship between the OVGC, Local Council or SA Government and that respondent.

**Notification:** The successful respondent will receive written valuation instruction.

### Inspection:
Inspection to occur on site and comparable sales.

### Information:
The Client has provided the following:
- Details of Land proposal
  - Copy of Certificates of Title
  - Copy of Plans
  - Aerial Plan
  - Further Proposal Document (to be supplied to successful tender)

### Contact for Property Inspection:
Please contact Martin McCarthy or Mark Kay should you have any questions or require further clarification.

### Report Format:
One electronic copy of a Valuation Report *(includes analysis of sales and discussion to justify your determination)* on the subject properties.

Electronic Report to be supplied to mmccarthy@barossa.sa.gov.au and mark.kay@sa.gov.au by close of business Friday 16 November 2018.
RFQ – Market Values for Proposed Disposal / Land Exchange

- Proposed disposal/land exchange between The Barossa Council & Chateau Tanunda
  - Allotments 11 & 12 Basedow Road, Tanunda - DP 33882 - CT 5133/408 and CT 5902/824
  - Portion of Allotment 74 Basedow Road, Tanunda – DP88229 – Pt CT 5962/946

Attachment 1: Site Plan
RFQ – Market Values for Proposed Disposal / Land Exchange

- Proposed disposal/land exchange between The Barossa Council & Chateau Tanunda
  - Allotments 11 & 12 Basedow Road, Tanunda – DP 33882 - CT 5133/408 and CT 5902/824
  - Portion of Allotment 74 Basedow Road, Tanunda – DP88220 – Pt CT 5962/946
RFQ – Market Values for Proposed Disposal / Land Exchange

- Proposed disposal/land exchange between The Barossa Council & Chateau Tanunda
  - Allotments 11 & 12 Basedow Road, Tanunda - DP 33882 - CT 5133/408 and CT 5902/824
  - Portion of Allotment 74 Basedow Road, Tanunda – DP88229 – Pt CT 5962/946

Attachment 2: Land Proposed for Exchange
Appendix 2: Certificates of Title

Certificate of Title - Volume 5133 Folio 408

Parent Title(s) CT 1065/20, CT 4065/156
Creating Dealing(s) RTD 7251297, RE 7505372, RE 7505372A
Diagram Reference D33882 01

Estate Type FEE SIMPLE

Registered Proprietor THE BAROSSA COUNCIL OF PO BOX 867 NURIOOTPA SA 5355

Description of Land ALLOTMENT 11 DEPOSITED PLAN 33882 IN THE AREA NAMED TANUNDA HUNDRED OF MOOROOOROO

Easements SUBJECT TO EASEMENT(S) OVER THE LAND MARKED D TO AUSTRALIAN NATIONAL RAILWAYS COMMISSION (RE 7505372A) TOGETHER WITH FREE AND UNRESTRICTED RIGHT(S) OF WAY OVER THE LAND MARKED C

Schedule of Dealings NIL

Notations Dealings Affecting Title NIL
Priority Notices NIL
Notations on Plan NIL
Registrar-General's Notes NIL
Administrative Interests NIL
Certificate of Title - Volume 5902 Folio 824

Parent Title(s)  CT 5133/409, CT 5713/408
Creating Dealing(s)  RTC 9261303
Diagram Reference  D58229 01

Estate Type
FEE SIMPLE

Registered Proprietor
THE BAROSSA COUNCIL
OF PO BOX 867 NURIOOTPA SA 5355

Description of Land
ALLOTMENT 12 DEPOSITED PLAN 33882
IN THE AREA NAMED TANUNDA
HUNDRED OF MOOROOCA

Easements
SUBJECT TO EASEMENT(S) OVER THE LAND MARKED E TO AUSTRALIAN NATIONAL RAILWAYS COMMISSION
(RE 7505372A)

SUBJECT TO FREE AND UNRESTRICTED RIGHT(S) OF WAY OVER THE LAND MARKED C

Schedule of Dealings
NIL

Notations
Dealings Affecting Title  NIL
Priority Notices  NIL
Notations on Plan  NIL
Registrar-General's Notes  NIL
Administrative Interests  NIL
Certificate of Title - Volume 5962 Folio 946

Parent Title(s)  CT 5902/823
Creating Dealing(s)  T 10391027
Title Issued  01/05/2006  Edition 1  Edition Issued  01/05/2006
Diagram Reference  D58229 01

Estate Type
FEE SIMPLE

Registered Proprietor
IVI VI PTY. LTD. (ACN: 066 966 198)
OF LEVEL 20 NATIONAL MUTUAL BUILDING 44 MARKET ST SYDNEY NSW 2000

Description of Land
ALLOTMENT 74 DEPOSITED PLAN 58229
IN THE AREA NAMED TANUNDA
HUNDRED OF MOORCROO

Easements
SUBJECT TO FREE AND UNRESTRICTED RIGHT(S) OF WAY OVER THE LAND MARKED B AND D

SUBJECT TO SERVICE EASEMENT(S) OVER THE LAND MARKED H FOR WATER SUPPLY PURPOSES TO SOUTH AUSTRALIAN WATER CORPORATION (222 LG RPA)

TOGETHER WITH FREE AND UNRESTRICTED RIGHT(S) OF WAY OVER THE LAND MARKED A APPURTENANT ONLY TO THE LAND MARKED X

Schedule of Dealings
NIL

Notations
Dealings Affecting Title  NIL
Priority Notices  NIL
Notations on Plan  NIL
Registrar-General's Notes  NIL
Administrative Interests  NIL
Appendix 3: Zoning Plans and Particulars

Zone Map Baro/18

TANUNDA

Zone
Area
Light Industry
Primary Production (Barossa Valley Region)
Recreation
Residential
Settlement
Tourist Accommodation
Zone Boundary
Development Plan Boundary

Land Services SA - Valuation Services
Market Value Allotments 11 and 12 and Pt Allotment 74 Basedow Road Tanunda
Policy Area Map Baro/18

Policy Area
2 Tanunda Historic Character
11 Menge Road

Consolidated - 1 November 2018
Tourist Accommodation Zone

Refer to the Map Reference Tables for a list of the maps that relate to this zone.

OBJECTIVES

1. Provision of tourist accommodation and service facilities for visitors and holiday-makers on short and long-term visits to the area.

2. Development that contributes to the desired character of the zone.

DESIRED CHARACTER

As Tanunda is a focus of the Barossa Valley area, and popular with tourists, the town is ideally situated to provide short and long-term accommodation and recreation and entertainment facilities for tourists staying locally and those travelling between Adelaide and the northern parts of the State. It is both desirable and important for the town that opportunities for tourist developments located within the zone are capitalised.

It is envisaged that uses will primarily include various forms of tourist accommodation such as hotel, motel and bed and breakfast facilities servicing the visitors and holiday-makers on short or long-term visits to the area. Caravan parks or tourist parks are not envisaged within this zone and are more appropriate located within the Caravan and Tourist Park Zone in other locations.

Other appropriate uses will include related tourist operations and low-impact attractions such as community, entertainment and exhibition facilities, provided these facilities are consistent with the objectives of the zone to promote tourism in the town and region and are of an appropriate scale in the context of the locality and role and function of the adjacent District Town Centre Zone.

The Chateau Tanunda Winery complex, a local and regional landmark representing a notable part of the town’s history and development, forms an integral portion of the zone. The expansion of the existing winery within this site will be limited such that the scale and integrity of activities are compatible with the function of the zone for the provision of tourist accommodation and surrounding residential development.

Redevelopment and adaptive re-use of the Chateau for entertainment and accommodation uses is encouraged. Any development of the Chateau complex will retain the vineyards as a part of the complex so as to retain attractive views to the Chateau from Basedow Road.

It is expected that new buildings will be sited, designed and landscaped in a manner that will enhance the appearance of Chateau Tanunda as the dominant built form in the zone through appropriate building scale, setbacks and the retention of important vistas. Buildings adjacent the Chateau will be compatible in appearance with the historic character of the Chateau and its related buildings. Along Basedow Road, buildings will exhibit a high standard of design and be of a height, scale, mass and bulk compatible with the residential setting on the opposite side of the road.

Development will take into account the adjoining industrial activities and proximity of the railway line running through the zone in the design and placement of buildings and the provision of landscaping so as to prevent noise or visual intrusion to activities in the zone. Appropriate landscaped buffers should be established adjacent to the boundary of the light industry zone to prevent additional conflicts.

There is an opportunity to consolidate car parking with the adjacent District Town Centre Zone adjacent to the rail line so as to avoid large expanses of car park. All car parking areas will be sensitive to the landscape character and incorporate extensive landscaping to screen them from view, shade vehicles and maintain amenity.
**PRINCIPLES OF DEVELOPMENT CONTROL**

**Land Use**

1. The following forms of development are envisaged in the zone:
   - bed and breakfast accommodation
   - entertainment, cultural and exhibition facility
   - guest house
   - hotel
   - motel
   - nature or health retreat.

2. Expansion of existing winery activities should only occur where they do not compromise the intent of the zone for tourist accommodation, or impact on surrounding residential development by way of their scale, location or intensity.

3. Development listed as non-complying is generally inappropriate.

**Form and Character**

4. Development should not be undertaken unless it is consistent with the desired character for the zone.

5. Development should incorporate suitable landscaped buffers to the adjoining Light Industry Zone to the east and incorporate a landscaped area of a minimum of 20 metres immediately adjacent that zone boundary.

6. Development should complement and maintain the important vistas and setting to the Chateau Tanunda complex of buildings with heritage value.

**PROCEDURAL MATTERS**

**Complying Development**

Complying developments are prescribed in Schedule 4 of the Development Regulations 2008.

**Non-complying Development**

Development (including building work, a change in the use of land, or division of an allotment) for the following is non-complying:

<table>
<thead>
<tr>
<th>Form of development</th>
<th>Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consulting room</td>
<td></td>
</tr>
<tr>
<td>Demolition or part demolition of any</td>
<td></td>
</tr>
<tr>
<td>State heritage place</td>
<td></td>
</tr>
<tr>
<td>Fire station</td>
<td></td>
</tr>
<tr>
<td>Fuel depot</td>
<td></td>
</tr>
<tr>
<td>General industry</td>
<td></td>
</tr>
<tr>
<td>Hospital</td>
<td></td>
</tr>
<tr>
<td>Intensive animal Keeping</td>
<td></td>
</tr>
<tr>
<td>Light Industry</td>
<td>Except where related to the processing or manufacturing of products associated with viticulture.</td>
</tr>
</tbody>
</table>
The Barossa Council  
Zone Section  
Tourist Accommodation Zone

<table>
<thead>
<tr>
<th>Form of development</th>
<th>Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor repair station</td>
<td></td>
</tr>
<tr>
<td>Motor showroom</td>
<td></td>
</tr>
<tr>
<td>Nursing home</td>
<td></td>
</tr>
<tr>
<td>Office</td>
<td>Except where associated with an entertainment or accommodation use.</td>
</tr>
<tr>
<td>Petrol filling station</td>
<td></td>
</tr>
<tr>
<td>Place of worship</td>
<td></td>
</tr>
<tr>
<td>Public service depot</td>
<td></td>
</tr>
<tr>
<td>Road transport terminal</td>
<td></td>
</tr>
<tr>
<td>Service trade premises</td>
<td></td>
</tr>
<tr>
<td>Shop or group of shops</td>
<td>Except where associated with an entertainment or accommodation use and the gross leasable area is less than 150 square metres.</td>
</tr>
<tr>
<td>Special Industry</td>
<td></td>
</tr>
<tr>
<td>Stock sales yard</td>
<td></td>
</tr>
<tr>
<td>Stock slaughter works</td>
<td></td>
</tr>
<tr>
<td>Store</td>
<td></td>
</tr>
<tr>
<td>Warehouse</td>
<td></td>
</tr>
<tr>
<td>Waste reception, storage, treatment or disposal</td>
<td></td>
</tr>
<tr>
<td>Winery</td>
<td>Except the expansion of an existing winery.</td>
</tr>
<tr>
<td>Wrecking yard</td>
<td></td>
</tr>
</tbody>
</table>

**Public Notification**

Categories of public notification are prescribed in Schedule 9 of the Development Regulations 2008.

Further, the following forms of development (except where the development is non-complying) are designated:

<table>
<thead>
<tr>
<th>Category 1</th>
<th>Category 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entertainmet, cultural and exhibition facility</td>
<td></td>
</tr>
</tbody>
</table>
CONTRACT FOR THE EXCHANGE OF LAND

Between

Ivivi Pty Ltd (Trading as Chateau Tanunda Estate) of [ADDRESS] (Chateau Tanunda)

and

The Barossa Council of 43-51 Tanunda Road, Nuriootpa, SA 5355 (the Council)

Recitals

A. Chateau Tanunda is the registered proprietor in fee simple of the land comprised in Allotment 74 in Deposited Plan 58229 being Certificate of Title Volume 5962 Folio 146 and located to the west of the Tanunda rail line adjacent to the existing residential township of Tanunda ("Chateau Tanunda Land").

B. The parties have identified a portion of the Chateau Tanunda Land which they wish to be transferred to the Council, which portion is identified on the plan attached as Annexure A ("Land A").

C. The Council is the registered proprietor in fee simple of the land comprised in:
   a. Allotment 12 in Deposited Plan 33882 being Certificate of Title Volume 5902 Folio 824; and
   b. Allotment 11 in Deposited Plan 33882 being Certificates of Title Volume 5133 Folio 408,

   (together, “Land B”)

D. The parties agree that Chateau Tanunda will transfer its unencumbered interest in Land A to the Council and contemporaneously, the Council will transfer its unencumbered interest in Land B to Chateau Tanunda on the terms and conditions set out in this Agreement.

Terms

1. Agreement for Exchange of Land

   1.1 Chateau Tanunda agrees to sell Land A and the Council agrees to buy Land A for the Land A Purchase Price and in consideration for the transfer of Land B pursuant to clause 1.2 on the terms and conditions of this Agreement.

   1.2 The Council Agrees to sell Land B and Chateau Tanunda agrees to Buy Land B for the Land B Purchase Price and in consideration for the transfer of Land A pursuant to clause 1.1 on the terms and conditions of this Agreement.

   1.3 The parties agree that the transfers referred to in clause 1.1 and 1.2 must occur contemporaneously, and a failure or a breach by a party in relation to the transfer of one Exchange Property will be deemed to be a failure or a breach in respect of the other Exchange Property.

2. Definitions and Interpretation

   In this Agreement, unless a contrary intention appears:

   2.1 "Act" means the Land and Business (Sale and Conveyancing) Act 1994 as amended;

   2.2 "Agreement" means this Agreement, the Schedule and any Annexure;

   2.3 "Annexure" means an annexure to this Agreement;
2.4 "Certificate of Title" means the Certificate of Title or other best evidence of the Vendor’s interest in the Property;
2.5 “Chateau Tanunda Contribution” means the amount of $25,000 exclusive of GST;
2.6 "Default Rate" means the rate of interest on the date default occurs, five (5) percentage points above the cash rate notified by the Reserve Bank of Australia;
2.7 "Exceptions" means any easements, rights, privileges and appurtenances referred to on the Certificate of Title and any encumbrances, charges, exceptions, reservations and other interests specified in Item 4 of the Schedule or the Form 1, to which the Exchange Properties are sold subject to;
2.8 “Exchange Property” means Land A and Land B as sometimes referred to individually or collectively as the “Exchange Properties”;
2.9 "Excluded Chattels" means the items specified in Item 3 of the Schedule;
2.10 "Form 1" means the Vendor’s statement required under section 7 of the Act;
2.11 "GST" means any goods and services tax or similar or comparable tax imposed by and defined in the GST Law;
2.12 "GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 and any other Act or Regulation pursuant to, associated with, amending or replacing that Act. Any expression used in this Agreement that is also defined in the GST Law shall have the meaning used or attributed to that expression by the GST Law;
2.13 "Included Chattels" means the items specified in Item 2 of the Schedule;
2.14 "Income" means all rent, fees, benefits and other monies received or receivable by the Vendor that are directly attributable to the use by any third party of the Property;
2.15 “Land A” means Land A as defined in Background B of this Agreement with: the easements, rights, privileges and appurtenances referred to on the Certificate of Title or Form 1; and any improvements and fixtures and fittings; and the Included Chattels;
2.16 “Land A Purchase Price” means $1.00;
2.17 “Land B” means Land B as defined in Background C of this Agreement with: the easements, rights, privileges and appurtenances referred to on the Certificate of Title or Form 1; and any improvements and fixtures and fittings; and the Included Chattels;
2.18 “Land B purchase Price” means $1.00;
2.19 "Outgoings" means all rates, levies, taxes (including, but not limited to land tax), assessments, charges and all other amounts payable by or chargeable to each respective Vendor in respect of the Exchange Properties;
2.20 "Purchase Price" means the sum of money specified in Item 4 of the Schedule;
2.21 "Purchaser" means:
  2.21.1 the Council in respect of Land A; and
  2.21.2 Chateau Tanunda in respect of Land B;
2.22 "Settlement" means completion of the sale and purchase of the Exchange Properties from the Vendor to the Purchaser;
2.23 "Settlement Date" means the date specified in Item 1 of the Schedule;
2.24 "Special Condition" means a special condition set out in or annexed to this Agreement;
2.25 "Transfer" means a Memorandum of Transfer (or other appropriate conveyance) for each Exchange Property and where applicable, any other documents supplied by the Vendor to the Purchaser necessary to transfer title of each Exchange Property to the respective Purchaser;
2.26 "Vendor" means:
  2.26.1 Chateau Tanunda in respect of Land A; and
  2.26.2 the Council in respect of Land B;
words which denote the singular include the plural and vice versa;
words which denote natural persons include corporations and vice versa; and
reference to a natural person includes that person and that person's personal representatives, assigns and permitted nominees; and
where a party to this Agreement consists of more than one person then:
any covenant or obligation to be performed by that party shall bind each of those persons jointly and severally; and
any reference to that party shall include any one or more of those persons;
headings are included in this Agreement for convenience and do not form any part of this Agreement or affect its interpretation.

3. Payment

3.1 Chateau Tanunda must pay the Chateau Tanunda Contribution and the Land B Purchase Price to the Council at Settlement as directed by the Council; and
3.2 The Council must pay the Land A Purchase Price to Chateau Tanunda at Settlement as directed by Chateau Tanunda.

4. Prior to Settlement

4.1 The Purchaser must execute and deliver to the Vendor at least seven (7) days before the Settlement Date:

4.1.1 a Transfer; and

4.1.2 any assignment or other instrument required to transfer title to the respective Exchange Property to the Purchaser.

4.2 If the Purchaser does not provide the Vendor with the Transfer in accordance with clause 4.1, the Purchaser authorises the Vendor to prepare the Transfer at the Purchaser's expense.

4.3 The Vendor must notify the Purchaser at least two (2) business days before the Settlement Date of the details of any bank cheques required at Settlement Date.

4.4 In the event the Vendor fails to notify the Purchaser in accordance with clause 4.3, the Purchaser must tender the total amount due to the Vendor at Settlement.

5. Settlement

5.1 Unless otherwise agreed, Settlement must occur, in person, at the Lands Titles Office in Adelaide on the Settlement Date.

5.2 At or before Settlement (provided the Purchaser has complied with its obligations under this Agreement), the Vendor must hand to the Purchaser the duly executed Transfer and any other documents required to transfer title to the respective Exchange Property to the Purchaser.

5.3 All Outgoings and Income will be adjusted to midnight of the day prior to the Settlement Date.
5.4 For the purposes of clause 5.3, the following method of adjustment will apply (as applicable):

5.4.1 the current annual water allowance and the water consumed by the Vendor during the current water consumption year will be calculated on a daily basis. Any water consumed in excess of the allowance prior to the Settlement Date is to be adjusted, either before or as soon as possible after the Settlement Date, at the price of water for the current year; and

5.4.2 land tax will be adjusted on a single holding basis.

5.5 If the Vendor incurs any cost in complying with a statutory requirement (which it did not have notice of prior to entering into this Agreement) between the date of this Agreement and the Settlement Date, the Purchaser must pay the Vendor that amount on Settlement.

5.6 The parties may settle under protest if there is a dispute in respect of amounts payable under this Agreement and Settlement will not in any way constitute a waiver of the rights of either party.

6. Vacant Possession

6.1 The Vendor will provide the Purchaser with vacant possession at Settlement.

6.2 For the purposes of clause 6.1, providing vacant possession includes, but is not limited to: the removal of the Excluded Chattels; giving possession of the Included Chattels free of any debt or encumbrance; and delivering all keys and security devices to the Exchange Property to the Purchaser.

7. Title and Risk

7.1 From the date of this Agreement each Exchange Property will be at the risk of the Purchaser.

7.2 The Purchaser must use the Exchange Property with all reasonable care so as to maintain its current state of repair and condition, fair wear and tear excluded.

7.3 The Certificate of Title will be conclusive evidence of the Vendor's title.

8. Misdescription

Subject to any applicable laws, this Agreement may not be terminated for any error, omission or misdescription of the Exchange Properties but either party will be entitled to compensation from the other for any loss or damage arising from the error or misdescription if notified and demanded within fourteen (14) days of Settlement.

9. Vendor Warranties Excluded

Except as outlined in the Schedule or the Form 1, the Vendor makes no representation or warranty in connection with the Exchange Property, this Agreement or anything else.

10. Special Conditions
10.1 This Agreement is subject to the satisfaction of the Special Conditions (if any) identified in Annexure B.

10.2 The party required to satisfy a Special Condition must use its best endeavours to do so on or before the date specified in that Special Condition (or if not specified, within twenty one (21) days of the date of this Agreement).

10.3 If a party fails to satisfy a Special Condition then:

10.3.1 if the party required to satisfy the Special Condition complies with clause 10.2 and such other terms and conditions as specified in the Special Condition, then either party may terminate this Agreement upon written notice to the other party; or

10.3.2 if the party required to satisfy the Special Condition fails to comply with clause 10.2, or is otherwise in breach of such other terms and conditions specified in the Special Condition, then such an event will be deemed a default under this Agreement and:

i. if the Purchaser is in default, clauses 11.3 and 11.4 will apply; or

ii. if the Vendor is in default, clauses 12.1 and 12.2 will apply.

10.4 If this Agreement is terminated pursuant to clause 10.3.1, then any monies paid by or on behalf of the relevant party under this Agreement shall be refunded to that party.

10.5 If this Agreement is terminated pursuant to, or as a result of clause 10.3.2 then:

10.5.1 if the Purchaser is in default, clauses 11.10 and 11.11 will apply; or

10.5.2 if the Vendor is in default, clause 12.2 will apply.

11. Purchaser’s Default

11.1 If for any reason whatsoever, except for the neglect or default of the Vendor, Settlement does not occur on the Settlement Date (or some other date as agreed in writing between the parties), the Purchaser must pay interest on the total Purchase Price (less any deposit paid) from the Settlement Date until the earlier of the date full payment is made or the date of termination, at the Default Rate.

11.2 The payment of interest under clause 11.1 shall be in addition to, and without prejudice to any other rights or remedies the Vendor has by reason of the Purchaser’s default.

11.3 Without prejudice to any other rights, if the Purchaser fails to observe or perform any obligations imposed on the Purchaser under this Agreement prior to the Settlement Date (or such other date as specified), the Vendor may give the Purchaser written notice requiring the Purchaser to remedy the default ("Notice of Default") within three (3) business days of the date of the Notice of Default. If the Purchaser fails to remedy the default within the time specified in the Notice of Default, the Agreement will automatically terminate at the expiration of that period unless the Vendor withdraws the notice in writing.

11.4 A Notice of Default under clause 11.3:

11.4.1 may be given at any time after the occurrence of the default;

11.4.2 must state that unless the default identified in the Notice of Default is remedied
within the time specified, this Agreement will automatically terminate.

11.5 If the Purchaser fails to complete Settlement on the Settlement Date and does not settle within three (3) business days from the Settlement Date, the Vendor may provide the Purchaser with a notice to complete settlement ("Notice of Completion").

11.6 The Notice of Completion must appoint a time for Settlement (with a minimum three (3) business days' notice) and require the Purchaser to settle at the time provided in the Notice of Completion.

11.7 If the Purchaser does not comply with the Notice of Completion, the Vendor may terminate this Agreement by further written notice to the Purchaser without prejudice to any of its other rights.

11.8 A Notice of Completion can be given more than once.

11.9 The Vendor may, but is not obliged to, waive its right to a re-adjustment of Outgoings if Settlement is postponed due to the Purchaser's default.

11.10 If this Agreement is terminated in accordance with this clause 11, the Vendor may retain the Deposit and (at the Vendor's option):

11.10.1 retain the Exchange Property; or

11.10.2 resell the Exchange Property; and

in either event sue the Purchaser for damages for breach of contract.

11.11 If the Vendor elects to resell the Exchange Property pursuant to clause 11.10.2, then:

11.11.1 the Purchaser will forthwith be required to pay to the Vendor:

i. any deficiency between the Purchase Price and the price obtained upon reselling the Property; and

ii. all costs, expenses and fees associated with or arising from the resale, by way of liquidated damages; and

11.11.2 the Vendor will be entitled to any surplus of the sale price over the Purchase Price.

11.12 The Vendor is not required to tender a Transfer before exercising any of its rights under this clause 11.

11.13 If the Settlement Date is postponed, all Income from the Exchange Properties shall be readjusted as at midnight on the day preceding Settlement, but Outgoings shall remain adjusted to the Settlement Date.

12. Vendor's Default

12.1 Without prejudice to any other rights, if the Vendor is in breach of this Agreement, the Purchaser must give the Vendor written notice to remedy the default within three (3) business days of service of the notice.

12.2 Where the Vendor fails to comply with that notice, the Purchaser may:

12.2.1 terminate this Agreement by further written notice in which case all monies paid
by the Purchaser must be refunded by the Vendor forthwith; or

12.2.2 postpone the Settlement Date until such time as the breach is remedied in which case the Vendor will pay to the Purchaser (at the Purchaser's absolute discretion):

i. interest at the Default Rate on the full Purchase Price from the Settlement Date to the date when the breach ceases and is notified to the Purchaser; or

ii. the amount of the actual damage suffered by the Purchaser.

12.3 If the Settlement Date is postponed, all Outgoings from the Property shall be readjusted to midnight on the day preceding Settlement, but Income remains adjusted to the Settlement Date.

13. Goods and Services Tax (GST)

13.1 The parties acknowledge and agree that if GST applies to any supply made under or in connection with this Agreement by a Vendor, then:

13.1.1 The amount payable in respect of the supply is exclusive of GST; and

13.1.2 The Vendor may, in addition to any amount or consideration expressed as payable in respect of the supply, recover from the Purchaser an additional amount on account of GST; and

13.1.3 The Purchaser shall pay to or reimburse to the Vendor or to a third party (as the case may be), any additional amount on account of any GST that is or was incurred, paid or payable by the Vendor in respect of that supply; and

13.1.4 The amount payable by the Purchaser to the Vendor or to a third party in respect of that supply shall be increased by the product of:

i. the rate at which GST is imposed at that time; and

ii. the amount or consideration payable for the relevant supply; and

13.1.5 The Purchaser shall pay any additional amount on account of GST at the same time as the payment for the relevant supply is payable or at such other time as the Vendor directs;

13.1.6 The Vendor shall deliver to the Purchaser a tax invoice for the supply in a form that complies with the GST law.

13.2 The parties acknowledges and agrees that if GST applies to any supply made under or in connection with this Agreement by a Purchaser, that the Purchaser shall be responsible for the payment of any additional amount on account of any GST, in respect of that supply.

13.3 If an Exchange Property is input taxed because it is residential premises to be used predominantly for residential accommodation then the Purchaser warrants that the property shall be used predominantly for residential accommodation within the meaning of the GST law.

13.4 Clauses 13.1 to 13.3 (inclusive) shall not merge on completion of this Agreement and shall survive settlement and any termination of this Agreement by either the Vendor or the Purchaser.
14. **Miscellaneous**

14.1 Notices under this Agreement:

14.1.1 must be in writing and signed by the party giving notice, or its authorised agent;

14.1.2 may be served:

i. by being left at the last known residence or place of business of the intended recipient; or

ii. by being sent by ordinary post in a pre-paid envelope to the address of the party set out in this Agreement;

14.1.3 will be deemed served if posted in accordance with clause 19.1.2(b), two (2) business days after posting; and

14.1.4 will be deemed sufficiently served if served in accordance with this clause on one of several persons comprising the Vendor or the Purchaser.

14.2 Time is of the essence in respect of any obligation under clause 11 and clause 12.

14.3 The provisions of this Agreement shall not merge upon Settlement.

14.4 If a provision of this Agreement would, but for this clause be unenforceable:

14.4.1 the provision must be read down to the extent necessary to avoid that result; or

14.4.2 if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this Agreement.

14.5 The costs of and incidental to the preparation of the Transfer (but not of any document needed to clear the title of the Vendor to the Exchange Properties) will be paid by the relevant Purchaser in respect of each Exchange Property.

14.6 Chateau Tanunda will bear all stamp duty, registration fees and Government fees, duties and all disbursements in respect of effecting the transfers of the Exchange Properties.

14.7 The parties will bear their own costs in respect of the preparation, negotiation and execution of this Agreement.

14.8 The date of this Agreement is the date on which the last of the parties executes it.

14.9 The Purchaser warrants that each natural person included in the description of the Purchaser has full legal capacity and further warrants that it is not (except as set out in any Special Condition) required to seek approval for purchase under the *Foreign Acquisitions and Takeovers Act 1975* as amended.

14.10 This Agreement is governed by and construed in accordance with the laws from time to time in force in South Australia and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia.
Executed for and on behalf of by the Council

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

Date....................................................................................................................................

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

Signature - Witness..............................................................................................................

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

Signature............................................................................................................................

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

Print name and position......................................................................................................

Executed for and on behalf by the Purchaser

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Date....................................................................................................................................

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Signature - Witness..............................................................................................................

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Signature............................................................................................................................

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Print name and position......................................................................................................
## SCHEDULE

<table>
<thead>
<tr>
<th>Item</th>
<th>Settlement Date</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Item 1</td>
<td><strong>Settlement Date</strong></td>
<td>In accordance with Special Condition 1</td>
</tr>
<tr>
<td>Item 2</td>
<td><strong>Included Chattels</strong></td>
<td>Land A: [Nil]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Land B: [Nil]</td>
</tr>
<tr>
<td>Item 3</td>
<td><strong>Excluded Chattels</strong></td>
<td>Land A: [Nil]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Land B: [Nil]</td>
</tr>
<tr>
<td>Item 4</td>
<td><strong>Exceptions</strong></td>
<td>Nil</td>
</tr>
</tbody>
</table>
ANNEXURE B – SPECIAL CONDITIONS

1. PLAN OF DIVISION

1.1 Lodgement of Plan of Division

1.1.1 Settlement will not take place unless and until a Plan of Division substantially in the form of the plan in Annexure A (Plan of Division) is approved for deposit by the Registrar-General pursuant to Part 19AB of the Real Property Act 1886 (SA) (as amended).

1.1.2 Chateau Tandunda must at its own cost make every reasonable endeavour to:

1.1.2.1 obtain all consents and approvals which are required by law before the Plan of Division can be deposited by the Registrar-General; and

1.1.2.2 ensure that the Plan of Division is approved for deposit by the Registrar-General within [Time within which Plan is to be approved] months after the date of this Agreement.

1.1.3 Chateau Tandunda must not vary the Plan of Division in any material way without the written consent of the Council, which consent the Council may withhold in its absolute discretion.

1.1.4 The Council must cooperate with Chateau Tanunda in all respects and must execute any consents and other documents required for the Plan of Division to be deposited by the Registrar-General.

1.1.5 Nothing in special conditions 1.1.1 and 1.1.2 requires Chateau Tanunda to prosecute any appeal(s) in relation to any refusal of approval, the imposition of any condition(s) in respect of the Plan of Division or in relation to any other matter or thing relevant to the Plan of Division.

1.2 Termination

1.2.1 If the Plan of Division has not been approved for deposit by the Registrar-General within [Time within which Plan is to be approved] months after the date of this Agreement then either party may terminate this Agreement by giving not less than [Notice to be given (days)] days’ notice to the other party.

1.2.2 If the Plan of Division is not approved for deposit on or before the expiry of that notice period, this Agreement terminates on the expiry of that notice period.

1.2.3 If this Agreement is so terminated then neither party has any claim against the other except in relation to any antecedent breach of this Agreement.

1.3 Settlement

1.3.1 After receiving notification that the Plan of Division has been approved for deposit by the Registrar-General, Chateau Tanunda must notify the Council in writing that:

1.3.1.1 the Plan of Division has been so approved; and

1.3.1.2 Chateau Tanunda nominates a date (being a date not less than 10 Business Days after the date of notice by Chateau Tanunda) as the Settlement Day.

1.3.2 Settlement must take place on the date nominated by Chateau Tanunda.
1.4 Council's acknowledgements

The Council acknowledges that:

1.4.1 in order to ensure the deposit of the Plan of Division by the Registrar-General it may be necessary to create easements in favour of Government, statutory or other authorities for the purpose of drainage, water supply, telephone connections and electricity (including any transformers and other equipment required to be located on Land A for the distribution of electricity to other land adjoining or neighbouring Land A);

1.4.2 the Council is aware that the creation of such easements may affect the Council's interest in and use of Land A;

1.4.3 where easements are required over Land A, such easements will vest upon the deposit of the Plan of Division pursuant to the provisions of the *Real Property Act 1886* (SA) (as amended) or in the event that such easements do not vest in the governmental or statutory or other body intended as grantee, then Chateau Tanunda may execute such documents as may be required for the easement to be registered on the Certificate of Title for Land A;

1.4.4 the creation of an easement affecting Land A does not entitle the Council to claim compensation, to terminate this Agreement or to refuse or delay settlement;

1.4.5 the dimensions of Land A may be subject to minor variation between the date of this Agreement and the date of deposit of the Plan of Division by the Registrar-General; and

1.4.6 any such variation does not entitle the Council to claim compensation, to terminate this Agreement or to refuse or delay settlement.

1.5 Certificate of Title

1.5.1 The Council further acknowledges that it is aware that a separate Certificate of Title for Land A is unlikely to be issued before the Settlement Day. The Council must not on that account make any objection, claim for compensation, claim to be entitled to terminate this Agreement or to refuse or to delay settlement.

1.5.2 At settlement the Council must accept an authority addressed to the Registrar-General directing the Registrar-General to deliver the separate Certificate of Title for the Land to the Council's solicitor upon issue.

1.6 Costs

Chateau Tanunda must pay all the costs of preparing, lodging and registering the Plan of Division including (without limitation) all survey and legal costs as well as all government fees and charges.

1.7 Waiver

Neither party may waive this special condition.
THIS DEED is made the day of 2019

BETWEEN:

THE BAROSSA COUNCIL of 43-51 Tanunda Rd, Nuriootpa, SA (“Council”);

AND:

ROBERT JOHN HOMBURG of 7 Park Street Tanunda, SA as the Executor of the Estate of the late Elma Linda Keil (“Mrs Keil”) ( “Executor”);

BACKGROUND

A. The Council and the Executor entered into an indenture deed dated 28 June 1996 (“Previous Deed”) with respect to land contained in Certificates of Title Volume 5133 Folio 408, Volume 5902 Folio 824 and Volume 5133 Folio 408 adjacent to the Tanunda Railway Station (together, “Previous Land”).

B. The Executor has previously made funds available by way of a public benefaction under the terms of the will of Mrs Keil in the sum of sixty five thousand dollars ($65,000.00);

C. The funds provided by Mrs Keil were specifically provided on the condition contained in her will that the Previous Land was to be purchased for purposes of parks gardens or sporting facilities within the area of the District Council of Tanunda and that that council give an undertaking that, pursuant to the Previous Deed the Previous Land the Previous Land would be used in the perpetuity for that purpose and not sold at any time in the future thus preserving the said land for such purposes.

D. The Council wishes to undertake a land swap whereby the Previous Land, being the land contained in Certificates of Title Volume 5133 Folio 408, Volume 5902 Folio 824 are exchanged for a portion of the land contained in Certificate of Title Volume 5962 Folio 146, with a view that the terms and conditions set out in this Deed will apply to portion of land contained in Certificate of Title Volume 5962 Folio 146 as per the attached land division (“Land”) in substitution for the Previous Land.

E. The parties enter into this Deed to set out the terms and conditions of their agreement in relation to the Land.

TERMS

1. The parties acknowledge the accuracy of the Background to this Deed.

2. The parties agree that the Previous Deed is hereby terminated and of not further effect including, without limitation, in respect of the land contained in Certificate of Title Volume 5902 Folio 824 and Volume 5133 Folio 408.

3. In consideration of the benefit given to the Council by the estate of Mrs Keil, the Council agrees in perpetuity:
3.1 that the Council will ensure that the Land remains classified as community land under the *Local Government Act* 1999 or any future legislation in substitution therefor.

3.2 that the Council will exercise all due care and diligence in the ongoing maintenance preservation and improvement of the Land for the purposes of its use as a public park lands and a recreation area.

3.3 that the Council will not erect any notices buildings or structures on the Land which are not aesthetically in sympathy and in keeping with the overall concept of a park land garden or recreation area.

4. Notwithstanding clause 3, the Council may develop the Land or part of it to enhance its future use either:

4.1 in conjunction and in sympathy with the railway station facilities and complex and adjoining Gallery; or

4.2 its use for some other commercial or public purpose provided that it retains its primary character as park lands and a recreation area for the public; or

4.3 to provide public infrastructure such as car parks, public areas for recreational use or public facilities and amenities to facilitate or improve access to, and use of the Land, and adjacent parcels of land and developments, provided that the Land retains its primary character as park lands and a recreation area for the public.

5. If the Council is in breach of this Deed then the Executor and his successors and assigns and anyone lawfully claiming through or under the Executor will be entitled to an order restraining the Council from any breach of this Deed or to remedy such breach within a reasonable time and to damages to be paid to the Executor as the Trustee of the Estate of Mrs Keil of a sum equivalent to sixty five thousand dollars ($65,000.00) with interest thereon at the rate of ten percent (10%) per annum calculated from the date of the breach or such other amount as a Court of competent jurisdiction shall determine if such breach is not remedied within a reasonable time to the satisfaction of the Executor.

6. Nothing in this Deed affects the powers that the Council has in relation to the Land under the *Local Government Act* 1999 to the extent that the Land is community land for the purposes of that act.

7. It is agreed between the parties that any breach or suspected breach of any of the obligations under this Deed will be capable of giving rise to a Caveat being lodged on all or any of the titles to the Land and the Council hereby pledges the Land as security to the Executor for such purpose.

8. In addition to any other method by which the Executor may give notice or make any demand under this Deed, such notice or demand may be in writing executed by the Executor or by the solicitors for the Executor and may be either served upon the Council personally or sent by prepaid post under cover addressed to the Council at the last known place of business or abode in South Australia of the Council and every such notice or demand shall take effect and be in force from the day next after the day upon which the same shall have been served or posted.
9. It is expressly agreed between the Executor and the Council that the Executor reserves the right to modify, waive or release wholly or in part all or any of the covenants, conditions and restrictions herein relating to the Land and the performance by the Council.

**Executed as a Deed**

**SIGNED by**

………………………………………………..
Signature

**ROBERT JOHN HOMBURG**

in the presence of:

…………………………………………………
Signature

…………………………………………………
Name

The Common Seal of **THE BAROSSA COUNCIL**
was affixed in the presence of:

…………………………………………………
Mayor

…………………………………………………
Chief Executive Officer
## Assessment of Proposed Land Swap – Chateau Tanunda - Under the Disposal of Land or Other Assets Policy

<table>
<thead>
<tr>
<th>Relevant Clause Number</th>
<th>Policy Direction</th>
<th>Comment/Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – Purpose</td>
<td>Sets out the general purpose of the policy</td>
<td>Noted</td>
</tr>
<tr>
<td>2 – Scope</td>
<td>Sets out exemptions that the policy does not apply to.</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>3 – Definition of Land</td>
<td>Land includes community land.....</td>
<td>Condition is met and therefore the land in question is subject to the directions of the policy.</td>
</tr>
<tr>
<td>4.1 – Disposal of Land or Other Assets</td>
<td>Any decision to dispose of Land or Other Assets will be made after considering (where applicable):</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a) the usefulness of the Land or Other Asset;</td>
<td></td>
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<tr>
<td></td>
<td>b) the current market value of the Land or Other Asset;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c) the annual cost of maintenance;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d) any alternative future use of the Land or Other Asset;</td>
<td></td>
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</tbody>
</table>

The current land is not significantly developed or utilised, is removed from adjacent Council land and offers little in broader community benefit, of course there are adjacent landowners and users who possibly derive benefit in terms of visual amenity and recreation. The proposal to swap land would in essence deliver the same outcome with future possible better interaction of the land to the community due to its location.

Whilst there is a perceived market value it is not derivable at present as it is encumbered and not saleable. It is considered that the land swap will be of equal market value, as any new parcel of land will be rededicated to the community and provide the same service level.

Minimal and no change in costs structures is expected for the open space areas.

The alternative use of the existing Council land under the swap would support a significant economic development in support of tourism and education. An investment of over $30M creating in the order of 150 FTE construction jobs and 97 FTE ongoing positions. Further it would support the re-utilisation of heritage and cultural assets at the Chateau as an integrated tourism, culinary and education development.
<p>| | |</p>
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<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>e)</td>
<td>any duplication of the Land or Other Asset or the service provided by the Land or Other Asset;</td>
</tr>
<tr>
<td>f)</td>
<td>any impact the disposal of the Land or Other Asset may have on the community;</td>
</tr>
<tr>
<td>g)</td>
<td>any cultural or historical significance of the Land or Other Asset;</td>
</tr>
<tr>
<td>h)</td>
<td>the positive and negative impacts the disposal of the Land or Other Asset may have on the operations of the Council;</td>
</tr>
<tr>
<td>i)</td>
<td>the long term plans and strategic direction of the Council;</td>
</tr>
<tr>
<td>j)</td>
<td>the remaining useful life, particularly of an Asset;</td>
</tr>
<tr>
<td>k)</td>
<td>a benefit and risk analysis of the proposed disposal;</td>
</tr>
<tr>
<td></td>
<td>Not applicable.</td>
</tr>
<tr>
<td></td>
<td>Discussed at a) and d) above.</td>
</tr>
<tr>
<td></td>
<td>The land was purchased by Council through funding from the Keil Estate and has an Indenture Deed over it, the trustees of this deed have been consulted and have provided a letter of intent that they would lift the trust.</td>
</tr>
<tr>
<td></td>
<td>None identifiable that do not already exist.</td>
</tr>
<tr>
<td></td>
<td>Is consistent with a raft of economic, heritage and cultural, community and education strategies outlined in the Community Plan, please refer to Council report 7.2.1.2 of 18 August 2017 for full detail, and thus delivers upon the plan.</td>
</tr>
<tr>
<td></td>
<td>Not applicable as it is land.</td>
</tr>
<tr>
<td></td>
<td>Significant benefits have been outlined at d) and i). The risk matters in brief have been outlined in the Council report 7.2.1.2 of 18 August 2017. The inability to deliver the outcome could put the commercial viability of the project at risk or result in sub-optimal outcomes with the development of tourism accommodation on land to the west of the railway corridor adjacent to residential area.</td>
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<td>l)</td>
<td>the results of any community consultation process;</td>
</tr>
<tr>
<td>m)</td>
<td>any restrictions on the proposed disposal;</td>
</tr>
<tr>
<td>n)</td>
<td>the content of any community land management plan; and</td>
</tr>
</tbody>
</table>
| o) | any other relevant policies of the Council, including:  
  - Prudential Management Policy  
  - Asset Accounting Policy | All other relevant matters have been explored in the Council report 7.2.1.2 of 18 August 2017. The Prudential Management Policy does not apply in this case and there are no specific accounting policy concerns. |

### 4.2 - Disposal Principles

**Encouragement of open and effective competition**

This matter is being addressed by ensuring full, open and transparent decision making. The ability to release this land for general market competition is extremely limited as it is encumbered by both the Keil Estate Trust and the Community Land classification; the proposal put forward makes strategic sense due to its location with adjacent assets owner by the Chateau and its recent success in securing State land upon which the Tanunda train station resides. The trustees of the Keil Estate have supported lifting of the trust to facilitate this project on condition the
land included in the swap is rededicated for the same purpose. Council is therefore practically stopped from placing the land parcel on the open market and to do so could jeopardise the broader community and economic outcomes.

On balance, given the highly restrictive nature of the encumbrances on the land, the proposal to swap land assets so that the Tourism Accommodation land can be developed and integrated into the Chateau other assets whilst maintaining open space for the community is considered a sound strategic path forward and mitigates the market concerns.

| 4.2 – Disposal Principles | Obtaining value for money | As explained above there is no market for the land asset other than what is being proposed at this time, with the swap of land assets there is no loss to the community of open space whilst assisting to try and deliver an economic and community project. |
| 4.2 – Disposal Principles | Ethical behaviour and fair dealings | All dealings to date and negotiations and community consultations have been or will be consistent with this principle whilst ensuring the best possible outcome for the community. |
| 4.2 – Disposal Principles | Probity, accountability, transparency and reporting | The Council and officers are dealing with the matter in a completely open and transparent manner through this assessment and the Council report 7.2.1.2 of 18 August 2017 and as intended all community consultation and other arrangements to be put in place should Council agree to continue will be undertaken (where legal) in open Council. It has also been recommended that Council have an independent probity advisor review this assessment and the process at the conclusion to ensure probity is maintained. |
| 4.2 – Disposal Principles | Ensuring compliance with all relevant legislation | This will be achieved through the process envisioned by the Council report 7.2.1.2 of 18 August 2017. |
| 4.3 – Accounting for Disposal of Non-Current Assets | Accounting requirements | Will be adhered to. |
| 4.3 – Accounting for Disposal of Attractive Assets | Accounting requirements | Not applicable. |
| 4.4.1 – Disposal Methods – Land Disposal | Explanation of various disposal methods including Direct Negotiation | As outlined in various components of this analysis the ability to undertake any market approach for the land is unable to be achieved, direct negotiation is identified as a valid method and is that which is proposed in this process due to the restrictive nature of the land and its strategic purpose. |
| 4.4.2 – Disposal Methods – Other Assets | Explanation of various disposal methods | Not applicable. |
| 4.4.3 Waiver for Disposal Methods | Conditions for waiver for disposal methods | No waiver is being sought as direct negotiation is an acceptable disposal methodology, and there is only one adjacent land owner who can meet the conditions for the release of the Keil Estate trust. |
| 5 – Supporting Documentation | Administrative notes within the policy | Not applicable. |
| 6 – Related Policies | Administrative notes within the policy | Noted |
| 7 – References | Cross references to relevant legislation or accounting requirements | Noted |
| 8 – Review | Review time period | Noted |
| 9 – Further Information | Administrative notes within the policy | Noted |

**Summary**

In summary, from the analysis is it reasonable to conclude that the direct negotiation methodology for any future disposal through land swap is reasonable and risks are mitigated through open and transparent decision making, working towards the outcome that sees new land coming to Council as part of the land swap is preserved as open space and recreational area under the Community Land provisions of the Local Government Act and rededication of the Keil Estate trust over the land.
Council’s management, care and control, will need to be revoked in accordance with the Crown Land Management Act 2007.

Summary and Conclusion
Council is asked to consider the Officer recommendation and confirm the revocation of the Community Land status of the Land, in accordance with its previous decisions.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES
Attachment 1 – Letter from the Department of planning, Transport and Infrastructure confirming the Ministerial delegate’s approval of Council’s proposal to revoke the community land status of the Land, dated 30 July 2019 and received on 2 August 2019.

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

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

3.3 Ensure Council’s sporting, recreational and leisure building facilities and associated programs meet the current need of the community to an agreed level of service.

Legislative Requirements
Local Government Act 1999, Section 194

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS
The financial costs associated with the public consultation process was sourced from existing budgets, as detailed in the Council report of 21 May 2019. There are no further financial or resource implications specifically relating to the revocation of community land status, and any further duties will be undertaken as part of Officers’ current roles.

Further to Council’s resolution of 21 May 2019, if the revocation of the community land status is approved by Council, and Council begins negotiating the gifting of the Council-owned land to the Mount Pleasant & District Golf Club for nil consideration, Council has resolved that ‘any GST, stamp duty or other fees and charges associated with the transfer will not be the responsibility of Council, but that Council may pay all necessary and reasonable legal costs of the transfer [emphasis added].’

Risk is mitigated by complying with the relevant section of the Local Government Act.

COMMUNITY CONSULTATION
Community consultation for this entire revocation of community land process has occurred in accordance with Section 194 of the Local Government Act 1999 and Council’s Public Consultation Policy, and has been further validated by the approval to proceed with final consideration by Council received from the Minister’s delegate on 2 August 2019.

7.2.1.7

FINAL COMMERCIAL AND VALUATION DOCUMENTS FOR LAND EXCHANGE BETWEEN CHATEAU TANUNDA (IVIVI PTY LTD) AND COUNCIL
B7081

MOVED Cr Miller that Council:

(1) Being satisfied with the Valuation Report approves the draft Contract for the Exchange of Land as presented at Attachment 2 and authorise the Chief Executive Officer to make further changes and authorise the Agreement on condition that:
The Barossa Council 19/48572    Minutes of Council Meeting held on Tuesday 20 August 2019

| a. | Chateau Tanunda (Ivivi Pty Ltd) shall at least transfer the portion of land being certificate of title volume 5962 folio 146 of approximately 8,241 square metres and $25,000 to Council to balance the market values of the land; and |
| b. | Any stamp duty costs shall be borne by Chateau Tanunda (Ivivi Pty Ltd); |

(2) Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

(3) Authorise the Chief Executive Officer to proceed with settlement of the land exchange after completion of the Contract for the Exchange of Land under resolution 1, and that the said land be excluded from community land status pursuant to Section 193(4) of the Local Government Act, until the Indenture Deed is settled under resolution 2 and that a final report be brought to Council for rededication of the land under Section 193(5) of the Local Government Act and application to an appropriate community land management plan.

Seconded Cr Hurn  
CARRIED 2018-22/279

PURPOSE
To seek final approval of the commercial agreement to exchange land with Chateau Tanunda as previously contemplated by Council.

REPORT

**Background and Introduction**
Following approval of the Minister’s delegate dated 19 April 2018 and Council of 26 April 2018 to revoke the classification of Council land as community land officers have been liaising with representatives of Chateau Tanunda to proceed with the land exchange.

**Discussion**
To ensure proper process and having considered matters of probity and Council’s Asset Disposal Policy I did engage an independent firm to undertake a valuation of the land to aid negotiation processes. In October 2018 this report was undertaken by Land Services SA after undertaking a request for quotation process. The valuation was concluded and provided as at 8 November 2018. Since that time I have been undertaking periodic discussions with the owner and also liaising with planning to facilitate the land division, utilising this report as the basis of a fair commercial arrangement.

The land division is now practically complete, with administrative processes for registration and issuing of the approved deposited plan currently underway.

The valuation report highlights that the estimated market value of Council’s land (unfettered, which it will be with the removal of the legislative community land matters and the Keil Deed) is $685,000. Conversely the portion of land to be provided to Council has an estimated market value of $660,000. Among other things therefore I have negotiated a position that ensures Council and thereby the community receives a value of the land plus $25,000. The valuation report is attached at Attachment 1.

Other than the matter above the other key outcomes of the commercial agreement are:

1. Each shall bear their own costs in negotiating and delivering the agreement;
2. Any stamp duties shall be the responsibility of Chateau Tanunda;
3. Manages the application of GST;
4. Manages the issues of default;
5. All costs associated with the land division are the responsibility of Chateau Tanunda.

Further, and as agreed in principle with the Executors of the Keil Deed, a revised Deed has been drafted and predominantly reflects the prior agreement, bar the acknowledgement by the Executors that the use of the land for a cultural, artistic and heritage development is understood and supported. The Cultural Hub project could utilise a small area of the land to support public
use however the vast majority of the land will remain in some way open space such as an open air performance area. Of course the final designs remain a work in progress, but the working group and Director are aware of the prominent need to ensure public access and provision of recreational and park land areas. A preliminary briefing has been scheduled with the Executor/s should Council agree to the draft documentation.

**Summary and Conclusion**
The Council is asked to endorse the Commercial Land Exchange Agreement and Deed and authorise the Chief Executive Officer to make final arrangements consistent with the documents provided and conclude the land exchange. Once the land exchange has concluded and at an appropriate juncture the entering into the Deed and rededication of the land for community land purposes will be made.

**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**
Attachment 1 - Valuation Report
Attachment 2 – Land Exchange Contract - Draft
Attachment 3 – Indenture Deed – Draft
Attachment 4 – Assessment against Council Asset Disposal Policy

**COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS**

**Community Plan**
- Natural Environment and Built Heritage
- Community and Culture
- Health and Wellbeing
- Business and Employment

1.4 Develop and maintain streetscapes that reflect the character and heritage of the region.
1.6 Support tourism development that is sensitive to the natural environment and sustainable.
2.1 Initiate and support activities which encourage participation and pride in the Barossa Council area.
2.2 Support the development of activities that celebrate the history and culture of the Barossa and its people.
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.
4.6 Ensure that community members can participate in cultural, recreational, sporting and learning opportunities.
5.1 Work closely with State Government, Federal Government and stakeholders to support economic growth, development and job creation.
5.4 Attract investment for new and innovative industries, such as creative industries and cultural tourism.
5.13 Support economic development through events.

**FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS**
There are no other risk or resourcing matters not explored by prior considerations or outlined in this report. Strategically Council has identified the land as highly supportive of the ongoing benefit for the community and releasing land which remains undeveloped to potentially develop a 5 star accommodation offer is of further economic and social benefit. Should the accommodation not proceed there still remains a strong benefit in the land being received by Council as it is located closer to the main street and interacts with other Council land and assets.

The financial impacts of this decision are presently within existing budget and either already paid for such as legal advice and the valuation analysis and in transacting of the settlement process existing resources will support it and costs of conveyancing and adjustments will be incurred.
Further the risk matters previously addressed in the Asset Disposal Policy are represented for Council's review, at Attachment 4, there is no further update than that previously provided. It is reiterated the only person in the market than can assist in meeting the principles of the Indenture Deed is Chateau Tanunda and therefore it is somewhat questionable that a market truly exists, in any case the independent valuation and negotiations to date also address this issue.

### COMMUNITY CONSULTATION

Community consultation for this entire revocation of community land process and culture hub has been extensive. Further both matters have been challenged under Section 270 of the Local Government Act and the Ombudsman and found to be proper or the best or preferable decision. At appropriate times the Mayor and or Chief Executive have met with the Executor/s to keep them up to date as was committed.

### VISITORS TO THE MEETING - 9.27AM

Mayor Lange welcomed Amber Perry, Liam Tappert, Finn Reed, Jessica Gobell, Austin McDonald, Mitchell McDonald, Riley McDonald, Maegan Schiller, Hayden Schiller, Kai Carson, Bailey Lobegeiger, Max Moritz and Kegan Coulter to the meeting and presented them with Youth Grant certificates.

Mayor Lange thanked each recipient for their attendance and congratulated them on their achievements.

### RESUMPTION OF COUNCIL MEETING – 9.45AM

The Council meeting resumed at 9.45am.

#### 7.2.1.8 THE BIG PROJECT PRIORITISATION AND FINANCIAL MODELLING – THE NEXT PHASE

**B5601**

**MOVED Cr Johnstone**

1. That Council having considered, reviewed and analysed The Big Project masterplans, community needs and benefits as gathered through the master planning and community engagement processes over the past 33 months, financial modelling and ability to fund projects, economic development opportunities, third party and grant funding alignment endorse the “Target Next Phase Priorities and Associated Analysis – August 2019” document as presented at the Attachment.

2. That Council noting that current 2019-20 financial year programs being the Angaston Railway Station masterplan implementation, Tanunda Recreational Park acceleration works, Nuriootpa Centennial Park multi-use change rooms and Old Talunga Recreation Park tennis/netball upgrades are approved projects that are below the thresholds of the Prudential Management Policy under to Section 48(aa1) of the Local Government Act for a full independent prudential report proceed as budgeted.

3. That Council noting that the “Target Next Phase Priorities and Associated Analysis – August 2019” include some projects that are above the expenditure threshold for a full independent prudential management report as contemplated by the Prudential Management Policy under to Section 48(aa1) of the Local Government Act undertake the required full prudential management report as outlined by Clause 4.3 of the policy on the remaining projects in totality and that the Chief Executive Officer proceed to engage an independent consultant to undertake the work.
2.1. DEBATE AGENDA – CHIEF EXECUTIVE OFFICER

2.1.1. APPROVAL TO PROCEED WITH FINAL CONSIDERATION OF REVOCATION OF COMMUNITY LAND CLASSIFICATION – BASEDOW ROAD, TANUNDA B7081

Author: Governance Advisor

PURPOSE

Following approval of the Minister’s delegate dated 19 April 2018 that Council has complied with requirements, Council can now proceed to final consideration of the revocation of Community Land classification over the two allotments known as 11 and 12 Basedow Road, Tanunda. Council is now asked to formally approve the revocation of the said land from Community Land classification in accordance with Local Government Act requirements.

RECOMMENDATION

(1) That pursuant to Section 194(3)(b) of the Local Government Act 1999, Council revokes the Community Land classification over Allotment 11 Basedow Road, Tanunda described in Certificate of Title Volume 5133 Folio 408, and Allotment 12 Basedow Road, Tanunda described in Certificate of Title Volume 5902 Folio 824.

(2) That the Chief Executive Officer excludes Allotments 11 and 12 Basedow Road, Tanunda from the Council’s Community Land Register.

(3) That the Chief Executive Officer advises adjacent landowners of the Council’s decision from the Special Council meeting held 26 April 2018.

(4) That the Chief Executive Officer proceeds with negotiating the commercial arrangements for the proposed land exchange in accordance with the Council resolution of 19 September 2017 (2014-18/1168).

(5) That the Chief Executive Officer facilitates the cancellation of the existing Indenture Deed with the trustees of the Elma Keil Trust, dated 28 June 1996 and replaces it with a new Indenture Deed to reflect the same restrictions with respect to the incoming land from Chateau Tanunda.

REPORT

Background

On 19 December 2017, Council resolved:

MOVED Cr Lange

(1) That the Council note and consider the feedback from community members and the Kelledy Jones Lawyers’ Independent Assessment of the consultation and proposed disposal process, which are attached to this report.
(2) That, further to the Independent Assessment at page 1, as the proposed disposal of land is via an exchange of land of the same or similar size and value, and the land currently has little or no market value due to the restrictions of the Dedication of the Keil Trust and the community land classification, the Council dispenses with the requirement of its Disposal of Land and Other Assets Policy at paragraph 4.4.1(i) to obtain any independent valuations in this matter.

(3) Pursuant to Section 194 of the Local Government Act 1999, that Council continue the process to revoke the Community Land classification for Allotments 11 and 12 Basedow Road, Tanunda, which are respectively contained in Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824.

(4) That the Chief Executive Officer prepare a report and submit it to the Minister for Planning seeking approval to revoke the Community Land classification of the said land parcels.

(6) That should the revocation be approved by the Minister for Planning, the matter be referred back to Council for final resolution in accordance with section 194(3)(b) of the Local Government Act 1999.

(7) That the Chief Executive Officer then proceed with the necessary steps to affect the proposed land exchange in accordance with the Council’s resolution of 19 September 2017.

Seconded Cr de Vries

CARRIED 2014-18/1269

Introduction

The report to the Minister was sent on 21 December 2017 and contained copies of reports to Council and confirmed minutes of the relevant decisions, and copies of public notices and supporting materials used for public consultation.

Approval to proceed with final consideration to revoke the community land classification was received on 19 April 2018 (see Attachment 1).

Discussion

Once the Minister (or his delegate) approves Council has complied with the legal requirements for community land revocation, section 194(3)(b) of the Local Government Act 1999 requires Council to formally resolve the revocation of the community land classification.

Upon Council’s approval, the Chief Executive Officer will then advise adjacent landowners of the Council’s decision.

Officers will remove reference to the relevant parcels in Council’s Community Land Register.

As Members will recall, the community land had additional restrictions placed on it in an Indenture Deed from the Elma Keil Trust of June 1996 (as funds from the latter had been used to initially purchase the parcels). Further to Council’s written agreement with the trustees of the Trust, the current Indenture Deed will be cancelled and a new Deed will be finalised by the Chief Executive Officer to ensure that the incoming land from Chateau Tanunda will receive the same restrictions as were in place over the outgoing community land.

Council has been provided extensive material and information from the consultation processes undertaken and is aware of matters raised that are of interest in the planning work and this has been communicated formally to representatives of the Chateau. Further, Council is aware of the objections to this proposal by some
nearby residents and has provided an opportunity to these residents to present to Council in December 2017. The Minister’s delegate has written to those that made representation to his office, informing them of the approval given to Council to proceed with final consideration.

**Summary and Conclusion**
The Council is asked to consider the Officer recommendation and confirm the revocation of the Community Land classification so as to give effect to the Council resolution of 17 September 2017 to exchange land with Chateau Tanunda.

**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**

**Attachment 1**– Letter from the Department of Planning, Transport and Infrastructure confirming the Ministerial delegates approval dated 19 April 2018.

**COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS**

 самостоятельно

Corporate Plan
Community and Culture:
  2.3 Support and promote community involvement and networks and provide opportunities for participation in local decision making.

Legislative Requirements
Local Government Act 1999, Section 194

**FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS**

There are no financial or resource implications. Risk is mitigated by complying with the relevant section of the Local Government Act.

Further to Council resolution of 19 September 2017 (Resolution Number: 2014-18/1168), Council will “require the proprietor (of Chateau Tanunda) to pay all reasonable external legal, consultant and advertising and other costs arising from the community consultation and subsequent commercial arrangements should the revocation of community land be approved by the relevant Minister” (Moved, Cr Miller, Seconded Cr de Vries).

**COMMUNITY CONSULTATION**
Community consultation for this entire revocation of community land process has occurred in accordance with Section 194 of the Local Government Act 1999 and Council’s Public Consultation Policy and been further validated by the KelleyJones Independent Assessment dated 13 December 2017 and approval to proceed with final consideration by Council received from the Minister’s delegate dated 19 April 2018.
In reply please quote 17PLN1232

Enquiries to David Whiterod
Telephone 7109 7142

DEVELOPMENT DIVISION

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136 North Terrace
Adelaide SA 5000

GPO Box 1533
Adelaide SA 5001

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Mr Martin McCarthy
Chief Executive Officer
The Barossa Council
PO Box 867
NURIOOTPA SA 5355

Dear Mr McCarthy

I write in response to a letter seeking approval for the Barossa Council's (the Council's) proposal to revoke the community land classification of the whole of the land contained in Certificate of Title Volume 5133 Folio 408, and Certificate of Title Volume 5902 Folio 824, and known respectively as Allotment 11 and 12 on Basedow Road, Tanunda.

I have considered the information provided to me by the Council and in making my decision (under delegation) I have taken into account the nature of the public consultation undertaken by the Council.

After carefully considering the effect of the revocation on the area and the local community, I am of the opinion that, on balance, the revocation will be more positive than not in its effect. I approve the Council's proposal to revoke the classification as community land of the whole of the land contained in Certificate of Title Volume 5133 Folio 408, and Certificate of Title Volume 5902 Folio 824, and known respectively as Allotment 11 and 12 located on Basedow Road, Tanunda.

If the Council wishes to proceed with the revocation it will need to pass a motion to revoke the community land classification pursuant to section 194(3)(b) of the Local Government Act 1999.

Yours sincerely

Andrew McKeegan
Chief Development Officer
DEPARTMENT OF PLANNING, TRANSPORT AND INFRASTRUCTURE

19 April 2018
MINUTES OF THE SPECIAL MEETING
OF THE BAROSSA COUNCIL
held on Thursday 26 April 2018 commencing at 5.30pm in the
Council Chambers, 43-51 Tanunda Road, Nuriootpa

1.1 WELCOME
Mayor Sloane declared the meeting open at 5.30pm.

1.2 MEMBERS PRESENT
Mayor Bob Sloane, Crs Michael (Bim) Lange, Deputy Mayor, Mark Grossman, David de
Vries, Michael Seager, Leonie Boothby (5.31pm), Christopher Harms and Richard Miller

1.3 LEAVE OF ABSENCE
Cr Scotty Milne
Cr Margaret Harris

1.4 APOLOGIES
Cr John Angas
Cr Tony Hurn

MOVED Cr Grossman that the apology received from Crs John Angas and Tony Hurn be
noted.
Seconded Cr Miller CARRIED 2014-18/1375

2. DEBATE AGENDA

2.1 CHIEF EXECUTIVE OFFICER

2.1.1 APPROVAL TO PROCEED WITH FINAL CONSIDERATION OF REVOCATION OF COMMUNITY
LAND CLASSIFICATION – BASEDOW ROAD, TANUNDA

Author: Governance Advisor

Mayor Sloane advised the meeting that a request from a member of the public had
been received seeking deferral of the matter 2.1.1 – Approval to Proceed with Final
Consideration of Revocation of Community Land Classification – Basedow Road,
Tanunda to the Council meeting to be held on Tuesday 15 May 2018.

Cr Lange sought clarification on the effect of any deferral.

Mr Martin McCarthy, Chief Executive Officer, advised that Council had received the
necessary statutory approval to proceed with consideration for the revocation, and it is
now a matter for Council to decide to revoke the community land classification or not.

COPY
Cr Lange moved the motion as written:

**MOVED Cr Lange**

(1) That pursuant to Section 194(3)(b) of the Local Government Act 1999, Council revokes the Community Land classification over Allotment 11 Basedow Road, Tanunda described in Certificate of Title Volume 5133 Folio 408, and Allotment 12 Basedow Road, Tanunda described in Certificate of Title Volume 5902 Folio 824.

(2) That the Chief Executive Officer excludes Allotments 11 and 12 Basedow Road, Tanunda from the Council’s Community Land Register.

(3) That the Chief Executive Officer advises adjacent landowners of the Council’s decision from the Special Council meeting held 26 April 2018.

(4) That the Chief Executive Officer proceeds with negotiating the commercial arrangements for the proposed land exchange in accordance with the Council resolution of 19 September 2017 (2014-18/1168).

(5) That the Chief Executive Officer facilitates the cancellation of the existing Indenture Deed with the trustees of the Elma Keil Trust, dated 28 June 1996 and replaces it with a new Indenture Deed to reflect the same restrictions with respect to the incoming land from Chateau Tanunda.

**Seconded Cr de Vries**

**CARRIED 2014-18/1376**

**PURPOSE**

Following approval of the Minister’s delegate dated 19 April 2018 that Council has complied with requirements, Council can now proceed to final consideration of the revocation of Community Land classification over the two allotments known as 11 and 12 Basedow Road, Tanunda. Council is now asked to formally approve the revocation of the said land from Community Land classification in accordance with Local Government Act requirements.

**REPORT**

*Background*

On 19 December 2017, Council resolved:

**MOVED Cr Lange**

(1) That the Council note and consider the feedback from community members and the KelleyJones Lawyers’ Independent Assessment of the consultation and proposed disposal process, which are attached to this report.

(2) That, further to the Independent Assessment at page 1, as the proposed disposal of land is via an exchange of land of the same or similar size and value, and the land currently has little or no market value due to the restrictions of the Dedication of the Keil Trust and the community land classification, the Council dispenses with the requirement of its Disposal of Land and Other Assets Policy at paragraph 4.4.1(i) to obtain any independent valuations in this matter.

(3) Pursuant to Section 194 of the Local Government Act 1999, that Council continue the process to revoke the Community Land classification for Allotments 11 and 12 Basedow Road, Tanunda, which are respectively contained in Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824.

(4) That the Chief Executive Officer prepare a report and submit it to the Minister for Planning seeking approval to revoke the Community Land classification of the said land parcels.

(5) That should the revocation be approved by the Minister for Planning, the matter be referred back to Council for final resolution in accordance with section 194(3)(b) of the Local Government Act 1999.

(6) That the Chief Executive Officer then proceed with the necessary steps to affect the
The report to the Minister was sent on 21 December 2017 and contained copies of reports to Council and confirmed minutes of the relevant decisions, and copies of public notices and supporting materials used for public consultation.

Approval to proceed with final consideration to revoke the community land classification was received on 19 April 2018 (see Attachment 1).

Discussion
Once the Minister (or his delegate) approves Council has complied with the legal requirements for community land revocation, section 194(3)(b) of the Local Government Act 1999 requires Council to formally resolve the revocation of the community land classification.

Upon Council’s approval, the Chief Executive Officer will then advise adjacent landowners of the Council’s decision.

Officers will remove reference to the relevant parcels in Council’s Community Land Register.

As Members will recall, the community land had additional restrictions placed on it in an Indenture Deed from the Elma Keil Trust of June 1996 (as funds from the latter had been used to initially purchase the parcels). Further to Council’s written agreement with the trustees of the Trust, the current Indenture Deed will be cancelled and a new Deed will be finalised by the Chief Executive Officer to ensure that the incoming land from Chateau Tanunda will receive the same restrictions as were in place over the outgoing community land.

Council has been provided extensive material and information from the consultation processes undertaken and is aware of matters raised that are of interest in the planning work and this has been communicated formally to representatives of the Chateau. Further, Council is aware of the objections to this proposal by some nearby residents and has provided an opportunity to these residents to present to Council in December 2017. The Minister’s delegate has written to those that made representation to his office, informing them of the approval given to Council to proceed with final consideration.

Summary and Conclusion
The Council is asked to consider the Officer recommendation and confirm the revocation of the Community Land classification so as to give effect to the Council resolution of 17 September 2017 to exchange land with Chateau Tanunda.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES
Attachment 1: Letter from the Department of Planning, Transport and Infrastructure confirming the Ministerial delegate’s approval dated 19 April 2018.
arrangements should the revocation of community land be approved by the relevant Minister” (Moved, Cr Miller, Seconded Cr de Vries).

COMMUNITY CONSULTATION
Community consultation for this entire revocation of community land process has occurred in accordance with Section 194 of the Local Government Act 1999 and Council’s Public Consultation Policy and been further validated by the KellyJones Independent Assessment dated 13 December 2017 and approval to proceed with final consideration by Council received from the Minister’s delegate dated 19 April 2018.

2.1.2 BAROSSA REGIONAL CULTURE HUB – DRAFT MASTER PLAN

Author: Director, Community Projects

MOVED Cr Lange that Council:

(1) Receives, notes and endorses the draft Barossa Regional Culture Hub Master Plan (the Plan) dated 22 January 2018 Ref: 18/6574 for community consultation, noting that the Master Plan may be subject to future amendment and budget consideration as required.

(2) Endorses the Community Consultation Plan – Barossa Regional Culture Hub Master Plan (Ref: 18/27039) to obtain feedback on the Plan for the period 30 April 2018 to the 21 May 2018 inclusive and requires Officers to bring a further report on the outcomes of the consultation to a future Council Meeting.

(3) Thanks the Barossa Regional Culture Hub Working and Stakeholder Groups for their work on the ongoing development of the draft Plan.

Seconded Cr de Vries CARRIED 2014-18/1377

PURPOSE
To present the current draft version of the Barossa Regional Culture Hub Master Plan (the Plan) (refer Attachment 1) for consideration by Council with a view to releasing for public consultation.

REPORT
Background
A full background to the development of the Barossa Regional Culture Hub is provided in Attachment 2 the Barossa Regional Cultural Hub – Discussion Paper June 2017 (ref: 17/46558).

In summary, the development of a Barossa Culture Hub has been discussed a number of times over the last 10 to 15 year period. The discussion around the development of a new Arts and Cultural Hub should take place within the context of the community’s desire for quality and authenticity in the cultural realm and the current prevailing view that the Barossa is punching below its weight in this area.

Whilst previous considerations and the trends are relevant, there is also an appetite for innovation and the redefining of artistic and cultural services and facilities that deliver a significant contribution to the economic diversity of the region, driving the development of the Barossa as a destination for cultural activities in its own right to support our premium wine, food and brand offering.

The role of a central hub as an incubator for culture and arts in the whole region is a recurring theme that is still supported by stakeholders.

Dealing with the challenges of providing a true hub and spoke model that does not duplicate what is already happening in the region but adds value and builds capacity has exercised the most time in the development of this concept plan rather than what the building ends up looking like. Why is this needed, why now and why in Tanunda? What is a sustainable model, what service should be provided and will it provide the desired outcomes, make the required difference and
2.1 DEBATE AGENDA – CHIEF EXECUTIVE OFFICER

2.1.2 BAROSSA REGIONAL CULTURE HUB – DRAFT MASTER PLAN

Author: Director, Community Projects

PURPOSE

To present the current draft version of the Barossa Regional Culture Hub Master Plan (the Plan) (refer Attachment 1) for consideration by Council with a view to releasing for public consultation.

RECOMMENDATION

That Council:

(1) Receives, notes and endorses the draft Barossa Regional Culture Hub Master Plan (the Plan) dated 22 January 2018 Ref: 18/6574 for community consultation, noting that the Master Plan may be subject to future amendment and budget consideration as required.

(2) Endorses the Community Consultation Plan – Barossa Regional Culture Hub Master Plan (Ref: 18/27039) to obtain feedback on the Plan for the period 30 April 2018 to the 21 May 2018 inclusive and requires Officers to bring a further report on the outcomes of the consultation to a future Council Meeting.

(3) Thanks the Barossa Regional Culture Hub Working and Stakeholder Groups for their work on the ongoing development of the draft Plan.

REPORT

Background

A full background to the development of the Barossa Regional Culture Hub is provided in Attachment 2 the Barossa Regional Cultural Hub – Discussion Paper June 2017 (ref: 17/46558).

In summary, the development of a Barossa Culture Hub has been discussed a number of times over the last 10 to 15 years period. The discussion around the development of a new Arts and Cultural Hub should take place within the context of the community’s desire for quality and authenticity in the cultural realm and the current prevailing view that the Barossa is punching below its weight in this area.

Whilst previous considerations and the trends are relevant, there is also an appetite for innovation and the redefining of artistic and cultural services and facilities that deliver a significant contribution to the economic diversity of the region, driving the development of the Barossa as a destination for cultural activities in its own right to support our premium wine, food and brand offering.
The role of a central hub as an incubator for culture and arts in the whole region is a recurring theme that is still supported by stakeholders.

Dealing with the challenges of providing a true hub and spoke model that does not duplicate what is already happening in the region but adds value and builds capacity has exercised the most time in the development of this concept plan rather than what the building ends up looking like. Why is this needed, why now and why in Tanunda? What is a sustainable model, what service should be provided and will it provide the desired outcomes, make the required difference and activation of the whole region and a commensurate return on investment? Refer to the Barossa Culture Hub Premise Attachment 3 for a summary of these considerations.

There is also the context of high profile Australian culture facilities that have been successful in carving their own niche into the arts tourism landscape such as Mona, in Tasmania, the Bendigo Gallery in Victoria and most recently South Australia’s own D’Arenberg Cube in McClaren Vale. Everyone wants to replicate the success of those facilities.

Introduction

Concept Development Process:
The development process has been supported by a variety of groups and stakeholders:

1. A broad Stakeholder Group of around 30 representatives of not for profit, community or commercially based interest groups from the sector
2. A smaller, focused Working Group tasked by the Stakeholders with the development of a concept and the liaison with Council appointed Architects.
4. Input from industry specialists Play Your Part, via Maz McGann who has extensive sector expertise at practitioner, local government, State, interstate and peak body level, as well as specific knowledge of the Barossa Cultural landscape as a resident and in a professional arts and culture capacity.
5. Input from State and interstate facility curators, councils and non-government organisations obtained from a culture facility road trip around a variety of arts and culture venues during February and March 2018. Comparative notes from these visits are documented in Attachment 4.
6. The Big Project Working Group has been provided with copies of the developing plan and associated documents. Council Workshop presentations to Elected Members regarding the status of the master plan development were made in: December 2017 and April 2018 and progress reported in each quarterly update report.

Regular Stakeholder and Working Group meetings have taken place over the 8 month period – June 2017 to March 2018 and notes circulated to all participants and identified sector interest groups.

Concept Design Process

Procurement of the concept design process was achieved by inviting 3 architectural firms with a particular interest and reputation in the arts, culture and tourism sector to visit the Barossa Regional Gallery and do a walk through with representatives of the Working Group. Each was provided with the Design Brief (refer Attachment 5) and the Barossa Culture Hub Premise. Given the level of expenditure for the commissioning of the concept plan, a direct approach to a single supplier would have been acceptable within the parameters of the Council’s procurement policy and process.
However, the Working Group wanted to get input from more than one perspective and so each consultant was given the opportunity to give their immediate impressions of the facility, the opportunities presented and the nature of their approach to developing a hub concept. They were asked to provide examples of concept development for a range of comparable projects. Based on those meetings and the associated information, the Working Group representatives then selected one architect to produce the concept drawing.

One of the firms approached could not deliver the concept plans within the required timeframes and declined to quote. Of the others, one had a greater degree of tourism related design expertise, the other a larger portfolio of pure arts facilities.

In the end the selected architect was the one with the higher level of tourism experience but primarily because of the cleaner and simpler presentation of its catalogue of designs given that the concept plan needs to provide clarity to the community when presented for consultation.

It was also stressed that whilst in due course the external presentation of the building is very important, in the concept stages, the critical deliverable was to achieve the hub principle and look at the potential functional arrangement for the various components of a future facility.

Discussion
As with other concept master plans for The Big Project at this stage, the key themes arising from Working Group discussions and which inform the current concept plan documents, are presented as follows:

1. Why is the Hub needed?
A consensus that the Barossa does not present a high calibre offering of arts and cultural content, activities and facilities. Whilst there is a significant amount of cultural content people (visitors and residents alike) do not necessarily know about it, they may not be able to readily access it and there is insufficient resource to programme and promote it professionally with too much reliance on volunteer input.

An overriding view that culture represents a significant opportunity to not only support our wine, food and tourism industry, but for a coordinated Barossan cultural experience to become a complementary attraction to the region in its own right and integrally aligned to the Barossan Brand offering. Creating opportunities to increase visitation to the area to access cultural experiences that have a uniquely Barossan appeal as well as the associated participatory benefits that flow to our own community through provision of high quality arts and culture product and facilities. Creating another reason to visit, stay, spend and talk about the region. A growth opportunity on a par with that identified in the sports tourism sector.

To provide access to the cultural heritage of the Barossa to ensure it is recorded, preserved, celebrated and leveraged.

To support the activation and promotion of arts and cultural content and venues throughout the region through a genuine hub and spoke model. The Regional Gallery venue in Tanunda was identified as the “landing point” for the greatest potential number of visitors and so should be capitalised upon as the best opportunity to signpost, generate interest and provide information and knowledge about all the other cultural activities elsewhere in the Barossa region.
In addition, to develop programmes around the use of other regional assets (ie Council halls and institutes, some of which are underutilised and have capacity) for art and cultural activities. For example a requirement of residency programmes to run workshops or exhibitions external to the main hub; educational and capacity building and the use of the hub as an incubator for artistic skills and collaboration that can add value to the whole region. In Victoria we saw examples where tenants of a centralised facility collaborated on projects to solve issues and attract investment for the benefit of the host and educational mentoring for schools and colleges at all levels. Partnerships with universities and TAFEs would be readily accessible in the Barossa.

Inventive and creative programming and an entrepreneurial mindset can generate revenue for cultural facilities to make them a more sustainable proposition for local government. Examples of charging admission for select exhibitions and events, provided they are of a high quality and have a novelty value and appeal, is a model deemed to be scaleable and transferrable by those that have adopted that approach in facilities such as the Bendigo Gallery in Victoria. It requires facilities and content of a calibre and that in turn demands dedicated and professional programming and curating expertise that we currently do not provide and facilities of a standard and quality that does not currently exist. Climate and lighting control, better use of exhibition space, storage and exhibition management from an arts perspective is lacking.

2. What is needed?

Building on the Why, recurring themes of What is required have focused on the requirement to fill gaps in provision and not to duplicate that which already exists. What already exists has been mapped to an extent by work initiated via RDA Barossa and Country Arts SA. The RDA Barossa, ArtMusicDesign Website resource is an opportunity to link and make connections within the cultural sector, but it needs that central, pivotal hub to provide the focal point and resourcing.

The development of the Barossa’s own Unique Selling Propositions and niche offerings in the cultural sector again has potential, but takes time and expertise to promote. Is that Council’s role as an economic development initiative and responsibility? Council’s Community Plan Strategy 2.6 refers to “Support (of) a vibrant and growing arts, cultural, heritage and events sector”. Of the high profile examples already referenced in this report, Mona and the Cube are private initiatives (albeit the latter received some public funding) but creating significant inward investment into their broader economies. Bendigo Gallery is a Council operated facility and has over time, developed a niche for the promotion of the highest quality international exhibitions.

The Working Group identified Barossan Heritage experience (showcased with contemporary digital media) as a potential niche product, with a rich and varied source of experiences throughout the region and with obvious links to our food and wine culture. This would be aligned with a particular focus on aspects of musical heritage (the Hill and Son Grand Organ) and the potential for digital music production and radio. Triple B has been actively engaged, with the opportunity for them not only to be located and broadcasting as a highly visible and engaging presence in the facility, but also supporting an education, skills and training opportunity. The Barossa is seen as a place where collaboration can be achieved and is a place that people want to be – both the artists and the audiences. We need to develop strategy that builds on those unique qualities.
3. Chateau Tanunda Development

Following directly on from this is the opportunity to leverage a process that has been running in parallel to the Culture Hub development but which has not, until more recently, been aligned to it. The potential land swap between Council and Chateau Tanunda provides the direct opportunity to open up the existing Regional Gallery site facilitating expansion towards the railway line.

The Chateau development has the potential to significantly increase the passing foot and vehicular traffic along Basedow Road and raise the profile and visibility of both facilities. The inclusion of an educational and job readiness training component in the hotel project (culinary institute) again provides opportunities for collaboration across the 2 sites and venue capacity for performance and exhibition if the right conditions can be incorporated. The timing for that joint planning and discussion process and the potential for joint funding initiatives are already being considered and facilitated with support from RDA Barossa.

4. Under-utilised Assets

Part of the Big Project is to ultimately look at any legitimate asset rationalisation that may free up capacity to better manage and sustain our long term portfolio. Linked to that process is consideration of which assets are underutilised because a sustainable purpose is no longer identified, or where other activities and initiatives can support the repurposing or better activation of existing facilities. There is still work to be commenced in this area. Discussion regarding the opportunities of developing arts and culture programmes that can be used to outreach and improve services through the region in our under-utilised assets have also formed part of the Culture Hub consideration. More work is required. However, rather than allocating dedicated resource to each “spoke”, there is the potential to invest in resources that allow for transportable, “pop up” and temporary service delivery. This could be facilitated as parts of an artist or musician in residence strategy and as a requirement or condition of receiving a residency. Residencies are not necessarily just designed to attract the highest profile artists and experts; that is great if you can. Other programmes are designed to be more modest but still generate excellent content and collateral. A residency programme can be spread across numerous disciplines and a programme built up over a rolling calendar. Again this requires resource to build and sustain.

5. Resourcing

Already threaded through previous commentary; however, it is identified as the single most important and recurring theme of the development process. The Regional Gallery has functioned with the exceptional energy and commitment of volunteer effort with minimal, part time paid resourcing. There will continue to be a vital role for volunteer resources to play in an expanded and evolving facility; however, the appropriate level of specialist resourcing to programme, curate and manage the facility on the necessary full time basis, with a focus on entrepreneurial opportunity and development, will be a prerequisite to success of this venture. The modelling being developed to support funding applications takes into account a significantly higher level of resourcing for the Culture Hub. This includes operational and strategic development requirements. It will be responsible for driving content through to the regional spokes.

The success of potential operational models such as studio leasing; residencies; exhibition attraction and collection management; educational revenue development; events and function programming; content and collaborative projects; marketing and promotion are all critical skills to generate cultural tourism
outcomes into the region and in turn the cultural outcomes for our residents and local ratepayers.

Collaboration with peak bodies around the potential for partnership approaches to increase the reach and impacts of the eventual resourcing model, needs further work. RDA Barossa has been active in this space, as traditionally has Council in previous investment to kick start the shared Country Arts SA and Council Arts and Culture Officer role back in 2010.

Discussion has also taken place around the ongoing role and interface between the Culture Hub and the Barossa Visitor Centre (BVC). Is there unnecessary duplication of resourcing, opportunities for integration of the facilities, service level review and associated savings in terms of the investment in infrastructure and how it is managed?

Visitor Centres and how they and tourism services (particularly booking services) are accessed, continue to evolve and develop in an increasingly digital and online industry. The BVC continues to receive the second highest foot traffic for any Centre in South Australia next to Adelaide, but generically, visitation is trending down with more people accessing services remotely. Our Centre bucks the trends to the extent that we continue to increase the dollar spend per visitor through our facility and we have been exceptional in keeping ahead of the game with introducing strategies to raise the profile and appeal of our Centre. Its central, high street location is second to none and it has established itself as a highly regarded and valued service for our local residents, as well as our visitors, facilitating events and use of the public open space that activates the township of Tanunda and drives revenue through businesses in the town. The most recent successful grant application for international wine tourism development that allows us to fund a remodelling of the Centre, is exciting and can continue that journey of development and reinvention.

While there has not been consensus in the Working Group as to whether economies exist in an amalgamated culture and visitor service, there is not sufficient space in the BVC site for both and the loss of the Murray Street location is an issue Council would need to consider in the first instance. Others in the Working Group see the Culture Hub as part of the service offering of the BVC in a standalone capacity and that the co-location of services would potentially detract from both. The opportunity for a degree of library/heritage service sharing is articulated in item 6 below. Council will need to direct officers further if it wishes a more detailed investigation of these considerations.

6. Regional Heritage
One of the identified key themes and an area that Council has dedicated significant resource and investment during the last 3 to 5 years, culminating in the adoption of the Regional Heritage Strategy in 2016 and driven through our Library and Heritage Services.

The Culture Hub provides the opportunity to take these unique Barossa stories and experiences to the next level. A focus on a new heritage library service offering based at the facility and concentrated around digital material, access to information – a DNA profiling opportunity and ongoing archival and oral history work, could make this a unique facility in the State. Still very much based on the hub and spoke model of the Culture Hub as the landing point that then creates the sense of urgency and commitment to go out into the region and explore and dig deeper. Investment in that Intellectual Property and technology will be a pre-requisite, but the heritage, raw materials and stories are already there and accessible to us.
7. **Programming**
Threaded through preceding items, is discussion of potential for building a more sustainable funding model for Culture and the Arts through a new hub facility.

There are multiple and myriad options and more work needs to be done. The current concept includes the following areas that present options for programming, cost recovery; revenue generation:

- Residencies – potentially more realistically in-kind expertise to activate spaces, generate collaboration, provide or manage content, share or transfer skills (ie artist, curator, musician, designers, broadcasters, writers, thinkers etc)
- Studio space – leasing
- Exhibition – not significant expansion – linkages to Chateau Tanunda – attraction of cornerstone events and programming with associated admission charge
- Membership base / fee
- Production space – music tuition / black box space
- Broadcast opportunity
- Workshop space rental
- Event and function hire – linkages to Chateau Tanunda
- Outdoor venue hire
- Quality retail outlet
- Ticketing via the BVC
- Workshop programme revenue

8. **Catering / Café Provision**
Our research indicates that establishing a sustainable model for a café / catering function within cultural facilities remains one of the most challenging aspects for practically every facility we have visited and researched. They divert the most, non-productive resources to managing lease and tenant arrangements. Our concept plan does not include a café. It does make provision for facilities that allow catering for events, functions and exhibition openings etc and the capacity for existing food operators to provide pop ups, food vans etc.

The Working Group identified 2 further existing opportunities to work in partnership with the Tanunda Club and a future Chateau Tanunda Culinary Institute to ensure catering requirements can be covered.

9. **Content of the Hub**
Taking into account all of the foregoing, this results in a Culture Hub concept that provides:

Main building – controlled access
- Contemporary exhibition space and storage
- A music venue for performance, leveraging the appeal of niche organ recital and the Baroque and Bach genre
- Associated Green Room facilities
- Upgrades to electrics, air quality, conditioning, humidity, control lighting, storage
- Improved access for safe loading / unloading of materials
- Heritage library space
- Dedicated and accessible Soldiers’ memorial and commemoration space
- Improved retail space
- Courtyard and outdoor performance space
- Catering equipment for events and leases
- Gathering and meeting spaces
- Performance space
- Broadcast capacity / black box capacity
- Administration and meeting spaces

Annexe Building
- Studios / Workshops - artists / lessee spaces
- Studios/Workshops – community – flexible
- Residency space
- Community radio facilities
- Shared production / broadcast space

Outdoor
- Car parking
- Public art and exhibition
- Community gardens
- Future amphitheatre
- Access / egress
- Loading bays

Summary and Conclusion
In summary, the transformation of existing Gallery facilities into the Barossa Regional Culture Hub is an exciting and ambitious undertaking. Like any project of this kind, it comes with its own set of risks and challenges, and the investment both now and into the future for Council is substantial. The potential for return on this investment however, is also significant, not only culturally but economically and socially. The development reflects the increasing needs and expectations of both local residents and visitors to the region - with the current offering not living up to the Barossa’s renown as a community that so often “punches above its weight”.

Repeatedly, throughout Australia and the rest of the world, cultural facilities have proven themselves to be a catalyst for significant growth and renewal. Considering the strong and reputable brand position already enjoyed by the Barossa, combined with private and community partnerships and the “hub and spoke” model, the Barossa Regional Culture Hub has the potential to be a premiere cultural destination for South Australia. For this opportunity to be fully realised however, the project requires the bold and visionary approach the Barossa is known for, to be reflected in Council’s decision making and long-term support of this project.

The consultation process provides opportunities for broad community input into the detail of the facility and the future consideration of its footprint, visual architecture and impact on the site.

Attachments or Other Supporting References

| Attachment 1 | Barossa Regional Gallery Draft Master Plan - Ref: 18/6574 |
| Attachment 2 | Barossa Regional Cultural Hub – Discussion Paper June 2017 - Ref: 17/46558 |
| Attachment 3 | Barossa Culture Hub Premise – Ref: 17/87178 |
| Attachment 4 | Research Notes and Themes – Ref: 18/19583 |
| Attachment 5 | Design Brief – Barossa Culture Hub - Ref: 17/87175 |
| Attachment 6 | Barossa Culture Hub Economic / Community Rationale - Ref: 18/27052 |
| Attachment 7 | Barossa Regional Gallery Draft Community Consultation Plan - Ref: 18/27039 |
COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

- Natural Environment and Built Heritage
- Community and Culture
- Infrastructure
- Health and Wellbeing
- How We Work – Good Governance

Corporate Plan

1.2 work toward developing township, streetscapes, entrances and open spaces that are attractive, welcoming and maintained to an agreed level of service
2.6 Provide, promote and support community arts and cultural events, programs, attractions and services.
3.1 provide regional and local walking and cycling connections between open spaces.
3.2 ensure Council’s parks, gardens and playgrounds are accessible, relevant and safe and maintained to an agreed level of service.
3.3 Ensure Council’s sporting, recreational and leisure grounds and playing areas and associated programs meet the current need of the community to an agreed level of service.
3.9 Ensure Council facilities and assets are accessible, safe and maintained to an agreed level of service.
3.11 advocate for the allocation of State and Federal funding to maintain and invest in infrastructure within our region.
4.1 Deliver and promote health and wellbeing initiatives in line with the Public Health Plan
6.4 Ensure that decisions regarding expenditure of Council’s budget are based on an assessment of whole of life cost, risks associated with the activity and advice contained within supporting plans.

Legislative Requirements
Local Government Act 1999
Development Act 1993

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Financial
The Master Plan is being prioritised, phased and costed as part of “The Big Project” feasibility study work with the associated costs to date taken from the approved project budget Q003.

Attachment 6 references a summary of research into the economic and social value rationale for facilities of this nature. Extract information includes comments from the United Nations Conference on Trade and Development (UNCTAD) which now recognises “creative industries as a new dynamic sector in world trade. While creative industries are often micro businesses or small to medium sized enterprises that focus on local markets, they can develop into powerful economic clusters, helping to drive economic growth.”

Resource
The project management work now falls within the scope of “The Big Project” with dedicated input from Director, Community Projects. Consultation and promotion support from the Communications and Marketing Officers.

**Risk Management**
The purpose of bringing this report to Council for the endorsement of the draft updated Masterplan at this point, is to seek broader input from the regional community in addition to that achieved via the Working Group and Stakeholder Group; flag any issues and concerns arising so that they can be addressed within future iterations of the Plan and ensure that the outcome is aligned as far as possible with community expectations.

**COMMUNITY CONSULTATION**
As detailed in the draft Community Consultation Plan – Barossa Regional Culture Hub Master Plan ref: 18/27039 (refer Attachment 7). The Plan considers the challenges of consulting across the region for this project and suggests a diverse, expert panel approach to work through the opportunities and issues arising from a facility of this nature that can be filmed and replayed throughout regional venues, as well as the tried and tested approach of Open Forums and Drop-in sessions and attendance at high profile community venues.

A suggested Concept Overview to assist the process is also in the development stages and presented for information as Attachment 8.
Historical Culture
Honouring spaces. The essence of where Barossa culture came from captured in photographs, historical stories, literature, examples.

Today’s Culture
Nurturing spaces. Tell cultural stories about today’s artists and musicians through arts, crafts and performance.

Growing Culture of Tomorrow
Spaces that grow, inspire and flourish the creativity and skill development of the Barossa people.

Concept
Materials: Responsibly resourced, comforting, soft, layering
Size & Scale: Human, embracing
Atmosphere: Calm, welcoming, accessible, interesting, textured
Lighting: Warm, comfortable
Active environment that ebbs and flows

BASEDOW ROAD ELEVATION
1. History interpretive / storytelling
2. Co-working space
3. Digital library
4. Library - books, literature
5. Tickets, Administration
6. Gallery
7. Performance hall
8. Hall building, organ
9. Staff room / kitchen
10. Storage
11. Greenroom
12. Amenities
13. Bar and catering service
14. Foyer
15. Soldier’s memorial
16. Retail - security screened or alarmed
17. Outdoor community market space
18. Break-out spaces / Courtyards
19. Meeting rooms
20. Digital studio
21. Artist in residence studio
22. Artist residence
23. Multi-purpose studio / wet workshop
24. Studio kitchenette + washroom
25. Multiple practice rooms
26. Multiple lettable artist studio spaces
27. Carparking
28. Community orchard
29. Play space / picnic area / outdoor performance space
30. Deliveries
31. Bikeway sculptures
32. Bus parking
33. Community gardens
34. Gateway

LEGEND

SITE PLAN
1:500

Note: Design assumes land swap agreement. Final plan subject to reconfiguration based on boundaries.
DISCUSSION PAPER
Barossa Regional Cultural Hub
June 2017

OVERVIEW

The development of a Barossa Culture Hub has been discussed a number of times over the last 10 – 15 years. Now as The Barossa Council contemplates its long-term community infrastructure and facilities plan as part of its “Big Project” initiative, the potential for a Barossa Cultural Hub has emerged again.

This discussion paper is designed to inform the conversations relating to the development of a Regional Cultural Hub. It provides insight into previous proposals that have been put forward, outlines cultural facilities situated within the region and gives an overview of current trends in relation to arts, cultural and heritage facilities and funding.

The discussion around the development of a new Arts and Cultural Hub should be framed within the context of the community’s desire for quality and authenticity and whilst previous discussions and the trends are relevant, within arts, culture and heritage there is always an appetite for innovation and the redefining of services and facilities.

EXISTING ARTS AND CULTURAL FACILITIES

The Barossa region has a range of existing cultural facilities and services. Many of these are owned and operated by Council, others are owned and managed by community organisations or similar. *These facilities and services include the following:

Barossa Council Facilities and Services

- Ten Institutes and Halls located throughout the community – owned by the Barossa Council with some managed by community groups
- The Barossa Regional Gallery – established in 2006
- Five Library Branches, which supports the Regional Heritage Network
- Local history rooms situated at the Nuriootpa Library
- Barossa Visitor Centre Interpretive Space – within the Visitor Centre in Tanunda
- Barossa Sculpture Park – located on Menglers Hill
- Staff employed by the Barossa Council across Library Services, Youth Services, Disability Services and Community and Cultural Services

Community and Privately Owned/Manged Facilities and Services

- The Barossa Arts and Convention Centre – owned and operated by Faith Lutheran College
- Lyndoch Local History Rooms – small gallery and services situated within the Lyndoch Library and operated by the Lydoch Historical Society
- The Barossa Museum – owned and operated by the Barossa Archives and Historical Trust
Mount Pleasant History Rooms – situated within the Mount Pleasant Hall and operated by the Mount Pleasant Historical Society
Williamstown Historical Society Rooms – situated within the Williamstown Hall
Luhrs Cottage – owned and operated by the Luhrs Cottage Preservation Society
Lillefield Gallery – situated in Eden Valley, owned and operated by a community group
Machinery Preservation Society – situated at the Angaston Railway Precinct and managed by the Barossa Machinery Preservation Society
 Stellar One Recording Studio in Tanunda
Various gallery spaces situated within wineries and other privately owned facilities.

Regional Arts and Cultural Facilities (located outside of municipality)

- Gawler Connect Hub – still under construction but will include a multipurpose facility that is suitable for performances, exhibitions and workshops, a dedicated heritage gallery, archive and research facility, a youth space and a digital hub
- Kapunda Community Gallery [http://www.kapundagallery.com](http://www.kapundagallery.com)
- JamFactory at Seppeltsfield – Gallery and Studios

*Council acknowledges that this is not a definitive list and further mapping and other gaps may be identified as the project progresses.

Barossa Regional Gallery physical aspects

The venue is located at 3 Basedow Road Tanunda and features two formal “white wall” gallery spaces with professional gallery lighting and an auditorium. The Hill and Son Grand Organ is situated on the stage at the southern end of the Auditorium. It is built into the stage with a third of the organ’s mechanics installed below the stage. The organ’s internals can be viewed from the multi-purpose room under the stage, which is also used as a meeting space by the Liedertafel. There are several other spaces in the venue including two storerooms, a domestic style kitchen, a retail area and an informal office space. There are two dressing rooms and a store / meeting room which are not currently utilised due to structural or access issues.

PREVIOUS ARTS AND CULTURAL DEVELOPMENT PROPOSALS


The Barossa Arts Hub was proposed in 2008 by the Barossa Arts Council to be established at the former Barossa Council Offices on Washington Street. An Arts Hub Working Party collaborated with Consultants to develop a high level strategic proposal, which is available for perusal and details proposed facilities, stages of the development, staffing, a governance structure and financial analysis.

The proposal aimed to see the retention of the vacated Council Office building in Angaston, as community asset and for it to be transformed into an innovative cultural space that strengthened the arts and cultural community within the Barossa and link it with key regional strategic drivers including across social, wellbeing, economic, tourism and wine sectors.

The proposal did not move forward and whilst the merit of its value was recognised by the Barossa Council other projects and initiatives were prioritized over the Barossa Arts Hub and the Council eventually sold the

The vision for the facility was

“To establish an independent not-for-profit, well-managed, coordinated and self-sustaining hub to nurture the growth of an interactive arts environment including an innovation/creativity incubator in the Barossa region.”

The proposal aimed to capitalise on:

- The existing arts and cultural community and the desire for arts and cultural services to complement the wine and tourism industry
- Potential funding available from the Federal and State Governments, which supported major infrastructure developments
- The availability of a significant asset in the form of the Barossa Council Offices that had become vacant with Council’s business operations relocating to a building in Nuriootpa.

The Barossa Arts Hub:

- Aimed to be business oriented and self-sustaining over the long term, delivering a range of services that nurture arts and creative enterprise in the Barossa
- Proposed a hub and spoke model, using other venues and facilities in the region with a home base in Angaston.
- Proposed a facility that moved beyond a traditional performance or exhibition space and foster active participation and the development workshop programs, artist residencies, sound and digital arts facilities, shared creative spaces, studios, creative enterprises and café and retail space.
- Included the establishment of a Barossa History Archive, which preserved significant cultural materials and the housing of the Angaston Library Branch.
- Aimed to cross a range of portfolios and sectors including youth, health and wellbeing, education, business growth and tourism.
- Focused on attracting visitors and building its reputation as a significant cultural facility on a state and national level.
- Proposed a three year financial plan with income and expenditure of xxx and xxx

Barossa Regional Gallery Re-development in Tanunda – 2013

With the release of funds through the Federal Government’s Regional Development Fund Council considered a range of large-scale infrastructure projects, which would meet the current and future needs of the community and could be “shovel ready” within the Federal Government’s timeframes. A proposal to re-develop the Barossa Regional Gallery as a Regional Cultural Hub was considered with some broad concepts considered and limited community consultation undertaken.

The proposal included the expansion of the current facility to increase access and capacity and transform the nature and purpose of the space to offer more active and innovative cultural experiences. It was pitched as a significant centre for the cultural needs of the Barossa community but also as a premiere venue that would attract visitors to the region – offering a unique and memorable experience for tourists.
Critical to its success of the re-development was the inclusion of a hub and spoke model, which saw the venue as an attraction for visitors in the first instance but also as a platform for directing people to other cultural facilities in the region through the use of storytelling, interpretation and digital media. As a premier facility it needed to leverage its capacity to attract visitors to strengthen the cultural facilities and attractions located across the Barossa region.

The proposal was supported by Council in principal and an EOI was submitted but did not make it past the first round of scrutiny in the funding process, which saw other regional infrastructure projects prioritised to proceed to the full application stage.

Documentation, which outlines the re-development proposal is available for perusal with the an overview of the key themes summarized below:

Key Themes / Objectives

- Transforming the existing space from a passive to an active place, where people go to enjoy an experience that is authentic, unique and interactive – and unlike anything else in Australia.
- To provide a Cultural Hub for the region that celebrates, acknowledges and preserves local history and encourages development of cultural products and content which is innovative and unique.
- To provide visitors to the region with a high quality cultural experience that complements their interaction with other tourism experiences and products.
- To engage a range of community and business groups to showcase the region and support their goal to promote Barossa culture and heritage.

Potential Facilities

A range of potential facilities and program opportunities were discussed as part of the proposal and during the initial consultation. The potential to relocate the Tanunda Library Branch to the Gallery and re-shape it as a local history facility was indicated, which would have freed up space for both the Visitor Centre in Tanunda and the Nuriootpa Library Branch. Other possibilities included:

- Interactive interpretive displays which convey the Barossa Story
- An arts incubator which provides studio and workshop facilities
- Story Bank - a contemporary Storytelling and Heritage facility, which could include the re-location of the Local History Rooms from Nuriootpa to Tanunda.
- An Artist / Thinker in Residence facility with the potential for short and long term residencies in design, music, art and heritage.
- A range of gallery spaces for heritage and visual art displays some of which would be semi-permanent and others temporary.
- A flexible live music venue providing a small – medium space for live music performance from local and touring musicians and the Hill and Son Grand Organ.
- A civic space for meetings, events and forums.
- A Café / Restaurant facility which showcases local food and wine.

Consultation

The general response through consultation was positive. Many supported the redevelopment in principal and recognised that a number of needs in the community could be fulfilled through the establishment of a Cultural Hub, including the need for workshop and studio spaces, an industry standard historic archive and the need for more civic meeting spaces. Naturally there was anxiety over Council expenditure that also
emerged with some residents that completed a survey about the project indicating their concerns over the use of rates on a project of this nature.

Support letters were received from the Barossa Grape and Wine Association, Creative Barossa (Barossa Arts Council), the Tanunda Town Committee, Tourism Barossa and articles about the proposal appeared in the Leader and the Herald.

Barossa Arts and Culture Think Tank - 2013

As the South Australian Tourism Commission’s marketing focus in 2013, there was a desire to bring a range of stakeholders and community members together to discuss arts and cultural opportunities. The Barossa Arts and Culture Think Tank was presented in 2013 with approximately 70 people from across the Barossa and Light Council areas attending. The focus of the discussion was how arts and cultural activity could leverage of the momentum created through the SATC advertising campaign and the connection between business (particularly tourism) and arts and culture.

Several speakers presented at the Think Tank, which was lead by The Barossa Council in collaboration with a working party made up of community members and representatives from RDA and Creative Barossa. A brainstorming session was included in the event with participants offering up a range of suggestions and recommendations regarding arts and cultural development. The event was the impetus for the development of the Art Music Design Website, which RDA developed in conjunction with Creative Barossa, the development of an “Arts” Membership through Tourism Barossa and further development of arts, cultural and heritage information at the Visitor Information Centre.

The following key themes were identified during the Think Tank discussions:

- Capitalise on existing strengths – heritage, culture and creative experiences.
- Improve communication and capacity to spread the word both for locals and visitors
- Using technology better in cultural tourism opportunities
- Increase activity with diverse array of experiences including events and workshops
- Need to develop arts, culture and tourism strategy which enables prioritising of actions to improve capacity

Interestingly, the themes focus very much on activity including story telling, heritage and arts trails, festivals, workshop and music programs and better communications, rather than venues or infrastructure. When drilling down into the notes from the event however, there is mention of venues/infrastructure including the following:

- Under-utilisation of existing venues
- Barossa Artist’s Space that can nurture arts and heritage development for the region including
  - A place for artists to congregate and share
  - A place for artist residencies
  - Studio spaces
- Suitable venues for live music
- Improvements to existing infrastructure development

Regional Gallery Planning Discussion - 2015

Whilst this information is not attributed to a formal proposal, it details the most recent discussions undertaken in relation to the re-development of the Barossa Regional Gallery. A planning and
development day was conducted in May 2015 with a range of stakeholders to discuss strategy, current operational issues and possibilities for the future.

In relation to the Barossa Regional Gallery, participants that participated in the planning day offered the following long-term vision:

- The Gallery will be a vibrant and interactive space where people could enjoy both passive and active cultural experiences.
- It will be known for visual arts, performing arts and music.
- There will be facilities and programming that engages young people.
- The Gallery will be a significant tourist attraction and work closely with other tourism operators in the region to provide an integrated cultural experience.
- An integrated digital presence will be developed connecting people before, during and after their visit – including bookings and promotions, interpretive installations and evaluations.
- It will be a repository for significant heritage items and provide access to local history resources and archives – and encourage interaction with external heritage experiences.
- There will be an extensive organ music archive and interpretive display about the organ.
- It will be a place of learning, art, history, music and culture – workshops, programs and research.
- The Gallery will be called Barossa Art and Music (BAM)
- There will be a range of flexible spaces including
  - A café with local fare
  - A bijou theatre
  - Digital suite
  - Workshop and studio rooms
  - Learning and rehearsal rooms
  - Luxury Auditorium
  - Commercial kitchen
  - Green rooms
  - Permanent and temporary exhibition spaces
  - Interactive interpretive walls
  - Dedicated memorial space
  - Writer’s atrium
- There will be a captivating exterior that makes it stand out from the street.
- It will be a hub of cultural activity where people come to socialise and interact with each other – a meeting place.
- There will be an innovative program, which features theatre, music, visual arts and heritage and include workshops and artist residencies.
- The Gallery will support creative industries and the economy of the region through cultural tourism.
- A full team of professional staff will manage the facility including a highly sought after Artistic Director.
- It will be a sustainable facility with a strong private / public funding base.

Of the ten recommendations included in the Planning and Development Day report the following are relevant to this discussion:

1. Be Brave – Invest, Lead, Take Some Risks and Aim To Be Cutting Edge: The Barossa Regional Gallery has the potential to be a state of the art destination facility that aligns with the world-class reputation the Barossa Valley enjoys. It has a population in excess of one million people to draw on within a 100km radius – new visitors, new customers and new investors. The Gallery could lead a cultural renaissance for the region, heralding the vibrancy, heritage and creativity of the Barossa and South Australia as a key economic force.
3. Think Innovation and Activation: Gone are the days where people are satisfied with a passive experience, immersive, unique and interactive activities are preferred, which requires a creativity and innovation to implement. Looking at how the Gallery connects to place and its role in celebrating, activating and preserving culture is vital. Activity breeds activity!

CURRENT ARTS AND CULTURAL FACILITY – INDUSTRY TRENDS

Overview

Arts and cultural facilities are everywhere – literally! The nature, quality and governance of these types of facilities varies considerably throughout Australia but their role and value in contemporary Australian society is clearly evidenced by the continued investment provided by local, state and federal government and form private and philanthropic sources.

With that said however, access to large pools of funding for these types of facilities has reduced significantly and new facilities are often designed to fulfil a range of needs – on a civic and economic level as well as a cultural level. Large-scale infrastructure projects rely on multiple funding sources and their role in fostering economic growth and jobs development are the primary drivers for facilities along side a range of other things such as cultural vitality and community wellbeing.

In the 2015 National Stronger Regions Funding Round of the 111 successful applications only two included the development of cultural facilities; the Gawler Connect project; and the development of a Cultural precinct in the City of Casey in Melbourne’s east. Both of the projects were required to reflect in considerable detail the economic value of the facilities and both projects entail the development of a diverse array of facilities – not just arts and cultural infrastructure.

Funding for larger for arts and cultural infrastructure continues to be available from time to time through Federal funds such as the Building Better Regions Fund (http://investment.infrastructure.gov.au/funding/bbrf/index.aspx) and the State Government’s Shared Fabrication Spaces Infrastructure Fund (http://www.greenindustries.sa.gov.au/shared-fabrication-space-infrastructure-grants) but it is very competitive and it will often rely on leveraging arrangements, where one funding body will only contribute if money from other sources is included in the bottom line.

Key Issues and Trends

The following summarises current issues and trends within the arts and cultural sector pertaining specifically to facilities:

- **Dual-purpose facilities and precincts are the norm.**
  Very few public arts and cultural venues, which are owned, developed and/or managed by government are single purpose. With the exception of premiere capital centre cultural facilities such as State Theatres or Galleries, most venues incorporate dual purpose with galleries, libraries, community and civic centres, theatres and visitor centres situated together within the facility. And those with a singular purpose often reside within a precinct. Like all public infrastructure projects, particularly in regional areas, the aim is for venues to be versatile and accessible across a range of needs.

- **Need to be valued across economic, social and cultural areas.**
  Arts and Cultural facilities need to reflect their value to the community across economic, social and
cultural areas. Their role in attracting visitors, generating jobs, attracting visitors and encouraging spending are just as important as contributing to the cultural and wellbeing of the community. The push towards creative industries, due to the measurable economic value of these, by state and local governments within the Arts and Cultural sphere is emerging as a strong driver in state and federal arts strategies. Data around the value of arts and cultural facilities on an economic level is limited but available.

- **Diverse governance models in place**
  In South Australian regional areas a range of diverse governance and management models are in place for arts and cultural facilities. Many galleries for example are developed and managed by the community and involve a dual community/council delivery model. Larger communities such as Port Augusta, Murray Bridge and Mount Gambier are owned and operated by the Local Council. In Victoria and New South Wales many galleries and performing arts centres are developed by Council’s with state and/or federal government funding support and ongoing operational funding is offered through three-year funding agreements. For example Wodonga Arts Space receives annual recurrent funding of $40,000 per year, Burrinja Cultural Centre (Yarra Ranges Council) receives $170,000 annual recurrent funding and Horsham Gallery receives $90,000 annual recurrent funding.

In South Australia, Country Arts SA, as a statutory body of the State Government has the management responsibilities for five performing arts centres throughout SA including Whyalla and the Riverland and one gallery space in the Riverland, which they are currently re-purposing.

- **Integrated design is imperative along with ongoing operational costs.**
  The development of new facilities is reliant not only on quality infrastructure but good governance and innovative programming is also imperative. It is not just about bricks and mortar but the principle purpose of the facility and how this will be achieved relies on an integrated approach where the activities programmed within the facility and how these are managed and funded is just as important as the building itself. Long-term operational costs must be considered when developing new facilities.

- **Arts and Cultural Facilities rely on Public Funds to stay afloat.**
  Cultural venues are subsidised by public or private funds – very few (if any) are fully sustainable through the income earned from their services. Some do better than others but ultimately funding through a government, community or philanthropic source is required to subsidise income. There are some social enterprise or Artist Run Collectives (ARC), which can be sustainable long term but there is often a significant volunteer contribution or other subsidy such as the provision of a building by Council for these to be successful.

**Sector Facts and Figures**

- Operational funding for cultural facilities in SA is virtually non-existent. A number of venues are managed and supported by Country Arts SA (CASA) but these are fixed and CASA are continually looking to local government for financial and in-kind support to help sustain these venues and the services they provide.

- There is a heavy reliance in the SA Galleries and Heritage Sector on Volunteers - average of 2000 hours per year provided by volunteers in each facility – particularly in regional areas.

- Australia’s creative industries contribute **more than $90 billion to our economy** annually in turnover, added **more than $45 billion to GDP** and generated **annual exports of $3.2 billion**.
• The United Nations Conference on Trade and Development (UNCTAD) now recognises creative industries as a new dynamic sector in world trade. While creative industries are often micro businesses or small to medium sized enterprises that focus on local markets, they can develop into powerful economic clusters, helping to drive economic growth.

• Every dollar in turnover generated by creative industries (i.e. initial revenue stimulus) results in 3.76 times the total revenue for all other industries in the Australian economy.

• 85% of Australians believe art enriches their lives.

• 95% of Australians were involved with the arts in the last 12 months (covering visual arts and crafts, music, theatre, dance and literature, community and Indigenous arts)

• 89% of Australians believe art is an important part of education

• In 2009, 11 million people visited an art gallery. To give that number context, it’s more people than went to the AFL and NRL combined.

• As an industry, the arts employs more people than mining does.

• The total composite multiplier is 1.5, meaning that for every 10 direct FTE jobs at Newcastle Gateshead (UK) Cultural Venues an additional 5 indirect and induced FTE jobs were created in the regional economy.

• Since opening in 2009, with a construction cost of $8.5 million, the Wangaratta Performing Arts Centre has generated significant additional economic activity in the region including:
  - Regional visitation has increased by approximately 5,200 persons per year associated with arts performances, conferences and events. As a consequence, regional visitor spending has increased by around $1.6 million (direct and indirect) per year, benefiting a wide range of regional businesses.
  - In 2011/2012 for every dollar of operational subsidy provided jointly by State and Council, $1.80 was generated for the regional economy.
  - The capital cost of the new centre will have been repaid, from additional economic activity in the region at the end of 2014, which is just over five years after completion.

• “The Bendigo Effect” is a phrase coined around the massive cultural and economic success of the Bendigo Regional Art Gallery. With ongoing investment, risk-taking and re-development the Gallery has gone from 14,000 visitors per year in 1996 to over 300,000 per year and attracts international exhibitions. One of their largest exhibitions to date was the Grace Kelly exhibition. Data from that exhibition indicates:
  - Of the 124,715 out-of-region attendees at the Grace Kelly exhibition, more than 99,840 (80.0%) were primarily visiting Bendigo because of the exhibition whilst a further 2,041 (1.6%) extended their planned length of stay.
  - Therefore, the economic impact of the Grace Kelly exhibition on the Bendigo economy is estimated as being more than $16.31 million.

Other Relevant Industry Documents
• Australia Council Strategic Plan – A Culturally Ambitious Nation 2014-2019
• South Australian Strategic Plan (SASP)
  http://saplan.org.au
• South Australian Tourism Plan 2020

Sources

• Valuing Australia’s Creative Industries 2013 Final Report published by Creative Industries Innovation Centre
• CIIC - Valuing Australia’s Creative Industries 2013
• Arts Facts
• Newcastle Gateshead Cultural Venues Economic Impact Assessment 2013 – 2014
• Economic Investment in the Wangaratta Performing Arts Centre
• Demonstrating Impact Public Art Museums 2013
BAROSSA CULTURE HUB PREMISE

OVERVIEW

The Barossa Council, as part of its “Big Project” initiative is investigating the viability of and need for a Regional Culture hub for the Barossa. The Tanunda Soldiers Memorial Hall, which currently houses the Barossa Regional Gallery and the Hill and Son Grand Organ, is the preferred site for the Hub with a range of options and ideas being discussed. Existing arts, culture and heritage activities and infrastructure and the value of arts and culture across a range of areas, including wine and tourism, education and wellbeing are being considered.

A Working Group has been established to discuss the prospect of a Cultural Hub and develop a foundation for further consultation and concept development. Past proposals for arts and culture developments have been reviewed and the current offerings both within the Barossa Council and surrounding region have been considered. The Working Group has grappled with questions including “Why do we want a Barossa Culture Hub?” and “What will it look like?” to establish a broader vision for the project and imagine the potential value and impact for locals and visitors to the region.

Further consultation and feasibility work will be undertaken in the coming months and an architectural designer will develop a concept based on the working group discussions.

The following information details the premise for a Barossa Culture Hub, developed by the working group and articulates the key themes and purpose for the facility.

A Barossa Culture Hub is not about duplicating activities or buildings that already exist. It’s about actively filling in the gaps and telling a powerful story that connects people to what is already happening culturally in our region.
# THE BAROSSA CULTURE HUB

## Key Themes

<table>
<thead>
<tr>
<th>Music</th>
<th>Heritage</th>
<th>Art + Creativity</th>
<th>Participation + Collaboration</th>
<th>Creating Links</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building on unique organ, choral and Lutheran heritage, UNESCO City of Music and Song Room Concerts for local and international audiences.</td>
<td>Celebrating Aboriginal, German and English heritage from both an historic and contemporary perspective.</td>
<td>Experimentation &amp; Innovation Interpretation Making Exhibiting</td>
<td>Active experiences Involvement in culture Local History Research and preservation</td>
<td>Sharing information and encouraging collaboration between community and business.</td>
</tr>
</tbody>
</table>

## Competitive Positioning
To maintain the Barossa’s reputation as a premier tourist destination and diversify our tourism offer – providing more reasons for people to visit.

## Growth Opportunities
Contribute to the economy through a culture of creativity and innovation and take advantage of unique cultural characteristics, undiscovered gems and hidden treasures.

## Preservation
Engagement with stories, spaces and artefacts to ensure they are protected, celebrated and enjoyed by future generations.

## Why is it Important?

<table>
<thead>
<tr>
<th>Why is it Important?</th>
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<tr>
<td>Competitive Positioning</td>
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<tr>
<td>To maintain the Barossa’s reputation as a premier tourist destination and diversify our tourism offer – providing more reasons for people to visit.</td>
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<table>
<thead>
<tr>
<th>Growth Opportunities</th>
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<td>Contribute to the economy through a culture of creativity and innovation and take advantage of unique cultural characteristics, undiscovered gems and hidden treasures.</td>
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<thead>
<tr>
<th>Preservation</th>
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<tr>
<td>Engagement with stories, spaces and artefacts to ensure they are protected, celebrated and enjoyed by future generations.</td>
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<tr>
<th>Wellbeing</th>
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<tr>
<td>Providing opportunities to interact with culture is essential for community health and wellbeing</td>
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## What Will It Look Like?

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<th>What Will It Look Like?</th>
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<tbody>
<tr>
<td>Striking</td>
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<tr>
<td>Combining heritage and contemporary architecture</td>
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<th>Flexible &amp; Accessible</th>
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<tr>
<td>Multi-functional facilities and resources that people of all abilities can use.</td>
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<tr>
<th>Specialised</th>
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<tr>
<td>Exhibition, studio, performance, research, storage and meeting spaces with appropriate tech and resources.</td>
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<tr>
<th>Expansive</th>
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<tr>
<td>Expansion of existing spaces and capitalising on existing strengths.</td>
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## What Will Happen There?

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<tr>
<th>What Will Happen There?</th>
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<tbody>
<tr>
<td>Making</td>
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<tr>
<td>Artisan wares, music, artwork, connections.</td>
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<table>
<thead>
<tr>
<th>Preserving</th>
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<tr>
<td>Research and interpretation of stories and the restoration of artefacts.</td>
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<tr>
<th>Innovation</th>
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<tr>
<td>Development of creative industries and collaboration between arts, business and tourism.</td>
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<tr>
<th>Promotion</th>
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<tr>
<td>Encourage people to engage with other cultural, heritage and retail offerings.</td>
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<tr>
<th>Learning</th>
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<tr>
<td>Education programs, workshops and residencies.</td>
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<tr>
<th>Engagement</th>
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<tr>
<td>Exhibitions, performances, research, participation</td>
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<tr>
<th>Support</th>
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<tr>
<td>Existing organisations and events to improve content and visitation</td>
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## Who Is It For?

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<th>Who Is It For?</th>
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<tr>
<td>Visitors</td>
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<td>Tourists and visiting family and friends.</td>
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<tr>
<th>Businesses</th>
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<tr>
<td>Local and regional businesses wanting to engage culturally.</td>
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<th>Schools</th>
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<td>From the region and further afield.</td>
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<th>Artists</th>
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<td>Local and visiting to create, learn, work and collaborate.</td>
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<tr>
<th>Community</th>
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<tr>
<td>The Barossa Community whose culture is reflected within the space</td>
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<tr>
<td>Theme / Component</td>
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<td>--------------------------------</td>
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<tr>
<td>Purpose / vision of facility – what is it</td>
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<tr>
<td>Studio Spaces</td>
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**Attachment 6**

Barossa Culture Hub – Research Notes and Themes – Road Trip 23 Feb, 28 Feb to 2 March 2018

18/19583
<table>
<thead>
<tr>
<th>Theme / Component</th>
<th>Murray Bridge</th>
<th>Horsham - c$20 million</th>
<th>Burrinja Cultural Centre, Upwey</th>
<th>Bendigo Art Gallery</th>
<th>Ararat Regional Art Gallery - $7.735 million</th>
<th>Barossa</th>
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<tbody>
<tr>
<td>Residencies</td>
<td></td>
<td>noise easily without bothering others. “Black box space”</td>
<td>• Screen based, digital artists – don't need dedicated workshop space or justify cost – more hot desk approach. Somewhere to feel connected with others, opportunity for collaboration</td>
<td>• Community garden established beside the shared workshops space.</td>
<td>• Use of studios is with 12-month license agreement with the option of an additional 2 years and important to have change over to keep vibe fresh, engaging. $85 per week fee</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td></td>
<td></td>
<td>• Black box space – Screen based, digital artists – don’t need dedicated workshop space or justify cost – more hot desk approach. Somewhere to feel connected with others, opportunity for collaboration.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td></td>
<td>• No formal residency program but feels as though the studio program has elements of an &quot;ongoing&quot; residency program with artists creating work for particular programs within the facility.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td>• No artist in residences on site but some programs see the gallery working closely with artists in creating a body of work relevant to the local community e.g. upcoming exhibition with Dave Jones.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td>• Private developer from Malaysia looking at creating a 5-star artist residency location as part of a riverside development. Lots of challenges in relation to this but potential to be an exceptional and sort after residency if and when it is completed.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td>• Recognition from Council in relation to value of this type of facility.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td>• Capitalising on their position in between Melbourne and Adelaide and connections with artists / architects</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td></td>
<td>• Suggestion to visit Tweed Gallery – Margaret Oiley Centre and check out their residency</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td></td>
<td></td>
<td>• The relationship with LaTrobe may bring Artist Residency opportunities in the future.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td>• New Community Arts facility opening in Bendigo that will most likely cater to this need more.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td>• Saw value in Artist and curator in residence (thinker in residence, writer in residence) approach as a means of generating Outreach activity in the region – so requirement of residency to develop and deliver program(s) in other “spoke” locations – opportunity to activate under utilised spaces / assets and engage community in the arts.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td></td>
<td>• Great opportunity to attract national and international artists of interest.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td></td>
<td></td>
<td>• Opportunities in retiree market – art residency experience.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td></td>
<td></td>
<td>• Important to have varying lengths of artist residencies – long periods of time are challenging for some.</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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<td></td>
<td></td>
<td>• Bundanon residencies are down to 11 Days</td>
<td>• Application process to have a studio and expectation that they are present for at least 18 hours over at least 3 days in a week.</td>
<td>• Interspace offered that is less private at $65 per month</td>
<td>• No ongoing artist residency capacity in the community</td>
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- Artist
- Writer
- Curator
- Thinker
- Actor
- Radio / Triple B
<table>
<thead>
<tr>
<th>Theme / Component</th>
<th>Murray Bridge</th>
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<tr>
<td>program in the Nancy Fairfax Gallery. <a href="http://artgallery.tweed.nsw.gov.au/MargaretOlleyArtCentre/ArtistInResidence">http://artgallery.tweed.nsw.gov.au/MargaretOlleyArtCentre/ArtistInResidence</a></td>
<td>Nancy Fairfax Gallery offers two funded residencies per year and the rest of the time the studio is available for $330 per week (attracts self funded retirees)</td>
<td>Length of time for residencies – critical to get right – can be too long (people cannot afford the time) or too short (not long enough to generate engagement or connection to a program).</td>
<td>Saw value in Artist and curator in residence (thinker in residence, writer in residence) approach as a means of generating Outreach activity in the region – so requirement of residency to develop and deliver program(s) in other “spoke” locations – opportunity to activate under utilised spaces / assets and engage community in the arts.</td>
<td>Triple B as a resident station provides opportunity for direct / real time access to the regional community, outreach, skills and education development, recording and programming activities – interstate practitioners saw this a real opportunity / plus point. Live, open and highly visible broadcasting provides direct activation of the space.</td>
<td></td>
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<tr>
<td>• Full time Director, who looks after the Gallery and the Performing Arts</td>
<td>• Town Hall and Gallery</td>
<td>• Approximately $500k annually expenditure</td>
<td>• $2 million expenditure per annum</td>
<td>• Employment opportunities</td>
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</tr>
<tr>
<td>• 3 further full-time staff + Casual Staff to support activities</td>
<td>• Full Time Gallery Director</td>
<td>• 60% Council and 40% provided through three-year funding agreement with Creative Victoria ($170k per year)</td>
<td>• $7 million in bequest fund that is used to fund things that are less conducive to Council’s spending expectations e.g. o.s travel for Director</td>
<td>• Technical / heritage skills mix for library staff</td>
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<tr>
<td>• 10 Gallery Volunteers</td>
<td>• Full Time Curator</td>
<td>• 7.4 FTE which includes 3 Full time staff including Exec Director, Venue Manager and Curator</td>
<td>• Impact assessment undertaken regularly with approximately 500 people interviewed to Leased Café</td>
<td>• Cost modelling required</td>
<td></td>
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<tr>
<td>• Amateur Theatre group provided support for performing arts shows</td>
<td>• 0.9FTE Education Officer – funded through Creative Victoria</td>
<td>• Approximately 35 volunteers – also use for openings and so have to have requisite number of RSAs if there is no café or linking in with café operator.</td>
<td>• Full time social media role implemented recently as a “pilot”</td>
<td>• Volunteer cohort</td>
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<tr>
<td>• Approximately $335k invested by Council annually for Gallery and $165k for Performing Arts</td>
<td>• Approximately $550k for Gallery program with income of around $50k.</td>
<td>• 3 Gallery spaces – all connected but can be used separately</td>
<td>• Significant funds provided for re-development through the state government – some of which was an election promise.</td>
<td>• Administration from Nuriootpa Office – to be modelled</td>
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<tr>
<td>• No Café</td>
<td>• Funding provided for re-development before the plan or community engagement undertaken.</td>
<td>• Small retail space in foyer</td>
<td>• Approximately 35 volunteers – also use for openings and so have to have requisite number of RSAs if there is no café or linking in with café operator.</td>
<td>• Triple B resources</td>
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<tr>
<td>• Approximately $60k income or Visual arts and $45 for performing arts</td>
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<td></td>
<td>• Some criticism from local artists suggesting there is not enough</td>
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<tr>
<td>Community Access</td>
<td>• Approximately 10,000 visitors per year</td>
<td>• 20,000 visitors prior to upgrade in the Gallery but the numbers</td>
<td>• Some criticism from local artists suggesting there is not enough</td>
<td>Open 7 Days per week</td>
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<td></td>
<td>Insert current and projected numbers – modelling work</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theme / Component</td>
<td>Murray Bridge</td>
<td>Horsham - c$20 million</td>
<td>Burrija Cultural Centre, Upwey</td>
<td>Bendigo Art Gallery</td>
<td>Ararat Regional Art Gallery - $7.735 million</td>
<td>Barossa</td>
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<tr>
<td>Café / Retail</td>
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<td></td>
<td>• 40% - 50% of shows are drawn from local community content</td>
<td>dropped off considerable and whilst improving they have not yet returned to that level. • Open 6 days per week • Gallery has an advisory board to support activities. • Tradition flat floor space retained during redevelopment and considered an important component of the building from a heritage perspective – often leased to services clubs. • Currently looking at other external venues for other community cultural based facilities. • Providing regular updates and tours important part of engagement during re-development – especially on the back of considerable community angst responding to the</td>
<td>Touring content as well as locally produced content • Shared workshop space doubling as a lunch room and a studio space with some artists using it as an ongoing studio as well as for education programs and HACC programs • Corridor space offered as an ARI • Visibility and patron flow important consideration when developing the re-fit • Rooms / black box space used by community groups for training / meetings etc.</td>
<td>access to the Gallery for them in terms of exhibiting / residency opportunities. • Strong membership base who receive discounts in the gallery shop, access to membership events and free / discount tickets. Membership fee $50 per year. • Open 7 Days.</td>
<td>8500 visitors to gallery prior to upgrade – this is expected to increase once re-development is completed</td>
<td>• Strong support from practitioners for the split model to allow for traditional / event access times and flexible 24/7 options for active creative spaces, workshops, studios etc • Support for place making / linkages to other key community buildings and infrastructure – Visitor Centre / Rotunda / Recreation Park / Main street – street art and pedestrian landscaping. • Mix of professional and community educational and recreational workshop spaces • Community theatre – within existing footprint and capacity with addition of green room space • Hub and spoke / outreach model – what is required in satellite facilities to deliver this model – promotion and marketing / how is it administered – investment in other facilities</td>
</tr>
<tr>
<td></td>
<td>• Small retail space in foyer of Gallery • Café on PAC side but challenges with leasing • Fit out of Café was funded through project capital costs and plan has been to repay that back through a proportion of the operational revenue from the lease. • Café has helped drive uplift in number and quality of cafes in the town. Initial plan for 12 month trial lease and then extension (3 – 5 years) but leaseholder has not exercised right of renewal and has moved to alternate premises. Challenges of finding suitable, sustainable tenants and issues of vacant space if that is not achieved – bad look for facility but does Council step in?</td>
<td>• Café / wine bar style area which includes live music venue (weekends and some weekday evenings). Great atmosphere but location makes it difficult for operator to sustain during weekdays which has resulted in turnover of operator and pressure to reduce opening hours, leaving the broader venue without services during those periods. • Operating under a catering services agreement rather than a lease, with requirement to open at certain core hours and provide refreshment facilities for openings and events – circa 400 people. • Issues with operation have meant that gallery management resources have had to be diverted into managing these issues – “so much effort goes into catering”!!! • Supportive of pop up, guest provision as a model</td>
<td>Café / wine bar style area which includes live music venue (weekends and some weekday evenings). Great atmosphere but location makes it difficult for operator to sustain during weekdays which has resulted in turnover of operator and pressure to reduce opening hours, leaving the broader venue without services during those periods. • Operating under a catering services agreement rather than a lease, with requirement to open at certain core hours and provide refreshment facilities for openings and events – circa 400 people. • Issues with operation have meant that gallery management resources have had to be diverted into managing these issues – “so much effort goes into catering”!!! • Supportive of pop up, guest provision as a model</td>
<td>Café being included in new facility and expectation that it will attract tenant but only received 1 EOI</td>
<td>• Investigate – pop up models of delivery / food trucks etc • Investigate links to Tanunda Club House as a service provider – physical link between buildings. • Opportunities from any future culinary institute. • Don’t duplicate provision in town • Cafés the most problematic component of all facilities we saw.</td>
<td></td>
</tr>
</tbody>
</table>

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### Key Considerations for Barossa Project

- **Building support base now** will be vital for the re-development. This could be done in a number of ways including:
  - Developing broad membership program
  - Ambassador program – looking to work with key influential people to speak to the project effectively.
  - Donor program – looking at tax deductible donations on a regular basis as well as bequests to build an investment fund. Could also develop a “building fund” now to start crowd sourcing, this will reflect well on future funding applications if the Gallery can demonstrate it has community support through financial donations.

- **Key positioning themes.**
  
  Whilst discussions with the community to date have suggested that a broad range of themes be incorporated into the facility the selection of 1 – 2 key focus areas will be vital to the Hub’s success. These do not need to discount the inclusion of a broad range of art forms within the facility but provide an opportunity for the facility to position itself as a unique proposition in the cultural landscape.

  Given the nature of the region and the potential identified to date the two preferred options in terms of key themes / focus areas include:

    - **Live Music** – this would encompass and grow the current organ program, see the development of a live music incubator / performance program that includes the Song Room concerts offered by Jamie and Vicki Blechynden and rehearsal and music education spaces. There is potential to build on past and existing music festivals including the Barossa Music Festival and Barossa Baroque and Beyond and also fill a gap that has been lost with the closing down of the Music Centre. “Live” music can encompass – broadcasting via Triple B, community theatre

    - **Contemporary Heritage** – this sees the interpretation of heritage including stories, objects and long held Barossa traditions with contemporary and digital artists creating artworks, performances, digital content, installations and exhibitions to create experiences that captivate visitors and promote the Barossa’s culture and history. This will reinforce the hub and outreach spoke model and help to foster relationships with the other stakeholders invested in heritage – which is almost everyone! Whilst heritage is not a new thing, fostering a reputation that the Barossa does Heritage differently and encourages artist / heritage collaborations is a point of difference that could be attractive for visitors, artist residencies, university partnerships and investment. The project needs to consider how this activates under utilised assets elsewhere in the regional community and how this is funded.
1. Overview

The Barossa Council, as part of its “Big Project” initiative (https://www.barossa.sa.gov.au/sections/our-region/the-big-project/barossa-community-infrastructure-plan), is developing concept plans for a Barossa Regional Cultural Hub and is inviting a select Architectural Firms to develop these plans based on the information provided in this brief, attached documents and information gathered during site visits.

The Concept Master Plans (the Plan) will be part of an overall project plan, which provides a road map for the development of the Culture Hub in the Barossa. Central to broader consultation still to be undertaken with the community and relevant stakeholders, the concept Plans will offer a tangible vision for the Hub and its many possibilities.

2. Background and Provenance

The development of a Barossa Culture Hub has been discussed several times over the last 10 – 15 years with details of these discussion included with in the attached Discussion Paper (June 2017). Broad stakeholder consultation for the Barossa Regional Cultural Hub was conducted in July with a more focused Working Group established since that time to provide advice and support. Based on the preliminary stakeholder consultation, the preferred site for the development of the Culture Hub is at the Tanunda Soldier’s Memorial Hall, located on Basedow Road, Tanunda. This facility currently houses the Barossa Regional Gallery and it is the home of the Hill and Son Grand Organ. It is owned and operated by the Barossa Council and used by a number of permanent and casual groups for a range of activities.

The original hall was built in the early 1900s by the Tanunda Club to provide a larger space for concerts and social events. During the First World War, the Clubhouse suffered financially and was forced to close for a period of time. Shortly thereafter, the Hall was sold and renamed the Tanunda Institute before being established as the Tanunda Soldiers Memorial Hall after the war.
Since that time, it has been largely utilised as an important civic and cultural facility for Tanunda and the surrounding region with concerts, film screenings and dances all within the living memory of local residents. It was the home of the District Council of Tanunda during the late 20th century and housed the local library, Council Administration and Council Chambers.

After a period of lobbying and fund-raising, part of the facility was adapted to establish the Barossa Regional Gallery and Music Centre – providing a place for exhibitions, concerts and to house the Vintage Art Collection. The Adelaide Town Hall’s Hill and Son Grand Organ was acquired by local community members in the late 1990’s and it has been restored and installed on the stage at the southern end of the building. A number of upgrades and additions have been undertaken since the original hall was built over 100 years ago, catering to the various services and activities hosted within the building.

3. Barossa Regional Cultural Hub Proposal

3.1 Vision

A short and succinct vision for the Barossa Regional Cultural Hub has not yet been finalised but an overall premise for the project and a broad vision of the possibilities has been articulated by the project working party. Whilst the potential exists for the facility to become a destination in its own right, it must also provide pathways to other places, facilities, services and cultural offerings within the region.

The premise document is attached for reference with the following purpose, themes and anticipated usage drawn from that document.

3.1.1. Key Purpose (Why):

- **Competitive Positioning** – ensuring the facility supports the maintenance and growth of the Barossa as a premiere tourist destination, boasting a diverse visitor offer that provides more reasons for people to visit.
- **Growth** – fostering economic and cultural growth through creativity, innovation and positioning of unique cultural characteristics, undiscovered gems and hidden treasures.
- **Preservation** – promoting stories and caring for places and artefacts, ensuring they are protected, celebrated and enjoyed by future generations.
• **Wellbeing** – providing a platform for cultural interaction that cultivates community health and wellbeing and increases the social capital of the region.

### 3.1.2 Key Themes

- **Music** – building on local and national organ culture and heritage and linking with the UNESCO City of Music status. The opportunity to develop the close connection between Lutheran musical heritage and the Bach recital movement as a niche concert and festival location.
- **Heritage** – celebrating Aboriginal, German and English heritage from both a contemporary and historic perspective.
- **Art and Creativity** – experimentation, innovation, interpretation, exhibiting and making.
- **Participation** – Active experiences and involvement in culture including local history research, preservation, remembrance and gathering with cross generation interaction encouraged.
- **Creation of Links** – sharing information and encouraging collaboration between community and business.

### 3.1.3 Anticipated Users

- **Visitors** – tourists, tour groups and visiting family and friends.
- **Businesses** – local and regional businesses wanting to engage culturally.
- **Educational Organisations** – from the region and further afield (primary, secondary, tertiary and community based).
- **Artists / Designers / Craftspeople** – local and visiting including those of great renown, hobbyists, emerging and community based.
- **Community** – the Barossa community whose culture is reflected within the space.
- **Researchers & Enthusiasts** – interested in local history particularly relating to early German settlement, organ heritage and the wine industry.
- **A relocated Tanunda Library and Heritage space**
- **Potential for a relocated community radio space?**
- **Soldiers Memorial Hall / RSL**
4. Physical Requirements for the Barossa Regional Cultural Hub

The following physical attributes, services and spaces are desirable within the new Barossa Regional Cultural Hub:

- A range of flexible – multi-purpose spaces that are functional for a variety of uses including functions, events, workshops, meetings, exhibitions and displays and performances.
- An auditorium suitable for a range of performances and boutique corporate events with appropriate green room facilities.
- Co-Working spaces / studios for artists working across digital and visual arts, design performance and music.
- Dedicated workshop space with wet area and room for shared equipment.
- An interpretive / heritage space suitable for both displays, research and storage – potential to relocate part of the Barossa Library Services to the site as a specialist heritage and predominantly digital facility.
- A1 Gallery space for changing exhibitions.
- A1 Gallery standard storage facilities for the storage of art and historic artefacts
- Disability access.
- Function / Events / Reception Area
- Office / Work Space for Manager / Coordinator and other staff
- Kitchen facilities / Small Café
- Retail Space
- Foyer / Ticketing office
- Small residency space – possible bed-sit with adjacent studios (zoning / use restrictions)
- Preservation of the important heritage characteristics within the facility.

5. Site Attributes

The Tanunda Soldiers Memorial Hall is located at 3 Basedow Road Tanunda and has a total indoor footprint of approximately 900m², positioned between a large council owned carpark adjacent to a dis-used rail corridor and the Tanunda Clubhouse. To the rear of the building is further carpark and through-way to Basedow Road providing access to the Tanunda Kindergarten.
The Tanunda Railway Station has recently been acquired by Chateau Tanunda as part of its future plans to build a 5-star hotel development on its land, re-establish the wine train into the Barossa and construct a culinary institute as part of the overall site. This development may also involve the transfer of land currently in Council / community ownership.

Refer to attached GIS map for the extent of current Council owned community land and potential impact of land transfer arrangements on the gallery site.

NB: The railway station is currently the location of the local community radio station, Triple B FM. The radio station will be looking for new premises in the short to medium term (2-5 years) if the hotel development plans proceed.

The building is divided into several spaces / rooms, which can be referenced on the attached building plans. The following spaces are currently included within the facility:

- Two “white-box” formal gallery spaces with gallery lighting connected via a corridor – utilised for touring and local exhibitions, workshops and meetings.
- An auditorium with flat floor and upper balcony with raked seating – utilised for concerts, workshops, exhibitions, functions and events.
- A stage with proscenium arch. The stage has been altered to accommodate the permanent installation of the Hill and Son Grand Organ, which consumes a significant part of the sub-level room, beneath the stage.
- A sub-level staging room beneath the stage, which now includes a viewing area for the Organ and is used as a storage and meeting room.
- Two green rooms, both in a state of disrepair and requiring structural reinforcement – one with a small bathroom.
- A sub-level office / meeting room with limited access – formerly used as Council Chambers.
- Two Storage Areas – one specifically for the storage of the Vintage Art Collection and the other to the west of the building, for general storage.
- A kitchen / meeting room.
- A retail space – adjacent to the front gallery
- A small office space, situated on the landing adjacent to the balcony stairs.
- Men’s and lady’s toilets and a disabled access toilet.
- A disused projector room at the top front of the building.
The building has multiple entry points with double glass front doors, leading in the gallery, acting as the primary public entrance. There are two doors off the auditorium and subsequent front doors leading into the kitchen and retail space and additional side access doors for service and emergency exits.

Whilst not considered significant on a state or national level, the value of the building from a local heritage perspective is substantial. The Tanunda Soldiers Memorial Hall is positioned within Council’s heritage overlay. Nearby buildings of significant heritage value include the former Tanunda Primary School, Chateau Tanunda, Tanunda Railway Station, the Tanunda Club House and St Pauls and Tabor Lutheran Churches.

5.1 Current limitations: (some limitations are both infrastructure and service related)

<table>
<thead>
<tr>
<th>Infrastructure</th>
<th>Service</th>
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</thead>
<tbody>
<tr>
<td>Heating and cooling has been installed in an ad-hoc manner in some parts of the building and is inadequate for the programs and services offered within the site.</td>
<td>Situated just of the main street – lacking the visibility that comes with main street exposure.</td>
</tr>
<tr>
<td>The building has reached the extent of its electrical capacity and upgrade will be required to meet any additional expansion needs (recent electrical assessment undertaken to scope upgrade to air conditioning system available)</td>
<td>The possible Chateau Tanunda development and land transfer will restrict Council’s ability to use current council land for parking purposes.</td>
</tr>
<tr>
<td>Limited storage</td>
<td>No clear Unique Selling Proposition</td>
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<tr>
<td>No loading dock / truck access</td>
<td>Signage</td>
</tr>
<tr>
<td>No disability access to balcony seating and other areas of the building – DDA triggers</td>
<td>Any expansion of the facility to the East will impact on the available off-street parking</td>
</tr>
<tr>
<td>Western side – butted against Tanunda Club with rear access to their facility adjacent to the Tanunda Soldiers Memorial Hall.</td>
<td>Linkages with Museum and Barossa bespoke furniture makers – opportunity for displays?</td>
</tr>
<tr>
<td>No designated workshop / studio spaces with workshops and public programs hosted within the auditorium and the gallery spaces</td>
<td>Detailed needs assessments required by user groups (to be actioned by Working Group)</td>
</tr>
<tr>
<td>No useable green rooms</td>
<td>Development of Indigenous Heritage approach</td>
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<tr>
<td>Heritage elements that must be considered in re-development</td>
<td>Opening / accessibility requirements? 24/7 for different uses.</td>
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<tr>
<td>Any expansion of the facility to the East will</td>
<td>Only part time employed resourcing –</td>
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<tr>
<td>Impact on the available off-street parking</td>
<td>Dependent on volunteer base support</td>
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<tr>
<td>The possible Chateau Tanunda development and land transfer will restrict Council's ability to use current council land for parking purposes.</td>
<td>No loading dock / truck access</td>
</tr>
<tr>
<td>Detailed needs assessments required by user groups (to be actioned by Working Group)</td>
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</tr>
<tr>
<td>Review of civil and service requirements – i.e. earthworks, circulation spaces, services on wrong side of building</td>
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<tr>
<td>Limitation of rehearsal and public performance spaces</td>
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<tr>
<td>Lack of external public art opportunities</td>
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<tr>
<td>Lack of available external green or open space</td>
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<tr>
<td>Need to strengthen linkages to Main Street and Visitor Centre (refer to Tanunda Urban Design Framework)</td>
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<tr>
<td>Visual amenity and impact of the building frontage</td>
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<tr>
<td>Signage</td>
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<tr>
<td>Frontage / street access for shop – how can it be achieved and premises secured?</td>
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<tr>
<td>How can separable portions of the building and access to them at different times be achieved? I.e can we achieve a separate side access? (art gallery / hall /shop access) – electronic / keyed entry?</td>
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<tr>
<td>Lack of storage</td>
<td></td>
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<tr>
<td>Toilets – insufficient</td>
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Assumptions:
Council to consult with Tanunda Club and Kindergarten and investigate opportunities and issues arising to feed into design process.
5.2 Current Strengths:

<table>
<thead>
<tr>
<th>Infrastructure</th>
<th>Service</th>
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</thead>
<tbody>
<tr>
<td>Room for expansion on the eastern side of the property (note comments regarding possible Chateau Tanunda development and land transfer)</td>
<td>Strong and diverse stakeholder base with variety of individuals and groups using the site for a range of activities (see Current Usage Below)</td>
</tr>
<tr>
<td>Opportunity to fill infrastructure gaps in local culture provision (dependent on resourcing) but not to duplicate what is already there. (refer Mapping Document Attachment *)</td>
<td>High Calibre cultural assets housed within the site including the Hill and Son Organ, which is of international significance and the Vintage Art Collection, which includes several works from renowned artists including Imants Tillers, Hilary Mais, Rod Schubert, Marnie Wark, Kathleen Petyare.</td>
</tr>
<tr>
<td>Developing capacity to take events, markets outside of the gallery space (ie Christmas Market)</td>
<td>Growing visitation and usage over the last 7 – 8 years.</td>
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<tr>
<td>Strength of volunteer base</td>
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<tr>
<td>Opportunity to fill service gaps in local culture provision (dependent on resourcing) but not to duplicate what is already there. (refer Mapping Document Attachment *)</td>
<td>Opportunity to be an exemplar point of cultural information and to signpost other cultural services and activities in the region.</td>
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<td></td>
<td>Developing capacity to take events, markets outside of the gallery space (ie Christmas Market)</td>
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6. Current Usage

The Tanunda Soldiers Memorial Hall is used throughout the week by a number of regular and casual users for a range of activities. The following list provides an overview of the current usage and users.
• Professional touring and locally curated exhibitions – managed by Barossa Council Staff with the support of a volunteer curatorial and installation committee.  
http://www.barossagallery.com

• Community exhibitions – developed by community groups including the Barossa Photography Club, Creative Barossa and the Barossa Kindergarten.

• Workshops – mostly hosted by the Barossa Council Staff with contract artists / facilitators. They include once off and ongoing workshop programs including a regular school holiday program and are offered to all ages and skill levels.

• The Liedertafel Men's Choir rehearsals and performances and storage of Choir resources – ongoing annual tenants at the site.  https://en.wikipedia.org/wiki/Tanunda_Liedertafel

• The Hill and Son Grand Organ, which is managed collaboratively by The Barossa Council, The Organ Historical Trust of Australia and the Friends of the Hill and Son Organ. Regular organ recitals are held at the Hall featuring both local and internationally renowned musicians and performers. http://www.barossaorgan.com

• Organ Tours / Demonstrations twice weekly

• Song Room Concerts – Professional Acoustic based concerts by a range of national and internationally renowned performers including Casey Chambers, Shane Howard, Mick Thomas, Jen Cloher and Dave Graney. These are hosted by a private business called Stella One Studio, who hire the facility and present concerts 4 – 6 times per year with support from Barossa Council Staff and volunteers.  https://www.stellaonestudio.com.au/the-song-room-concerts

• Functions and events both cultural and corporate in nature hosted by The Barossa Council and by external groups such as Tourism Barossa and Regional Development Australia Barossa.

• Meetings and workshop space for hire. Use of the space is subject to approval by the Management Committee and generally needs to be cultural or community in nature but there have been the occasional private functions including weddings.

• Creative Barossa hold their regular monthly meetings on the site.  https://sites.google.com/site/creativebarossa/

• A Gallery shop was installed in 2012, adjacent to the front gallery for the purposes of selling hand-made artisan wares.

• A number of volunteers work on the site on a daily basis

• Current opening hours are 7 days per week 11am to 4pm with a range of out of hours activities
7. Concept Plans Specifications

7.1 To completion of Master Plan phase only

7.1.2 Site meeting and Site Analysis (up to 2) and project initiation meeting with representatives of the Working Group. To include (but not limited to) assessment of: existing buildings and infrastructure; site amenities; historical elements; land use; business activities and events; account of social values and community usage of the site in relation to internal and external spaces, built form, commercial opportunities, links, views, vistas, topography, connections, access, local context, neighbours and how all these aspects will influence the Plan. (Meeting #1 and #2)

Site analysis to be documented.

7.1.3 Review of Background documentation refer Section 11.

7.1.4 Production of architect’s return brief to guide the project ie to consider the findings of the preliminary investigations, confirm scope and objectives and act as a working document.

7.1.5 Issues and opportunities Paper – it is considered that this Design Brief and accompanying documentation provides much to the content of an issues and opportunities paper, however, the architect can document in the context of the architectural considerations and options and provide final summary of key matters.

7.1.6 Guided by the endorsed Return Brief (7.4) development of an (or if warranted at this stage additional draft Master Plans) for The Barossa Culture Hub for the purposes of discussion, testing and further development. The Master Plan will be schematic in approach and will focus on the developed vision, testing design directions, site potential and information gathered. Reference to the presentation of other “The Big Project” master plans is required to ensure a consistent methodology and approach linked to “The Big Project” brand and so for example to include mood board images to support the Master Plan design and suggested experiences.
7.1.7 Meeting with the Working Group for testing and review (Meeting #3)

7.1.8 Key Stakeholder Workshop – present the master plan to the Stakeholder Group in a workshop format to test ideas and give opportunity for feedback. (Meeting #4)

7.1.9 Modifications – as a result of Working Group and Stakeholder input

7.1.10 Final version draft – for presentation to Council Workshop (by architect) and consideration by Council (at Meeting of Council) and endorsement for community consultation. (Meeting #5)

7.1.11 Modifications following community consultation.

7.1.12 Cost Estimate Opinion

As part of the quotation for the development of the concept master plan, there is a requirement for the approved plan (ie the version of the plan after community consultation; modification required to address relevant community feedback and endorsed by Council) to be prioritised, phased and costed. The cost of the service of a recognised cost consultant (who must be approved by Council) needs to be included in the budget cost / quotation provided.

7.13 Final Report – coordinate all information generated into one project document

7.2 Deliverables

- Return Brief to include project timeline.
- Up to #6 meetings
- Draft Master Plan (to include versions and amendments arising from Working Group discussions; community consultation; instructions from Council prior to adoption of final version Master Plan)

It is Council’s intent to have one version plan to take to Council for approval to consult rather than multiple versions/options

Master Plan to incorporate a: Plan, Vision, Principles and Objective statements (refer background documentation where some of these elements are already largely compiled)
Prioritised, phased and costed (as per 7.1.12) plan in final report format

8. Budget / Fee Proposal

Quotation to include all elements of detailed in Item 7 above and all allowances for travel and administrative costs.
Include statement of hourly rates that apply for personnel engaged on the project
No variations to be made or enacted without prior written consent
Include statement of personnel that will work on the project and what role they will take

Assumptions:
1. Council officers will coordinate all meetings (locations, invites, documentation etc)
2. venues for meetings will be made available at no cost
3. base mapping, survey information (as available) provided by Council at no cost
4. Documentation to be provided electronically
5. Architect will need to complete Council’s induction processes and enter into a Service Agreement Contract.

9. Timeframe

Milestones

- Return brief by 17 November 2017 unless otherwise agreed
- Working Group and Stakeholder Group meetings by the end of November 2017 unless otherwise agreed.
- Presentation of draft concept plan to Council 6 December 2017 unless otherwise agreed
- Presentation of master plan to Council Meeting (no attendance required) 21 December 2017 unless otherwise agreed

10. Further Information

Joanne Thomas
Community Projects Director
The Barossa Council
jthomas@barossa.sa.gov.au
08 8563 8450
11. Attachments

- Current Building Plans
- Barossa Regional Cultural Hub Discussion Paper (June 2017)
- Culture Hub Premise Document
- Mapping Document
- Extent of Council / Community owned land and potential Chateau Tanunda land transfer
Barossa Culture Hub
Economic / Community Rationale

ECONOMIC

Economic investment of the Wangaratta Performing Arts Centre
Creative Victoria 2013

- Since opening in 2009, the Wangaratta Performing Arts Centre has fostered and increase in regional visitation by 5200 persons per year that are associated with arts performances, conferences and events. Regional visitor spending has increased by around $1.6 million per year, benefiting a wide range of regional businesses.

Demonstrating Impact – Public Art Museums
Public Galleries Association of Victoria 2013

- Of the 124,715 out-of-region attendees at the Grace Kelly exhibition, more than 99,840 (80.0%) were primarily visiting Bendigo because of the exhibition whilst a further 2,041 (1.6%) extended their planned length of stay.
- The economic impact of the Grace Kelly exhibition on the Bendigo economy is estimated as being more than $16.31 million. (estimated 1.82 multiplier effect)
- Visitation for the Bendigo Gallery has grown from 14,000 in 1996 to 300,000 in 2015.

Value Added – the economic and social contribution of cultural facilities and activities in Central NSW
Museums & Galleries NSW 2010

- A study of 12 regional performing arts venues, public art galleries and museums indicate that collectively these facilities:
  - create an additional 8.5 jobs outside the cultural sector for every 10 full time positions within the cultural sector
  - add over $14 million to the local economy in 07/08 FY
- create almost $9 million in household income per annum

Newcastle Gateshead Cultural Venues Economic Impact
2013 – 2014

For every 10 direct FTE jobs at Newcastle Gateshead Cultural Venues an additional 5 indirect and induced FTE jobs were created in the regional economy.
Valuing Australia’s Creative Industries
The Creative Industries Innovation Centre 2013

- “The United Nations Conference on Trade and Development (UNCTAD) now recognises creative industries as a new dynamic sector in world trade. While creative industries are often micro businesses or small to medium sized enterprises that focus on local markets, they can develop into powerful economic clusters, helping to drive economic growth.”

- Every dollar in turnover generated by creative industries (i.e. initial revenue stimulus) results in 3.76 times the total revenue for all other industries in the Australian economy.

- The creative sector adds almost $46 billion in GDP for the Australian economy.

*Creative Industries includes a diverse range of sectors including music, performing arts, design and visual arts, television, radio and film, marketing, social media, software development and interactive content, animation, print, writing and publishing.

SOCIAL CAPITAL & WELLBEING

Value Added – the economic and social contribution of cultural facilities and activities in Central NSW
Museums & Galleries NSW 2010

A study of 12 regional performing arts venues, public art galleries and museums indicate that collectively these facilities contribute positively to social capital by helping people to think differently, enhance their connections, build trust between people and develop a “sense of place”

The Art of Being Healthy Framework
University of Western Australia. Christina Davies, Matthew Knuiman, Peter Wright and Michael Rosenberg.

- People with 100 or more hours per year of 2 or more hours per week had significantly better mental wellbeing than those with none or lower levels of arts engagement.

Creative Health: The Arts for Health and Wellbeing July
All Parliamentary Group on Arts Health and Wellbeing UK 2017

- After engaging with the arts
  - 79% of people in deprived community in London ate more healthily
  - 77% engaged in more physical activity
  - 82% enjoyed greater wellbeing.
- 85% of people in England agree that the quality of the built environment influences the way they feel.
- An arts-on-prescription program has shown a 37% drop in GP consultation rates and 27% reduction in hospital admissions.
Overview

The Barossa Culture Hub project forms part of The Big Project and seeks to identify key services and features of a proposed regional cultural hub, based around the existing Barossa Regional Gallery at Tanunda. It is informed by extensive preliminary work undertaken in 2013 which identified strong potential and benefits of a regional cultural hub.

The project will be undertaken in close consultation with key stakeholders representing culture and the arts, tourism and regional development, in addition to broader community input.

*Please note preliminary communications with the community commenced in 2017 via media and newsletter articles and advertising ahead of the formal consultation period. These centred around the pending masterplan development and appointment of architect.
<table>
<thead>
<tr>
<th>Communication Method</th>
<th>Costs</th>
<th>Target</th>
<th>Who</th>
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<td></td>
<td>• Boosted posts: $100 to boost posts 5 times</td>
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<td>Cross promotion (Library, heritage network, Gallery, My Barossa)</td>
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<td>CMOs</td>
<td>Our Better Barossa</td>
<td>April/May</td>
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<td>Facebook (Council, Heritage Network) to drive traffic to these platforms</td>
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<td>• Twice-yearly program</td>
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<tr>
<td>Activity</td>
<td>Resources</td>
<td>Target Audience</td>
<td>Key Deliverables</td>
<td>Schedule</td>
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| Visual displays                      | Internal resources                 | Community             | CMOs                                                                              | Website
|                                      |                                    |                       |                                                                                 | Enewsletter
|                                      |                                    |                       |                                                                                 | Market promotions
| Pop ups                              | Internal resources/Associated     | Arts & culture        | MCC/DCP/PYP                                                                       | Potentially Barossa Made |
|                                      | advertising                        | enthusiasts, wider    |                                                                                 | Market, Barossa Farmers   |
|                                      |                                    | community              |                                                                                 | Market, Mount Pleasant    |
| Regional drop in                     | Internal resources, potential      | Arts & culture        | MCC/DCP/PYP                                                                       | Venues TBC                |
| sessions/panel discussion (Q&A)      | consultancy costs                  | enthusiasts, wider    |                                                                                 | Dates TBC                 |
|                                      |                                    | community              |                                                                                 |                           |
| Video                                | Internal resources                 | Arts & culture        | CMOs                                                                              | Video of initial drop-in  |
|                                      |                                    | enthusiasts, wider    |                                                                                 | session for playback at   |
|                                      |                                    | community              |                                                                                 | subsequent sessions,     |
|                                      |                                    |                       |                                                                                 | events, customer service  |
| Heritage Network meetings            | Internal                            | Heritage stakeholders | Manager Library/Customer Service                                                  | Provide verbal update/latest |
|                                      |                                    |                       |                                                                                 | media releases/marketing  |
|                                      |                                    |                       |                                                                                 | collateral                | April/May
| BRG Network meetings                 | Internal                            | Arts & culture        | BRG Project Officer                                                              | Provide verbal update/latest |
|                                      |                                    | stakeholders           |                                                                                 | media releases/marketing  |
|                                      |                                    |                       |                                                                                 | collateral                | April/May
| Community Newsletters                | Internal resources                 | Wider community       | CMOs                                                                              | Willy Wagtail
|                                      |                                    |                       |                                                                                 | Lyndoch Grapevine         |
|                                      |                                    |                       |                                                                                 | MP Beat                   |
|                                      |                                    |                       |                                                                                 | At key milestones         |
| RDA                                  | Internal resources                 | Wider community       | Anne Moroney/Ali                                                                  | enewsletter
<p>|                                      |                                    |                       |                                                                                 | facebook                 |
|                                      |                                    |                       |                                                                                 | As needs basis            |</p>
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<td>April/May</td>
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Barossa Regional Culture Hub Proposal

The Barossa Council, as part of the “Big Project” initiative has developed a concept to develop a Regional Culture Hub. This would be situated at the Tanunda Soldiers Memorial Hall, which currently houses the Barossa Regional Gallery and the Hill and Son Grand Organ. The concept involves an upgrade of existing facilities and an expansion, with the potential to include multipurpose studio and workshop spaces, a heritage library and resource centre and meeting and function rooms.

WHY?

The facility will provide a premium cultural experience for the local community and for visitors to the region - strengthening our position as a destination for food, wine and cultural experiences. The development is important because...

OUR STORIES

We have such rich stories that we want to share! We need a place for collecting, preserving and showcasing our past and present in captivating and interesting ways.

OUR POSITION

Our visitors love wine and food but they also want culture! We need to expand and strengthen our arts and cultural offerings. The Barossa has lots to offer but it’s important that we make the most of these – we don’t want to be left behind!

ITS WHO WE ARE

We are a clever, generous and hospitable community and we deserve a place to show off, share our stories, have fun and encourage creativity, learning and innovation. Important things for a strong and prosperous community
An Integrated Approach

The plans attached to this document provide an overview of what is possible in terms of the physical nature of the building – they are concept plans only. What happens inside the facility in terms of programs and activities and its reach out into the community is all so a crucial part of the development. Our integrated approach sees the development of programs, resources and physical infrastructure in a complementary way. Having great facilities but making sure we make the best of these on a local and regional level.

OUTREACH

The Barossa Regional Culture Hub will foster development and creativity beyond the physical structure in Tanunda. A “hub and spoke” model, will be core to the operations of the facility ensuring what happens inside is of benefit culturally, socially and economically for the whole region.

The facility will give people a reason for visitors to come to Barossa and enjoy a premiere cultural experience but it will also act as a landing site, encouraging people to further explore all that the region has to offer. The exhibitions, performances and activities will link to other places and other stories – like a cultural tasting plate, visitors will enjoy interesting morsels that build an appetite for further discovery.

Investment will be made to link with businesses, community organisations and schools both locally and further afield. Exchanges that strengthen the cultural capacity of the region will be a priority with the Barossa Cultural Hub a catalyst for further development and investment.

CORE PROGRAMMING THEMES

Barossa Stories

Celebrating the heritage of the region, both past and present, this theme focuses on the telling of stories using contemporary approaches. Combining new technologies and artistic mediums to tell our stories in captivating and unique ways, the Hub we want to take heritage to the next level.

Barossa Live

Showcasing music, live performance and the interactions between audience and artist, this theme focuses on creating and sharing music and art on an interactive level. The Hub will be a place to see exceptional live performances, where people can learn, experiment and create new works. A place where the audience can get up close and personal with the performers, the makers and the creators – live and in the flesh.
The Experience

The following concept program provides an idea of what people could experience at the Barossa Regional Culture Hub.

Visual Art
As you walk into the gallery the size and colour of the artworks take you by surprise. It's an exhibition of works by Albert Namatjira, borrowed from the Art Gallery of SA collection. One of the most famous artists from the Hermannsburg School, Namatjira's works are accompanied by an interpretive installation and program of activities that tell the story of the two Barossa missionaries that set up the Hermannsburg community in 1877.

On your way out you meet a young artist painting in one of the studios. He's the resident artist, visiting as a result of a partnership with Tandanya, South Australia's leading Indigenous cultural institution. Her work is similar to Namatjira but more edgy – a contemporary interpretation of the Namatjira style.

Nearby are some of the artworks made by local school kids, created as part of a workshop with the resident artist.

Live Music
After picking up your son from his jam session at one of the studio spaces, you stop by the front desk to purchase your tickets for the concert on Saturday night. The Australian Chamber Orchestra are performing in the auditorium - its their only regional show in SA! Your membership includes a discount if you buy your tickets for next month's acoustic performance by Pete Murray, so you pick up those up as well.

There are a crowd of people streaming through the main doors as you leave, there is an organ concert tonight, its the first of a series of concerts involving new musical works designed to showcase the Hill and Son and other organs located in churches throughout the Barossa. The local community radio station is broadcasting from their studio on site and you can tune in the car radio on the way home.

Heritage Interpretation
This is your first visit to the Barossa and the Visitor Centre insisted you start here! The interactive story board is amazing – visually stunning as it projects objects holographically in front of you connecting each item with a person and yet more fascinating stories that tie in with many of the region's icons and undiscovered gems.

You take a seat in one of the story pods and trace the ancestral links of the region and how both Germans and English migrants established the region. Their skills as growers and makers still influencing the food & wine you are off to enjoy later in the day.

The next pod offers you a sample of Barossa soundscapes and oral histories. You listen for five minutes, captivated and then download the rest onto your phone so you can listen to it in your car. Its part story, part personal tour guide it compels you to explore further.

As you move on, the kids in the next pod creating digital photo collages – creating their own piece of Barossa history.

Markets, Makers & Meetings
Its the first Sunday afternoon for the Spring and the Hub courtyard is packed. A pre-cursor to the region's Gourmet Festival, Food producers and wineries are offering tastings and you can pre-purchase your festival tickets.

You wander into the studios to watch the artists at work. The kids sit down at the workshop table an artist is working on a collaborative print and the kids start dabbling.

You buy a scarf from the textile artist working in the next studio and she tells you about the workshops she’s got on offer next month – you can learn to make your own.

After checking out the latest exhibition inside you grab a glass of wine and take a seat in the courtyard – your friends arrive, the kids are happy and now its time to relax, unwind and listen to the acoustic music on offer.
1. History interpretive / storytelling
2. Co-working space
3. Digital library
4. Library - books, literature
5. Tickets, Administration
6. Gallery
7. Performance hall
8. Hall building, organ
9. Staff room / kitchen
10. Storage
11. Greenroom
12. Amenities
13. Bar and catering service
14. Foyer
15. Soldier’s memorial
16. Retail - security screened or alarmed
17. Outdoor community market space
18. Break-out spaces / Courtyards
19. Meeting rooms
20. Digital studio
21. Artist in residence studio
22. Artist residence
23. Multi-purpose studio / wet workshop
24. Studio kitchenette + washroom
25. Multiple practice rooms
26. Multiple lettable artist studio spaces
27. Carparking
28. Community orchard
29. Play space / picnic area / outdoor performance space
30. Deliveries
31. Bikeway sculptures
32. Bus parking
33. Community gardens
34. Gateway

LEGEND

Note: Design assumes land swap agreement. Final plan subject to reconfiguration based on boundaries.
arrangements should the revocation of community land be approved by the relevant Minister” (Moved, Cr Miller, Seconded Cr de Vries).

**COMMUNITY CONSULTATION**

Community consultation for this entire revocation of community land process has occurred in accordance with Section 194 of the Local Government Act 1999 and Council’s Public Consultation Policy and been further validated by the KelledyJones Independent Assessment dated 13 December 2017 and approval to proceed with final consideration by Council received from the Minister’s delegate dated 19 April 2018.

**2.1.2 BAROSSA REGIONAL CULTURE HUB – DRAFT MASTER PLAN**

Author: Director, Community Projects

**MOVED** Cr Lange that Council:

(1) Receives, notes and endorses the draft Barossa Regional Culture Hub Master Plan (the Plan) dated 22 January 2018 Ref: 18/6574 for community consultation, noting that the Master Plan may be subject to future amendment and budget consideration as required.

(2) Endorses the Community Consultation Plan – Barossa Regional Culture Hub Master Plan (Ref: 18/27039) to obtain feedback on the Plan for the period 30 April 2018 to the 21 May 2018 inclusive and requires Officers to bring a further report on the outcomes of the consultation to a future Council Meeting.

(3) Thanks the Barossa Regional Culture Hub Working and Stakeholder Groups for their work on the ongoing development of the draft Plan.

Seconded Cr de Vries

**CARRIED 2014-18/1377**

**PURPOSE**

To present the current draft version of the Barossa Regional Culture Hub Master Plan (the Plan) (refer Attachment 1) for consideration by Council with a view to releasing for public consultation.

**REPORT**

**Background**

A full background to the development of the Barossa Regional Culture Hub is provided in Attachment 2 the Barossa Regional Cultural Hub – Discussion Paper June 2017 (ref: 17/46558).

In summary, the development of a Barossa Culture Hub has been discussed a number of times over the last 10 to 15 year period. The discussion around the development of a new Arts and Cultural Hub should take place within the context of the community’s desire for quality and authenticity in the cultural realm and the current prevailing view that the Barossa is punching below its weight in this area.

Whilst previous considerations and the trends are relevant, there is also an appetite for innovation and the redefining of artistic and cultural services and facilities that deliver a significant contribution to the economic diversity of the region, driving the development of the Barossa as a destination for cultural activities in its own right to support our premium wine, food and brand offering.

The role of a central hub as an incubator for culture and arts in the whole region is a recurring theme that is still supported by stakeholders.

Dealing with the challenges of providing a true hub and spoke model that does not duplicate what is already happening in the region but adds value and builds capacity has exercised the most time in the development of this concept plan rather than what the building ends up looking like. Why is this needed, why now and why in Tanunda? What is a sustainable model, what service should be provided and will it provide the desired outcomes, make the required difference and
activation of the whole region and a commensurate return on investment? Refer to the Barossa Culture Hub Premise Attachment 3 for a summary of these considerations.

There is also the context of high profile Australian culture facilities that have been successful in carving their own niche into the arts tourism landscape such as Mona, in Tasmania, the Bendigo Gallery in Victoria and most recently South Australia’s own d’Arenberg Cube in McLaren Vale. Everyone wants to replicate the success of those facilities.

Introduction

Concept Development Process:
The development process has been supported by a variety of groups and stakeholders:

1. A broad Stakeholder Group of around 30 representatives of not for profit, community or commercially based interest groups from the sector
2. A smaller, focused Working Group tasked by the Stakeholders with the development of a concept and the liaison with Council appointed Architects.
4. Input from industry specialists Play Your Part, via Maz McGann who has extensive sector expertise at practitioner, local government, State, interstate and peak body level, as well as specific knowledge of the Barossa Cultural landscape as a resident and in a professional arts and culture capacity.
5. Input from State and interstate facility curators, councils and non-government organisations obtained from a culture facility road trip around a variety of arts and culture venues during February and March 2018. Comparative notes from these visits are documented in Attachment 4.
6. The Big Project Working Group has been provided with copies of the developing plan and associated documents. Council Workshop presentations to Elected Members regarding the status of the master plan development were made in: December 2017 and April 2018 and progress reported in each quarterly update report.

Regular Stakeholder and Working Group meetings have taken place over the 8 month period – June 2017 to March 2018 and notes circulated to all participants and identified sector interest groups.

Concept Design Process
Procurement of the concept design process was achieved by inviting 3 architectural firms with a particular interest and reputation in the arts, culture and tourism sector to visit the Barossa Regional Gallery and do a walk through with representatives of the Working Group. Each was provided with the Design Brief (refer Attachment 5) and the Barossa Culture Hub Premise. Given the level of expenditure for the commissioning of the concept plan, a direct approach to a single supplier would have been acceptable within the parameters of the Council’s procurement policy and process. However, the Working Group wanted to get input from more than one perspective and so each consultant was given the opportunity to give their immediate impressions of the facility, the opportunities presented and the nature of their approach to developing a hub concept. They were asked to provide examples of concept development for a range of comparable projects. Based on those meetings and the associated information, the Working Group representatives then selected one architect to produce the concept drawing.

One of the firms approached could not deliver the concept plans within the required timeframes and declined to quote. Of the others, one had a greater degree of tourism related design expertise, the other a larger portfolio of pure arts facilities.

In the end the selected architect was the one with the higher level of tourism experience but primarily because of the cleaner and simpler presentation of its catalogue of designs given that the concept plan needs to provide clarity to the community when presented for consultation.

It was also stressed that whilst in due course the external presentation of the building is very important, in the concept stages, the critical deliverable was to achieve the hub principle and look at the potential functional arrangement for the various components of a future facility.

Discussion
As with other concept master plans for The Big Project at this stage, the key themes arising from Working Group discussions and which inform the current concept plan documents, are presented as follows:

The Barossa Council18/27538   Minutes of Special Council Meeting Thursday 26 April 2018

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1. Why is the Hub needed?
A consensus that the Barossa does not present a high calibre offering of arts and cultural content, activities and facilities. Whilst there is a significant amount of cultural content people (visitors and residents alike) do not necessarily know about it, they may not be able to readily access it and there is insufficient resource to programme and promote it professionally with too much reliance on volunteer input.

An overriding view that culture represents a significant opportunity to not only support our wine, food and tourism industry, but for a coordinated Barossan cultural experience to become a complementary attraction to the region in its own right and integrally aligned to the Barossan Brand offering. Creating opportunities to increase visitation to the area to access cultural experiences that have a uniquely Barossan appeal as well as the associated participatory benefits that flow to our own community through provision of high quality arts and culture product and facilities. Creating another reason to visit, stay, spend and talk about the region. A growth opportunity on a par with that identified in the sports tourism sector.

To provide access to the cultural heritage of the Barossa to ensure it is recorded, preserved, celebrated and leveraged.

To support the activation and promotion of arts and cultural content and venues throughout the region through a genuine hub and spoke model. The Regional Gallery venue in Tanunda was identified as the “landing point” for the greatest potential number of visitors and so should be capitalised upon as the best opportunity to signpost, generate interest and provide information and knowledge about all the other cultural activities elsewhere in the Barossa region.

In addition, to develop programmes around the use of other regional assets (ie Council halls and institutes, some of which are underutilised and have capacity) for art and cultural activities. For example a requirement of residency programmes to run workshops or exhibitions external to the main hub; educational and capacity building and the use of the hub as an incubator for artistic skills and collaboration that can add value to the whole region. In Victoria we saw examples where tenants of a centralised facility collaborated on projects to solve issues and attract investment for the benefit of the host and educational mentoring for schools and colleges at all levels. Partnerships with universities and TAFEs would be readily accessible in the Barossa.

Inventive and creative programming and an entrepreneurial mindset can generate revenue for cultural facilities to make them a more sustainable proposition for local government. Examples of charging admission for select exhibitions and events, provided they are of a high quality and have a novelty value and appeal, is a model deemed to be scaleable and transferrable by those that have adopted that approach in facilities such as the Bendigo Gallery in Victoria. It requires facilities and content of a calibre and that in turn demands dedicated and professional programming and curating expertise that we currently do not provide and facilities of a standard and quality that does not currently exist. Climate and lighting control, better use of exhibition space, storage and exhibition management from an arts perspective is lacking.

2. What is needed?
Building on the Why, recurring themes of What is required have focused on the requirement to fill gaps in provision and not to duplicate that which already exists. What already exists has been mapped to an extent by work initiated via RDA Barossa and Country Arts SA. The RDA Barossa, ArtMusicDesign Website resource is an opportunity to link and make connections within the cultural sector, but it needs that central, pivotal hub to provide the focal point and resourcing.

The development of the Barossa’s own Unique Selling Propositions and niche offerings in the cultural sector again has potential, but takes time and expertise to promote. Is that Council’s role as an economic development initiative and responsibility? Council’s Community Plan Strategy 2.6 refers to “Support [of] a vibrant and growing arts, cultural, heritage and events sector”. Of the high profile examples already referenced in this report, Mona and the Cube are private initiatives (albeit the latter received some public funding) but creating significant inward investment into their broader economies. Bendigo Gallery is a Council operated facility and has over time, developed a niche for the promotion of the highest quality international exhibitions.

The Working Group identified Barossan Heritage experience (showcased with contemporary digital media) as a potential niche product, with a rich and varied source of experiences
throughout the region and with obvious links to our food and wine culture. This would be aligned with a particular focus on aspects of musical heritage (the Hill and Son Grand Organ) and the potential for digital music production and radio. Triple B has been actively engaged, with the opportunity for them not only to be located and broadcasting as a highly visible and engaging presence in the facility, but also supporting an education, skills and training opportunity. The Barossa is seen as a place where collaboration can be achieved and is a place that people want to be – both the artists and the audiences. We need to develop strategy that builds on those unique qualities.

3. **Chateau Tanunda Development**

Following directly on from this is the opportunity to leverage a process that has been running in parallel to the Culture Hub development but which has not, until more recently, been aligned to it. The potential land swap between Council and Chateau Tanunda provides the direct opportunity to open up the existing Regional Gallery site facilitating expansion towards the railway line.

The Chateau development has the potential to significantly increase the passing foot and vehicular traffic along Basedow Road and raise the profile and visibility of both facilities. The inclusion of an educational and job readiness training component in the hotel project (culinary institute) again provides opportunities for collaboration across the 2 sites and venue capacity for performance and exhibition if the right conditions can be incorporated. The timing for that joint planning and discussion process and the potential for joint funding initiatives are already being considered and facilitated with support from RDA Barossa.

4. **Under-utilised Assets**

Part of the Big Project is to ultimately look at any legitimate asset rationalisation that may free up capacity to better manage and sustain our long term portfolio. Linked to that process is consideration of which assets are underutilised because a sustainable purpose is no longer identified, or where other activities and initiatives can support the repurposing or better activation of existing facilities. There is still work to be commenced in this area. Discussion regarding the opportunities of developing arts and culture programmes that can be used to outreach and improve services through the region in our under-utilised assets have also formed part of the Culture Hub consideration. More work is required. However, rather than allocating dedicated resource to each “spoke”, there is the potential to invest in resources that allow for transportable, “pop up” and temporary service delivery. This could be facilitated as parts of an artist or musician in residence strategy and as a requirement or condition of receiving a residency. Residencies are not necessarily just designed to attract the highest profile artists and experts; that is great if you can. Other programmes are designed to be more modest but still generate excellent content and collateral. A residency programme can be spread across numerous disciplines and a programme built up over a rolling calendar. Again this requires resource to build and sustain.

5. **Resourcing**

Already threaded through previous commentary; however, it is identified as the single most important and recurring theme of the development process. The Regional Gallery has functioned with the exceptional energy and commitment of volunteer effort with minimal, part time paid resourcing. There will continue to be a vital role for volunteer resources to play in an expanded and evolving facility; however, the appropriate level of specialist resourcing to programme, curate and manage the facility on the necessary full time basis, with a focus on entrepreneurial opportunity and development, will be a prerequisite to success of this venture. The modelling being developed to support funding applications takes into account a significantly higher level of resourcing for the Culture Hub. This includes operational and strategic development requirements. It will be responsible for driving content through to the regional spokes.

The success of potential operational models such as studio leasing; residencies; exhibition attraction and collection management; educational revenue development; events and function programming; content and collaborative projects; marketing and promotion are all critical skills to generate cultural tourism outcomes into the region and in turn the cultural outcomes for our residents and local ratepayers.

Collaboration with peak bodies around the potential for partnership approaches to increase the reach and impacts of the eventual resourcing model, needs further work. RDA Barossa has been
active in this space, as traditionally has Council in previous investment to kick start the shared Country Arts SA and Council Arts and Culture Officer role back in 2010.

Discussion has also taken place around the ongoing role and interface between the Culture Hub and the Barossa Visitor Centre (BVC). Is there unnecessary duplication of resourcing, opportunities for integration of the facilities, service level review and associated savings in terms of the investment in infrastructure and how it is managed?

Visitor Centres and how they and tourism services (particularly booking services) are accessed, continue to evolve and develop in an increasingly digital and online industry. The BVC continues to receive the second highest foot traffic for any Centre in South Australia next to Adelaide, but generically, visitation is trending down with more people accessing services remotely. Our Centre bucks the trends to the extent that we continue to increase the dollar spend per visitor through our facility and we have been exceptional in keeping ahead of the game with introducing strategies to raise the profile and appeal of our Centre. Its central, high street location is second to none and it has established itself as a highly regarded and valued service for our local residents, as well as our visitors, facilitating events and use of the public open space that activates the township of Tanunda and drives revenue through businesses in the town. The most recent successful grant application for international wine tourism development that allows us to fund a remodelling of the Centre, is exciting and can continue that journey of development and reinvention.

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While there has not been consensus in the Working Group as to whether economies exist in an amalgamated culture and visitor service, there is not sufficient space in the BVC site for both and the loss of the Murray Street location is an issue Council would need to consider in the first instance. Others in the Working Group see the Culture Hub as part of the service offering of the BVC in a standalone capacity and that the co-location of services would potentially detract from both. The opportunity for a degree of library/heritage service sharing is articulated in item 6 below. Council will need to direct officers further if it wishes a more detailed investigation of these considerations.

6. Regional Heritage
One of the identified key themes and an area that Council has dedicated significant resource and investment during the last 3 to 5 years, culminating in the adoption of the Regional Heritage Strategy in 2016 and driven through our Library and Heritage Services.

The Culture Hub provides the opportunity to take these unique Barossa stories and experiences to the next level. A focus on a new heritage library service offering based at the facility and concentrated around digital material, access to information – a DNA profiling opportunity and ongoing archival and oral history work, could make this a unique facility in the State. Still very much based on the hub and spoke model of the Culture Hub as the landing point that then creates the sense of urgency and commitment to go out into the region and explore and dig deeper. Investment in that Intellectual Property and technology will be a pre-requisite, but the heritage, raw materials and stories are already there and accessible to us.

7. Programming
Threaded through preceding items, is discussion of potential for building a more sustainable funding model for Culture and the Arts through a new hub facility.

There are multiple and myriad options and more work needs to be done. The current concept includes the following areas that present options for programming, cost recovery; revenue generation:

- Residencies – potentially more realistically in-kind expertise to activate spaces, generate collaboration, provide or manage content, share or transfer skills (ie artist, curator, musician, designers, broadcasters, writers, thinkers etc)
- Studio space – leasing
- Exhibition – not significant expansion – linkages to Chateau Tanunda – attraction of cornerstone events and programming with associated admission charge
- Membership base / fee
- Production space – music tuition / black box space
- Broadcast opportunity
- Workshop space rental
- Event and function hire – linkages to Chateau Tanunda
- Outdoor venue hire
- Quality retail outlet
- Ticketing via the BVC
- Workshop programme revenue

8. Catering / Café Provision
Our research indicates that establishing a sustainable model for a café / catering function within cultural facilities remains one of the most challenging aspects for practically every facility we have visited and researched. They divert the most, non-productive resources to managing lease and tenant arrangements. Our concept plan does not include a café. It does make provision for facilities that allow catering for events, functions and exhibition openings etc and the capacity for existing food operators to provide pop ups, food vans etc.

The Working Group identified 2 further existing opportunities to work in partnership with the Tanunda Club and a future Chateau Tanunda Culinary Institute to ensure catering requirements can be covered.

9. Content of the Hub
Taking into account all of the foregoing, this results in a Culture Hub concept that provides:

Main building – controlled access
- Contemporary exhibition space and storage
- A music venue for performance, leveraging the appeal of niche organ recital and the Baroque and Bach genre
- Associated Green Room facilities
- Upgrades to electrics, air quality, conditioning, humidity, control lighting, storage
- Improved access for safe loading / unloading of materials
- Heritage library space
- Dedicated and accessible Soldiers’ memorial and commemoration space
- Improved retail space
- Courtyard and outdoor performance space
- Catering equipment for events and leases
- Gathering and meeting spaces
- Performance space
- Broadcast capacity / black box capacity
- Administration and meeting spaces

Annexe Building
- Studios / Workshops - artists / lessee spaces
- Studios/Workshops – community – flexible
- Residency space
- Community radio facilities
- Shared production / broadcast space

Outdoor
- Car parking
- Public art and exhibition
- Community gardens
- Future amphitheatre
- Access / egress
- Loading bays

Summary and Conclusion
In summary, the transformation of existing Gallery facilities into the Barossa Regional Culture Hub is an exciting and ambitious undertaking. Like any project of this kind, it comes with its own set of risks and challenges, and the investment both now and into the future for Council is substantial. The potential for return on this investment however, is also significant, not only culturally but economically and socially. The development reflects the increasing needs and expectations of both local residents and visitors to the region - with the current offering not living up to the Barossa’s renown as a community that so often “punches above its weight”. 
Repeatedly, throughout Australia and the rest of the world, cultural facilities have proven themselves to be a catalyst for significant growth and renewal. Considering the strong and reputable brand position already enjoyed by the Barossa, combined with private and community partnerships and the “hub and spoke” model, the Barossa Regional Culture Hub has the potential to be a premiere cultural destination for South Australia. For this opportunity to be fully realised however, the project requires the bold and visionary approach the Barossa is known for, to be reflected in Council’s decision making and long-term support of this project.

The consultation process provides opportunities for broad community input into the detail of the facility and the future consideration of its footprint, visual architecture and impact on the site.

**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**

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<th>Attachment</th>
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<td>Barossa Regional Gallery Draft Master Plan</td>
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**COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS**

**Community Plan**

- Natural Environment and Built Heritage
- Community and Culture
- Infrastructure
- Health and Wellbeing
- How We Work – Good Governance

**Corporate Plan**

1.2 work toward developing township, streetscapes, entrances and open spaces that are attractive, welcoming and maintained to an agreed level of service

2.6 Provide, promote and support community arts and cultural events, programs, attractions and services.

3.1 provide regional and local walking and cycling connections between open spaces.

3.2 ensure Council’s parks, gardens and playgrounds are accessible, relevant and safe and maintained to an agreed level of service.

3.3 Ensure Council’s sporting, recreational and leisure grounds and playing areas and associated programs meet the current need of the community to an agreed level of service.

3.9 Ensure Council facilities and assets are accessible, safe and maintained to an agreed level of service.

3.11 advocate for the allocation of State and Federal funding to maintain and invest in infrastructure within our region.

4.1 Deliver and promote health and wellbeing initiatives in line with the Public Health Plan

6.4 Ensure that decisions regarding expenditure of Council’s budget are based on an assessment of whole of life cost, risks associated with the activity and advice contained within supporting plans.

**Legislative Requirements**

Local Government Act 1999
Development Act 1993

**FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS**

**Financial**
The Master Plan is being prioritised, phased and costed as part of “The Big Project” feasibility study work with the associated costs to date taken from the approved project budget Q003.

Attachment 6 references a summary of research into the economic and social value rationale for facilities of this nature. Extract information includes comments from the United Nations Conference on Trade and Development (UNCTAD) which now recognises “creative industries as a new dynamic sector in world trade. While creative industries are often micro businesses or small to medium sized enterprises that focus on local markets, they can develop into powerful economic clusters, helping to drive economic growth.”

**Resource**
The project management work now falls within the scope of “The Big Project” with dedicated input from Director, Community Projects. Consultation and promotion support from the Communications and Marketing Officers.

**Risk Management**
The purpose of bringing this report to Council for the endorsement of the draft updated Masterplan at this point, is to seek broader input from the regional community in addition to that achieved via the Working Group and Stakeholder Group; flag any issues and concerns arising so that they can be addressed within future iterations of the Plan and ensure that the outcome is aligned as far as possible with community expectations.

**COMMUNITY CONSULTATION**
As detailed in the draft Community Consultation Plan – Barossa Regional Culture Hub Master Plan ref: 18/27039 (refer Attachment 7). The Plan considers the challenges of consulting across the region for this project and suggests a diverse, expert panel approach to work through the opportunities and issues arising from a facility of this nature that can be filmed and replayed throughout regional venues, as well as the tried and tested approach of Open Forums and Drop-in sessions and attendance at high profile community venues.

A suggested Concept Overview to assist the process is also in the development stages and presented for information as Attachment 8.

2.1.3
**REGIONAL GROWTH FUND EXPRESSION OF INTEREST**
B8029

Authors: Chief Executive Officer and Director, Community Projects

MOVED Cr de Vries that Council, having noted the financial, project and risk analysis undertaken and development application undertaken;

(1) Support the Project Premise for the Barossa Global Food and Wine Project (the Project) as presented in Attachment 1 (Ref: 18/27097);

(2) Endorse the prioritisation and phasing analysis for the Project presented in Attachment 2 (Ref: 18/26987);

(3) Commit to The Big Project - Phase 1 - Implementation financial estimate presented in Attachment 2 (Ref: 18/26987) and that they be included in the draft 2018-19 Annual Budget and Business Plan for community consultation; and

(4) Authorise the Chief Executive Officer to continue to negotiate and enter into a Memorandum of Understanding as contemplated by the agreement presented at Attachment 6 (Ref: 18/27049)

(5) Authorise the Chief Executive Officer to submit an Expression of Interest in respect of the Project to the Regional Growth Fund.

(6) Note that if Council is successful funding for detailed design work and assistance to complete the full Business Case will be necessary.

Seconded Cr Miller CARRIED 2014-18/1378
7.2.1 DEBATE AGENDA - CHIEF EXECUTIVE OFFICER

7.2.1.1 REVOCATION OF COMMUNITY LAND CLASSIFICATION - BASEDOW ROAD, TANUNDA B7081

PURPOSE
Council is now asked to consider community feedback in response to its proposal to revoke the Community Land classification over Allotments 11 and 12 Basedow Road, Tanunda, with a view to exchanging these parcels for land adjacent to Council property and which are owned by Chateau Tanunda. Should Council agree with the revocation, the matter should then be referred to the Minister for Planning to consider in accordance with the Local Government Act 1999.

RECOMMENDATION

(1) That the Council note and consider the feedback from community members and the KeliedyJones Lawyers’ independent assessment of the consultation and proposed disposal process, which are attached to this report.

(2) Pursuant to Section 194 of the Local Government Act 1999, that Council continue the process to revoke the Community Land classification for Allotments 11 and 12 Basedow Road, Tanunda, which are respectively contained in Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824.

(3) That the Chief Executive Officer prepare a report and submit it to the Minister for Planning seeking approval to revoke the Community Land classification of the said land parcels.

(4) That should the revocation be approved by the Minister for Planning, the matter be referred back to Council for final resolution in accordance with section 194(3)(b) of the Local Government Act 1999.

(5) That the Chief Executive Officer then proceed with the necessary steps to affect the proposed land exchange in accordance with the Council’s resolution of 19 September 2017.

REPORT

Background
On 19 September 2017 Council resolved:

MOVED Cr Miller

That Council, being satisfied the proposal has extensive community benefit and can be managed in accordance with the Disposal of Land and Other Assets Policy:

(1) Agrees to undertake a six week community consultation process on a proposal to revoke the community land classification of Allotments 11 and 12 Basedow
Road, Tanunda being Certificates of Title 5133/408 and 5902/824.

(2) Instructs the Chief Executive Officer to develop and release the consultation document outlining the proposal to transfer land on a commercial basis, subject to receiving legal advice that the proposal and process is compliant with Council’s asset disposal policy and legal responsibilities.

(3) Appoints a small working group of Mayor Sloane and Cr Lange to support the Chief Executive Officer and Governance Advisor in formulating the consultation document and commercial negotiation of subsequent commercial arrangements for any approved land swap, should the revocation of community land classification be approved by the relevant Minister.

(4) Require the proprietor to pay all reasonable external legal, consultant and advertising and other costs arising from the community consultation and subsequent commercial arrangements should the revocation of community land be approved by the relevant Minister.

Seconded Cr de Vries
CARRIED 2014-18/1168

Introduction
In accordance with the above resolution, officers provide the following for Elected Members’ information:

- Consultation Report: Revocation of Community Land Classification at attachment 1
- Copy of public notices in the Herald and Leader newspapers, media releases, and promotions on Council’s website, Our Better Barossa consultation platform and Facebook at attachment 2
- Map of landowners adjacent to the proposed land exchange parcels who were sent a letter outlining the proposal at attachment 3
- Copy of letter sent to these identified adjacent landowners at attachment 4
- Summary table of responses from the community via postal service, email and the Our Better Barossa consultation platform at attachment 5
- Copy of all correspondence from the community at attachment 6
- Copy of thank you letter sent to those who provided feedback at attachment 7
- Independent Assessment by KelleyJones Lawyers of the proposed disposal of Council land against the principles of Council’s Disposal of Land and Other Assets Policy at attachment 8.

Discussion
A public notice was placed in each of the Herald and Leader newspapers and on Council’s homepage on 1 November 2017, and letters written to owners of land adjacent to those parcels which are proposed for exchange - all inviting written comment on the attached Consultation Report by 5pm, 12 December 2017. This timeframe allowed a period of 6 weeks of community consultation, which in the interests of improved community engagement is considerably longer than the prescribed 21 day minimum under the Local Government Act at section 50(4).

The public notices also advised that the Consultation Report would be made available for download via Council’s website and in hard copy at its principal office, the Tanunda Library, and Chateau Tanunda. Officers also provided display maps and consultation documents in these three locations.

Further promotion of the consultation was undertaken via the Our Better Barossa consultation platform, weekly Facebook posts and in media releases.
There was a variety of feedback in the 20 submissions from the community both for and against the proposal, which is presented for Elected Member convenience in summary form and for completion with copies of all correspondence at, respectively, attachments 5 and 6. A thank you letter and invitation to attend the Council meeting, as per the template in attachment 7 was sent to each person who provided an address with their submission.

Although a detailed analysis was provided in the Consultation Report at attachment 3, regarding the disposal of land through land exchange as assessed against the principles of Council’s Disposal of Land and Other Assets Policy, it was also considered that further obtaining an independent assessment of the disposal of land process was prudent during the public consultation period.

Accordingly, KelledyJones Lawyers were briefed to prepare this independent assessment to review the probity, accountability, transparency and reporting of this public consultation process and proposed disposal of land process. It is provided at attachment 8 and has validated both processes.

After considering all the community feedback and the independent assessment, the Elected Body must now consider whether or not to approve the Consultation Report for referral to the Minister for Planning.

Should the Consultation Report be referred to the Minister and he approves revoking the Community Land classification over the two identified parcels, the matter will be referred back to the Elected Body for final endorsement in accordance with the Local Government Act at section 194(3)(b).

The Chief Executive Officer will then negotiate the necessary commercial arrangements with the proprietor of Chateau Tanunda, and organise the appropriate valuations, where required, and the formal voluntary release from the trustees of the community land to finalise the approved land exchange.

Summary and Conclusion
The Council is asked to consider and approve the officer recommendation and refer the matter of revocation to the Minister for Planning.

**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**
Attachment 1 – Consultation Report: Revocation of Community Land Classification
Attachment 2 – Copy of public notices in the Herald and Leader newspapers, media releases, and promotions on Council’s website, Our Better Barossa consultation platform and Facebook
Attachment 3 – Map of adjacent landowners who were sent proposal letter
Attachment 4 – Copy of letter sent to adjacent landowners
Attachment 5 – Summary table of responses from the community
Attachment 6 – Copies of correspondence from the community
Attachment 7 – Copy of thank you letter sent to those who provided feedback
Attachment 8 – Independent Assessment by KelledyJones Lawyers of the proposed disposal of Council land against the principles of Council’s Disposal of Land and Other Assets Policy
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.

Legislative Requirements
Local Government Act 1999, Sections 50 and 194

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS
There is no financial or resource implications in finalising this report for referral to the Minister for Planning. Risk is mitigated by complying with the relevant sections of the Local Government Act as to the revocation of community land classification and Council’s Public Consultation Policy and Disposal of Land and Other Assets Policy and the validation these two Council’s processes by way of an independent assessment.

COMMUNITY CONSULTATION
Community consultation has occurred in accordance with section 194 of the Local Government Act and Council’s Public Consultation Policy.
Consultation Report

Pursuant to Section 194 of the Local Government Act 1999
PROPERTY DETAILS

Land Name: Allotments 11 and 12 Basedow Road, Tanunda
Address: 11 and 12 Basedow Road, Tanunda
Certificate of Title References: Volume 5133 Folio 408 and Volume 5902 Folio 824 (see attached titles)

1. Reason for proposal

The relevant vacant parcels of land (“the community land”) were donated to Council as open space under an Indenture Deed, through the Keil Estate.

Chateau Tanunda sits adjacent to the community land. Recently the proprietor of Chateau Tanunda secured the right to land owned by the State Government known as the Tanunda Railway Station land, which sits adjacent to both the community land and Chateau Tanunda.

The proprietor of land upon which Chateau Tanunda resides and now having the rights to the Tanunda Railway Station land, has developed a concept for a five-star hotel, short term villa accommodation and a culinary institute with associated small scale student accommodation.

To facilitate the development that would be integrated with the Chateau and Railway Station land, the proprietor has approached Council to undertake a land exchange to assist in facilitating the hotel development and at the same time moving the hotel away from adjoining residential properties.

The vision for the development is at Attachment 1.

Importantly Council’s community land is zoned as tourism accommodation land in accordance with the current Development Plan pursuant to the Development Act 1993, it therefore has already been strategically determined as an appropriate location for tourism accommodation development.

2. Proposed Land for Transfer and Assessment of its Strategic Purpose

The following proposal is subject to Council achieving extinguishment of the encumbrances on the community land as outlined by the Indenture Deed. Refer to paragraph 3 below for specifics of the Deed.

The proposed land for transfer to Council being offered by Chateau Tanunda in exchange for the community land is land adjacent to the car park at the Tanunda Soldiers’ Memorial Hall which traverses south behind residential development and concludes at or near the rear of the Tanunda Hospital. The proposed land that Council would receive is
highlighted at “E” on the map at Attachment 2. The land that Council proposes to exchange is highlighted at “A” and “B” on the map at Attachment 2. However before the proposed land can be transferred to Council, it would need to undergo a land division so as to retain access to the rear of the Chateau and oval area. The balance of the proposed land would then be made available for the land exchange.

The proposed land that would be transferred by Chateau Tanunda to Council, would be rededicated for community land purposes which is consistent with the terms of the Keil Estate donation, so the open space remains for the benefit of the people of Tanunda.

The proposed land from Chateau Tanunda to Council has worthy open space usage due to its closer interaction with Council’s existing Hall asset as well as residential use and the main street. It is unlikely to have any significant development for the foreseeable future other than lower level recreational assets. In any case, development would be limited to that expected of open space and recreational use and the restrictions placed on the land through the re-dedication of land under the principles of the Keil Estate trust and establishment of the land as community land under the Local Government Act 1999 (the Act).

Further, any development of the proposed land from Chateau Tanunda to Council into future residential development which is currently contemplated by the Development Plan will be prohibited by rededication of land under the principles of the Keil Estate trust.

3. Reservation/Dedication/Trust

The Council’s community land parcels are Allotment 11, Basedow Road, Tanunda, Certificate of Title Volume 5133 Folio 408 and Allotment 12, Basedow Road, Tanunda, Certificate of Title Volume 5902 Folio 824. They are identified on the map at Attachment 2 as parcels “A” and “B”.

The community land parcels are currently encumbered in two ways:

(1) The land is formally classified as Community Land pursuant to Section 193 of the Local Government Act 1999 (“the Act”).

(2) The land also has an indenture deed (described herein as a trust) dedication applied to it. The parcels of land were donated to Council by way of trust from the Keil Estate for the purposes of open space and recreation.

Council has been in discussions with the trustees of the Keil Estate and they have provided in-principle written support for the land exchange on condition the proposed land that would be transferred to Council be rededicated under a similar deed.
4. **Relevance to Community Consultation**

Before the community land can be dealt with in the proposed way, its formal classification as “Community Land” under the *Local Government Act* must be considered and if supported by Council, revoked.

The Act established a framework for the classification of land owned by or under Council’s care, control and management – this is known as “community land”. The framework ensures a consistent and strategic approach to the administration and management of local government land. Its objectives are to protect the interests of the whole community regarding the land for current and future generations.

The Act requires Council to consult with its community over proposals to revoke land from the Community Land classification framework.

Accordingly, Council has approved a 6 week consultation process which will start on Wednesday, 1 November 2017 and conclude at 5pm, local time on Tuesday, 12 December 2017. The approved consultation process shall be:

1. Development and release of an extensive public consultation document;
2. Public notices in the Herald and Leader newspapers;
3. Media statement;
4. Placement of information on web-site, Better Barossa consultation platform and Facebook;
5. Displays at Council Library and Visitor Centre in Tanunda and seeking for the Chateau Tanunda proprietor to also have displays at the Chateau.

The consultation period will seek written submissions through email, letter or Council’s Better Barossa consultation platform.

After the consultation period, a report will be prepared for Council’s consideration including submissions received, to determine if it will proceed with the revocation of the community land status of the relevant parcels of community land and to continue negotiations for the proposed land exchange.

5. **Future use of Land**

It is anticipated that should the community land classification be revoked and:

1. an agreed negotiated commercial agreement be reached for exchange of land parcels as described above, in essence disposing of community land via direct transfer to Chateau Tanunda;
2. a land division of Chateau Tanunda’s land (as outlined at Attachment 2 and marked parcel “E”) and development approval is approved;
3. development approval for the hotel is approved;

the land would be utilised to provide tourism accommodation.

The land which is transferred to Council by Chateau Tanunda as part of the land exchange proposal will provide open space and recreational space, as the current community land parcels provided, but are of increased community benefit as they are located closer to existing Council assets and the main street of Tanunda. The land is currently not used for community purpose.

There has been no Government assistance in purchasing the community land which is the subject of this proposal.

6. Effect on the Area and Local Community

It has been estimated that the proposal in its entirety could generate the following benefits for the area and local community:

- A high class 5-star hotel development in the centre of the Barossa;
- A vehicle to establish a culinary institute;
- Significant construction (estimated at 150 FTEs) and ongoing job creation (estimated at 97 FTEs);
- Utilisation of appropriately zoned land;
- Land available to Council that better integrates with existing Council assets and integration with the main street precinct for open space and recreational purposes.

7. Other Key Legislative Considerations

Whilst this report addresses the requirements under Section 194 of the Local Government Act, the disposal of any unencumbered land through land exchange has been additionally assessed against the principles of Council’s Disposal of Land and Other Assets Policy, should approval for the revocation of the community land classification be obtained.

At this time Council is satisfied that a land exchange proposal is sound, however this analysis will be further independently assessed as part of the community consultation process.

While a detailed analysis can be found at Attachment 3, by way of summary, the analysis demonstrates there is significant community benefit in the proposal and as an outcome a land exchange will not result in any loss of value of appropriate open space to the community. This is further reinforced by the proposal to rededicate the land transferred by Chateau Tanunda to Council, in accordance with the community land classification of the Act and restrictions under the Keil Estate thereby maintaining the same community service.
### Certificate of Title - Volume 5133 Folio 408

**Parent Title(s)**
CT 1065/20, CT 4085/156

**Creating Dealing(s)**
RTD 7251297, RE 7505372, RE 7505372A

**Title Issued**
21/07/1993

**Estate Type**
FEE SIMPLE

**Registered Proprietor**
THE BAROSSA COUNCIL
OF PO BOX 867 NURIOOTPA SA 5355

**Description of Land**
ALLOTMENT 11 DEPOSITED PLAN 33882
IN THE AREA NAMED TANUNDA
HUNDRED OF MOOROOROO

**Easements**
SUBJECT TO EASEMENT(S) OVER THE LAND MARKED D TO AUSTRALIAN NATIONAL RAILWAYS COMMISSION (RE 7505372A)

TOGETHER WITH FREE AND UNRESTRICTED RIGHT(S) OF WAY OVER THE LAND MARKED C

**Schedule of Dealings**
NIL

**Notations**

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<th>Description</th>
<th>Notation</th>
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</thead>
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<tr>
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<td>Priority Notices</td>
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</tr>
<tr>
<td>Notations on Plan</td>
<td>NIL</td>
</tr>
<tr>
<td>Registrar-General's Notes</td>
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<td>Administrative Interests</td>
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Date/Time 20/11/2017 03:50 PM
Customer Reference Chateau-Allot11
Order ID 20171120010044
Cost $28.25
Certificate of Title - Volume 5902 Folio 824

Parent Title(s)  CT 5133/409, CT 5713/408

Creating Dealing(s)  RTC 9261303

Title Issued  24/09/2003

Edition 1

Edition Issued 24/09/2003

Estate Type  FEE SIMPLE

Registered Proprietor  
THE BAROSSA COUNCIL
OF PO BOX 867 NURIOOTPA SA 5355

Description of Land  
ALLOTMENT 12 DEPOSITED PLAN 33882
IN THE AREA NAMED TANUNDA
HUNDRED OF MOOROOROO

Easements  
SUBJECT TO EASEMENT(S) OVER THE LAND MARKED E TO AUSTRALIAN NATIONAL RAILWAYS COMMISSION
(RE 7505372A)

SUBJECT TO FREE AND UNRESTRICTED RIGHT(S) OF WAY OVER THE LAND MARKED C

Schedule of Dealings  
NIL

Notations  
Dealings Affecting Title  NIL

Priority Notices  NIL

Notations on Plan  NIL

Registrar-General's Notes  NIL

Administrative Interests  NIL
Product Register Search (CT 5902/824)

Date/Time
20/11/2017 03:51PM

Customer Reference
Chateau-Allot12

Order ID
20171120010089

Cost
$28.25

Attachment 6


Land Services

Page 3 of 3

AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION

CHATEAU TANUNDA BAROSSA VALLEY
ACCOMMODATION

- 5 star lifestyle hotel 100-120 rooms
- Adapting part of the existing Bond Store for 60 bed student accommodation
- 60 villas to offer accommodation for a broader market including longer term stays that may be associated with training, education and cultural programs

FACILITIES

- Adapting the existing buildings to create major meeting and conference facilities to compliment SA programs on events, conferences, and meetings for national and international participants
- Function Space >1000m²
- Gym, spa and pool
- Oval used for outdoor events, recreation, markets, music, sport
- SA Culinary Institute for education, training, cultural and culinary tourism (similar to the Culinary Institute of America)

ECONOMIC BENEFITS

- Project Cost > $30 million
- Jobs FTE during construction: 150
- Jobs FTE post completion: 97
- Annual expenditure > $4 million with multiplier economic benefits

MARKETING AND PROMOTION

- Revival of the Barossa Wine Train: Adelaide – Tanunda
- Appointment of an international hotel operator as an overlay to manage these businesses, market SA and Tanunda nationally and internationally
- Promotion and marketing through the Chateau Tanunda wine business
- SA Culinary Institute with national and international markets
TABLE OF CONTENTS

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   LOCAL CONTEXT 6
02 MASSING STUDY 15
   PROPOSED USE 17
03 IMAGERY 18
Local Context | Tanunda Township

Chateau Tanunda Barossa Valley: An Iconic Winery Becomes an International Tourist Destination
Local Context
Tanunda is a major town in the Barossa Valley, located 70km north of Adelaide. Historic township circa 1850-1910. Chateau Tanunda established 1890. Traditional grid layout established to west of Murray Street (B19) and by watercourses North Para River and Tanunda Creek. Name derived from an Aboriginal word meaning water hole.
Historic blue stone buildings quarried from Bethany, include Chateau Tanunda winery.
Landscape - Significant Moreton Bay figs, Carob trees, Phoenix canariensis, Eucalypts, deciduous trees.
Railway divides the township with development to the east with vineyards, light industry, primary industry.

Key Destinations
- Chateau
- Railway station (tourism trail)
- Heysen Tourist trail
- Town centre commerce
- Sports and recreation
- Hospital
- Schools

Opportunities
- Potential to exploit the tourist train route and railway station as it is owned by Chateau Tanunda
- Chateau Tanunda history, historic buildings, uses, cricket ground, croquet lawn
- Vistas across the valley, vineyards and to nearby Barossa Ranges
- Low lying land with a slight fall north to south towards Tanunda Creek
- Land swap with State government to consolidate Chateau Tanunda landholdings
- Tourism development potential (hotel, villas, educational and cultural facilities, culinary institute etc and benefits to the town and region
- Rationalise site access and circulation

Constraints
- Impact of the light industry to the east edge of the site
- Traffic and parking
- Topography; cleaver design and planning to nest the buildings into the landscape
- Respect the history of place with adaptive reuse and intersection of new buildings and uses.
- Working use of the winery balance with tourism destination (screen uses)
- Resolve connections over railway line to the town
- New carpark, screening
CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION

STREETScape

7 BASEDOWN ROAD, TANUNDA

CHATEAU TANUNDA ENTRY
CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
CHATEAU TANUNDA VIEW LOOKING NORTH

CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION

Source: Nearmap 26 November 2016
UNDERSTANDING OF SITE, PLACE, HISTORY

CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
UNDERSTANDING OF SITE, PLACE, HISTORY

CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
UNDERSTANDING OF SITE, PLACE, HISTORY

CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
02 MASSING STUDY
PROPOSED USE

- Geometry of hotel complements that of the existing historic buildings and vineyards. "Completes the square" on the western edge of the vines.

- Main entry to central public area from town and Basedow Rd, combined with old station

- Central public area closely connected to hotel wings for ease of access & servicing central lounge / bar has views over vineyards

- 50% of hotel rooms have views over vineyards, other 50% look to landscaped courtyards & pool

- VIP Hotel Suites in house N. 07 Basedow Road

- Villas close to central reception, some with views of vines, some looking towards oval

- Pool in hotel courtyard, accessible from central public area, screened from road by planting.

- Culinary institute and function centre top level of Chateau Tanunda with wine tasting on level below

- Student housing within restored Bond Store with internalised courtyard

- Parking located close to Basedow Road for ease of access

- Screened parking to existing storage area

- Oval used for recreation, events, markets, sport, connection to town via Mill Street

- Connections from Bushman & Mill Streets upgraded

CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
03 IMAGERY
CHATEAU TANUNDA BAROSSA VALLEY  AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
VILLAS

CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
STUDENT ACCOMMODATION

URBANEST DARLING SQUARE, ALLEN JACK+COTTIER

AUSTRALIA STREET STUDENT HOUSING, ALLEN JACK+COTTIER

CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
LE CORDON BLEU COLLEGE OF CULINARY ARTS, PARIS
EXISTING LAND TITLES

A land exchange between The Barossa Council and Château Tanunda has been proposed to facilitate the development of an international hotel together with education and Culinary Institute facilities that will create a new major tourism destination in Tanunda with long term economic and employment opportunities.

Château Tanunda own the majority of lots zoned for Tourist Accommodation, with the exception of the reserve owned by The Barossa Council including the old railway station with access from Basedow Road.

The current land holdings are outlined below by lot (plan / parcel number) and current ownership and highlighted on the plan.

- A Lot 11 CT 5133/408 D33882 The Barossa Council
- B Lot 12 CT 5902/824 D33882 The Barossa Council
- C Lot 72 CT 5902/821 D58229 Château Tanunda
- D Lot 73 CT 5902/822 D88229 SA Government - Rail reserve easement
- E Lot 74 CT 5962/946 D58229 Château Tanunda

Château Tanunda has taken the initiative of acquiring C (Lot 72) from the SA Government to enable the development strategy. This lot includes the railway station and access road.

PROPOSED LAND EXCHANGE

The next step is to effect a land exchange between The Barossa Council and Château Tanunda:

Lots to be transferred to Council

- E (Lot 74 CT 5962/946 D58229) excluding a portion to the south to be retained by Château Tanunda.

Lots to be transferred to Château Tanunda

- A, Lot 11 CT 5133/408 D33882
- B, Lot 12 CT 5902/824 D33882
## Attachment 3 – Assessment Against Disposal of Land and Other Assets Policy

<table>
<thead>
<tr>
<th>Relevant Clause Number</th>
<th>Policy Direction</th>
<th>Comment/Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – Purpose</td>
<td>Sets out the general purpose of the policy</td>
<td>Noted</td>
</tr>
<tr>
<td>2 – Scope</td>
<td>Sets out exemptions that the policy does not apply to.</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>3 – Definition of Land</td>
<td>Land includes community land.....</td>
<td>Condition is met and therefore the land in question is subject to the directions of the policy.</td>
</tr>
<tr>
<td>4.1 – Disposal of Land or Other Assets</td>
<td>Any decision to dispose of Land or Other Assets will be made after considering (where applicable): a) the usefulness of the Land or Other Asset; b) the current market value of the Land or Other Asset; c) the annual cost of maintenance; d) any alternative future use of the Land or Other Asset;</td>
<td>The current land is not significantly developed or utilised, is removed from adjacent Council land and offers little in broader community benefit, of course there are adjacent landowners and users who possibly derive benefit in terms of visual amenity and recreation. The proposal to swap land would in essence deliver the same outcome with future possible better interaction of the land to the community due to its location. Whilst there is a perceived market value it is not derivable at present as it is encumbered and not saleable. It is considered that the land swap will be of equal market value, as any new parcel of land will be rededicated to the community and provide the same service level. Minimal and no change in costs structures is expected for the open space areas. The alternative use of the existing Council land under the swap would support a significant economic development in support of tourism and education. An investment of over $30M creating in the order of 150 FTE construction jobs and 97 FTE ongoing positions. Further it would support the re-utilisation of heritage and cultural assets at the Chateau as an integrated tourism, culinary and education development.</td>
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</tr>
<tr>
<td>e)</td>
<td>any duplication of the Land or Other Asset or the service provided by the Land or Other Asset;</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>f)</td>
<td>any impact the disposal of the Land or Other Asset may have on the community;</td>
<td>Discussed at a) and d) above.</td>
</tr>
<tr>
<td>g)</td>
<td>any cultural or historical significance of the Land or Other Asset;</td>
<td>The land was purchased by Council through funding from the Kell Estate and has an Indenture Deed over it, the trustees of this deed have been consulted and have provided a letter of intent that they would lift the trust.</td>
</tr>
<tr>
<td>h)</td>
<td>the positive and negative impacts the disposal of the Land or Other Asset may have on the operations of the Council;</td>
<td>None identifiable that do not already exist.</td>
</tr>
<tr>
<td>i)</td>
<td>the long term plans and strategic direction of the Council;</td>
<td>Is consistent with a raft of economic, heritage and cultural, community and education strategies outlined in the Community Plan, please refer to Council report 7.2.1.4 of 19th September 2017 for full detail, and thus delivers upon the plan.</td>
</tr>
<tr>
<td>j)</td>
<td>the remaining useful life, particularly of an Asset;</td>
<td>Not applicable as it is land.</td>
</tr>
<tr>
<td>k)</td>
<td>a benefit and risk analysis of the proposed disposal;</td>
<td>Significant benefits have been outlined at d) and i). The risk matters in brief have been outlined in the Council report 7.2.1.4 of 19th September 2017. The inability to deliver the outcome could put the commercial viability of the project at risk or result in sub-optimal outcomes with the development of tourism accommodation on land to the west of the railway corridor adjacent to residential area.</td>
</tr>
</tbody>
</table>
l) the results of any community consultation process;

m) any restrictions on the proposed disposal;

n) the content of any community land management plan; and

o) any other relevant policies of the Council, including:
   • Prudential Management Policy
   • Asset Accounting Policy

This will be considered as part of the community consultation process being explored by the Council report 7.2.1.4 of 19th September 2017.

The Keil Estate and Local Government restrictions have been outlined in the Council report 7.2.1.4 of 19th September 2017 and at g) above.

The community land management plan does not support Tourism Accommodation, and this is in conflict with the stated policies in the Development Plan. The purpose of the Council report 7.2.1.4 of 19th September 2017 is to address the matter and proceed towards achieving community comment and potential land swap that will see community access to similar open space preserved whilst delivering a significant economic driver for the community. Should the proposed land swap be approved, an appropriate community land management plan would be put in place over the swapped land.

All other relevant matters have been explored in the Council report 7.2.1.4 of 19th September 2017. The Prudential Management Policy does not apply in this case and there are no specific accounting policy concerns.

4.2 – Disposal Principles

Encouragement of open and effective competition

This matter is being addressed by ensuring full, open and transparent decision making. The ability to release this land for general market competition is extremely limited as it is encumbered by both the Keil Estate

Trust and the Community Land classification; the proposal put forward makes strategic sense due to its location with adjacent assets owner by the Chateau and its recent success in securing State land upon which the Tanunda train station resides. The trustees of the Keil Estate have supported lifting of the trust to facilitate this project on condition the
<table>
<thead>
<tr>
<th>4.2 – Disposal Principles</th>
<th>Obtaining value for money</th>
<th>As explained above there is no market for the land asset other than what is being proposed at this time, with the swap of land assets there is no loss to the community of open space whilst assisting to try and deliver an economic and community project.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2 – Disposal Principles</td>
<td>Ethical behaviour and fair dealings</td>
<td>All dealings to date and negotiations and community consultations have been or will be consistent with this principle whilst ensuring the best possible outcome for the community.</td>
</tr>
<tr>
<td>4.2 – Disposal Principles</td>
<td>Probity, accountability, transparency and reporting</td>
<td>The Council and officers are dealing with the matter in a completely open and transparent manner through this assessment and the Council report 7.2.1.4 of 19th September 2017 and as intended all community consultation and other arrangements to be put in place should Council agree to continue will be undertaken (where legal) in open Council. It has also been recommended that Council have an independent probity advisor review this assessment and the process at the conclusion to ensure probity is maintained.</td>
</tr>
<tr>
<td>4.2 – Disposal Principles</td>
<td>Ensuring compliance with all relevant legislation</td>
<td>This will be achieved through the process envisioned by the Council report 7.2.1.4 of 19th September 2017.</td>
</tr>
<tr>
<td>4.3 – Accounting for Disposal of Non-Current Assets</td>
<td>Accounting requirements</td>
<td>Will be adhered to.</td>
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</table>
### 4.3 – Accounting for Disposal of Attractive Assets

<table>
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<tr>
<th>Subsection</th>
<th>Description</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>4.4.1 – Disposal Methods – Land Disposal</td>
<td>Explanation of various disposal methods including Direct Negotiation</td>
<td>As outlined in various components of this analysis the ability to undertake any market approach for the land is unable to be achieved, direct negotiation is identified as a valid method and is that which is proposed in this process due to the restrictive nature of the land and it strategic purpose.</td>
</tr>
<tr>
<td>4.4.2 – Disposal Methods – Other Assets</td>
<td>Explanation of various disposal methods</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>4.4.3 Waiver for Disposal Methods</td>
<td>Conditions for waiver for disposal methods</td>
<td>No waiver is being sought as direct negotiation is an acceptable disposal methodology, and there is only one adjacent land owner who can meet the conditions for the release of the Keil Estate trust.</td>
</tr>
</tbody>
</table>

### Summary

In summary from the analysis is it reasonable to conclude that the direct negotiation methodology for any future disposal through land swap is reasonable and risks are mitigated through open and transparent decision making, working towards the outcome that sees new land coming to Council as part of the land swap is preserved as open space and recreational area under the Community Land provisions of the Local Government Act and rededication of the Keil Estate trust over the land.
REVOCAION OF LAND FROM COMMUNITY LAND CLASSIFICATION

PROPOSED LAND EXCHANGE WITH CHATEAU TANUNDA

Notice is given under section 194(2)(b) of the Local Government Act 1999 that public comment is invited on a Council proposal to revoke the following land from classification as Community Land:

Land Name: Vacant Land at Allotments 11 and 12 Basedow Road, Tanunda
Address: Allotments 11 and 12, Basedow Road, Tanunda

Title References: Volume 5133 Folio 408 and Volume 5902 Folio 824

Council has received an application to remove the Community Land classification for the above land parcels, which are adjacent to Chateau Tanunda, to then proceed with a land transfer to Chateau Tanunda on a commercial basis, in exchange for land adjacent to both Council property and private property on the western side of the Tanunda railway, to support the construction of a 5-star hotel facility at Chateau Tanunda.

Interested persons may inspect documents relating to the land at The Barossa Council's Principal Office at 43-51 Tanunda Road, Nuriootpa; or at the Tanunda Library at 66 Murray Street, Tanunda during business hours; or on Council's website at www.barossa.sa.gov.au; or at Chateau Tanunda at 9 Basedow Road, Tanunda during business hours.

Written submissions on the proposed revocation of the Community Land should be addressed to the Chief Executive Officer, The Barossa Council, PO Box 867, Nuriootpa SA 5355 or email to barossa@barossa.sa.gov.au. Submissions must be received by 5pm Tuesday 12 December, 2017.

Martin McCarthy
Chief Executive Officer
ATTACHMENT 2

PUBLIC NOTICE IN THE LEADER NEWSPAPER - 1 NOVEMBER 2017 EDITION

REVOCATION OF LAND FROM COMMUNITY LAND CLASSIFICATION

PROPOSED LAND EXCHANGE WITH CHATEAU TANUNDA

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Written submissions on the proposed revocation of the Community Land should be addressed to the Chief Executive Officer, The Barossa Council, P.O. Box 867, Nuriootpa SA 5355 or email to barossa@barossa.sa.gov.au. Submissions must be received by 5pm Tuesday 12 December, 2017.

Martin McCarthy
Chief Executive Officer
ATTACHMENT 2
OUR BETTER BAROSSA CONSULTATION PLATFORM

Have your say

We are seeking feedback from the you (the community) in relation to a proposal to exchange community land in Tanunda, with Chateau Tanunda.

The proposal seeks to swap Council-owned community land with land currently owned by Chateau Tanunda, to facilitate a future development which would include five-star tourism accommodation.

The location of the proposed land offered to Council by Chateau Tanunda is for community land is adjacent to the car park at the Tanunda Soldiers’ Memorial Hall. This land expands in a southerly direction behind a residential development and ends near the Tanunda Hospital.

Council has been approached by the proprietor of Chateau Tanunda to undertake a land exchange, to facilitate future tourism accommodation development.

The two-page summary document which simplifies the overall proposal has been developed to help the community better understand the complexities of the proposed land exchange.

Members of the community are encouraged to visit either Chateau Tanunda, the Nuriootpa Council office or the Tanunda Library to see visual displays of the proposal, including maps and concept drawings.

For more information and to have your say visit www.ourbetterbarossa.com.au. Consultation closes 5pm 12 December 2017.

This is your chance to get involved and be an active participant in Council’s decision making process.

Please see a range of material below to help inform you and provide further information regarding this proposed land exchange with Council and Chateau Tanunda. You can submit feedback in the orange box below.

CONSULTATION REPORT
TWO PAGE SUMMARY
MEDIA RELEASE
LOCAL CONTEXT AND MAP
Chateau Tanunda proposed land exchange

The Barossa Council is seeking feedback from the community in relation to a proposal to exchange community land in Tanunda, with Chateau Tanunda.

The proposal seeks to swap Council-owned community land with land currently owned by Chateau Tanunda, to facilitate a future development which would include five-star tourism accommodation.

Mayor Bob Sloane is encouraging the community to take advantage of this opportunity to get involved and be an active participant of Council’s decision making process.

“Council is committed to protecting the interests of the whole community regarding the use of this land, both now and for future generations,” he said, “which is why we are giving the community a chance to be part of these discussions.”

Mayor Sloane acknowledges Council is confident there is significant community benefit in this proposal, particularly in relation to increased tourism opportunities, economic benefit, long term job creation and the retention of land dedicated for open space and recreation.

“The land Council stands to acquire as part of this ‘exchange’ will be retained for open space and recreation purposes, as part of the original Indenture Deed, through Kell Estate,” said Mayor Sloane.

“The land exchange has the potential to provide increased connectivity with the main street of Tanunda and Council assets, including the Barossa Visitor Information Centre and Barossa Regional Gallery.

“Council is confident this proposal has significant benefit for the community.”

A two-page summary document which simplifies the overall proposal has been developed to help the community better understand the complexities of the proposed land exchange.

Members of the community are encouraged to visit either Chateau Tanunda, the Nuriootpa Council office or the Tanunda Library to see visual displays of the proposal, including maps and concept drawings.

For more information and to have your say visit www.ourbetterbarossa.com.au

Consultation closes 5pm 12 December 2017.

Click here to view the Two Page Summary

Click here to view the Local Context and Map

Click here to view the consultation report
The Barossa Council
31 October -

We are seeking feedback from the community in relation to a proposal to exchange community land in Tanunda, with Chateau Tanunda.

The proposal seeks to swap Council-owned community land with land currently owned by Chateau Tanunda, to facilitate a future development which would include five-star tourism accommodation. Consultation closes 5pm 12 December.

For more information http://ow.ly/0f3og4wCZ.

HAVE YOUR SAY ON THE BAROSSA COUNCIL’S PROPOSED LAND EXCHANGE WITH CHATEAU TANUNDA

Consultation Period: 3 November to 12 December

www.ourbetterbarossa.com.au

The Barossa Council
14 November at 18:00 -

Have you had your say in relation to our proposed land exchange with Chateau Tanunda?

We’re seeking your feedback on the proposal which seeks to swap Council-owned community land with land currently owned by Chateau Tanunda, to facilitate a future development including five-star tourism accommodation. Consultation closes 5pm 12 December. For more information visit http://ow.ly/9QH38gPll or check out the displays at the Tanunda Library, Chateau Tanunda or Council’s Nuriootpa office.

HAVE YOUR SAY ON THE BAROSSA COUNCIL’S PROPOSED LAND EXCHANGE WITH CHATEAU TANUNDA

Consultation Period: 3 November to 12 December

www.ourbetterbarossa.com.au

The Barossa Council
29 November at 09:00 -

There’s still time to have your say about our proposed land exchange with Chateau Tanunda!

We’re seeking your feedback on the proposal which seeks to swap Council-owned community land with land currently owned by Chateau Tanunda, to facilitate a future development including five-star tourism accommodation. Consultation closes 5pm 12 December. For more information visit http://ow.ly/9QH38gPll or check out the displays at the Tanunda Library, Chateau Tanunda or Council’s Nuriootpa office.

HAVE YOUR SAY ON THE BAROSSA COUNCIL’S PROPOSED LAND EXCHANGE WITH CHATEAU TANUNDA

Consultation Period: 3 November to 12 December

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The Barossa Council
6 December at 17:30 -

There’s still time for you to have your say on our proposed land exchange with Chateau Tanunda!

We’re keen to hear your views on the proposal which seeks to swap Council-owned community land with land currently owned by Chateau Tanunda, to facilitate a future development including five-star tourism accommodation. Consultation closes 5pm 12 December. For more information visit http://ow.ly/9QH38gPll or check out the displays at the Tanunda Library, Chateau Tanunda or Council’s Nuriootpa office.

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Consultation Period: 3 November to 12 December

www.ourbetterbarossa.com.au

The Barossa Council
ATTACHMENT 3

Map of landowners adjacent to the proposed land exchange parcels who were sent a letter outlining the proposal
31 October 2017

NAME
Address
TANUNDA SA 5352

Public Consultation: Proposed Community Land Exchange with Chateau Tanunda and the Revocation of Community Land classification under section 194(2) of the Local Government Act 1999

The Barossa Council is consulting its community about the potential removal of the “Community Land” classification over two of its vacant community land parcels near the Tanunda Train Station.

This public consultation was triggered as a result of an application to Council by the proprietor of Chateau Tanunda who seeks to exchange an adjacent parcel of land for these two community land parcels, on a commercial basis, in order to facilitate the development of an international hotel together with a culinary institute, subject to the relevant development approvals.

While we have provided a summary map on the next page which shows the location of the relevant land parcels, we encourage you to refer to the entire Consultation Report which outlines the particulars of the proposed land exchange and the vision for the new development. The Report can be found at our public consultation site at www.ourbetterbarossa.com.au and on our website at www.barossa.sa.gov.au.

If you prefer to view the concept and maps or read a hard copy, you can attend during business hours at our Principal Office at 43-51 Tanunda Road, Nuriootpa; or the Tanunda Library at 66 Murray Street, Tanunda or at Chateau Tanunda at 9 Basedow Road, Tanunda.

Should you wish to respond to any aspect of the Consultation Report, please do so in writing by 5pm, Tuesday, 12 December 2017 to the Chief Executive Officer via the Our Better Barossa site, or at barossa@barossa.sa.gov.au or c/o The Barossa Council, PO Box 867 Nuriootpa SA 5355.

All submissions will be compiled into a report and placed on the public agenda at the next available Council meeting, where Elected Members will consider the merits of revoking the Community Land classification and if they agree to do so, they will recommend to do so to the Minister of Planning, who has oversight in these cases.

Yours sincerely,

Martin McCarthy
Chief Executive Officer
Château Tanunda has taken the initiative of acquiring C (Lot 72) from the SA Government to enable the development strategy. This lot includes the railway station and access road.

**PROPOSED LAND EXCHANGE**

The next step is to effect a land exchange between The Barossa Council and Château Tanunda:

**Lots to be transferred to Council**
- E Lot 74 CT 5962/946 D58229 (excluding a portion to the south to be retained by Château Tanunda)

**Lots to be transferred to Château Tanunda**
- A Lot 11 CT 5133/406 D33882
- B Lot 12 CT 5902/824 D33882
### Summary table of responses from the community via postal service, email and the Our Better Barossa consultation platform

<table>
<thead>
<tr>
<th>Name</th>
<th>Town</th>
<th>For or Against Proposal</th>
<th>Additional Comments or Concerns</th>
<th>Officer Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ron Bailey</td>
<td>Not specified</td>
<td>For</td>
<td>If this does not go through we are not serious about promoting the Barossa as in our slogan.</td>
<td>Transparent and wide consultation process has occurred to obtain as much community feedback as possible.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Could this be the return of the Barossa Wine Train? I honestly hope so.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Providing all protocol and regulations are put in place and adhered to I definitely hope this</td>
<td>Council is not the decision maker in regards to the use of the Old Tanunda Railway Station as it is a State owned asset.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>does proceed and is not appealed and given in to by a minority.</td>
<td>All protocols followed under the Local Government Act 1999. Independent assessment obtained regarding Council’s Disposal of Land and Other Assets Policy.</td>
</tr>
<tr>
<td>Susan Guy</td>
<td>Not specified</td>
<td>For</td>
<td>The whole proposal sounds great! And even better with the train line working again!</td>
<td>The State Government is the decision maker as regards the train line.</td>
</tr>
<tr>
<td>Nelly at Auchii</td>
<td>Not specified</td>
<td>For</td>
<td>The land exchange will help to improve the infrastructure, promote tourism and make Barossa</td>
<td>No further response.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>known to the world; not just a tiny village with good wines.</td>
<td></td>
</tr>
<tr>
<td>Joanne Nash</td>
<td>Not specified</td>
<td>Not specified</td>
<td>Doesn’t matter what people’s feedback is, council will do what they want anyway.</td>
<td>Transparent and wide consultation process has occurred to obtain as much community feedback as possible in accordance with Public Consultation Policy and Local Government Act protocols.</td>
</tr>
</tbody>
</table>
### Summary table of responses from the community via postal service, email and the Our Better Barossa consultation platform

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
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<th>Position</th>
<th>Concerns/Opinions</th>
<th>Council's Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Lisa Barclay</td>
<td>Tanunda</td>
<td>Not against</td>
<td>Existing concerns about water management and run off from Chateau Tanunda holding ponds.</td>
<td>Council will not be involved in the development assessment process, as this will be independently assessed by the State Government, but would encourage frank and timely discussion between the Chateau and concerned adjacent landowners as part of the consultation process on formal development plans. These planning matters will be raised formally with the proponent in any case as they further develop their design for consideration.</td>
</tr>
<tr>
<td>6</td>
<td>Volunteer Radio with Sandie M</td>
<td>Not specified</td>
<td>Not specified</td>
<td>Wants to keep the Old Tanunda Railway Station for community use.</td>
<td>Council is not the decision maker in regards to the use of the Old Tanunda Railway Station as it is a State owned asset.</td>
</tr>
<tr>
<td>7</td>
<td>Loris Pullen</td>
<td>Not specified</td>
<td>For</td>
<td>The proposal sounds like a great idea, for future tourist development in the Barossa.</td>
<td>No further response.</td>
</tr>
<tr>
<td>8</td>
<td>Peter and Angela Heuzenroeder</td>
<td>Tanunda</td>
<td>For</td>
<td>Concerned about the use of Mill Street and traffic congestion. Land opposite 17 Mill Street used by children as a bicycle track, pity to destroy this harmless activity.</td>
<td>Council will not be involved in the development assessment process, as this will be independently assessed by the State Government, but would encourage frank and timely discussion between the Chateau and concerned adjacent landowners as part of the consultation process on formal development plans. These planning matters will be raised formally with the proponent in any case as they further develop their design for consideration.</td>
</tr>
<tr>
<td>9</td>
<td>Sonya Day</td>
<td>Not specified</td>
<td>Against</td>
<td>Concerned that plans for hotel put it too close to Chateau – put a hotel there and you will take the grandeur away and that’s not what the Barossa is about.</td>
<td>As above.</td>
</tr>
<tr>
<td>10</td>
<td>Kerin and Julie Ramsey</td>
<td>Not specified</td>
<td>Against</td>
<td>Council cannot swap community land that has been gifted to the council to benefit a privately owned business.</td>
<td>The community land parcels have been donated by the Keil Trust, but Council has obtained support from the Trustees to exchange the two parcels, with the same land use restrictions to be placed in land it receives in</td>
</tr>
<tr>
<td>No.</td>
<td>Name/Address</td>
<td>Location</td>
<td>Position</td>
<td>Concerns</td>
<td>Council's Response</td>
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<td>--------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>11</td>
<td>Wayne and Marilyn Mensforth</td>
<td>Tanunda</td>
<td>Against</td>
<td>Concerns for traffic increase and congestion on Bushman Street, loss of bird life, trees and open space.</td>
<td>Council will not be involved in the development assessment process, as this will be independently assessed by the State Government, but would encourage frank and timely discussion between the Chateau and concerned adjacent landowners as part of the consultation process on formal development plans. Officers clarified that proposed extended car park is off Basedow Road, not Bushman Street, and that further, Bushman Street would not be extended. These planning matters will be raised formally with the proponent in any case as they further develop their design for consideration.</td>
</tr>
<tr>
<td>12</td>
<td>David and Judith Heuzenroeder</td>
<td>Tanunda</td>
<td>Not specified</td>
<td>Concerns for traffic increase and congestion on Mill Street</td>
<td>Council will not be involved in the development assessment process, as this will be independently assessed by the State Government, but would encourage frank and timely discussion between the Chateau and concerned adjacent landowners as part of the consultation process on formal development plans. These planning matters will be raised formally with the proponent in any case as they further develop their design for consideration.</td>
</tr>
<tr>
<td>13</td>
<td>Jeff Meek</td>
<td>Not specified</td>
<td>Against</td>
<td>Wants the train line and station to remain for public use</td>
<td>Council is not the decision maker as regards the train line/station as it is a State owned asset.</td>
</tr>
</tbody>
</table>

Support Triple B and improve the old railway station for all to enjoy. This is in accordance with the provisions of the Trust Indenture Deed. Council is not the decision maker in regards to the use of the Old Tanunda Railway Station as it is a State owned asset. Council has been working with Triple B FM to help address its future.
### Summary table of responses from the community via postal service, email and the Our Better Barossa consultation platform

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<thead>
<tr>
<th></th>
<th>Name</th>
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<th>Position</th>
<th>Against</th>
<th>Concerns</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Elva Hueppauff</td>
<td>Not specified</td>
<td>Against</td>
<td>Concerns with parking</td>
<td>Council will not be involved in the development assessment process, as this will be independently assessed by the State Government, but would encourage frank and timely discussion between the Chateau and concerned adjacent landowners as part of the consultation process on formal development plans. These planning matters will be raised formally with the proponent in any case as they further develop their design for consideration.</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Emily Faulkner</td>
<td>Tanunda</td>
<td>Against</td>
<td>Concerns that losing land that is used by locals, to be swapped for land that is of inferior quality.</td>
<td>Land that is proposed to be transferred to Council better integrates with existing Council assets and integrates with the main street precinct for open space and recreational purposes for more people to use.</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Shelley James and Robbert Sennef</td>
<td>Tanunda</td>
<td>Against</td>
<td>Seek to be consulted about meeting the conditions of release for Keil Indenture Deed.</td>
<td>CEO and Governance Advisor have met with Ms James and Mr Sennef to discuss their general concerns about the proposed land exchange. Response to these specific concerns as follows: Refers to the Consultation Report at Attachment 3 - 4.4.3 Waiver for Disposal Methods – where CEO asserts that “no waiver is being sought as direct negotiation is an acceptable disposal methodology, and there is only one adjacent land owner who can meet the conditions for the release of the Keil Estate Trust”. The only adjacent landowner who can meet the conditions for the release of the Keil Estate Trust is the Chateau Tanunda proprietor who is offering similar sized and quality land in exchange of two parcels of community land.</td>
<td></td>
</tr>
</tbody>
</table>
**ATTACHMENT 5**

**Summary table of responses from the community via postal service, email and the Our Better Barossa consultation platform**

<table>
<thead>
<tr>
<th>Seek an independent review that the principles of Council’s Disposal of Land or Other Assets Policy have been met.</th>
<th>The Keil Estate Trust does not require any consultation with adjacent landowners prior to releasing land under its trust structure. The executors of the Trust Estate have indicated their support for the proposal on various conditions including that the exchange land be rededicated to the community.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seek two independent valuations of the relevant land parcels.</td>
<td>Officers have provided this independent review by KelledyJones Lawyers at <strong>Attachment 8</strong> to this Council report.</td>
</tr>
<tr>
<td>Seek that Council appoint an independent probity advisor to review the assessment and the process at the conclusion to ensure probity is maintained.</td>
<td>Refer to above. Further, upon Council approval to proceed with the land exchange, comprehensive and current valuations will be obtained in due course. The Chateau Tanunda land parcel for transfer can only be valued after it has been appropriately sub-divided in accordance with the original proposal to exchange.</td>
</tr>
<tr>
<td>Seek guarantee that land from Chateau Tanunda is maintained as per original Keil Indenture Deed.</td>
<td>Officers have provided this as part of the independent review by KelledyJones Lawyers at <strong>Attachment 8</strong> to this Council report.</td>
</tr>
<tr>
<td>Seek new community land management plan for new land if it is transferred to Council.</td>
<td>Clause 7 at page 5 of the Consultation Report: CEO asserts that Council will “rededicate the land transferred by Chateau Tanunda to Council in accordance with the community land classification of the (Local Government) Act and restrictions under the Keil Estate, thereby maintaining the same community service”.</td>
</tr>
<tr>
<td>As above.</td>
<td></td>
</tr>
</tbody>
</table>

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**Note:** As above.
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<table>
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<tr>
<th>No.</th>
<th>Name</th>
<th>Town</th>
<th>Position</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Ngaire Ingham</td>
<td>Tanunda</td>
<td>Against</td>
<td>The current open space should be kept for community enjoyment. Disrespectful to the person who bequeathed land to trade it for commercial development. Concerned with increased traffic congestion and building works noise and impact on lifestyle.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Land that is proposed to be transferred to Council better integrates with existing Council assets and integrates with the main street precinct for open space and recreational purposes for more people to use. As above and also Council has worked closely with the Estate of Mrs Keil to provide a good outcome for the community with the proposed exchange of land parcels. Clause 7 at page 5 of the Consultation Report: CEO asserts that Council will “rededicate the land transferred by Chateau Tanunda to Council in accordance with the community land classification of the (Local Government) Act and restrictions under the Keil Estate, thereby maintaining the same community service”. Council will not be involved in the development assessment process, as this will be independently assessed by the State Government, but would encourage frank and timely discussion between the Chateau and concerned adjacent landowners as part of the consultation process on formal development plans. These planning matters will be raised formally with the proponent in any case as they further develop their design for consideration.</td>
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<thead>
<tr>
<th></th>
<th>Name</th>
<th>Address unspecified</th>
<th>Address unspecified</th>
<th>Concerns about Triple B FM's future</th>
<th>Council has been working with Triple B FM to help address its future.</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Pauline Hakala</td>
<td>Not specified</td>
<td>Not specified</td>
<td>Concerns about Triple B FM's future</td>
<td>Council has been working with Triple B FM to help address its future.</td>
</tr>
<tr>
<td>19</td>
<td>Cathy Arnst</td>
<td>Not specified</td>
<td>Not specified</td>
<td>Concerns about Triple B FM's future</td>
<td>Council has been working with Triple B FM to help address its future.</td>
</tr>
<tr>
<td>20</td>
<td>Garry Wharton*</td>
<td>Not specified</td>
<td>No objection</td>
<td>Concerned with future of Triple B radio and that any deal should include the re-establishment of Triple B.</td>
<td>Council has been working with Triple B FM to help address its future.</td>
</tr>
</tbody>
</table>

*This submission was received just after the consultation deadline, but is included by way of transparency.*
ATTACHMENT 6

Copy of correspondence from the community
From: RON BAILEY <ron.bailey@yahoo.com.au>
Subject: PROPOSED COMMUNITY LAND EXCHANGE

Message Body:
If this does not go through we are not serious about promoting the Barossa as in our slogan. This is a no brainer in my opinion.
The land in question at this point in time is useless. It would make a lot more sense having the land closer and more accessible to the community being on the town side of the railway line, as well as being easier to access and maintain.
If these people are prepared and willing to make this happen it is a Very Big Positive for the Valley.
We as a Community are very quick to judge and look at the negatives moving forward sometimes.
Yes you’re going to get negatives but in this situation the positives well and truly out weigh the negative.
Could this be the return of the Barossa Wine Train? I honestly hope so.
Providing all protocol and regulations are put in place and adhered to I definitely hope this does proceed and is not appealed and given in to by a minority.

--
This e-mail was sent from a contact form on A WordPress Site (http://ourbetterbarossa.com.au)

From: Susan Guy <guybuilders@bigpond.com>
Subject: Chateau Tanunda proposed land exchange

Message Body:
the whole proposal sounds great! And even better with the train line working again!

--
This e-mail was sent from a contact form on A WordPress Site (http://ourbetterbarossa.com.au)
Hi,

We are in support of any development in the Barossa. Just settling down in the Barossa, we find the lack of activities, hotels and night life in the Barossa. The land exchange will help to improve the infrastructure, promote tourism and make Barossa known to the world; not just a tiny village with good wines. Comparing Bordeaux area, Bourgogne (France) Napa Valley in California and many vineyard areas in the world, Barossa has a lack of international tourists.

Why are there no loads and loads of Chinese tourists who are willing to spend in the Barossa?

The aim is not to have small amount of rich tourists but to attract as many tourists as possible, so that everyone in the community can benefit from tourism. Foreign income helps us grow and keeps our economy going.

We need new dynamic young people to bring us ahead in this challenging world. New opinions should be supported by our Barossa community.

Things need to change to bring us ahead!

Kind regards,

Nelly
For the attention on the Chief Executive Officer

Dear Martin McCarthy,

With regard to the proposed land exchange and future development at Chateau Tanunda, we would like to note our reservations to the proposed construction.

Our property 105 Bethany Road backs on to the Chateau property, we are the property across the train line. We have been in consultation with John Gieber previously as on a few occasions his holding ponds have over flowed onto our property, while discussions have been held no proper resolution has occurred. The current water management plan at Chateau Tanunda is insufficient and this has caused the washing away of our top soil and results in erosion paths though our vineyards and access tracks. There is also the risk to the vines should there be contaminants in the water when this occurs.

While we are not against the development in principle we do want to protect our rights and property. As this development would result in increased water catchment we would seek assurances that the proper water management plans will be implemented so that over flows of this nature or worse do not occur again, possibly even on a larger scale.

Thank you for your consideration on this matter.

Kind regards

Lisa Barclay
On behalf of the Hueppauf family trust

---

From: Loris Pullen <pullen.loris@gmail.com>
Subject: Proposed land exchange with Chateau Tanunda

Message Body:
The proposal sounds like a great idea, for future tourist development in the Barossa.

---

This e-mail was sent from a contact form on A WordPress Site (http://ourbetterbarossa.com.au)
The Chairperson  
Barossa Council  
Nuriootpa 5355  

Dear Sir,  

As next door neighbours to Château Tanunda at the end of Mill Street, we wish to make the following points about the development and land exchange between the owners of the Château and the Barossa Council. 

We applaud the thrust of the proposal in general terms but do have the following concerns.

Mill Street  

1. Our main concern is the use to be made of Mill Street, a narrow, historic street dating from the early days of Tanunda. 

2. Extra traffic along this street will exacerbate difficulties for residents and visitors. There are already parking problems causing road congestion between Murray Street and McDonnell Street. 

3. Traffic congestion in the street is increased by the location of the clinic where cars are turning and reversing very frequently. 

4. Extra traffic past the hospital area in Mill Street is not appropriate.

Our Requests  

5. We would like more detail about the proposed upgrade of historic Mill Street. 

6. We strongly urge the owners of the Château to keep all grape trucks and wine tankers out of Mill Street. 

7. Generally the use of Mill Street should be discouraged. We think that the Basedow Road entrance should be preferred. A larger No Through Road sign needs to be erected at the end of Mill Street. 

8. Over more than one generation the land directly opposite 17 Mill Street has been used by children as a bicycle track where they have made jumps and circuits and generally enjoyed themselves. It would be a great pity to see this harmless activity in a quiet corner of the town destroyed.

In Summary  

9. This proposal, if executed with sensitivity of design and proper consultation with adjoining landowners has exciting possibilities. Please keep us informed of developments. 

Yours sincerely,  

Peter and Angela Heuzenroeder
Our Better Barossa <wordpress@ourbetterbarossa.com.au>

Consultation Feedback

To: MBX Marketing

You forwarded this message on 1/12/2017 4:47 PM.

From: Sonya Day <bentonvorgirl@hotmail.com>
Subject: Proposed Community Land Exchange

Message Body:
To Whom it May Concern

After reading the Consultation Report and looking at all the maps and proposed Hotel Development, I can understand the community and employment benefits of this proposal. The amount of new jobs estimated, the Culinary School and getting the Wine Train back up and running would be all be wonderful things for the Barossa.

However, even with all of that, I have to say that I am not in favour. The Proposal puts a hotel behind a hotel basically. It seems cramped and the views that guests would have is one block of vineyard fronting Bosedow Road. One of the good, no greats thing about the Barossa is space and even though I know the architects would be sympathetic of putting new buildings next to the iconic Chateau, I just don’t think it will work. Its one of the things that makes the Chateau grand, is the space around it. Put a Hotel there (even 5 star) and you will take that grandeur away and that’s not what the Barossa is about.

Regards
Sonya Day

Our Better Barossa <wordpress@ourbetterbarossa.com.au>

Consultation Feedback

To: MBX Marketing

You forwarded this message on 1/12/2017 4:50 PM.

From: Kerin and Julie Ramsey <kerin.ramsey@bigpond.com.au>
Subject: Proposed community land exchange

Message Body:
Council cannot swap community land that has been gifted to the council to benefit a privately owned business. The land must stay in council ownership. Support Tribble B radio station and improve the old railway station for all to enjoy.
From: marilyn.mensforth [mailto:menforthrn@gmail.com]
Sent: Monday, 4 December 2017 10:50 AM
To: MEX Barossa ; Nicole Westrich
Subject: Public Consultation (PC) Submission - Proposed Land Exchange with Chateau Tanunda

Nicole Westrich
Barossa Council
43 - 51 Tanunda Road
Nuriootpa SA 5355

Dear Nicole

Please accept this email as our formal submission in relation to the PC process and wish for the enclosed to be included when the outcome of the PC process is presented to the 19 December Council meeting, for consideration.

As you kindly explained the PC process is at this time only in relation to the concept plan for the Chateau’s redevelopment, however we would like to highlight our concern right from the onset of the project.

After recently building our new home on the corner of MacDonnell and Bushman Streets Tanunda, the only negative is how busy the traffic is on MacDonnell Street during the day. Having said that we fully accept the day traffic as part of living so close to the main street. Unfortunately we never anticipated that we may also need to live with an even higher traffic volume and noise during the day and the possibility of non stop traffic noise during the night with cars accessing the proposed carpark and hotel.

This concern is in relation to the statement made on page 7 of the PC report, being a plan of the area, stating that Bushman Street is a “Potential Future Connection” and page 17 stating “Connections from Bushman & Mill Streets upgraded”. The page 7 plan clearly shows that there is the intention to extend Bushman Street into the planned complex carpark which allows for 150 spaces.

However does Council realise that Bushman Street, which runs along the side of our home, currently ends at the driveway of a private residence? Therefore can Council please explain how / where the proposed continuation of Bushman Street will happen?

If Council somehow was to open up Bushman Street as a thoroughfare to the proposed complex, it would not be acceptable as it would have a major impact on the home owners on the town side of the complex. The traffic volume and noise day and night along Bushman Street would be unbearable and would reduce the value of properties. As mentioned the traffic along MacDonnell Street, which intersects with Bushman Street, is extremely fast and non stop during the day and further vehicles would cause considerable congestion. Besides access to private properties, MacDonnell Street is used to access the Hospital, Medical Centre, Wohlers, Community Club, Kindergarten and Basedow Road.

Presently the area for the proposed connection is open space with lots of trees and bird life therefore please consider how this would be affected. A consideration would be for the connection to the complex be a walk and bike way which patrons can use to access Murray Street with vehicle access to the complex / carpark from Basedow Road.

As we are directly affected by the concept of extending Bushman Street, may I ask that we be notified by mail / email by Council or which ever body is appointed for the Development Approval process, of any proposed changes to Bushman Street so we are able to make comment.

Kind regards
Wayne and Marilyn Mensforth
Attachment 6

--Original Message--
From: Judy Heuvenroeder [mailto:judyrid@bigpond.com]
Sent: Monday, 4 December 2017 5:15 PM
To: Nicole Welch <nwielch@barossa.sa.gov.au>
Subject: Chateau Tanunda plans re Mill St Tanunda

After a phone call to you from Marilyn Menzforth, she recommended I send this submission re Chateau Tanunda plans to alter Mill St Tanunda to you.

Plan to make Mill St a thoroughfare from Murray St to Chateau Tanunda.

1. Mill St either end too narrow.
2. Width one way only between Edward St and MacDonnell St, and from No 14 Mill St to Chateau Tanunda.
3. Hospital heavy during the week near the Tanunda Hospital and the Medical Practice.
4. Hospital environment would be compromised by passing through traffic.
5. No footpath from No 14 Mill St onwards, no provision for one unless trees are removed.
6. Already 3 adequate entrances to the Chateau Tanunda from Baudow Rd.
7. Cross road at MacDonnell St and Mill St very poor line of vision, incidents will increase with greater traffic flow.
8. Make Mill St extension to the Chateau Tanunda a bike and walking track, leave gates that are there at present and open them for traffic if the oval is in use.

We would appreciate this submission being put to the Council.

David and Judith Heuvenroeder

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From: jeff meek <lo.meek@hotmail.com>
Subject: proposed land exchange

Message Body:
I strongly oppose the land swap for the following reason.
To give away our land & train station to private investment so he can use our assets for his personal gain is not a reason.
The future use of our asset (train station & line) to bring tourists & the use for all locals to enjoy is too great.
Considering our nearest working train line is in Gawler, once it’s gone it’s gone forever & we have no say over it & the public will have no access to old train station.
DO NOT DO THIS, IT’S FOR ALL BAROSSA NOT JUST A FEW
regards Jeff
Council Members

I do not approve of Mr Giebel from Chateau
Tanunda using a land exchange deal with
the Barossa Council.
The piece of land was given to Tanunda Council
now Barossa Council by Mobils Estate and
should not be transferred. They have plenty
land they can use.
The piece of land they want to exchange is
locked away behind the homes and does not
have easy access. The land is used by
Caravan & Mobile homes for parking. We do not
have enough parking for Caravans. If they
use the land their will be less parking
How long will it be before he buys the rest of
land for his own use?

Eva M. Thijsen

Attachment 6

Fri 8/12/2017 9:30 PM
Our Better Barossa <wordpress@ourbetterbarossa.com.au>
Consultation Feedback

From: Emily Faulkner <emily.maclean@iinet.net.au>
Subject: Chateau Tanunda land swap

Message Body:
I am writing to express my concern about the proposed swap between Chateau Tanunda and the Council. My family and I regularly access the current Council land and were not happy to hear it could be swapped for development by the Chateau. It is a lovely piece of land with big gum trees and a great open space. It would be a shame for it to be lost to the community. We have always felt so lucky to be able to access such a space so close to our home. The land being offered in return is of a lesser quality and would actually be less useful to our community. I am sure that I am not the only person who feels this way, hopefully the Council will take in to account the opinions of the people who live in this area and will lose a great space before making this decision.

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This e-mail was sent from a contact form on A WordPress Site [http://ourbetterbarossa.com.au]
5 Basedow Road,
Tamunda SA 5352.

11 December 2017.

Mr. Martin McCarthy,
Chief Executive Officer,
The Barossa Council,
PO Box 867,
Nuriootpa SA 5355.

Dear Mr. McCarthy,

We welcome the opportunity to respond to the Consultation Report regarding the Proposed Community Land Swap with Chateau Tanunda and the Revocation of Community Land Classification under Section 194 (2) of the Local Government Act 1999.

We understand that all submissions received by Council will be compiled into a report and placed on the Public Agenda at the next available Council Meeting, which we believe will be on Tuesday the 19th of December 2017, where elected members will consider the merits of revoking the Community Land Classification and if they agree to do so, they will recommend to do so to the Minister of Planning who has oversight in these cases. (We believe the relevant Minister is the Minister for Local Government, Geoff Brock.)

We note that Section 194 (2) states: “Before a council revokes the classification of land as community land – (b) the council must follow the relevant steps set out in its public consultation policy.”

The Barossa Council’s Public Consultation Policy at 4.2 states: “In carrying out its consultation processes, Council applies the following principles:

- Council decision making will be informed, transparent and accountable.
- Members of the community have a right to be informed about issues affecting their area and their lives and to influence Council’s decisions about these issues.”

We bought our heritage listed property at 5 Basedow Road Tanunda in February 2007 and moved in two years later following refurbishment. We love our home, the surrounds and the Tanunda community we have moved into. We enjoy sitting out the front at our home enjoying the ambience, the peace and quiet, the birds including the parrots and the rabbits and we hope to be able to continue to do so for the next ten years or more. We are aware that people walk their dogs, tourists park their Winnebagos and adults and children ride their bikes over the Community Land which
is adjacent to us and love to explore what they call “The Magic Forest.” Local community markets are held here on a regular basis and there was one held on Saturday the 9th of December with many people in attendance.

We note that Lot 106777 12 Basedow Road Tanunda, CT 5902/824D33882, and Lot 106775 11 Basedow Road Tanunda, CT 5133/408D33882, have Community Land Management Plans applying to them which would need to be revoked if the proposed land swap with Chateau Tanunda proceeds. These Lots are currently listed in The Barossa Council’s Community Land Register under Management Plan 2 Undeveloped Reserves and Gardens (or those with minor improvements.) We further acknowledge that these Lots are currently subject to the terms and conditions of the Keil Estate Indenture Deed.

We note that the terms of the Keil Estate Indenture Deed state that the funds provided ($65,000.00) by the said Elma Linda Keil deceased were specifically provided on the condition contained in her will that the said land was to be purchased for purposes of park gardens or sporting facilities within the area of the District Council of Tanunda and that the Council give an undertaking that the said land would be used in perpetuity for that purpose and not sold at any time in the future thus preserving the said land for such purposes; and whereas the Council agreed to accept the benefit and to purchase the said land under those conditions.

Clause 2 in the Keil Estate Indenture Deed states that the Council... shall restore the said land to a neat, clean and tidy appearance and shall exercise all due care and diligence in the ongoing maintenance, preservation and improvement of the said land for the purposes of its use as public park lands and a recreation area.

As neighbours to this Community Land currently owned by the Barossa Council we are disappointed that more attention has not been paid to this land over the years (we have been living next door for the previous 10 years) to enhance their amenity while retaining their use as open space and recreation.

We would also like to refer to 4.4.3 Waiver for Disposal Methods – Conditions for Waiver for Disposal Methods (Attachment 3 to the Consultation Report.) “No waiver is being sought as direct negotiation is an acceptable disposal methodology and there is only one adjacent land owner who can meet the conditions for the release of the Keil Estate trust.”

We are the adjacent landowners referred to in Attachment 3. To date, we have not been directly consulted about meeting the conditions for the release of the Keil Estate trust.

We are also aware that should this land be swapped with Chateau Tanunda as is proposed, then, it will no longer be available for community groups for example, during the The Tour Down Under, The Valley Hot Rodders, the Barossa Vintage Festival, the Tanunda Band Festival, the Barossa Gourmet Weekend and the Tanunda Christmas Parade. We also believe that there will be less public green space in the Tanunda Town Centre than ever before if the land swap is agreed to. We believe that the public green space which currently exists at The Hub is in no way comparable to
the green spaces currently available in the town centres of Lyndoch, Nuriootpa and Angaston.

We are also aware that the proposed land swap is informed by The Barossa Council’s Disposal of Land or Other Assets Policy. We note at 1. Purpose 1.1 “This Policy provides a framework to:

a) define the methods by which Land and Other Assets are disposed of;
b) demonstrate accountability and responsibility of Council;
c) be fair and equitable to all parties involved;
d) enable all processes to be monitored and recorded; and

e) ensure that the best possible outcome is achieved for the Council.

1.2 Furthermore, Section 49 (a1) of the Act requires Council to develop and maintain policies, practices and procedures directed towards:

a) obtaining value in the expenditure of public money; and
b) providing for ethical and fair treatment of participants; and
c) ensuring probity, accountability and transparency in all disposal processes.”

4.1 Disposal of Land or Other Assets states:

“Any decision to dispose of Land or Other Assets will be made after considering (where applicable):

a) the usefulness of the Land or Other Asset;
b) the current market value of the Land or Other Asset;
c) the annual cost of maintenance;
d) any alternative future use of the Land or Other Asset;
e) any duplication of the Land or Other Asset;
f) any impact the disposal of the Land or Other Asset may have on the community;
g) any cultural or historical significance of the Land or Other Asset;
h) the positive and negative impacts the disposal of the Land or Other Asset may have on the operations of the Council;
i) the long term plans and strategic direction of the Council;
j) the remaining useful life, particularly of an Asset;
k) a benefit and risk analysis of the proposed disposal;
l) the results of any community consultation process;
m) any restrictions on the proposed disposal;
n) the content of any community land management plan; and
(o) any other relevant policies of the Council, including:
- Prudent Management Policy
- Asset Accounting Policy”.

Evidence suggests that these issues have not been considered in full in Attachment 3 of the Consultation Report.
In fact, it is stated that “An assessment of the proposal against the principles of the relevant policy have been undertaken at officer level and provided at Attachment 6. (Attachment 3 in the Consultation Report). These have not been independently reviewed due to the timeframes involved and so it is suggested this be done during the Community Land Consultation Process to ensure they are well tested and agreed independently.” (The Barossa Council, CEO Report 19 September 2017, page 313.)

We believe that this must be done to ensure the community receives value for money for the Community Land proposed to be swapped with Chateau Tanunda.

Further 4.4.1 (i) states that “if Land is to disposed of through a … Direct Negotiation, then (unless the Council resolves otherwise) a minimum of two independent valuations must be obtained to ensure that an appropriate market value is obtained. The independent valuation must be made no more than 6 months prior to the proposed disposal.”

We do not believe that to date two independent valuations have been obtained with regard to the existing value of the Community Land proposed to be swapped. We also note that the Lot to be transferred from Chateau Tanunda, Lot 74 CT 5962/946D58229, “excludes a portion to the south to be retained by Chateau Tanunda.” This portion of land has not been defined and its value is not known.

We note further at Attachment 3 of the Consultation Report 4.2 Disposal Principles—Probity, accountability, transparency and reporting—“It has also been recommended that Council have an independent probity adviser review this assessment and the process at the conclusion to ensure probity is maintained.”

We strongly recommend to Council that this step be taken in the interests of probity, accountability and transparency.

We note that Chateau Tanunda has taken the initiative of acquiring C Lot 72 from the SA Government to enable the development strategy. This Lot includes the railway station and access road.

We also note that Clause 4 of the Keil Estate Indenture Deed states that the Council may however develop the said land or part thereof to enhance its future use in conjunction and in sympathy with the railway station facilities and complex adjoining the said land should such facilities be themselves properly restored and once again become a railway passenger station whether on a regular commercial basis or for tourist purposes or is used for some other commercial or public purpose provided that it retains its primary character as park lands and a recreation area for the public.

We are fearful that the proposed community land swap and future Chateau Tanunda development would sound the death knell for future train services between Gawler and the Barossa.
In summary, we recommend that the following steps be completed by The Barossa Council prior to a decision being made on the merits of the Proposed Community Land Swap:

1. As adjoining land owners we ask to be consulted about meeting the conditions for the release of the Keil Estate Indenture Deed as discussed in the Consultation Report.
2. An independent review be undertaken of the assessment of the proposal against the principles outlined in The Barossa Council’s Disposal of Land or Other Assets Policy.
3. Two independent valuations be obtained with regard to the existing value of the Community Land proposed to be swapped and the existing value of the Chateau Tanunda land proposed to be swapped.
4. Council appoint an independent probity advisor to review this assessment and the process at the conclusion to ensure probity is maintained.
5. After due consideration, if and when the Proposed Community Land Swap is agreed to, Council guarantees that the land received from Chateau Tanunda is maintained as per the terms and conditions of the Keil Estate Indenture Deed. We understand that this has also been agreed to by the current trustees of the Keil Estate Indenture Deed.
6. A revised Community Land Management Plan is developed as soon as possible for the newly acquired land from Chateau Tanunda.

Yours faithfully,

Robbert (Bob) Sennef

Shelley James
12 December 2017

The Barossa Council
Chief Executive Officer
PO Box 867
NURIOOTPA SA 5355

barossa@barossa.sa.gov.au

Dear Sir/Madam

Re: Public Consultation: Land Swap with Chateau Tanunda of Community Land

I write with regard to the land swap proposed with Chateau Tanunda to which I strongly disagree. I am concerned with what will happen to the lovely little heritage town of Tanunda as private development attempts to change the town to benefit itself.

I understand that the subject land was actually gifted to the Barossa Council by a deceased Estate together with a large sum of money for its up-keep. I regularly enjoy walking my dogs in this area with friends and family and hope to be able to continue to do so.

There is no other open space area equal to this Reserve and I feel it should be kept as it is for the Community’s enjoyment, the reason for which it was bequeathed. I feel it is disrespectful to the deceased person, to now trade off this gift so that it can be turned into a Carpark, Hotel and swimming pool for private commercial development.

I also live on Basedow Road and am concerned with the potential change in the aesthetics of the area. There are many private family homes and retirees living in the immediate locality who benefit from the open space provided by the land Reserve.

The increase in vehicle traffic, noise from building works and extra foot traffic late at night which comes with an International Hotel, will severely impact my own property and quiet lifestyle.

Therefore, I believe that Chateau Tanunda should utilise their own land better and develop their Hotel within their existing boundaries.

Yours sincerely,

NGAIRE INGHAM
22 Basedow Road
TANUNDA SA 5352
-----Original Message-----
From: Our Better Barossa [mailto:wordpress@ourbetterbarossa.com.au]
Sent: Wednesday, 13 December 2017 7:09 AM
To: MBX Marketing <MBXMarketing@barossa.sa.gov.au>
Subject: Consultation Feedback

From: Garry Wharton <mukalele@gmail.com>
Subject: Land exchange with Chatau Tanunda

Message Body:
I have no objection to this exchange but am concerned about the future of bbbfm COMMUNITY radio and think any deal should include the reestablishment of bbb.
My feeling is that council is pulling out of its community involvements at late. Note I do not say obligations. When I moved to the barossa I marvelled at the councils involvement with disability services, aged care, charity and other community services and I dont know if my perception is correct but it is nevertheless how it appears.
I really think council should be seen to support community activities including community radio.

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This e-mail was sent from a contact form on A WordPress Site [http://ourbetterbarossa.com.au]
THANK YOU LETTER TO THOSE WHO PROVIDED FEEDBACK

Dear Mr Bailey:

Thank you for your recent feedback to The Barossa Council regarding the proposed community land exchange with Chateau Tanunda.

Your correspondence will be compiled with all other public feedback and attached to a report for Council’s consideration at its Tuesday 19 December 2017 meeting. The Council meeting commences at 9am at the Nuriootpa Chamber, 43-51 Tanunda Road, Nuriootpa.

You are welcome to attend in the public gallery and listen to the Elected Members discuss and decide, among other agenda items, whether or not community land classification should be removed from the relevant parcels of land, with a view to exchanging them with Chateau Tanunda.

Please note that Elected Members will not be receiving any questions without notice from the public gallery during the meeting.

In the week leading up to that Council meeting, you will find the agenda for the entire meeting on Council’s website here. You will also find the meeting minutes at that link within 5 days of the meeting, so that even if you are unable to attend, you can read about the Elected Members’ decision on this matter.

Should you have any questions about this process, please contact me via details below.

Sincerely
13 December 2017

Ms Nicole Westrich
The Barossa Council
43-51 Tanunda Road
NURIOOPTA SA 5355

VIA EMAIL: nwestrich@barossa.sa.gov.au

Dear Nicole

INDEPENDENT ASSESSMENT OF PROPOSED LAND EXCHANGE WITH OWNER OF CHATEAU TANUNDA

We refer to our email exchanges earlier this week and confirm our instructions to provide an independent assessment of the Council proposal to exchange Council-owned community land with land owned by Chateau Tanunda.

Executive Summary

In completing the independent assessment, we advise as follows:

- Council’s process to date and its further proposed steps, accord with the requirements of the Local Government Act 1999 (“the LG Act”) to revoke the classification of the current community land as community land.

- Council’s public consultation process for the revocation of the community land classification accords with its requirements under the LG Act and its Public Consultation Policy.

- Given the in-principle agreement of the Executors of the Deceased Estate of Elma Linda Keil, it appears that there is no impediment to the Dedication over the community land being released under the Deed of Indenture.

- In its process to date and its further proposed steps, the Council has complied with the requirements of the LG Act and its Disposal of Land and Other Asset Policy in considering disposal of the land.

- The Council’s process to date and its further proposed steps demonstrate compliance with principles of probity, accountability, transparency and reporting in disposal of the land.

- Given the proposed disposal method, the Council will need to resolve to either not require independent valuations, or to grant a waiver to the proposed disposal method for the land and to record its reasons for this proposed methodology.
Background

1. In 1996, the then District Council of Tanunda purchased three parcels of land, being Certificates of Title 5133/408, 5133/409 and 5133/410, for public park land purposes.

2. The purchase was partially funded by a gift from the deceased estate of Elma Linda Keil. A condition of which was that the funds were to be used to purchase land for the purposes of parks, gardens or sporting facilities within the area of the District Council of Tanunda and that the then Council undertake that the land be used in perpetuity for that purpose and not sold at any time in the future.

3. A Deed of Indenture was entered into between the then executors of the deceased estate and the District Council of Tanunda, dated 28 June 1996, to this effect. The Council agreed to ensure that the land remained as dedicated parklands and a recreation area for the benefit of the public.

4. The Deed of Indenture specifically provides, at paragraph 2(9) that:

   ...the Executors reserve the right to modify waive or release wholly or in part all or any of the covenants conditions and restrictions herein relating to the said land and the performance thereof by the Council.

5. On 1 July 1996, the Barossa Council ("the Council") was formed through the amalgamation of the District Council of Angaston, the District Council of Barossa, and the District Council of Tanunda. The Council is the successor to the District Council of Tanunda.

6. The land sits adjacent to land known as the Tanunda Railway Station land, formerly owned by the South Australian State Government and now secured by Chateau Tanunda, as well as to the land owned by Chateau Tanunda.

7. The land is classified as community land under section 193 of the LG Act and is subject to the Council's Community Land Management Plan 2, which applies to undeveloped reserves and gardens (or those with only minor improvements).

8. The land is zoned as ‘tourism accommodation land’ under the Council’s current Development Plan.

9. Chateau Tanunda has developed a concept for a five-star hotel, short term villa accommodation and a culinary institute with associated small scale student accommodation. This would be integrated into both the existing Chateau Tanunda land, and the Tanunda Railway station land.

10. In order to facilitate the development and achieve the best results for both the development, the Council and the community, Chateau Tanunda has proposed that a land exchange occur, with community land identified as Certificates of Title 5133/408 and 5902/824 (which includes the land previously included in 5133/409) being transferred to Chateau Tanunda ("the Community Land"), in exchange for similar parcels of land owned by Chateau Tanunda being transferred to the Council ("the Exchanged Land").
11. The land being offered to the Council is land adjacent to the car park at the Tanunda Soldier’s Memorial Hall. This land is owned by the Council and is more accessible to the main street.

12. In order to achieve the proposal, the Council must consider and complete the following:

12.1 the revocation of the community land classification of the Community Land under the LG Act;

12.2 reaching final agreement to remove the dedication over the Community Land with the trustees under the Deed of Indenture; and

12.3 entering into an agreement with [the owners of] Chateau Tanunda for the transfer of the Community Land and the transfer of the Exchanged Land to the Council.

13. We note that the proposal is also subject to a land division of the parcels of land which include the Exchanged Land, in order to create the lots to form the Exchanged Land and a small parcel to be retained to allow access to Chateau Tanunda land. This division will be subject to usual development approval considerations and processes, which are not part of this assessment.

14. The proposal is also subject to Chateau Tanunda submitting a development application and receiving approval for, the proposed development, which will be subject to the usual processes and considerations. Again this is not a part of this assessment.

Community Land Revocation

15. Section 194 of the LG Act sets out the process by which the Council may revoke the classification of land as community land.

16. Section 194(2) and (3) of the LG Act specifically set out that:

(2) Before a council revokes the classification of land as community land—

(a) the council must prepare and make publicly available a report on the proposal containing—

(i) a summary of the reasons for the proposal; and

(ii) a statement of any dedication, reservation or trust to which the land is subject; and

(iii) a statement of whether revocation of the classification is proposed with a view to sale or disposal of the land and, if so, details of any Government assistance given to acquire the land and a statement of how the council proposes to use the proceeds; and

(iv) an assessment of how implementation of the proposal would affect the area and the local community; and
(v) if the council is not the owner of the land—a statement of any requirements made by the owner of the land as a condition of approving the proposed revocation of the classification; and

(b) the Council must follow the relevant steps set out in its public consultation policy.

(3) After complying with the requirements of subsection (2), the Council—

(a) must submit the proposal with a report on all submissions made on it as part of the public consultation process to the Minister; and

(b) if the Minister approves the proposal—may make a resolution revoking the classification of the land as community land.

17. The Council has prepared a report pursuant to section 194(2)(a) of the LG Act ("the Report") and has made the Report publicly available on its website. The Council has also provided a two page summary and visual displays, including maps and concept drawings, at the Council offices at Nurioopta and at the Tanunda Library. The visual display has also been made available at Chateau Tanunda.

18. We have reviewed the report and confirm that it complies with the requirements of section 194(2)(a) of the LG Act as it includes:

18.1 a summary of the reasons for the proposal;

18.2 a statement of the dedication and trust to which the land is subject, including how this is to be dealt with;

18.3 an outline of the future use of the land, being disposal via the proposed land exchange, and an outline of the proposed land exchange and how it will impact the Council and the community, together with a statement that no Government assistance was given to acquire the land;

18.4 an assessment of how the proposal will impact the local community and area; and

18.5 confirmation that the Council is the owner of the land.

19. The recent case of Coastal Ecology Protection Group Inc & Ors v City of Charles Sturt [2017] SASC 136 ("the Coastal Ecology Decision") emphasised the importance of ensuring full compliance with the Council public consultation policy where public consultation is required under the LG Act.

20. Section 50 of the LG Act provides that the Council must prepare and adopt a public consultation policy, which must set out steps that it will follow in cases where the LG Act requires the Council to undertake public consultation in accordance with its policy.

21. Such steps must provide interested persons with a reasonable opportunity to make submissions and provide for publication of a notice in a newspaper circulating within the area and on a website, describing the matter and inviting interested persons to make submissions within a stated period (not less than 21 days). It must also provide for consideration of any submissions made in response.
22. Section 194(2)(b) of the LG Act provides that the Council must follow its public consultation policy before revoking the classification of land as community land.

23. The Council has adopted a Public Consultation Policy, as approved by the Council on 26 September 2016.

24. The Council has engaged in a six (6) week consultation process, which included:
   24.1 development and release of an extensive public consultation document;
   24.2 public notices in the Herald and Leader newspapers;
   24.3 release of a media statement;
   24.4 placement of information on its website, the Better Barossa consultation platform and Council’s Facebook homepage; and
   24.5 displays at the Council Library and Visitor Centre in Tanunda, at Chateau Tanunda and at the Council offices in Nurioopta.

25. Written submissions have been sought through email, letter, or the Better Barossa consultation platform and will be included in a report for the consideration of the Council in formal meeting.

26. On review of the public consultation process both as undertaken to date and to be undertaken, we confirm that the process:
   26.1 complies with the requirements of the LG Act, specifically sections 50 and 194; and
   26.2 complies with the Council’s Public Consultation Policy.

Release of Dedication under the Kiel Trust

27. As above, the Community Land is subject to a dedication pursuant to a Deed of Indenture, entered into with the Executors of the Deceased Estate of Elma Linda Keil.

28. The Deed of Indenture, on its face, prevents sale of the Community Land, as it is dedicated in perpetuity for public parkland purposes under the Deed and may not be sold at any time in the future.

29. However, the Deed also expressly provides for the Executors to modify, waive or release wholly or partly all or any of such covenants, conditions and restrictions.

30. The Executors have conditionally and in-principle provided their support to a release of the Community Land from the covenants, conditions and restrictions under the Deed, to allow for the land exchange, provided that the Exchanged Land is re-dedicated under the same or similar covenants. The Executors have also indicated a number of other conditions, including that:
   30.1 no costs be borne by the Executors;
   30.2 no release will occur until a final agreement has been reached on all matters; and
30.3 the Council undertakes any necessary actions under the LG Act and that the Minister for Local Government approve the proposal to revoke the classification of the land as community land.

31. Given the provisions of the Deed and the in-principle support of the Executors, I advise that there is no apparently insurmountable impediment to the release of the dedications under the Deed of Indenture.

32. We further note that the Costal Ecology Decision considered land subject to dedicated purposes (albeit under the Crown Lands Act 2009), and confirmed the test of whether the land was used in accordance with the dedicated purpose is whether it is consistent with the dedicated purpose, rather than whether it is in furtherance of the dedicated purpose.

33. Given the advice above that release of the dedications under the Deed of Indenture can be achieved, we do not consider the Coastal Ecology Decision has any relevant impact for this matter. However, as the dedicated purpose was to provide land for the purposes of parks, gardens or sporting facilities within the area of the District Council of Tanunda and the same or equivalent land will still be provided for this same purpose under the proposed land exchange, we consider that the land exchange will still be consistent with the dedicated purpose.

Transfer of Land

34. If the Council is successful in obtaining the approval of the Minister to its proposal to revoke the classification of land as Community Land, pursuant to section 201(1) of the LG Act, the Council may sell or otherwise dispose of its interest in the land.

35. Section 49 of the LG Act requires that the Council prepare and adopt procurement policies, practices and procedures, and policies on contracts and tenders, including on the sale or disposal of land or other assets.

36. The Council has adopted its Disposal of Land or other Asset Policy, as approved by the Council on 20 September 2014.

37. Paragraph 4.1 sets out considerations for the Council before making a decision to dispose of land or other assets.

38. The Council has considered and assessed each of these in its Report in Attachment 3. We have reviewed the assessment and consider that each of the considerations has been adequately taken into account by the Council, save for the outcome of the community consultation process currently underway, which will be considered by the Council prior to making its decision.

39. Paragraph 4.2 sets out the principles to which the Council must have regard in its disposal of land or other assets.

40. Again, the Council has assessed and considered these principles in Attachment 3 to its Report. We have reviewed the assessment and consider that, generally, the principles have been adequately addressed.
41. The Council has maintained a fully transparent and open process, including extensive community consultation.

42. The Council has recognised that, in effect, competition (or an open or other public process) is not possible due to the restrictions on the land and that the only viable disposal option is the proposed land exchange. The land exchange is recognised as providing significant value to the community through economic growth. The land exchange will not result in a reduction in Council land assets, with land of the same or similar value and size being exchanged and, as we understand it, being community land located in a more accessible location.

43. In assessing probity, accountability, transparency and reporting, as set out in paragraph 4.2(d), the Council is required to demonstrate accountability by ensuring that decisions are appropriately documented and evidence provided to ensure that an independent third party can identify that the principles in paragraph 4.2 have been followed.

44. The preparation of the detailed Consultation Report, as well as the assessment included at Attachment 3 and other documents attached and the extensive public consultation, with the report, documents, summaries and visual displays being made available, is demonstrable of high levels of probity, accountability, transparency and reporting. The reasoning for all decisions is clearly documented and evidenced and compliant with the principles in paragraph 4.2 and is evident and easily identifiable.

45. Paragraph 4.4.1 of the Policy sets out land disposal methods. The Council is required to make a decision to dispose of the land and the method of disposal.

46. Direct negotiation is set out as a valid method, to occur with owners of land adjoining the land or others with a pre-existing interest in the land.

47. In this matter, it has been identified by the Council that the proposed transferee is the only viable purchaser, as it is able to make provision to allow the Council to release the Dedication over the land.

48. However, paragraph 4.4.1(j) provides that if land is to be disposed of through direct negotiation then, unless the Council resolves otherwise, a minimum of two recent independent valuations must be obtained.

49. We understand the Council has not obtained such valuations and does not intend to do so. Further, in order to assess the land exchange on this basis, valuations of the Exchanged Land would also be necessary.

50. Therefore the Council will need to resolve to dispense with this requirement. In circumstances where the disposal is via a land exchange of land of the same or similar size and value and the land currently has little or no value due to the restrictions of the Dedication, this is, in our opinion, a reasonable and valid step for the Council.

51. Alternatively, the Council may grant a waiver under paragraph 4.4.3(a) to allow an alternative disposal method, allowing for the direct negotiation with the owner of Chateau Tanunda without the need to obtain valuations or similar.
52. Otherwise, I consider the steps taken or proposed to be taken by the Council to make a
decision to dispose of the land via the land exchange proposed, comply with Council's
Disposal of Land or Other Asset Policy. However, as a matter of precautionary practice
and good governance, it is our advice that each step taken by the Council under the
Policy (in particular, see paragraphs 49–51 above) be subject to the recording of its
reasons for taking that step.

Once a decision is made to proceed with the proposal, the Council will still need to enter into a
formal agreement with Chateau Tanunda to document the exchange, including any conditions
precedent to the exchange, which will include the community land classification revocation, the
dedication release, and the sub-division of the Exchanged Land. If the formal agreement has
not been entered into by the time of Ministerial approval under section 194 of the LG Act, the
Minister might request that the Council provide an undertaking not to resolve to exclude the
community land classification until the formal agreement has been entered into.

If you have any questions, please contact me (or my colleague, Chris Morey).

Yours sincerely
KELLEDYJONES LAWYERS

MICHAEL KELLEDY
Direct Line: 08 8113 7103
Mobile: 0417 653 417
Email: mkelledy@kelledyjones.com.au
The Barossa Council 17/102076 Minutes of Council Meeting held on Tuesday 19 December 2017

MOVED Cr de Vries that Council in compliance with Section 90(9)(a) of the Local Government Act (Act) and having reviewed the confidentiality orders of 17 February 2015 and 24 January 2017 made in accordance with Section 90(3)(a) of the Act, in the matter of the Mid-Year Chief Executive Officer Performance Report resolve that the attachments, performance review documents and agenda remain confidential and that Council reviews the said order prior to 19 December 2018.

Seconded Cr Miller

CARRIED 2014-18/1268

INTRODUCTION

On 17 February 2015 Council passed a resolution as follows:

That Council having considered this matter in confidence under Section 90(2) and (3)(a) (being information the disclosure or which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)) of the Local Government Act 1999 makes an order pursuant to Section 91(7) of the Act that all supporting attachments and performance review documents and agenda of the Confidential Council meeting held on 17 February 2015 in relation to confidential item 8.1.1 mid-year CEO Performance Report and not available for public inspection other than the minutes relating to this confidentiality order, until the conclusion of the Chief Executive Officer’s employment.

Any order made by Council that operates for a period extending for more than 12 months must be reviewed at least once in every year.

This order was last reviewed on 24 January 2017 and thus is due for renewal at this meeting of 19 December 2017.

COMMENT

The conditions of the order remain consistent with that considered at the meeting of 17 February 2015 and 24 January 2017 - that the relevant information pertains to the employment performance of the Chief Executive Officer as contemplated by Section 90(3)(a) and 90(9)(b) of the Act; it is therefore considered appropriate to maintain the order as is.

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

How We Work – Good Governance

Local Government Act 1999, S90 and S91

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Failure to keep this matter confidential could expose Council to reputational risk and compromise the integrity of the review process.

COMMUNITY CONSULTATION

No public consultation is required or considered appropriate.

VISITORS TO THE MEETING – 9.04AM

Mayor Sloane welcomed Mrs Shelley James to the meeting. Mrs James made a presentation to Council speaking against the matter 7.2.1.1 – Revocation of Community Land Classification – Basedow Road, Tanunda, and provided members with a copy of her presentation.

Mayor Sloane thanked Mrs James for her attendance and presentation.

7.2 EXECUTIVE SERVICES – DEBATE

7.2.1 CHIEF EXECUTIVE OFFICER
7.2.1.1 REVOCATION OF COMMUNITY LAND CLASSIFICATION – BASEDOW ROAD, TANUNDA B7081

MOVED Cr Lange

(1) That the Council note and consider the feedback from community members and the KelleyJones Lawyers’ Independent Assessment of the consultation and proposed disposal process, which are attached to this report.

(2) That, further to the Independent Assessment at page 1, as the proposed disposal of land is via an exchange of land of the same or similar size and value, and the land currently has little or no market value due to the restrictions of the Dedication of the Keil Trust and the community land classification, the Council dispenses with the requirement of its Disposal of Land and Other Assets Policy at paragraph 4.4.1(i) to obtain any independent valuations in this matter.

(3) Pursuant to Section 194 of the Local Government Act 1999, that Council continue the process to revoke the Community Land classification for Allotments 11 and 12 Basedow Road, Tanunda, which are respectively contained in Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824.

(4) That the Chief Executive Officer prepare a report and submit it to the Minister for Planning seeking approval to revoke the Community Land classification of the said land parcels.

(5) That should the revocation be approved by the Minister for Planning, the matter be referred back to Council for final resolution in accordance with section 194(3)(b) of the Local Government Act 1999.

(6) That the Chief Executive Officer then proceed with the necessary steps to affect the proposed land exchange in accordance with the Council’s resolution of 19 September 2017.

Seconded Cr de Vries

CARRIED 2014-18/1269

PURPOSE

Council is now asked to consider community feedback in response to its proposal to revoke the Community Land classification over Allotments 11 and 12 Basedow Road, Tanunda, with a view to exchanging these parcels for land adjacent to Council property and which are owned by Chateau Tanunda. Should Council agree with the revocation, the matter should then be referred to the Minister for Planning to consider in accordance with the Local Government Act 1999.

REPORT

Background

On 19 September 2017 Council resolved:

MOVED Cr Miller

That Council, being satisfied the proposal has extensive community benefit and can be managed in accordance with the Disposal of Land and Other Assets Policy:

(1) Agrees to undertake a six week community consultation process on a proposal to revoke the community land classification of Allotments 11 and 12 Basedow Road, Tanunda being Certificates of Title 5133/408 and 5902/824.

(2) Instructs the Chief Executive Officer to develop and release the consultation document outlining the proposal to transfer land on a commercial basis, subject to receiving legal advice that the proposal and process is compliant with Council’s asset disposal policy and legal responsibilities.

(3) Appoints a small working group of Mayor Sloane and Cr Lange to support the Chief Executive Officer and Governance Advisor in formulating the
consultation document and commercial negotiation of subsequent commercial arrangements for any approved land swap, should the revocation of community land classification be approved by the relevant Minister.

(4) Require the proprietor to pay all reasonable external legal, consultant and advertising and other costs arising from the community consultation and subsequent commercial arrangements should the revocation of community land be approved by the relevant Minister.

Seconded Cr de Vries  CARRIED 2014-18/1168

Introduction

In accordance with the above resolution, officers provide the following for Elected Members’ information:

- Consultation Report: Revocation of Community Land Classification at attachment 1
- Copy of public notices in the Herald and Leader newspapers, media releases, and promotions on Council’s website, Our Better Barossa consultation platform and Facebook at attachment 2
- Map of landowners adjacent to the proposed land exchange parcels who were sent a letter outlining the proposal at attachment 3
- Copy of letter sent to these identified adjacent landowners at attachment 4
- Summary table of responses from the community via postal service, email and the Our Better Barossa consultation platform at attachment 5
- Copy of all correspondence from the community at attachment 6
- Copy of thank you letter sent to those who provided feedback at attachment 7
- Independent Assessment by KelleyJones Lawyers of the proposed disposal of Council land against the principles of Council’s Disposal of Land and Other Assets Policy at attachment 8.

Discussion

A public notice was placed in each of the Herald and Leader newspapers and on Council’s homepage on 1 November 2017, and letters written to owners of land adjacent to those parcels which are proposed for exchange - all inviting written comment on the attached Consultation Report by 5pm, 12 December 2017. This timeframe allowed a period of 6 weeks of community consultation, which in the interests of improved community engagement is considerably longer than the prescribed 21 day minimum under the Local Government Act at section 50(4).

The public notices also advised that the Consultation Report would be made available for download via Council’s website and in hard copy at its principal office, the Tanunda Library, and Chateau Tanunda. Officers also provided display maps and consultation documents in these three locations.

Further promotion of the consultation was undertaken via the Our Better Barossa consultation platform, weekly Facebook posts and in media releases.

There was a variety of feedback in the 20 submissions from the community both for and against the proposal, which is presented for Elected Member convenience in summary form and for completion with copies of all correspondence at, respectively, attachments 5 and 6. A thankyou letter and invitation to attend the Council meeting, as per the template in attachment 7 was sent to each person who provided an address with their submission.

Although a detailed analysis was provided in the Consultation Report at attachment 3, regarding the disposal of land through land exchange as assessed against the principles of Council’s Disposal of Land and Other Assets Policy, it was also considered that further obtaining an independent assessment of the disposal of land process was prudent during the public consultation period.

Accordingly, KelleyJones Lawyers were briefed to prepare this independent assessment to review the probity, accountability, transparency and reporting of this public consultation process and proposed disposal of land process. It is provided at attachment 8 and has validated both...
processes.

After considering all the community feedback and the independent assessment, the Elected Body must now consider whether or not to approve the Consultation Report for referral to the Minister for Planning.

Should the Consultation Report be referred to the Minister and he approves revoking the Community Land classification over the two identified parcels, the matter will be referred back to the Elected Body for final endorsement in accordance with the Local Government Act at section 194(3)(b).

The Chief Executive Officer will then negotiate the necessary commercial arrangements with the proprietor of Chateau Tanunda, and organise the appropriate valuations, where required, and the formal voluntary release from the trustees of the community land to finalise the approved land exchange.

Summary and Conclusion
The Council is asked to consider and approve the officer recommendation and refer the matter of revocation to the Minister for Planning.

**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**

- Attachment 1 – Consultation Report: Revocation of Community Land Classification
- Attachment 2 – Copy of public notices in the Herald and Leader newspapers, media releases, and promotions on Council’s website, Our Better Barossa consultation platform and Facebook
- Attachment 3 – Map of adjacent landowners who were sent proposal letter
- Attachment 4 – Copy of letter sent to adjacent landowners
- Attachment 5 – Summary table of responses from the community
- Attachment 6 – Copies of correspondence from the community
- Attachment 7 – Copy of thank you letter sent to those who provided feedback
- Attachment 8 - Independent Assessment by KelledyJones Lawyers of the proposed disposal of Council land against the principles of Council’s Disposal of Land and Other Assets Policy

**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.

**FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS**

There is no financial or resource implications in finalising this report for referral to the Minister for Planning. Risk is mitigated by complying with the relevant sections of the Local Government Act as to the revocation of community land classification and Council’s Public Consultation Policy and Disposal of Land and Other Assets Policy and the validation these two Council’s processes by way of an independent assessment.

**COMMUNITY CONSULTATION**

Community consultation has occurred in accordance with section 194 of the Local Government Act and Council’s Public Consultation Policy.

**7.2.1.2**

**HOSPITALITY POLICY**

B6888
7.2.1 DEBATE AGENDA – CHIEF EXECUTIVE OFFICER

7.2.1.4 CHATEAU TANUNDA – COMMUNITY LAND PROPOSAL
B5789 17/68380

PURPOSE
To seek Council’s consideration to undertake a community consultation process with a view to removing the community land classification for land adjacent to Chateau Tanunda and swapping the land with land adjacent to Council property and private property on the western side of the Tanunda railway, to support the construction of a 5-star hotel facility. Relevant maps are provided at attachment 3.

RECOMMENDATION
That Council, being satisfied the proposal has extensive community benefit and can be managed in accordance with the Disposal of Land and Other Assets Policy:

1. Agrees to undertake a six week community consultation process on a proposal to revoke the community land classification of Allotments 11 and 12 Basedow Road, Tanunda being Certificates of Title 5133/408 and 5902/824.

2. Instructs the Chief Executive Officer to develop and release the consultation document outlining the proposal to transfer land on a commercial basis, subject to receiving legal advice that the proposal and process is compliant with Council’s asset disposal policy and legal responsibilities.

3. Appoints a small working group of Mayor Sloane and Crs ………….. to support the Chief Executive Officer and Governance Advisor in formulating the consultation document and commercial negotiation of subsequent commercial arrangements for any approved land swap, should the revocation of community land classification be approved by the relevant Minister.

4. Require the proprietor to pay all reasonable external legal, consultant and advertising and other costs arising from the community consultation and subsequent commercial arrangements should the revocation of community land be approved by the relevant Minister.

REPORT
Background
Council has been presented background information in various briefings of the proposal to develop land adjacent to Chateau Tanunda, and to the eastern side of the railway corridor as a 5-star hotel development integrated with the Chateau and
including the possibilities of a culinary institute and supporting student accommodation.

It is important to note the proprietor of the Chateau has been successful in securing the State Government land between Council’s land and the rail corridor which will form a critical link to the hotel development.

The vision of the Chateau proprietor is provided at attachment 2.

Introduction
Correspondence has been received from the representative of Chateau Tanunda seeking to swap land between the Chateau and Council to facilitate the proposed development.

It is important to note this report does not address any planning merits of the proposal or other Development Act activity attached to the proposal; that is a matter independent of Council deliberations and will be assessed by the relevant authority at the time of development application.

Discussion
There are multiple matters that need to be considered and the proposed process needs to ensure full and transparent decision making.

Land Encumbrances

The land in question is currently encumbered in two ways:

(1) The land is identified as Community Land pursuant to Section 193 of the Local Government Act. The land parcels are Allotment 11, Basedow Road, Tanunda, certificate title number 5133/408 and Allotment 12, Basedow Road, Tanunda, certificate title number 5902/824. These land parcels are identified on the map at attachment 3 as parcels A and B. The proposal is not consistent with the management plan at present and therefore cannot be leased or licenced for the purpose.

(2) The land also has an indenture deed (described herein as a trust) dedication applied to it. The parcels of land were donated to Council by way of trust from the Keil Estate for the purposes of open space and recreation.

The land is zoned Tourist Accommodation, a prior decision of Council and the relevant planning Minister which considered this appropriate land for such development, however the current encumbrances exclude that use in totality.

Legal advice was sought as to the best way to address the trust matter. It was determined that a voluntary negotiated release with the trust holders would be an appropriate way. With the approval of the proprietor of the Chateau, the Chief Executive Officer met with the trust holders on two occasions and they have expressed strong support for the proposal and provided a letter of intent to revoke the trust. Importantly, any land that will be transferred to Council, if a swap is approved, as part of that transfer process it is proposed to rededicate the new parcel of land in accordance with the wishes of the Keil Estate and thus honour the gift to the people of Tanunda. A copy of the relevant correspondence is provided at attachment 4.

To address the community land encumbrance Council must undertake a process in accordance with Section 194 of the Local Government Act. That is:
Undertake a community consultation process outlining at a minimum:

- Summary of the reasons for the proposal;
- Statement of any dedications, reservations or trusts (explained above);
- Statement of whether revocation of the classification is proposed with a view to sale or disposal of the land, and, if so, details of any Government assistance given to acquire the land and a statement of how the Council proposes to use the proceeds; and
- Assessment of how implementation of the proposal would affect the area of the local community.

Should Council determine to proceed after consultation, then submit the proposal to the Minister with a report on all submissions and seek approval of the Minister.

If the Minister approves the revocation Council can then proceed to revoke the community land status for the purpose outlined.

If the revocation is supported and approvals obtained the Council then has an unencumbered land parcel which it can dispose of in accordance with the proposal.

It is estimated with a 6 week consultation period, 21 days is the minimum requirement, necessary administration and governance of the process, Ministerial approval and final revocation should it receive Ministerial consent will take at least another 6 weeks. This reflects best case scenario, being three months, taking us to the conclusion of December 2017.

Proposed Land for Transfer and Assessment of Its Strategic Purpose

The proposed land for transfer being offered by the proprietor is land adjacent to the car park at the Tanunda Soldiers’ Memorial Hall and travelling south behind residential development and concluding at or near the rear of the Tanunda Hospital. The current parcel of land is highlighted at C on the map at attachment 3. However the land would need to undergo a land division so as to retain access to the rear of the Chateau and oval area, and release the balance of the land for the purposes to be available to a land swap.

Any land that is swapped, subject to achieving extinguishment of the encumbrances on the land, is proposed to be rededicated for community land use and consistent with the Keil Estate donation so the open space is not lost to the people of Tanunda.

The proposal land has worthy open space usage due to its closer interaction with Council’s existing hall asset as well as residential use and the main street. It is unlikely to have any significant development for the foreseeable future other than lower level recreational assets.

Further any development of the land into future residential development which is currently contemplated by the Development Plan will be prohibited under the reestablishment of the land encumbrances on the swapped parcel of land.

Whilst the land proposed for land swap has some minor improvements in strategic connection, in commercial reality, the land has no greater value to Council or the community than the current parcel of land as they in essence will perform the same function and will be encumbered so as to preclude any other form of development.

It is estimated that a land division will take a minimum of 3 months to be processed through the system, a further 6 weeks would be required for the approval of a
deposited plan of land division and further 6 weeks for issuing of titles, however, land settlement can take place upon an approved deposited plan. In total the land division process to reach a stage of settlement would take 4-5 months, the proprietor can commence this at any time and is not dependent on Council actions.

Commercial Negotiation

Some time has been devoted to considering the need for and timing of commercial negotiation of land swap details. There are various conditions precedent that need to occur before the parties actually have a viable proposal to execute, it is therefore considered that Council work towards a commercial agreement that sets out all foreseeable matters and once it determines to proceed with the community land consultation the commercial negotiations could run concurrently, but would always as the first condition precedent be dependent on revocation of the community land classification.

It is recommended that due to the public nature of the proposal that a small working group assist the Chief Executive Officer with negotiations and a probity advisor review the deliberations and agreement to ensure probity is maintained.

Disposal of Land and Other Assets Policy

An assessment of the proposal against the principles of the relevant policy have been undertaken at officer level and provided at attachment 6. These have not been independently reviewed due to the timeframes involved and so it is suggested this be done during the community land consultation process to ensure they are well tested and agreed independently.

In essence the analysis demonstrates there is significant community benefit in the proposal and as an outcome a land swap will not result in any loss of value of appropriate open space to the community. This is further reinforced through the current proposal to rededicate the land to be transferred on the western side of the railway corridor under the community land provisions of the Local Government Act and the Keil Estate thereby maintaining the same community service.

Community Consultation Proposal

It is proposed to undertake a 6 week consultation process recognising the expected community interest in the proposal. The consultation proposed as follows:

(1) Development and release of extensive public consultation document;
(2) Public notices in the Herald and Leader newspapers;
(3) Media statement;
(4) Placement of information on web-site, Better Barossa consultation platform and Facebook.
(5) Displays at Council Library and Visitor Centre in Tanunda and seeking for the proprietor to also have displays at the Chateau.

The consultation period will seek written submissions through email, letter or our consultation platform.

Preliminary Benefits and Costs

It is estimated that the project, if successful will deliver:
- A high class 5-star hotel development in the heart of the Barossa;
- A vehicle for achievement of a culinary institute.
- Significant construction (estimated at 150 FTE's) and ongoing job creation (estimated at 97 FTE's).
- Utilisation of appropriately zoned land.
- Land available to Council that better integrates with existing ownership of Council and integration with the main street precinct.

The costs of the project relevant to Council at this time, not including private construction costs, land division, planning and development and other costs:

- Officer resources, absorbed.
- Legal, probity, and other professional advice:
  - Commercial negotiation up to $10,000.
  - Extinguishment of Deed and Re-establishment $5,000
  - Other advice $4,000
- Advertising and associated public consultation costs upwards of $1,500.
- State Government fees and charges, unknown at this time.
- Conveyancing costs $2,000.

These costs are not budgeted for.

It is recommended, other than officer costs, Council seeks as part of the commercial arrangements reimbursement of costs incurred to support the project. Alternatively Council will need to approve a budget adjustment which will impact the operating position of Council by approximate $22,000; if that is the wish of Council it will be undertaken as part of the Council first quarter budget review.

**Summary and Conclusion**

The vision as proposed provides for a significant investment for the Barossa area and delivery of a high class facility. The current land parcels owned by Council are not of significant community value or use and the swap of land to that adjacent to Council and closer to the main street offers a more strategic parcel of land. It is recommended that Council, should it commence the relevant processes, commit as part of the community consultation process to rededicate the swapped land under the Keil Estate and as community land to ensure it has at least the same community service outcome as the existing land.

In summary the steps envisaged are:

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<th>Action</th>
<th>Timeframe</th>
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<td>Council approval</td>
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<td>2.</td>
<td>Community Consultation – Community Land Consultation – Ministerial Approval</td>
<td>6 weeks</td>
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<td>3.</td>
<td>Revocation of Community Land Classification</td>
<td>1 week</td>
<td>Part 2 Above</td>
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<td>4.</td>
<td>Commercial Negotiation</td>
<td>7 weeks</td>
<td>Council approval to proceed – concurrent with 1 above.</td>
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<td>Activity</td>
<td>Duration</td>
<td>Notes</td>
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<td>Land Division</td>
<td>12 weeks</td>
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<td>6</td>
<td>Indenture Deed Management</td>
<td>4 weeks</td>
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<td>8</td>
<td>Land Transfer</td>
<td>2 weeks</td>
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**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**

Attachment 1 – Correspondence from Tuscan
Attachment 2 – Strategic Vision
Attachment 3 – Maps
Attachment 4 – Letter Agreeing to Release Indenture Deed
Attachment 5 – Disposal of Land or Other Assets Policy
Attachment 6 – Assessment of Proposal against Disposal of Land or Other Assets Policy

**COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS**

**Community Plan**

- Natural Environment and Built Heritage
- Community and Culture
- Health and Wellbeing
- Business and Employment
- How We Work – Good Governance

1.5 Provide support and advice to preserve properties and sites which have historic significance.
1.10 Facilitate opportunities to repurpose or find alternative use of built heritage.
2.2 Support the development of activities that celebrate the history and culture of the Barossa and its people.
2.6 Support a vibrant and growing arts, cultural, heritage and events sector.
2.8 Provide opportunities for the community to participate in local decision-making.
2.13 Advocate for education infrastructure and support improvements.
4.6 Ensure that community members can participate in cultural, recreational, sporting and learning opportunities.
5.1 Work closely with State Government, Federal Government and stakeholders to support economic growth, development and job creation.
5.3 Help build the capacity of the tourism sector and encourage the development of tourist services, including eco and recreational tourism infrastructure.
5.4 Attract investment for new and innovative industries, such as creative industries and cultural tourism.
5.5 Support education and training programs that directly respond to work-force gaps and innovation.

**Legislative Requirements**

Section 49 of the Local Government Act
Section 194 of the Local Government Act

**FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS**

Financial estimates are outlined in the body of the report.
Internal resources will be provided primarily by the Chief Executive Officer and Governance Advisor.

Risk Management considerations include the public interest in the matter, possibilities of loss of the project, public objection. It is considered the best way to mitigate these risks is to be completely open and transparent in Council’s decision making and provision of sufficient information. Further in-principle support from the Keil Estate trustees has already been provided. Also importantly the State Government has reviewed the proposal in the context if its land arrangements and has supported the project through arrangements for land transfer of the railway station land.

**COMMUNITY CONSULTATION**

Outlined in the body of the report.
RE: Land Swap Proposal, Chateau Tanunda

Dear Mr McCarthy,

We act as Development Manager for Chateau Tanunda and hereby submit a proposal for a land exchange between Barossa Council and Chateau Tanunda to facilitate the development of an international hotel together with education and Culinary Institute facilities that will create a new major tourism destination in Tanunda with long term economic and employment consequences.

There is a major area in Tanunda that is zoned for Tourist Accommodation of which the majority is owned by Chateau Tanunda, except for a parcel that is a Barossa Council reserve and a parcel that is the old railway station with an access road owned by the SA Government.

The current land holdings are not optimal for a $40m tourist destination development and in effect prevents the implementation of a development strategy that compliments and complies with the Barossa Development Plan.

Chateau Tanunda has taken the initiative of acquiring the old railway station and access road as part of implementing this exciting development strategy. The next step is the effect the land exchange with Barossa Council and Chateau Tanunda.

1. Chateau Tanunda: development strategy that compliments and complies with Barossa Development Plan

Heritage

In contemplating the development of tourist accommodation, we have considered the important heritage nature of Chateau Tununda and its location. The Barossa Development Plan states:

Heritage Objective

“The continued use, or adaptive re-use of State and local heritage places that supports the conservation of their cultural significance”.

Desired Character

“It is expected that development will retain the historic character and cultural significance of the policy area through the retention of historic buildings and sensitively located and designed new development.”
All buildings identified to be of heritage significance or contributing to the character of this policy area will be carefully maintained and conserved. Work to these buildings should be undertaken in a manner to preserve historic fabric and be undertaken in a manner appropriate to the style and period of the building. This is of importance for places of early German construction techniques. The continued use of historic buildings is important and appropriately scaled tourism accommodation involving the restoration and re-use of historic buildings is encouraged”.

Response

Chateau Tanunda has undertaken a massing study for a new international hotel that combines new and old buildings.

The old railway station is being acquired and repurposed as part of the public areas of the hotel and used when the wine train is activated.

Part of the historic Bond Store is to be converted to student accommodation associated with a new SA Culinary Institute.

The SA Culinary Institute will be located in part of the upper level of the main winery building along with its continued use as a winery and for functions, events, displays and exhibitions.

Tourism

The tourism Objectives and Principles of the Barossa Development Plan have been considered by Chateau Tanunda in its development strategy for an international hotel.

Tourism Objective

1. Environmentally sustainable and innovative tourism development objective is met through first undertaking a demand study to determine the appropriate size and type of hotel. We concluded that a hotel of 100-120 rooms was appropriate and consistent with other regional hotels in Australia. In terms of innovation we have also included in the development plan;
   (a) SA Culinary Institute in the existing main chateau building,
   (b) Student accommodation in the Bond Store,
   (c) Villa accommodation for the market that is longer than an overnight stay,
   (d) Purchase and activation of the old railway station,
   (e) Reinstatement of the Barossa Wine Train which is owned by Chateau Tanunda, and
   (f) Use of these facilities at an existing internationally renowned winery to provide ‘innovative conferencing’ which will support mid-week events and conferences.

2. Tourism development that assists in the conservation, interpretation and public appreciation of significant natural and cultural features including State or local heritage places has been addressed through our development strategy.

3. Tourism development that contributes to local communities by adding vitality to neighbouring townships, regions and settlements is a material outcome from the proposed development. Of significance;
   (a) The economic multiplier of a 24/7 business in Tanunda that employs 97 fulltime equivalent staff on operations as well as 150 during construction, and
   (b) The extraordinary marketing and sales leverage and opportunities for Tanunda and the Barossa with an international hotel management company who employ 1000s of sales and marketing staff worldwide.
4. Increased opportunities for visitors to stay overnight is incorporated in a combination of accommodation opportunities and at a scale that can attract a significant increase in mid-week meetings and events.

Principles of Development Control

1. Tourism development should have a functional or locational link with its natural, cultural, or historical setting. The massing studies that have been undertaken (a copy is attached) concluded that proximity to the old rail station, to the town of Tanunda and Basedow Road was appropriate to create the functional link and to respond to the historical setting.

2. The existing historic Chateau Tanunda buildings establish a rectangle grid from the entrance off Basedow Road. New buildings on the east boundary would be inappropriate due to the light industry and distance from the town and rail station. The new hotel should be in a rectangular form on the land between the existing vines and the rail station.

   This has the additional benefit of linking the Bond Store use for student accommodation, the Culinary Institute and Villa accommodation in an operationally efficient manner.

3. The principle of tourism development should, where appropriate, add to the range of services and accommodation types available in an area has been addressed through the mixed-use nature of the accommodation.

Tourist Accommodation Zone

The location of a major tourism development has been determined by the Barossa Development Plan by zoning Chateau Tanunda land as Tourist Accommodation (TA).

Objective

The objective of the Tourism Accommodation Zone is to provide tourist accommodation and service facilities for visitors and holiday-makers on short and long-term visits to the area. This objective has been addressed in the attached massing study.

Desired Character

“As Tanunda is a focus of the Barossa Valley area, and popular with tourists, the town is ideally situated to provide short and long-term accommodation and recreation and entertainment facilities for tourists staying locally and those travelling between Adelaide and the northern parts of the State. It is both desirable and important for the town that opportunities for tourist developments located within the zone are capitalised” (TA Zone)

The development is a major tourist initiative with a capital cost more than $40 million.

Other appropriate uses will include related tourist operations and low-impact attractions such as;

   (a) Retention of the oval for entertainment, markets, music, sport, outside exhibitions, and
   (b) Use of the existing historic buildings for events, exhibitions, meetings, conferences, promotions.

There is no expansion of the existing winery and the vineyards are retained.

“It is expected that new buildings will be sited, designed and landscaped in a manner that will enhance the appearance of Chateau Tanunda as the dominant built form in the zone through appropriate building scale, setbacks and the retention of important vistas. Buildings adjacent the Chateau will be compatible in appearance with the historic character of the Chateau and its related buildings. Along Basedow Road,
buildings will exhibit a high standard of design and be of a height, scale, mass and bulk compatible with the residential setting on the opposite side of the road” (TA Zone)

The massing studies have in addressing this provision, concluded that there is a requirement for land consolidation on the west side of Chateau Tanunda wines where a significant parcel of Chateau Tanunda land to the west of the rail line needs to be exchanged for a Council reserve on the adjacent to the rail line on the east side.

The design and placement of buildings will be remove a potential conflict with the adjoining residential land and at the same time enhance the Desired Character of the development.

To develop the Chateau Tanunda land on the west side of the line has distinct disadvantages;

(a) The distance from the adjoining residential land may create a nuisance,
(b) The required set-backs from the rail reserve and the adjoining residential neighbours leaves an uncommercial narrow strip of land for a viable international hotel, and
(c) The car parking for such a project would be complicated.

“There is an opportunity to consolidate car parking with the adjacent District Town Centre Zone adjacent to the rail line to avoid large expanses of car park. All car parking areas will be sensitive to the landscape character and incorporate extensive landscaping to screen them from view, shade vehicles and maintain amenity”. (TA Zone)

The massing study attached responds to this opportunity in a very constructive manner. The location of the hotel and its facilities has through the proposed land exchange and purchase of land from the State Government, enabled the car parking to be located partly on Chateau Tanunda and partly on new consolidated Council land as envisaged by the TA Zone.

This efficient consolidation is only possible if the proposed land exchange requested in this letter is implemented.

2. Massing Study for an International Hotel at Chateau Tanunda

The attached massing study responds to the commercial requirements of a viable international hotel together with the Objectives, Principles, and Zoning requirements of the Barossa Development Plan.

There is a combination of utilizing existing buildings as well as new construction.

The development strategy responds to the need to preserve and protect the important wine business which means the hotel and its facilities are focused on the west of the Chateau land holdings. This location is close the town, accessible to locals and tourists, and incorporates the reintroduction of the Barossa Wine Train.

The hotel component is broken into the 4 connected components to not present as a long ‘wall’ of rooms.

3. Proposed Land Exchange

3.1 Chateau Tanunda transfers to Barossa Council
(a) Lot 74 CT 5962/946 DP 58229 on the west side of the rail reserve (see attached)

(b) portion is to be retained by Chateau Tanunda as marked in the attached massing study and subject to survey, to preserve and protect the winery business

(c) area is 1.440ha less the area referred to in (b)

(d) rail reserve CT 5902/822 unchanged save for future crossings at Mill Street and Ferdinand Street

3.2 Council to transfer to Chateau Tanunda

(a) Lot 11 CT 5133/408 DP 33882
(b) Area 6240 m²

3.3 Council to transfer to Chateau Tanunda

(a) Lot 12 CT 5902/824 DP 33882
(b) Area 7470 m²

3.4 Chateau Tanunda has agreed terms to purchase from the Minister for Transport

(a) CT 5902/821 DP 33882
(b) Area 3936 m²

3.5 Commercial Considerations

The values attributable to the land being exchanged by both parties should be subject to valuation by an experienced valuer and jointly instructed.

4. Advantages of the land swap to Council

Long term consolidation of Council land on the west side of the rail line provides a more substantial and usable land holding for public or community purposes. The current location of the Council land is complicated with Chateau Tanunda land surrounding it.

One of the iconic wineries of the Barossa remains protected and its appeal as a destination extended to being a major tourism facility with accommodation that will provide jobs and economic growth for Tanunda.

The land swap facilitates the implementation of the Desired Character of Council’s Tourist Accommodation Zoning. Without the land exchange, it is probable that the opportunity identified by Chateau Tanunda would lapse.

The implementation of the development strategy as facilitated by the land exchange will mean that the project is of interest to international hotel operators and preliminary discussions have taken place with several companies.

By attracting an international hotel operator, the Barossa enters a different league in terms of marketing the destination and economic outcomes. The operators have enormous reach in terms of distribution;
through airlines, travel agents, car rental programs, loyalty programs, events and conferences. The Chateau Tanunda hotel would have over 100 distribution channels to drive business to the Barossa.

5. **Conclusion**

The implementation of this land swap proposal and to facilitate a long-term vision for Tanunda we would like to advance the exchange in a timely manner now that the old railway transaction has been agreed with the SA Government.

Plans consistent with the massing study are underway with an experienced design team for planning consent. The lodging of these plans will be contingent on the advancement of the proposed land exchange and we would like to advise that the design team’s target date to complete concept plans is the end of September 2017.

Please feel free to direct any questions to us with a copy to John Geber at Chateau Tanunda (johngeber@chateautanunda.com).

We look to working with you in advancing this outstanding opportunity.

Yours faithfully

David Berry
Director
28 July 2017

ATTACHED
- Massing Study
- Title the subject of the land exchange
AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION

CHATEAU TANUNDA, BAROSSA VALLEY
KEY FEATURES

ACCOMMODATION

- 5 star lifestyle hotel 100-120 rooms
- Adapting part of the existing Bond Store for 60 bed student accommodation
- 60 villas to offer accommodation for a broader market including longer term stays that may be associated with training, education and cultural programs

FACILITIES

- Adapting the existing buildings to create major meeting and conference facilities to complement SA programs on events, conferences, and meetings for national and international participants
- Function Space >1000m²
- Gym, spa and pool
- Oval used for outdoor events, recreation, markets, music, sport
- SA Culinary Institute for education, training, cultural and culinary tourism (similar to the Culinary Institute of America)

ECONOMIC BENEFITS

- Project Cost > $30 million
- Jobs FTE during construction: 150
- Jobs FTE post completion: 97
- Annual expenditure > $4 million with multiplier economic benefits

MARKETING AND PROMOTION

- Revival of the Barossa Wine Train: Adelaide - Tanunda
- Appointment of an international hotel operator as an overlay to manage these businesses, market SA and Tanunda nationally and internationally
- Promotion and marketing through the Chateau Tanunda wine business
- SA Culinary Institute with national and international markets
01 SITE ANALYSIS
LOCAL CONTEXT

Tanunda is a major town in the Barossa Valley, located 70 km north of Adelaide.

Historic township circa 1850-1910.

Chateau Tanunda established 1890

Traditional grid layout established to west of Murray Street (B19) and by watercourses North Para River and Tanunda Creek

Name derived from an Aboriginal word meaning water hole

Historic blue stone buildings quarried from Selthiny, include Chateau Tanunda winery

Landscape - Significant Moreton Bay figs, Carob trees, Phoenix canariensis, Eucalypts, devil's root trees

Railway divides township with development to the east with vineyards, light industry, primary industry

Key destinations

• Chateau
• Railway station (tourism trail)
• Heysen Tourist trail
• Town centre commerce
• Sports and recreation
• Hospital
• Schools

Opportunities

• Potential to exploit the tourist train route and railway station as it is owned by Chateau Tanunda
• Chateau Tanunda history, historic buildings, uses, cricket ground, croquet lawn
• Vistas across the valley, vineyards and to nearby Barossa Ranges
• Low lying land with a slight fall to south towards Tanunda Creek
• Land swap with State government to consolidate Chateau Tanunda landholdings
• Tourism development potential (hotel, villas, educational and cultural facilities, culinary institute etc and benefits to the town and region)
• Rationalise site access and circulation

Constraints

• Impact of the light industry to the east edge of the site
• Traffic and parking
• Topography, clever design and planning to nest the buildings into the landscape
• Respect the history of place with adaptive reuse and intersection of new buildings and uses.
• Working use of the winery balance with tourism destination (screen uses)
• Resolve connections over railway line to the town
• New carpark, screening
UNDERSTANDING OF SITE, PLACE, HISTORY

CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
02 MASSING STUDY
PROPOSED USE

- Geometry of hotel complements that of the existing historic buildings and vineyards. "Completes the square" on the western edge of the vines.
- Main entry to central public area from town and Basedow Rd, combined with old station.
- Central public area closely connected to hotel wings for ease of access & servicing central lounge / bar has views over vineyards.
- 50% of hotel rooms have views over vineyards, others other 50% look to landscaped courtyards & pool.
- VIP Hotel Suites in house N. of Basedow Road.
- Villas close to central reception, some with views of vines, some looking towards oval.
- Pool in hotel courtyard, accessible from central public area, screened from road by planting.
- Culinary institute and function centre top level of Chateau Tanunda with wine tasting on level below.
- Student housing within restored Bond Store with internalised courtyard.
- Parking located close to Basedow Road for ease of access.
- Screened parking to existing storage area.
- Oval used for recreation, events, markets, sport, connection to town via Mill Street.
- Connections from Bushman & Mill Streets upgraded.
03 IMAGERY
STUDENT ACCOMMODATION

URBANEST DARLING SQUARE, ALLEN JACK+COrrIER

AUSTRALIA STREET STUDENT HOUSING, ALLEN JACK+COrrIER

CHATEAU TANUNDA BAROSSA VALLEY AN ICONIC WINERY BECOMES AN INTERNATIONAL TOURIST DESTINATION
This map is a representation of the information currently held by The Barossa Council. While every effort has been made to ensure the accuracy of the product, Council accepts no responsibility for any errors or omissions. Any feedback on omissions or errors would be appreciated.
Dear Martin

Thank you for your letter of 23 December 2015.

We the undersigned agree in-principle so that parties may continue negotiations that:

1. As executors of the Deed we conditionally agree to cancel the Deed which is currently over land parcels Allotment 11, 12 and 13 contained in certificate of titles 5133/408, 5902/824 (was previously 5133/409) and 5133/410.

2. The conditions are, but not limited to;
   a. That we as executors shall not bear any costs for cancelling and re-establishing a new Deed;
   b. That no cancellation or re-establishment will occur until Mr Geber and Council achieve an agreed position;
   c. That Council undertakes all the necessary actions to satisfy the requirements of the Local Government Act;
   d. That the Minister for Local Government, should the project proceed to this advanced state, approves the release of the land from Community Land status; and
   e. We reserve the right to discuss any other matter that is reasonably required by all parties.

As stakeholders in this project we ask that you keep us apprised of progress as matters of significance come to hand.

Yours sincerely

Mr Roland Braunack

As joint Executors of the Estate of Elma Linda Keil and the Indenture dated 28 June 1996
THE BAROSSA COUNCIL

DISPOSAL OF LAND OR OTHER ASSETS POLICY

<table>
<thead>
<tr>
<th>Strategic Plan Outcome:</th>
<th>4.1 Governance and Organisation - Responsibility</th>
<th>Document Code:</th>
<th>TBCPOC4750</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy Owner:</td>
<td>Director - Corporate &amp; Community Services</td>
<td>Last Revised Date:</td>
<td>20/11/2012</td>
</tr>
<tr>
<td>Document Control:</td>
<td>Manager Financial Services</td>
<td>TRIM Reference:</td>
<td>14/42692</td>
</tr>
<tr>
<td>Date Approved:</td>
<td>10/09/2014</td>
<td>Next Review Date:</td>
<td>10/09/2018</td>
</tr>
</tbody>
</table>

1. Purpose

1.1 This Policy provides a framework to:
   a) define the methods by which Land and Other Assets are disposed of;
   b) demonstrate accountability and responsibility of Council;
   c) be fair and equitable to all parties involved;
   d) enable all processes to be monitored and recorded; and
   e) ensure that the best possible outcome is achieved for the Council.

1.2 Furthermore, Section 49 (a1) of the Act requires Council to develop and maintain policies, practices and procedures directed towards:
   a) obtaining value in the expenditure of public money; and
   b) providing for ethical and fair treatment of participants; and
   c) ensuring probity, accountability and transparency in all disposal processes.

2. Scope

This Policy does not cover:
   a) Land sold by Council for the non-payment of rates; or
   b) Disposal of goods which are not owned by Council, such as abandoned vehicles.

3. Definitions

In this Policy, unless the contrary intention appears, these words have the following meanings:

<table>
<thead>
<tr>
<th>Land</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land includes community land, vacant land, operational land, road reserves, any legal interest in land, and any other land-related assets, including all buildings (community and operational) on Land.</td>
</tr>
</tbody>
</table>
| Other Assets | Other Assets are any item owned by Council and used to deliver the services of Council including but not limited to:  
- Plant and Equipment  
- Furniture and Fittings  
- Attractive Assets  
- Other assets held by Council  
(refer to the Asset Classification, Capitalisation and Depreciation table in the Asset Accounting Policy for further detail). |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Current Asset</td>
<td>Refers to all assets except current (financial) assets such as cash, investments, debtors and inventories</td>
</tr>
<tr>
<td>Balance Sheet</td>
<td>Financial Statement as required periodically to meet legislative reporting</td>
</tr>
<tr>
<td>Income Statement</td>
<td>Financial Statement as required periodically to meet legislative reporting</td>
</tr>
</tbody>
</table>
| Community Land | All local government land (except roads) that is owned by a council or under a council’s care, control and management is taken to have been classified as community land unless –  
(a) the council resolves to exclude the land from classification as community land within three years after the commencement date;  
and  
(b) The land is unaffected by provisions of a reservation, dedication, trust or other instrument that would prevent or restrict its alienation. |
| Not-for-Profit | An organisation that uses surplus revenues to achieve its goals rather than distributing them as profit or dividends. |
| Attractive Assets | A non-consumable item of a portable and attractive nature which is not capitalised as per 4.15 Asset Classification, Capitalisation and Depreciation table in the Asset Accounting Policy (e.g. equipment, furniture, excess materials, second hand library books etc) which include:  
- Portable information technology such as laptops, Toughbooks, iPads and notepads etc  
- Small plant and equipment such as mobile phones, recording devices etc. |
| Public Officers of The Barossa Council | Council’s Elected Members, Committee Members, Employees, Authorised Agents, and Contractors undertaking work on behalf of Council. |
| Volunteers of The Barossa Council | Volunteers are defined as persons who:  
- Undertake activities without monetary reward;  
- Undertake activities of their own free will;  
- Undertake activities of benefit to Council and the local community; and  
- Undertake activities that complement but do not replace the services provided by paid staff. |
4. **Policy Statement**

4.1 **Disposal of Land or Other Assets**

Any decision to dispose of Land or Other Assets will be made after considering (where applicable):

a) the usefulness of the Land or Other Asset;

b) the current market value of the Land or Other Asset;

c) the annual cost of maintenance;

d) any alternative future use of the Land or Other Asset;

e) any duplication of the Land or Other Asset or the service provided by the Land or Other Asset;

f) any impact the disposal of the Land or Other Asset may have on the community;

g) any cultural or historical significance of the Land or Other Asset;

h) the positive and negative impacts the disposal of the Land or Other Asset may have on the operations of the Council;

i) the long term plans and strategic direction of the Council;

j) the remaining useful life, particularly of an Asset;

k) a benefit and risk analysis of the proposed disposal;

l) the results of any community consultation process;

m) any restrictions on the proposed disposal;

n) the content of any community land management plan; and

o) any other relevant policies of the Council, including:

- Prudential Management Policy
- Asset Accounting Policy

4.2 **Disposal Principles**

Council must have regard to the following principles in its disposal of Land or Other Assets:

a) Encouragement of open and effective competition;

b) Obtaining Value for Money (this is not restricted to price alone)

An assessment of value for money must include consideration of (where applicable):

i. the contribution to Council’s long term financial plan and strategic management plans;

ii. any relevant direct and indirect benefits to Council, both tangible and intangible;

iii. efficiency and effectiveness;

iv. the costs of various disposal methods;

v. internal administration costs;

vi. risk exposure; and

vii. the value of any associated environmental benefits.
c) Ethical Behaviour and Fair Dealing
   i. Council is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations.

d) Probity, Accountability, Transparency and Reporting
   i. Council will demonstrate accountability in the sale of Land or Other Assets by ensuring that decisions are appropriately documented taking account of the considerations of the Clause and evidence provided to ensure that an independent third party can clearly see that the principles of this Clause have been followed or an appropriate waiver authorised.
   ii. Employees may approve the sale of an asset where the sale value of that asset does not exceed the Employees expenditure levels as delegated at Delegation 47 in Council’s Instrument of Delegation under the Local Government Act 1999 and the sale is in accordance with any policy or budgetary constraints set by the Council to perform or discharge the Council’s functions or duties or to achieve the Council’s objectives.

e) Ensuring compliance with all relevant legislation (see Section 7 of this Policy).

4.3 Accounting for Disposal of Non-Current Assets
   a) All Non-Current Assets will be removed from Council’s accounts upon disposal.
   b) When Land or Other Asset is disposed of and its selling price varies from the carrying amount in Council’s Balance Sheet, a gain or loss on disposal will be recognised directly to the Income Statement in accordance with AASB116.
   c) If Land or Other Asset is scrapped before it has been fully depreciated the carrying amount represents a loss on disposal and will be expensed.

4.4 Accounting for Disposal of Attractive Assets
   An Attractive Asset does not require removing from Council’s accounts as the asset is not recorded in the Balance Sheet in accordance with the Asset Accounting Policy therefore sale proceeds will be recognised directly in the Income Statement as a gain on disposal.

4.4 Disposal Methods
4.4.1 Land disposal
   a) Surplus Land will be disposed taking into account the principles at Clause 4.2 and shall be the subject of a decision of Council to dispose of the Land and the method of disposal.
b) Where the Land forms or formed a road or part of a road, the Council must ensure that the Land is closed under the Roads Opening and Closing Act 1991 (SA) prior to its disposal. Further, that the land is excluded as Community Land as per Section 201 of the Local Government Act.

c) Where Land is classified as Community Land, the Council must satisfy the requirements of the Local Government Act and Public Consultation Policy.

d) Where the Council proposes to dispose of Land through the grant of a leasehold or licence interest, the Council must comply with:
   i. The Local Government Act;
   ii. Public Consultation Policy
   iii. Retail and Commercial Leases Act;
   iv. Crown Lands Act or dedications or other Crown Land matters such as Native Title;
   v. Development Act; or
   vi. Land Use Agreements Policy.

e) The Council will, where appropriate, dispose of Land through one of the following methods:
   i. Open Market Sale – which shall include advertisement for disposal of the Land through the local paper and where appropriate, a paper circulating in the State, or by procuring the services of a licensed real estate agent and/or auctioneer (following compliance with the Council’s Procurement Policy);
   ii. Expressions of Interest - seeking expressions of interest for the Land;
   iii. Select Tender - seeking tenders from a selected group of persons or companies;
   iv. Open Tender - openly seeking bids through tenders, including public auction;
   v. Direct Negotiation – with owners of Land adjoining the Land or others with a pre-existing interest in the Land, or where the Land is to be used by a purchaser whose purpose for the Land is consistent with the Council’s strategic objectives for the Land.

f) Selection of a suitable disposal method will include consideration in accordance with the principles of Clause 4.2 - of (where appropriate):
   i. the number of known potential purchasers of the Land;
   ii. the original intention for the use of the Land;
   iii. the current and possible preferred future use of the Land;
   iv. the opportunity to promote local economic growth and development;
   v. delegation limits, taking into consideration accountability, responsibility, operation efficiency and urgency of the disposal;
vi. the total estimated value of the disposal; and
vii. compliance with statutory and other obligations.

g) The Council will not dispose of Land to any Public Officer or Volunteer of the Council who has been involved in any process related to a decision to dispose of the Land or the method of disposal of that Land.

h) If Land is to be disposed of through an Open Market Sale or by Expression of Interest, then (unless the Council resolves otherwise) one independent valuation must be obtained to establish the reserve price for the Land. The independent valuation must be made no more than 6 months prior to the proposed disposal.

i) If Land is to be disposed of through a Select Tender, Open Tender or Direct Negotiation, then (unless the Council resolves otherwise) a minimum of two independent valuations must be obtained to ensure that an appropriate market value is obtained. The independent valuation must be made no more than 6 months prior to the proposed disposal.

j) The Council will seek to dispose of Land at or above current market valuation by whichever method is likely to provide the Council with a maximum return, unless there are reasons for the Council to accept a lesser return which is consistent with the Council’s overall strategic direction. These reasons must be documented in writing.

4.4.2 Other Assets disposal

a) The sale of Other Assets will be the responsibility of the relevant Council Officer in accordance with the value of their expenditure authority based on the sale revenue expected. An Asset Disposal Form will be completed for the disposal of any Other Asset excluding fleet vehicle trade-ins.

b) The Council will, where appropriate, dispose of Other Assets through one of the following methods:
   i. Trade-In – trading in assets to suppliers
   ii. Expressions of Interest – seeking expressions of interest from buyers;
   iii. Select Tender – seeking tenders from a selected group of persons or companies;
   iv. Open Tender – openly seeking bids through tenders;
   v. Public Auction – advertisement for auction through the local paper and/or the Council Website and, where appropriate, a paper circulating in the State, or procuring the services of an auctioneer (following compliance with the Council’s Procurement Policy);
vi. Donation to Not-for-Profit organisations (via an Expression of Interest advertised in the local paper) operating within the Council area in support of Council’s community development strategic goal; or

vii. Write-off – in accordance with the Asset Accounting Policy (in the case of an Attractive Asset which is not covered by the Asset Accounting Policy – any faulty or damaged Attractive Asset which carries a potential risk will not be disposed of to a third party – but will be destroyed or scrapped).

c) Selection of a suitable method will include consideration of (where appropriate):
   i. the public demand and interest in the Other Asset;
   ii. the method most likely to return the highest revenue unless they are donated to Not-for-Profit organisations operating within the Council area;
   iii. the value of the Asset;
   iv. the costs of the disposal method compared to the expected returns; and
   v. compliance with statutory and other obligations.

d) A person who is either a Public Officer or Volunteer of the Council will not be permitted to purchase Other Assets (that Council is disposing of) unless:
   i. the purchase is through an Open Tender process;
   ii. the purchase is through a Public Auction,
   iii. they have not been involved in any disposal process or decision making; and
   iv. the tender submitted or bid made is the highest.

e) A person who is either a Public Officer or Volunteer of the Council will not make improper use of information, including confidential information, acquired by virtue of their position.

f) Purchasers of Other Assets must complete an ‘Asset / Item Disposal Disclaimer Form’ before receiving any Other Assets, agreeing that no warranty is given by the Council in respect of the suitability and condition of the Asset for the purchaser and that the Council will not be responsible for the Asset in any respect following the sale.

4.4.3 Waiver for Disposal Method

a) Council may grant a waiver to a disposal method for Land disposal contained within this Policy on condition there are extenuating circumstances that support an alternative disposal methodology but a waiver cannot be provided if it results in allowing Personnel to purchase Land contrary to the intent of Clauses 4.4.1.(g).
b) Council authorises the Chief Executive Officer or relevant Director to grant a waiver for disposal of Other Assets but the waiver cannot be provided such that it will allow Personnel to purchase Other Assets contrary to the intent of Clauses 4.4.2.(d) of this policy.

c) Any grant of waiver must be documented on the Asset / Item Disposal Method Waiver Form and approved prior to commencing any disposal process.

5. Supporting Documentation

- TBCFOR4601 Asset Disposal Form
- TBCFOR4751 Asset / Item Disposal Disclaimer Form
- TBCFOR4752 Asset / Item Disposal Method Waiver Form
- Community Land Management Plans
- Community Land Register
- Delegations Register – Instrument of Delegation under the Local Government Act 1999

6. Related Policies

- Public Consultation Policy
- Procurement Policy
- Asset Accounting Policy
- Prudential Management Policy
- Motor Vehicle Policy
- Land Use Agreements Policy
- The Code of Conduct for Council Employees Clause 2.12

7. References

- Accounting Standard AASB 116 – Property Plant and Equipment
- Local Government Act 1999 (SA)
- Real Property Act 1886 (SA)
- Land and Business (Sale and Conveyancing) Act 1994 (SA)
- Development Act 1993 (SA)
- Retail and Commercial Leases Act 1995 (SA)
- Residential Parks Act 2007 (SA)
- Strata Titles Act 1988 (SA)
- Crown Land Management Act 2009 (SA)
- Community Titles Act 1996 (SA)
- Roads (Opening and Closing) Act 1991 (SA)
- Land Acquisition Act 1969 (SA)
- Independent Commissioner Against Corruption Act 2012
8. **Review**

This Policy shall be reviewed by the Council, in consultation with the relevant stakeholders, within four years or more frequently if legislation or Council needs change.

9. **Further Information**

This Policy is available for inspection at the Council offices at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. It is also available for inspection, download or printing, free of charge, from Council’s web site: www.barossa.sa.gov.au.

Any grievances in relation to this Policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council, PO Box 867, Nuriootpa SA 5355.

SIGNED: 

Mayor

DATED: 15/09/2014
### Assessment of Proposed Land Swap – Chateau Tanunda - Under the Disposal of Land or Other Assets Policy

<table>
<thead>
<tr>
<th>Relevant Clause Number</th>
<th>Policy Direction</th>
<th>Comment/Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – Purpose</td>
<td>Sets out the general purpose of the policy</td>
<td>Noted</td>
</tr>
<tr>
<td>2 – Scope</td>
<td>Sets out exemptions that the policy does not apply to.</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>3 – Definition of Land</td>
<td>Land includes community land.....</td>
<td>Condition is met and therefore the land in question is subject to the directions of the policy.</td>
</tr>
<tr>
<td>4.1 – Disposal of Land</td>
<td>Any decision to dispose of Land or Other Assets will be made after considering</td>
<td>The current land is not significantly developed or utilised, is removed from adjacent Council land and offers little in broader community benefit, of</td>
</tr>
<tr>
<td>Other Assets</td>
<td>(where applicable):</td>
<td>course there are adjacent landowners and users who possibly derive benefit in terms of visual amenity and recreation. The proposal to swap land would</td>
</tr>
<tr>
<td></td>
<td>a) the usefulness of the Land or Other Asset;</td>
<td>in essence deliver the same outcome with future possible better interaction of the land to the community due to its location.</td>
</tr>
<tr>
<td></td>
<td>b) the current market value of the Land or Other Asset;</td>
<td>Whilst there is a perceived market value it is not derivable at present as it is encumbered and not saleable. It is considered that the land swap will be</td>
</tr>
<tr>
<td></td>
<td>c) the annual cost of maintenance;</td>
<td>of equal market value, as any new parcel of land will be rededicated to the community and provide the same service level.</td>
</tr>
<tr>
<td></td>
<td>d) any alternative future use of the Land or Other Asset;</td>
<td>Minimal and no change in costs structures is expected for the open space areas.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The alternative use of the existing Council land under the swap would support a significant economic development in support of tourism and education. An</td>
</tr>
<tr>
<td></td>
<td></td>
<td>investment of over $30M creating in the order of 150 FTE construction jobs and 97 FTE ongoing positions. Further it would support the re-utilisation of</td>
</tr>
<tr>
<td></td>
<td></td>
<td>heritage and cultural assets at the Chateau as an integrated tourism, culinary and education development.</td>
</tr>
<tr>
<td></td>
<td>Statement</td>
<td>Analysis</td>
</tr>
<tr>
<td>---</td>
<td>---------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>e</td>
<td>any duplication of the Land or Other Asset or the service provided by the Land or Other Asset;</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>f</td>
<td>any impact the disposal of the Land or Other Asset may have on the community;</td>
<td>Discussed at a) and d) above.</td>
</tr>
<tr>
<td>g</td>
<td>any cultural or historical significance of the Land or Other Asset;</td>
<td>The land was purchased by Council through funding from the Keil Estate and has an Indenture Deed over it, the trustees of this deed have been consulted and have provided a letter of intent that they would lift the trust.</td>
</tr>
<tr>
<td>h</td>
<td>the positive and negative impacts the disposal of the Land or Other Asset may have on the operations of the Council;</td>
<td>None identifiable that do not already exist.</td>
</tr>
<tr>
<td>i</td>
<td>the long term plans and strategic direction of the Council;</td>
<td>Is consistent with a raft of economic, heritage and cultural, community and education strategies outlined in the Community Plan, please refer to Council report 7.2.1.2 of 18 August 2017 for full detail, and thus delivers upon the plan.</td>
</tr>
<tr>
<td>j</td>
<td>the remaining useful life, particularly of an Asset;</td>
<td>Not applicable as it is land.</td>
</tr>
<tr>
<td>k</td>
<td>a benefit and risk analysis of the proposed disposal;</td>
<td>Significant benefits have been outlined at d) and i). The risk matters in brief have been outlined in the Council report 7.2.1.2 of 18 August 2017. The inability to deliver the outcome could put the commercial viability of the project at risk or result in sub-optimal outcomes with the development of tourism accommodation on land to the west of the railway corridor adjacent to residential area.</td>
</tr>
</tbody>
</table>
l) the results of any community consultation process;

m) any restrictions on the proposed disposal;

n) the content of any community land management plan; and

o) any other relevant policies of the Council, including:
   - Prudential Management Policy
   - Asset Accounting Policy

This will be considered as part of the community consultation process being explored by the Council report 7.2.1.2 of 18 August 2017.

The Keil Estate and Local Government restrictions have been outlined in the Council report 7.2.1.2 of 18 August 2017 and at g) above.

The community land management plan does not support Tourism Accommodation, and this is in conflict with the stated policies in the Development Plan. The purpose of the Council report 7.2.1.2 of 18 August 2017 is to address the matter and proceed towards achieving community comment and potential land swap that will see community access to similar open space preserved whilst delivering a significant economic driver for the community. Should the proposed land swap be approved, an appropriate community land management plan would be put in place over the swapped land.

All other relevant matters have been explored in the Council report 7.2.1.2 of 18 August 2017. The Prudential Management Policy does not apply in this case and there are no specific accounting policy concerns.

4.2 – Disposal Principles

Encouragement of open and effective competition

This matter is being addressed by ensuring full, open and transparent decision making. The ability to release this land for general market competition is extremely limited as it is encumbered by both the Keil Estate

Trust and the Community Land classification; the proposal put forward makes strategic sense due to its location with adjacent assets owner by the Chateau and its recent success in securing State land upon which the Tanunda train station resides. The trustees of the Keil Estate have supported lifting of the trust to facilitate this project on condition the
land included in the swap is rededicated for the same purpose. Council is therefore practically stopped from placing the land parcel on the open market and to do so could jeopardise the broader community and economic outcomes.

On balance, given the highly restrictive nature of the encumbrances on the land, the proposal to swap land assets so that the Tourism Accommodation land can be developed and integrated into the Chateau other assets whilst maintaining open space for the community is considered a sound strategic path forward and mitigates the market concerns.

<table>
<thead>
<tr>
<th>4.2 – Disposal Principles</th>
<th>Obtaining value for money</th>
<th>As explained above there is no market for the land asset other than what is being proposed at this time, with the swap of land assets there is no loss to the community of open space whilst assisting to try and deliver an economic and community project.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2 – Disposal Principles</td>
<td>Ethical behaviour and fair dealings</td>
<td>All dealings to date and negotiations and community consultations have been or will be consistent with this principle whilst ensuring the best possible outcome for the community.</td>
</tr>
<tr>
<td>4.2 – Disposal Principles</td>
<td>Probity, accountability, transparency and reporting</td>
<td>The Council and officers are dealing with the matter in a completely open and transparent manner through this assessment and the Council report 7.2.1.2 of 18 August 2017 and as intended all community consultation and other arrangements to be put in place should Council agree to continue will be undertaken (where legal) in open Council. It has also been recommended that Council have an independent probity advisor review this assessment and the process at the conclusion to ensure probity is maintained.</td>
</tr>
<tr>
<td>4.2 – Disposal Principles</td>
<td>Ensuring compliance with all relevant legislation</td>
<td>This will be achieved through the process envisioned by the Council report 7.2.1.2 of 18 August 2017.</td>
</tr>
<tr>
<td>4.3 – Accounting for Disposal of Non-Current Assets</td>
<td>Accounting requirements</td>
<td>Will be adhered to.</td>
</tr>
</tbody>
</table>
COMMUNITY CONSULTATION

Community consultation has occurred in accordance with section 194 of the Local Government Act and Council’s Public Consultation Policy.

7.2.1.4

CHATEAU TANUNDA – COMMUNITY LAND PROPOSAL

The Chief Executive Officer clarified, due to reporting timing, that at Attachment 6 – Assessment of Proposed Land Swap – Chateau Tanunda – Under the Disposal of Land or Other Assets Policy references to Council report 7.2.1.2 of 18 August 2017 should read as Council report 7.2.1.4 of 19 September 2017.

MOVED Cr Miller that Council, being satisfied the proposal has extensive community benefit and can be managed in accordance with the Disposal of Land and Other Assets Policy:

(1) Agrees to undertake a six week community consultation process on a proposal to revoke the community land classification of Allotments 11 and 12 Basedow Road, Tanunda being Certificates of Title 5133/408 and 5902/824.

(2) Instructs the Chief Executive Officer to develop and release the consultation document outlining the proposal to transfer land on a commercial basis, subject to receiving legal advice that the proposal and process is compliant with Council’s asset disposal policy and legal responsibilities.

(3) Appoints a small working group of Mayor Sloane and Cr Lange to support the Chief Executive Officer and Governance Advisor in formulating the consultation document and commercial negotiation of subsequent commercial arrangements for any approved land swap, should the revocation of community land classification be approved by the relevant Minister.

(4) Require the proprietor to pay all reasonable external legal, consultant and advertising and other costs arising from the community consultation and subsequent commercial arrangements should the revocation of community land be approved by the relevant Minister.

Seconded Cr de Vries

CARRIED 2014-18/1168

PURPOSE

To seek Council’s consideration to undertake a community consultation process with a view to removing the community land classification for land adjacent to Chateau Tanunda and swapping the land with land adjacent to Council property and private property on the western side of the Tanunda railway, to support the construction of a 5-star hotel facility. Relevant maps are provided at attachment 3.

REPORT

Background

Council has been presented background information in various briefings of the proposal to develop land adjacent to Chateau Tanunda, and to the eastern side of the railway corridor as a 5-star hotel development integrated with the Chateau and including the possibilities of a culinary institute and supporting student accommodation.
It is important to note the proprietor of the Chateau has been successful in securing the State Government land between Council’s land and the rail corridor which will form a critical link to the hotel development.

The vision of the Chateau proprietor is provided at attachment 2.

Introduction
Correspondence has been received from the representative of Chateau Tanunda seeking to swap land between the Chateau and Council to facilitate the proposed development.

It is important to note this report does not address any planning merits of the proposal or other Development Act activity attached to the proposal; that is a matter independent of Council deliberations and will be assessed by the relevant authority at the time of development application.

Discussion
There are multiple matters that need to be considered and the proposed process needs to ensure full and transparent decision making.

Land Encumbrances

The land in question is currently encumbered in two ways:

(1) The land is identified as Community Land pursuant to Section 193 of the Local Government Act. The land parcels are Allotment 11, Basedow Road, Tanunda, certificate title number 5133/408 and Allotment 12, Basedow Road, Tanunda, certificate title number 5902/824. These land parcels are identified on the map at attachment 3 as parcels A and B. The proposal is not consistent with the management plan at present and therefore cannot be leased or licenced for the purpose.

(2) The land also has an indenture deed (described herein as a trust) dedication applied to it. The parcels of land were donated to Council by way of trust from the Keil Estate for the purposes of open space and recreation.

The land is zoned Tourist Accommodation, a prior decision of Council and the relevant planning Minister which considered this appropriate land for such development, however the current encumbrances exclude that use in totality.

Legal advice was sought as to the best way to address the trust matter. It was determined that a voluntary negotiated release with the trust holders would be an appropriate way. With the approval of the proprietor of the Chateau, the Chief Executive Officer met with the trust holders on two occasions and they have expressed strong support for the proposal and provided a letter of intent to revoke the trust. Importantly, any land that will be transferred to Council, if a swap is approved, as part of that transfer process it is proposed to rededicate the new parcel of land in accordance with the wishes of the Keil Estate and thus honour the gift to the people of Tanunda.

A copy of the relevant correspondence is provided at attachment 4.

To address the community land encumbrance Council must undertake a process in accordance with Section 194 of the Local Government Act. That is:

- Undertake a community consultation process outlining at a minimum:
  - Summary of the reasons for the proposal;
  - Statement of any dedications, reservations or trusts (explained above);
  - Statement of whether revocation of the classification is proposed with a view to sale or disposal of the land, and, if so, details of any Government assistance given to acquire the land and a statement of how the Council proposes to use the proceeds; and
  - Assessment of how implementation of the proposal would affect the area of the local community.
- Should Council determine to proceed after consultation, then submit the proposal to the Minister with a report on all submissions and seek approval of the Minister.
If the Minister approves the revocation Council can then proceed to revoke the community land status for the purpose outlined.

If the revocation is supported and approvals obtained the Council then has an unencumbered land parcel which it can dispose of in accordance with the proposal.

It is estimated with a 6 week consultation period, 21 days is the minimum requirement, necessary administration and governance of the process, Ministerial approval and final revocation should it receive Ministerial consent will take at least another 6 weeks. This reflects best case scenario, being three months, taking us to the conclusion of December 2017.

**Proposed Land for Transfer and Assessment of Its Strategic Purpose**

The proposed land for transfer being offered by the proprietor is land adjacent to the car park at the Tanunda Soldiers’ Memorial Hall and travelling south behind residential development and concluding at or near the rear of the Tanunda Hospital. The current parcel of land is highlighted at C on the map at attachment 3. However the land would need to undergo a land division so as to retain access to the rear of the Chateau and oval area, and release the balance of the land for the purposes to be available to a land swap.

Any land that is swapped, subject to achieving extinguishment of the encumbrances on the land, is proposed to be rededicated for community land use and consistent with the Keil Estate donation so the open space is not lost to the people of Tanunda.

The proposal land has worthy open space usage due to its closer interaction with Council’s existing hall asset as well as residential use and the main street. It is unlikely to have any significant development for the foreseeable future other than lower level recreational assets.

Further any development of the land into future residential development which is currently contemplated by the Development Plan will be prohibited under the reestablishment of the land encumbrances on the swapped parcel of land.

Whilst the land proposed for land swap has some minor improvements in strategic connection, in commercial reality, the land has no greater value to Council or the community than the current parcel of land as they in essence will perform the same function and will be encumbered so as to preclude any other form of development.

It is estimated that a land division will take a minimum of 3 months to be processed through the system, a further 6 weeks would be required for the approval of a deposited plan of land division and further 6 weeks for issuing of titles, however, land settlement can take place upon an approved deposited plan. In total the land division process to reach a stage of settlement would take 4-5 months, the proprietor can commence this at any time and is not dependent on Council actions.

**Commercial Negotiation**

Some time has been devoted to considering the need for and timing of commercial negotiation of land swap details. There are various conditions precedent that need to occur before the parties actually have a viable proposal to execute, it is therefore considered that Council work towards a commercial agreement that sets out all foreseeable matters and once it determines to proceed with the community land consultation the commercial negotiations could run concurrently, but would always as the first condition precedent be dependent on revocation of the community land classification.

It is recommended that due to the public nature of the proposal that a small working group assist the Chief Executive Officer with negotiations and a probity advisor review the deliberations and agreement to ensure probity is maintained.

**Disposal of Land and Other Assets Policy**
An assessment of the proposal against the principles of the relevant policy have been undertaken at officer level and provided at attachment 6. These have not been independently reviewed due to the timeframes involved and so it is suggested this be done during the community land consultation process to ensure they are well tested and agreed independently.

In essence the analysis demonstrates there is significant community benefit in the proposal and as an outcome a land swap will not result in any loss of value of appropriate open space to the community. This is further reinforced through the current proposal to rededicate the land to be transferred on the western side of the railway corridor under the community land provisions of the Local Government Act and the Keil Estate thereby maintaining the same community service.

Community Consultation Proposal

It is proposed to undertake a 6 week consultation process recognising the expected community interest in the proposal. The consultation proposed as follows:

(1) Development and release of extensive public consultation document;
(2) Public notices in the Herald and Leader newspapers;
(3) Media statement;
(4) Placement of information on web-site, Better Barossa consultation platform and Facebook.
(5) Displays at Council Library and Visitor Centre in Tanunda and seeking for the proprietor to also have displays at the Chateau.

The consultation period will seek written submissions through email, letter or our consultation platform.

Preliminary Benefits and Costs

It is estimated that the project, if successful will deliver:

- A high class 5-star hotel development in the heart of the Barossa;
- A vehicle for achievement of a culinary institute.
- Significant construction (estimated at 150 FTE’s) and ongoing job creation (estimated at 97 FTE’s);
- Utilisation of appropriately zoned land.
- Land available to Council that better integrates with existing ownership of Council and integration with the main street precinct.

The costs of the project relevant to Council at this time, not including private construction costs, land division, planning and development and other costs:

- Officer resources, absorbed.
- Legal, probity, and other professional advice:
  - Commercial negotiation up to $10,000.
  - Extinguishment of Deed and Re-establishment $5,000
  - Other advice $4,000
- Advertising and associated public consultation costs upwards of $1,500.
- State Government fees and charges, unknown at this time.
- Conveyancing costs $2,000.

These costs are not budgeted for.

It is recommended, other than officer costs, Council seeks as part of the commercial arrangements reimbursement of costs incurred to support the project. Alternatively Council will need to approve a budget adjustment which will impact the operating position of Council by approximate $22,000; if that is the wish of Council it will be undertaken as part of the Council first quarter budget review.

Summary and Conclusion

The vision as proposed provides for a significant investment for the Barossa area and delivery of a high class facility. The current land parcels owned by Council are not of significant community
value or use and the swap of land to that adjacent to Council and closer to the main street offers a more strategic parcel of land. It is recommended that Council, should it commence the relevant processes, commit as part of the community consultation process to rededicate the swapped land under the Keil Estate and as community land to ensure it has at least the same community service outcome as the existing land.

In summary the steps envisaged are:

<table>
<thead>
<tr>
<th>Number</th>
<th>Action</th>
<th>Timeframe</th>
<th>Dependency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Community Consultation – Community Land Consultation – Council</td>
<td>7 weeks</td>
<td>Council approval</td>
</tr>
<tr>
<td>2.</td>
<td>Community Consultation – Community Land Consultation – Ministerial Approval</td>
<td>6 weeks</td>
<td>Part 1 Above</td>
</tr>
<tr>
<td>3.</td>
<td>Revocation of Community Land Classification</td>
<td>1 week</td>
<td>Part 2 Above</td>
</tr>
<tr>
<td>4.</td>
<td>Commercial Negotiation</td>
<td>7 weeks</td>
<td>Council approval to proceed – concurrent with 1 above.</td>
</tr>
<tr>
<td>5.</td>
<td>Land Division</td>
<td>12 weeks</td>
<td>Private developer matter.</td>
</tr>
<tr>
<td>6.</td>
<td>Indenture Deed Management</td>
<td>4 weeks</td>
<td>Part 2 Above</td>
</tr>
<tr>
<td>7.</td>
<td>Approval of Deposited Plan</td>
<td>6 weeks</td>
<td>Part 5 Above</td>
</tr>
<tr>
<td>8.</td>
<td>Land Transfer</td>
<td>2 weeks</td>
<td>Part 2 and 4 Above</td>
</tr>
</tbody>
</table>

**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**
- Attachment 1 – Correspondence from Tuscan
- Attachment 2 – Strategic Vision
- Attachment 3 – Maps
- Attachment 4 – Letter Agreeing to Release Indenture Deed
- Attachment 5 – Disposal of Land or Other Assets Policy
- Attachment 6 – Assessment of Proposal against Disposal of Land or Other Assets Policy

**COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS**

**Community Plan**

- Natural Environment and Built Heritage
- Community and Culture
- Health and Wellbeing
- Business and Employment
- How We Work – Good Governance

1.5 Provide support and advice to preserve properties and sites which have historic significance.
1.10 Facilitate opportunities to repurpose or find alternative use of built heritage.
2.2 Support the development of activities that celebrate the history and culture of the Barossa and its people.
2.6 Support a vibrant and growing arts, cultural, heritage and events sector.
2.8 Provide opportunities for the community to participate in local decision-making.
2.13 Advocate for education infrastructure and support improvements.
4.6 Ensure that community members can participate in cultural, recreational, sporting and learning opportunities.
5.1 Work closely with State Government, Federal Government and stakeholders to support economic growth, development and job creation.
5.3 Help build the capacity of the tourism sector and encourage the development of tourist services, including eco and recreational tourism infrastructure.
5.4 Attract investment for new and innovative industries, such as creative industries and cultural tourism.
5.5 Support education and training programs that directly respond to work-force gaps and innovation.

Legislative Requirements
Section 49 of the Local Government Act
Section 194 of the Local Government Act

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS
Financial estimates are outlined in the body of the report.

Internal resources will be provided primarily by the Chief Executive Officer and Governance Advisor.

Risk Management considerations include the public interest in the matter, possibilities of loss of the project, public objection. It is considered the best way to mitigate these risks is to be completely open and transparent in Council’s decision making and provision of sufficient information. Further in-principle support from the Keil Estate trustees has already been provided. Also importantly the State Government has reviewed the proposal in the context if its land arrangements and has supported the project through arrangements for land transfer of the railway station land.

COMMUNITY CONSULTATION
Outlined in the body of the report.

7.2.1.5 QUARTERLY UPDATE OF DELEGATIONS REGISTER
B5819

MOVED Cr de Vries
(1) That having delegated powers and functions to the Chief Executive Officer of the Council on the 17th day of May 2016 under the Local Government Act 1999, the Council hereby revokes this 19th day of September 2017 delegations of those powers and functions under the following Acts set out below:

- Heavy Vehicle National Law (South Australia) 2013 – section 174(2) regarding amendment or cancellation on request by relevant road manager

- Local Government Act 1999 – section 187(1) regarding certificate of liabilities

- Work Health Safety Act 2012 – section 65 regarding disqualification of health and safety representatives and section 229 regarding application for external review.

(2) That Council, in exercise of the power contained in Section 44 of the Local Government Act 1999, hereby delegates to the person occupying the office of Chief Executive Officer this 19th day of September 2017, the powers and functions under the following Acts set out below:

- Heavy Vehicle National Law (South Australia) 2013 – section 174(2) regarding amendment or cancellation on request by relevant road manager

- Local Government Act 1999 – section 187(1) regarding certificate of liabilities and clause 6(2) to clause 13(3) regarding building upgrade charges
Author: Governance Advisor

Mayor Lange tabled late correspondence from the applicants for the consideration of Council.

MOVED Cr de Vries that:

Council having received and considered:

(i) the independent external party review report and attachments which were received by officers on 5 November 2019 from the external reviewer, Ms Felice D’Agostino or Norman Waterhouse Lawyers as regards an application made to review Council’s decision of 20 August 2019 to approve the final commercial and valuation documents for the land exchange between Chateau Tanunda (IVIVI Pty Ltd) and Council at Attachment 1;

(ii) the agenda and associated minutes relating to agenda item 7.2.1.7 of the Council meeting of 20 August 2019, being the Chief Executive Officer Report titled ‘Final commercial and valuation documents for land exchange between Chateau Tanunda (IVIVI Pty Ltd) and Council’ and all attachments at Attachment 2;

(iii) the agenda and associated minutes relating to agenda item 2.2.1 of the Special Council meeting of 26 April 2018, being the Chief Executive Officer Report titled ‘Approval to proceed with final consideration of revocation of community land classification – Basedow Road, Tanunda’ and all attachments at Attachment 3;

(iv) the agenda and associated minutes relating to agenda item 2.1.2 of the Special Council meeting of 26 April 2019, being the Chief Executive Officer Report titled ‘Barossa regional Culture Hub – Draft Master Plan’ and all attachments at Attachment 4;

(v) the agenda and associated minutes relating to agenda item 7.2.1.1 of the Council meeting of 19 December 2017, being the Chief Executive Officer Report titled ‘Revocation of community land classification – Basedow Road, Tanunda’ and all attachments at Attachment 5;

(vi) the agenda and associated minutes relating to agenda item 7.2.1.4 of the Council meeting of 19 September 2017, being the Chief Executive Officer Report titled ‘Chateau Tanunda – Community Land Proposal’ and all attachments at Attachment 6;

(vii) letter to the Minister for Planning from the Council’s Governance Advisor dated 21 December 2017 and all attachments to the letter;

and Council having given due consideration to whether the original decision of 20 August 2019 was legally, procedurally and meritoriously correct:
(1A) that being satisfied that the decision of 20 August 2019 was legally, procedurally and meritoriously correct, Council determines that the decision was the best and/or preferable decision, and reaffirms its decision of 20 August 2019, the decision being:

(1) Being satisfied with the Valuation Report approves the draft Contract for the Exchange of Land as presented at Attachment 2 and authorise the Chief Executive Officer to make further changes and authorise the Agreement on condition that:

a. Chateau Tanunda (Ivivi Pty Ltd) shall at least transfer the portion of land being certificate of title volume 5962 folio 146 of approximately 8,241 square metres and $25,000 to Council to balance the market values of the land; and

b. Any stamp duty costs shall be borne by Chateau Tanunda (Ivivi Pty Ltd);

(2) Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

(3) Authorise the Chief Executive Officer to proceed with settlement of the land exchange after completion of the Contract for the Exchange of Land under resolution 1, and that the said land be excluded from community land status pursuant to Section 193(4) of the Local Government Act, until the Indenture Deed is settled under resolution 2 and that a final report be brought to Council for rededication of the land under Section 193(5) of the Local Government Act and application to an appropriate community land management plan.

(2A) that having considered Council’s Disposal of Land or Other Assets Policy (“DLOA Policy”) and notwithstanding Council’s resolution at its meeting of 19 December 2017 to dispense with the requirement to obtain valuations of the land pursuant to clause 4.4.1(i) of the DLOA Policy:

(i) Council is satisfied that it is appropriate to dispense with the DLOA Policy’s requirement at clause 4.4.1(i) to obtain a minimum of two valuations of the Council-owned land made up of Allotments 11 and 12 Basedow Road, being Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824 (the “Council Land”) and the land owned by Ivivi Pty Ltd (trading as Chateau Tanunda) being a portion of Allotment 74 in Deposited Plan 85229 being Certificate of Title Volume 5962 Folio 146 (the “Chateau Tanunda Land”), and

(ii) that the disposal of the Council Land in exchange for the Chateau Tanunda Land proceed with only one valuation, being the valuation that was presented to Council at its meeting on 20 August 2019.

Seconded Cr Johnstone  
CARRIED 2018-22/398

PURPOSE
Council is asked to receive and consider the report and recommendation given by Ms Felice D’Agostino of Norman Waterhouse Lawyers in her external party review report entitled ‘The Barossa Council - Section 270 Final Report - Matter of Land Exchange’, which was received by
officers on 5 November 2019 as regards an application made to review Council’s decision of 20 August 2019 to approve the final commercial and valuation documents for the land exchange between Chateau Tanunda (IVIVI Pty Ltd) and Council.

**REPORT**

**Background**
Following Council’s decision at its Special Meeting on 26 April 2018 to revoke the community land status over Allotments 11 and 12 Basedow Road, Tanunda being Certificates of Title Volume 5133 Folio 408 and Volume 5902 Folio 824 (the “Council Land”), Council further resolved at its meeting on 20 August 2019 to dispose of the Council Land in exchange for a portion of land owned by Chateau Tanunda (IVIVI Pty Ltd) being a portion of Allotment 74 in Deposited Plan 85229 and described in Certificate of Title Volume 5962 Folio 146 (the “Chateau Tanunda Land”), and proceed with commercial arrangements:

1. Being satisfied with the Valuation Report approves the draft Contract for the Exchange of Land as presented at Attachment 2 and authorise the Chief Executive Officer to make further changes and authorise the Agreement on condition that:
   a. Chateau Tanunda (Ivivi Pty Ltd) shall at least transfer the portion of land being certificate of title volume 5962 folio 146 of approximately 8,241 square metres and $25,000 to Council to balance the market values of the land; and
   b. Any stamp duty costs shall be borne by Chateau Tanunda (Ivivi Pty Ltd);

2. Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

3. Authorise the Chief Executive Officer to proceed with settlement of the land exchange after completion of the Contract for the Exchange of Land under resolution 1, and that the said land be excluded from community land status pursuant to Section 193(4) of the Local Government Act, until the Indenture Deed is settled under resolution 2, and that a final report be brought to Council for rededication of the land under Section 193(5) of the Local Government Act and application to an appropriate community land management plan.

Seconded Cr Hurn  
CARRIED 2018-22/279

On 4 September 2019 Council administration received a request from the applicants, Mr Robbert Sennef and Ms Shelley James, to conduct an internal review of this decision, exercising their right to do so under Council’s Internal Review of Council Decision Policy (the “Policy”).

Internal review of a Council decision enables Council to reconsider all the evidence relied on to make the original decision, and additional available evidence if relevant.

On 16 September 2019, the Chief Executive Officer notified the applicants that, due to the decision of which review is sought being a decision of the Elected Body, he had determined to appoint an external reviewer to provide an independent investigation and recommendation, in accordance with the Policy and the supporting Internal Review of Council Decision Process (the “Process”). The external reviewer appointed to conduct the review was Ms Felice D’Agostino of Norman Waterhouse Lawyers.

**Introduction**
Ms D’Agostino has finalised her investigation, and subsequently her report and recommendations are presented for Council’s consideration, at Attachment 1 to this report.
In accordance with clause 4.6.5 of the Process, an external reviewer cannot vary or revoke a decision made by or on behalf of Council. They must report their recommendation(s) from the internal review to the Elected Body for a determination as to whether the relevant decision should be affirmed, varied or revoked.

Discussion

In accordance with clause 4.6 of the Process, Ms D'Agostino has considered the merits of all the materials and information that were before the Council at the time of the decision on 20 August 2019, and any additional relevant information or material provided by the applicant or which has become available during the course of the review.

Ms D'Agostino considered whether the original decision of 20 August 2019 was legally, procedurally and meritoriously correct having regard to the following, that Council:

- 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 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 and processes;

and that the decision was reasonable in all the circumstances.

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

Procedural fairness was observed throughout this review so that the applicants were given the opportunity to put forward information and materials in support of the application for review, they were informed of the proposed outcome of the review, and had the opportunity to make submissions to Ms D'Agostino on the outcome and have these submissions taken into account, and Ms D'Agostino did not have a bias or perceived bias when undertaking the review.

For full transparency it should be noted that as per clause 4.6.4 and 4.6.7 of the Process and to ensure that procedural fairness is observed, prior to issuing her final report, Ms D'Agostino prepared a provisional report and provided the applicants with the opportunity to comment on the said provisional report. The deadline for comments was extended at the request of the applicants. However, the applicants then notified Ms D'Agostino in writing that they would not be providing submissions on the provisional report, as they had made a complaint to the Ombudsman regarding Ms D'Agostino's appointment.

In spite of this, upon Ms D'Agostino issuing her final report, the applicants notified Ms D'Agostino that they ‘did wish to make submission on the draft provisional report but would not do so until their further correspondence to the Ombudsman was answered’ (paragraph 3.1.6 of the report at Attachment 1).

Originally, officers had intended for the matter to be presented to Council at its November meeting for consideration, however, to ensure procedural fairness was observed and that the applicants were given every opportunity to present information relevant to their application, the applicants were given an additional two weeks to provide submissions, which resulted in the matter being deferred to the December Council meeting. As noted in Ms D'Agostino’s report, the applicants did not provide submissions on her report by the extended deadline. Further detail can be found at paragraphs 3.1.4 – 3.1.7 and Appendix B and C of the external reviewer’s report at Attachment 1.

In her report, Ms D’Agostino has concluded that ‘based on all the matters outlined in [the external reviewer’s] report and having regard to the [Process] and in particular the matters set out at
Clause 4.6.2 therein, the Decision is the best and preferable decision’ (paragraph 8.1 of the external reviewer’s report at Attachment 1). Further, Ms D’Agostino has recommended that ‘the Council reconsider all the information before it at the time it made the Decision, the information submitted by the Applicants and this report and determine if the Decision is the best and/or preferable decision’ (paragraph 9.1 of the external reviewer’s report at Attachment 1).

Furthermore, in her report, Ms D’Agostino considered whether it was appropriate that only one valuation of the Council Land and Chateau Land was obtained by Council as part of the land disposal process. She noted that Council’s Disposal of Land and Other Assets Policy ("DLOA Policy") requires that a minimum of two valuations be obtained, unless Council resolves to dispense with the requirement.

Ms D’Agostino concluded that ‘it is appropriate that only one valuation of the Council Land and Chateau Land has been obtained’ (paragraph 8.2) and ‘the circumstances of this matter are such that it is not necessary or appropriate to obtain more than one valuation’ [paragraph 7.2.2.3 of the external reviewer’s report at Attachment 1]. Thus, she has recommended that in addition to reconsidering the original decision, that ‘Council consider if one valuation of the Council Land and Chateau Land is appropriate and resolve accordingly’ [paragraph 9.2 of the external reviewer’s report at Attachment 1].

After carefully considering Ms D’Agostino’s report and recommendations, and giving due consideration to all the evidence relied on to make the original decision and any additional available evidence if relevant, the Elected Body must:

- make a decision to affirm, vary or revoke its decision of 20 August 2019; and
- decide whether or not it is appropriate to proceed with the land transfer with only one valuation of the Council and Chateau Land i.e. dispense with the requirement to obtain a minimum of two valuations of the Council and Chateau Tanunda Land when disposing of land, as per the DLOA Policy.

Following Council’s decision, further appeal rights remain available to the Ombudsman SA should the applicants wish to escalate their concerns.

Summary and Conclusion
Council is asked to consider Ms D’Agostino’s Internal Review Report and recommendation(s) and either affirm, vary or revoke its decision of 20 August 2019, and to consider whether or not it is appropriate to dispense with the requirement of the DLOA Policy to obtain a minimum of two valuations of the Council Land and Chateau Tanunda Land.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

**Attachment 1** - External Reviewer, Felice D’Agostino of Norman Waterhouse Lawyers received by officers on 5 November 2019 and titled ‘Section 270 Final Report – Matter of Land Exchange’ (19/71094)

**Attachment 2** - Extract of the agenda and associated minutes relating to agenda item 7.2.1.7 of the Council meeting of 20 August 2019, being the Chief Executive Officer Report titled ‘Final commercial and valuation documents for land exchange between Chateau Tanunda (IVIVI Pty Ltd) and Council’ and all attachments (19/64873 and 19/64875)

**Attachment 3** - Extract of the agenda and associated minutes relating to agenda item 2.2.1 of the Special Council meeting of 26 April 2018, being the Chief Executive Officer Report titled ‘Approval to proceed with final consideration of revocation of community land classification – Basedow Road, Tanunda’ and all attachments (19/66082 and 19/66085)

**Attachment 4** - Extract of the agenda and associated minutes relating to agenda item 2.1.2 of the Special Council meeting of 26 April 2019, being the Chief Executive Officer Report titled ‘Barossa regional Culture Hub – Draft Master Plan’ and all attachments (18/27200 and 19/66087)
COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Corporate Plan
2.3 Support and promote community involvement and networks and provide opportunities for participation in local decision making.
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, Sections 270, 201(2) and 49(a1)

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Pursuant to the Chief Executive Officer’s appointment of an external reviewer to review the Council decision of 20 August 2019, the total cost will be reported in the annual reporting requirements.

COMMUNITY CONSULTATION
Community consultation for the revocation of community land status over the Council Land occurred in accordance with Section 194 of the Local Government Act 1999 and Council’s Public Consultation Policy and was further validated by an Independent Assessment conducted by Kelledy Jones Lawyers. Approval to proceed with final consideration by Council was also received from the Minister’s delegate.

The Barossa Regional Culture Hub draft Master Plan also underwent public consultation, and the results of the consultation were presented to Council at its meeting on 27 June 2018, whereupon Council endorsed the Draft Master Plan subject to amendment and budget considerations, and determined to move ahead with the next stages of the project.

Both Council decisions relating to the revocation of community land status and Barossa Culture Hub matters, made by Council at its Special Meeting of 26 April 2018 and 27 June 2018 respectively, have previously been reviewed pursuant to Section 270 of the Local Government Act 1999, with the current applicants initiating the review of the community land status revocation decision of 26 April 2018. An external reviewer was appointed to conduct an investigation and present their recommendations to Council, in both cases. In both instances, Council resolved that the original decision made by Council was the best and/or preferable decision and reaffirmed the original decisions.
It should also be noted that the Ombudsman’s office received complaints in relation to those matters, and made an assessment that:

- the conclusion reached in relation to the section 270 review was reasonably open to the reviewer;
- in relation to the complaints received, based on the evidence available, it did not appear that Council had acted in a way that was unlawful, unreasonable or wrong within the meaning of the Ombudsman Act 1972.

7.2.1.3 MINOR AMENDMENT TO COMMUNITY LAND MANAGEMENT PLANS – MANAGEMENT PLAN 2 (UNDEVELOPED RESERVES AND GARDENS OR THOSE WITH MINOR IMPROVEMENTS) AND MANAGEMENT PLAN 7 (ESTABLISHED TRAILS, WALKWAYS AND BIKEWAYS)

Author: Governance Advisor

MOVED Cr Angas that with respect to the proposed amendment to Community Land Management Plan 2 – Undeveloped Reserves and Gardens (or Those with Minor Improvements) and Community Land Management Plan 7 - Established Trails, Walkways and Bikeways (collectively, “CLMPs”), in relation to Allotment 91 Jonathan Avenue, Nuriootpa (Certificate of Title 5771 Folio 120), the amendment being to record in the Community Land Register with respect to the subject land, easement/s in favour of adjoining landowner/s, noting that the easements have not been granted and that it is discretionary for Council or the Chief Executive Officer under delegation, to grant such easements, that Council being satisfied that the amendment has no impact or no significant impact on the interests of the community pursuant to section 198 of the Local Government Act 1999:

(1) Receives, considers and adopts the proposed minor amendment to the CLMPs, with respect to Allotment 91 Jonathan Avenue, Nuriootpa (Certificate of Title 5771 Folio 120), to include easement/s that may be granted by the Chief Executive Officer, in exercise of his delegated powers under section 201(2)(d) of the Local Government Act 1999; and

(2) That this amendment be reflected in the Community Land Register and authorises the person acting in the position of Chief Executive Officer to record the amendment (i.e. easement/s over community land comprised of Allotment 91 Jonathan Avenue, Nuriootpa) in the community Land Register in the event that easement/s are granted in favour of the landowners of the allotments that will result from the proposed subdivision, located at what is currently 21 Barossa Street, Nuriootpa, noting that the proposed subdivision and development is yet to be finalised.

Seconded Cr Barrett

CARRIED 2018-22/399

PURPOSE

Council is asked to receive, consider and adopt the proposed minor amendment (to record easement/s over land if granted) to Community Land Management Plan 2 – Undeveloped Reserves and Gardens (or Those with Minor Improvements) and Community Land Management Plan 7 - Established Trails, Walkways and Bikeways, with respect to Allotment 91 Jonathan Avenue, Nuriootpa (Certificate of Title 5771 Folio 120), pursuant to section 198 of the Local Government Act 1999. Public consultation is not required if Council is satisfied that the amendment has no impact or no significant impact on the interests of the community. Council is also asked to authorise the Chief Executive Officer to record the amendment in the Community Land Register.
Final Report
Full investigation - Ombudsman Act 1972

Complainant  Mr John Ayliffe
Council  Kangaroo Island Council
Ombudsman reference  2017/06921
Agency reference  E2017/6954
Date complaint received  6 July 2017

Issue
Whether the council undertook its review of Mr Ayliffe’s complaint in accordance with its Code of Conduct for Elected Council Members Procedure.

Jurisdiction
The complaint is within the jurisdiction of the Ombudsman under the Ombudsman Act 1972.

Investigation
My investigation has involved:
- assessing the information provided by the complainant
- seeking a response from the council
- seeking more particulars from the council
- considering:
  - the Local Government Act 1999
  - the Code of Conduct for Council Members
  - the council’s Code of Conduct for Elected Council Members – Procedure
- preparing a provisional report, and seeking response from the interested parties
- preparing this final report.

Standard of proof
The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court’s decision in Briginshaw v Briginshaw (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.1 It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ... 2

1 This decision was applied more recently in Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd (1992) 110 ALR449 at 449-450 per Mason CJ, Brennan, Deane and Gaudron JJ.
2 Briginshaw v Briginshaw at pp361-362, per Dixon J.
Response to my provisional report

The complainant, Mr John Ayliffe, wrote to me on 7 January 2018 in response to my letter of 15 December 2017 inviting comment on my provisional report. In summary, Mr Ayliffe endorsed the content, findings and foreshadowed recommendations of my report.

He made one ‘small point’, requesting that I consider making a further recommendation to request an apology to be issued by the Deputy Mayor as well as by the council for the incorrect handling of his Code of Conduct complaint.

I have maintained my recommendation that the council only apologise as the council bears the responsibility for the administration of the complaint handling procedure. As such, the council is the respondent to this complaint rather than the Deputy Mayor.

The council did not provide a response to my provisional report by the notified due date of 12 January 2018. However, after checking with council to ensure that no response was to be forwarded, I received a request for an extension of time to prepare a response. I received that response on 22 January 2018. In summary, the council has submitted:

- that item 24 of my provisional report has not included a reference to dot point 4 in clause 4.1.5 of the council’s Code of Conduct for Council Members Procedure
- that the advice sought from Mr Harris QC does form part of the Code of Conduct Process because the Procedure also states that in making a determination pursuant to clause 4.1.5 ‘the mayor may seek advice and guidance from any source in relation to the best course of action to pursue’
- that the referral of the matter to the Local Government Association Mutual Liability Scheme (LGAMLS) was separate to the Code of Conduct Process
- that Clause 4.1.5 of the Code of Conduct Procedure does not require the council to employ a formal mediation process as this is only one of the options available at the preliminary assessment stage
- that the Deputy Mayor made a determination that the complaint was considered frivolous and/or vexatious and therefore a referral to a formal mediation process was not required
- that at no stage was Mr Ayliffe denied the opportunity to have his allegations assessed as part of the Code of Conduct procedure and in any event a determination in regards to this had already been made
- that the assessment of the complaint by the Deputy Mayor does not appear to systematically address any of the six Code of Conduct breaches alleged against Mayor Clements ‘nor do we believe that it is required to do so’
- that as the complaint had been determined to be frivolous and/or vexatious there was no case to answer and therefore no need to provide a detailed assessment on any of the six alleged breaches
- that although the Procedure does require the Deputy Mayor to refer the matter to the Local Government Governance Panel if the matter cannot be resolved, council considers that the matter was resolved when the complaint was deemed frivolous and/or vexatious – therefore no referral was necessary
- that despite considering the matter resolved, the council offered an informal meeting in a genuine attempt to satisfy Mr Ayliffe’s grievance
- that the Deputy Mayor was permitted to seek advice and guidance from any source in relation to the best course of action to pursue
- that because there had already been a determination by the Deputy Mayor that there was no breach of the Code of Conduct, advice regarding civil liability protection was not part of the Code of Conduct investigation
- that the deputy Mayor did not hand the entire Code of Conduct matter to the LGAMLS

3 The timing and implications of this determination by the council are discussed in detail at 30.
for resolution as a determination had already been made. The matter referred to the
LGAMLS was one of civil liability

- that the wording of the Special Council Meeting resolution carried on 29 July 2017
  stating that Mayor Clements had no case to answer ‘based on advice’ [my emphasis]
  sought from Mr Harris QC contradicted the earlier statement that the Deputy Mayor
  relied on ‘his assessment alone’ and, perhaps, should have read was ‘confirmed by
  advice’ [my emphasis] from Mr Harris QC

- that council believes it has taken all decisions in this matter in accord with the council’s
  Code of Conduct for Elected Council Members - Procedure

- that with the benefit of hindsight the council considers that the invitation to attend an
  informal meeting with Mayor Clements was an offer made in error - and for that the
  council apologises

- that the council does not apologise for an incorrect handling of the Code of Conduct
  complaint

- that the council stands by the determination made by the Deputy Mayor that the
  complaint was frivolous and/or vexatious and there was no breach of the Code and the
  Mayor had no case to answer.

I have considered the substantive submissions of the council and responded to them where
necessary in the body of this report. However, none of the submissions has persuaded me to
change my findings. I have made only minor changes to my provisional recommendations.

Background

1. The complainant, Mr John Ayliffe, is a small business person who has run a pelican
   feeding show at Kingscote for residents and tourists for approximately 20 years. He is
   known locally as ‘The Pelican Man’.

2. Mr Ayliffe has referred to an article which ran on the ABC news website on or about 28
   May 2017. The article stated:

   A major tour operator has dropped Mr Ayliffe’s pelican show from its itinerary. At
   the end of April, Mr Ayliffe stepped off the feeding platform and has not been back
   since - a move he never wanted to make.

   “You don’t work at something for that long to just walk away for the fun of it”, he
   said. It was not the birds which beat him, he said, but the tourists who were
   watching and not paying the $5 fee which covers the cost of the fish.

   “When you have a lot of people you’ll see some of them jumping through the rails
   and out the back. You might lose 15 per cent”, he said. Those losses were
   compounded by a major tour operator dropping him from one of their itineraries.

   Kangaroo Island Mayor Peter Clements said while Mr Ayliffe’s act had become a
   major part of the island, the pelican man had put some people offside by being rude
   to customers who did not pay at the end of the show.

   He’s got quite hostile. [Tour operator] Sealink pulled out of sending people there
   because some people were being abused”, Mr Clements said.

   But Mr Clements said he was willing to help Mr Ayliffe develop the site if the
   Government approved it. “He’s good for the island. He’s good for Kingscote and I
   hope we can make it work for him,” he said.

3. The complaint alleged that the comments made by the Mayor of Kangaroo Island
   Council (the council) Mr Peter Clements constituted breaches of clauses 2.2-2.5, 2.6
   and 2.8 of Part 2 of the Code of Conduct for Council Members (the Code of Conduct).
4. The complaint alleged, *inter alia*, that there is no basis in truth to the Mayor’s comments and that because they had been circulated on ABC media outlets and on social media they have damaged Mr Ayliffe’s reputation and caused distress to him and his family.

5. On 31 May 2017, Mr Ayliffe sent an email to the council’s Deputy Mayor Graeme Ricketts setting out a formal complaint against Mayor Clements for the Part 2 Code of Conduct breaches.

6. On 1 June 2017 Mr Ricketts acknowledged receipt of the Code of Conduct complaint to Mr Ayliffe and advised him that he would be attending to the matter as required by the council’s Code of Conduct for Elected Members - Procedure (the Procedure).

7. In response to further evidence of the content of the ABC media article provided by Mr Ayliffe, Mr Ricketts contacted him again on 1 June 2017 to confirm that he was in the preliminary stages of his investigation and advising Mr Ayliffe that he may seek further clarification of the allegations prior to making an initial determination.

8. On 6 June 2017 Mr Rickett’s rang Mr Ayliffe to confirm that he had conducted an assessment of the complaint and then proposed mediation between Mr Ayliffe and Mayor Clements to resolve the matter. Mr Ayliffe indicated that he was reluctant to attend a mediation session. He suggested that he had suffered damage to his reputation and asked what Mayor Clements was prepared to do to resolve the damage to himself and his family.

9. At this point Mr Ricketts concluded that Mr Ayliffe was intimating that he was likely to make a claim for damages once he had confirmation of the outcome of the Code of Conduct inquiry. As a consequence, he sought external legal advice in relation to the matter and, on 8 June 2017, also referred the matter to the LGAMLS for their consideration.

10. Given the seriousness of the allegations the council considered it had an obligation pursuant to LGAMLS Rules to notify them of the potential threat of a defamation claim.

11. On 20 June 2017, the LGAMLS wrote to Mr Ayliffe confirming that the matter was now being managed by the LGAMLS, on behalf of council and Mayor Clements, and that it would be inappropriate for Mr Ricketts in the circumstances, to attempt to resolve the issue between the parties.

12. On 22 June 2017, Mr Ayliffe sent an email addressed to Mr Ricketts stating his:

   disappointment that the Code of Conduct process had not been able to consider his claims...to bring about a resolution...

   My Code of Conduct claim clearly requested the council to consider my claims and to have the elected members of council arbitrate on the matter to bring about a resolution to the disagreement between the mayor and myself. This disagreement is a result of publicly made untruths made by the mayor acting in his capacity of mayor; on the ABC radio and repeated on various commercial media and the internet.

13. Mr Ayliffe asked Mr Ricketts to:

   ...in good faith, to follow the procedures spelt out in the Kangaroo Island Council's procedure guide to resolving Code of Conduct complaints.

14. Also on 22 June 2017, the LGAMLS wrote to Mr Ayliffe noting that:

   The Council has now considered these comments [allegedly made by Mayor Clements] using their internal Code of Conduct process to determine, if in the course of Mayor
Clements undertaking his role, duties, functions as the Mayor, was in breach of any protocols.

The Council has determined that in this case Mayor Clements was not in breach of any protocols.

15. A report covering the above facts was tabled before the council during a confidential session of the 29 June 2017 Special Council Meeting.

16. The council's minutes concerning this meeting record the following:

### 3.3 Code of Conduct 2017/02

 Moved Cr S Kauppila Seconded Cr L Turner

1.14pm That Council approves under the provisions of Section 90 (2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting, excluding CEO, in order to consider, in confidence, a matter on the grounds of Section 90 (3) -

   a) Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

This matter relates to a code of conduct (sic) and as such represents private interest that should not be divulged in the public realm.

CARRIED. Minute: SC16:2017

 Moved Cr S Kauppila Seconded Cr L Turner

1. That the Code of Conduct complaint from Mr John Ayliffe against Mayor Peter Clements for breaches of multiple provisions of the Code is assessed as having no case to answer based on advice sought from Mr Harris QC.

2. Endorse the provisions of Section 39 of the Local Government Act 1999 apply to the Mayor, Mr Peter Clements, in the case of all statements made by him pertaining to Mr John Ayliffe and his conduct in business.

3. Note that, based on the implied threat of litigation against the Mayor, the matter has been referred to the LGAMLS for their action if required.

CARRIED. Minute: SC17: 2017

 Moved Cr S Kauppila Seconded Cr L Turner

1:27pm That Council approves:

   a. That all documentation and reports relating to the above matter be kept confidential, pursuant to Section 91(7)(b) of the said Act.

   b. Further, that pursuant to Section 91(9)(a) of the said Act, that part ‘a’ of this resolution shall cease from 30 June 2018.

The reports relating to a code of conduct (sic) and as such represents private interest that should not be divulged in the public realm.

CARRIED. Minute: SC18: 2017

17. As part of the initial assessment of Mr Ayliffe's complaint, my Office wrote to the council's Chief Executive Officer, Mr Andrew Boardman to ask if an Internal Review of Council Decision (under section 270 of the Local Government Act) had been considered at any stage of the handling of the complaint. My Office also requested details of the reasons for the decision made by Deputy Mayor Ricketts that 'there was no case to answer' with regard to the Code of Conduct complaint.
18. Mr Boardman responded that the matter had not been considered for a section 270 Internal Review of Decision: ‘given Mr Ayliffe has already complained to the Ombudsman I do not see any benefit in this process being followed...’. In response to the request for the reason given for the decision not to pursue the matter, Mr Boardman enclosed an email from Mr Ricketts to Mr Ayliffe dated 5 July 2017. It read as follows:

Dear Mr Ayliffe,

Thank you for your email dated 4 July 2017.

You are correct in that it was my assessment alone that determined that there was no case to answer with regards your Code of Conduct Complaint against Mayor Clements.

It is clear in Councils Code of Conduct - Policy and Procedures that as the Deputy Mayor I have the ability to seek advice / opinion while undertaking my assessment. The advice I received assisted in my determination of no case to answer.

In this circumstance Council does not debate on a Code of Conduct but simply notes the result of the assessment.

If my assessment determined that an independent investigation was required (which it wasn't), Council would only debate on a CoC if recommended as a result of a investigative report... this was not the case.

As noted in the letter dated 30 June 2017 this decision cannot be appealed however you have the right to refer the matter to the Ombudsman should you feel the procedure has not been followed correctly.

Sincerely,

Graeme Ricketts
Deputy Mayor
KI Council

19. After deciding to commence an investigation of the matter, I wrote to the council to seek an explanation of what consideration was given by the council to assessing Mr Ayliffe’s complaint against the cited Code of Conduct provisions. I also sought an explanation of the decision by Mr Ricketts to conclude an investigation of the complaint under the council’s Procedure.

20. By letter dated 2 November 2017, Mr Ricketts advised my investigation:

In response to the complaint and request, I conducted an internal Code of Conduct investigation in accord with the Council’s complaint procedures. [...]

As a result of my investigation, I was unable to identify any breach of the provisions of the Code of Conduct... ...It was my decision that Clements was acting at all times in accord with the Code of Conduct and was not in breach of any of the Code’s provisions. [...] 

At that point, I sought legal advice in relation to personal immunity protection for Mayor Clements on the premise that Ayliffe had intimated a damages claim on the basis of defamation, allegedly impacting on his wife, his business and himself. [...] 

Mr Harris QC dictated a letter to me over the phone for sending to Ayliffe which reflected his advice that in the light of the complaint of reputational damage and loss being complained of by Mr Ayliffe this was a matter appropriate for notification to the LGA Mutual Liability Scheme. Mr Harris QC also confirmed his advice to me on the telephone that, on the facts as he had been given them, any statements made by Clements were protected by the statutory immunity attaching to public statements made by the Mayor in the exercise or purported exercise of his powers, duties and functions and for that same reason this disposed of any suggestion of a Code of Conduct breach as well.
21. In response to my request to provide documentation received from and sent to the LGAMLS in relation to the Code of Conduct complaint against Mayor Clements, Mr Ricketts responded in the same letter as follows:

The LGAMLS is a local government indemnity scheme established pursuant to Schedule 1, Part 1(2) of the Local Government Act 1999. It is owned by the Local Government Association of South Australia and governed by a set of Rules, overseen by a Board with delegated authority from the LGA. It is an exempt agency for the purpose of the Ombudsman’s jurisdiction. Council is therefore not in a position to provide all correspondence however, the LGAMLS is willing to meet and discuss its file with you in order to support Council’s position.

Relevant law

22. The relevant clauses of the Code of Conduct are:

Part 2 - General behaviour

2.2 Act in a way that generates community trust and confidence in the Council.

2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.

2.4 Show respect for others if making comments publicly.

2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

2.6 Comply with all Council policies, codes and resolutions.

2.8 Endeavour to provide accurate information to the Council and to the public at all times.

23. The relevant sections of the Local Government Act are:

39-Protection of members

(1) No civil liability attaches to a member of a council for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member’s or council’s powers, functions or duties under this or other Acts.

(2) A liability that would, but for this section, attach to a member of a council attaches instead to the council.

63-Code of conduct for members

(2) Council members must observe the code of conduct.

Whether the council undertook its review of Mr Ayliffe’s complaint in accordance with its Code of Conduct for Elected Council Members Procedure.

24. The council’s Code of Conduct Procedure, current at the time the complaint from Mr Ayliffe was received, states at clause 4.1.5:4

4 Clause 4.1.1 of the council’s Procedure notes that the ‘complainant should report the allegation to the Council, addressed to the Mayor (or in the case of the Presiding Member being the subject of the complaint, the Deputy Mayor)...’
Preliminary Assessment of Complaint

Upon receiving a complaint the Mayor will make a preliminary assessment of the complaint to determine whether the complaint:

- Is frivolous and/or vexatious, in which case, no further action will be taken in relation to the complaint; or
- Has the potential to be adequately resolved informally between the Member who is the subject of the complaint and the complainant (for example, such as where constructive discussion is facilitated between the parties); or
- Should be referred for a formal mediation process, such as the Local Government Governance Panel, etc; or
- Warrants referral to an independent assessor, such as the Office of Public Integrity, SAPOL, etc., for a formal investigation and report to the Council (which may occur immediately or in circumstances where any mediation of informal discussion did not adequately resolve the matter).

25. The council’s Procedure states at clause 5.1.2 that:

   The Principal Member must ensure that the principles of natural justice and procedural fairness are observed.

26. The council’s Procedure states at clause 5.1.4 that:

   Where the matter cannot be resolved, the Principal Member will refer the original complaint to the Local Government Governance Panel. Neither the Principal Member nor the CEO will investigate a complaint.

27. The Procedure also states that in making a determination pursuant to clause 4.1.5:

   - the Mayor may seek advice and guidance from any source in relation to the best course of action to pursue;

28. In this instance the Deputy Mayor was handling the complaint and in the process sought external professional advice from Mr Andrew Harris QC. However, as noted above, he did so only after [my emphasis] making the decision that there was no Code of Conduct breach.

29. The issue of Deputy Mayor Ricketts’ decision to seek external legal advice and the subsequent referral of the matter to the LGAMLS to manage is related to but separate to my examination of the question of procedural propriety in the council’s handling of the complaint.

30. For the following reasons, I consider that the Deputy Mayor’s handling of Mr Ayliffe’s complaint against the Code of Conduct was not undertaken in accordance with the council’s Procedure:

   (a) Clause 4.1.5 of the Procedure requires the complaint to be assessed and dealt with in one of four ways: no further action if the complaint is frivolous and/or vexatious; resolve informally; referral for formal mediation; referral to an independent assessor. In this case, the council has recently submitted to me that the Deputy Mayor considered the complaint to be frivolous and/or vexatious from the outset of his assessment.\(^5\) There is no evidence that the Deputy Mayor made this determination and conveyed this decision to Mr Ayliffe. Indeed, the council has conceded that they ‘perhaps should have’. Instead, the Deputy Mayor spoke to Mr Ayliffe and later confirmed to him in an email dated 9 June 2017 that he had

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\(^5\) The submission has been made for the first time in the council’s response to my provisional report. The claim that the complaint was considered ‘frivolous and/or vexatious’ was made only in response to my provisional report, not at any of the earlier stages of my enquiry.
conducted an investigation and proposed informal mediation with the Mayor. I consider this action to be clear evidence that Mr Ayliffe’s complaint had not been deemed to be frivolous and/or vexatious and that a version of the ‘second option’ in the process had been assessed as appropriate for resolving the matter. Moreover, no opportunity was given to Mr Ayliffe to respond to the alleged determination that the matter was considered frivolous and/or vexatious. If that was the determination at the time, no heed was paid to observing the principles of natural justice and procedural fairness as required at 5.1.2 of the Procedure. In any event, I do not consider that Mr Ayliffe’s complaint can be reasonably described as being either frivolous or vexatious.\footnote{In \textit{SB, MF v Minister for Education and Child Development} [2017] SASC 161 the SASC has referred to previous authorities and interpreted ‘frivolous’ and ‘vexatious’ quite simply:  
\begin{enumerate}  
\item a frivolous proceeding is one which does not warrant serious attention.  
\item a vexatious proceeding is one which is pursued in order to harass a party.\end{enumerate}} I note that the report to the council dated 29 June 2017 states that Mr Ayliffe objected to Mayor Clements’ alleged comments on ABC radio on or about 28 May 2017 when he said about Mr Ayliffe:

\begin{quote}
\textit{He’s got quite hostile. (Tour Operator) Sealink pulled out of sending people there because some people were being abused.}
\end{quote}

This statement was made in a very public domain and circulated widely in the media. It does not appear that the Mayor has denied making these comments. Plainly, the comments have the potential to be hurtful and damaging and were the basis for the Code of Conduct complaint Mr Ayliffe brought against Mayor Clements. There is nothing to suggest that the complaint was other than a genuine grievance. On these facts, I cannot see how the complaint could be assessed as frivolous or vexatious.

(b) The assessment of the complaint by Mr Ricketts did not systematically address any of the six Code of Conduct breaches alleged against Mayor Clements. Mr Ayliffe identified the individual breaches and made comment on each in his complaint. Mr Ricketts provided no detailed assessment on any of the alleged breaches. The council submission is that the Procedure did not require this, but in my view the commitment of clause 5.1.2 to apply the principles of natural justice did require this.

(c) This recent council submission contradicts the Deputy Mayor’s statement in his 30 June 2017 letter that: ‘I have assessed your complaint against Mayor Peter Clements for breaches of multiple provisions of the Code as having no case to answer’. This indicates such an assessment was done and that the complaint had been taken seriously. However, the council now maintains that because the Deputy Mayor had determined that the complaint was frivolous and/or vexatious, and that there was no case for the Mayor to answer, there was ‘no need to provide a detailed assessment on any of the six alleged breaches’. This strikes me as a reconstruction of events.

(d) As Mr Ayliffe declined the offer of an informal resolution process, clause 5.1.4 required the Deputy Mayor to refer the matter to the Local Government Governance Panel or to ‘an independent assessor’ because it had not been resolved. The clause further prohibited the Deputy Mayor from investigating the complaint himself. The matter was not referred to the Panel and it was investigated by the Deputy Mayor. In my view, these actions are in clear breach of the Procedure.\footnote{Whilst the council’s Code of Conduct Procedure at 5.1.4 refers to the ‘Principal Member’ not being eligible to investigate the complaint, in this instance the Deputy Mayor was acting in his position for the purposes of the investigation as per clause 4.1.1.}
31. The council’s decision to absolve Mayor Clements of any breach of the council’s Code of Conduct was apparently confirmed on the strength of advice of Mr Andrew Harris QC. The report made to the council Special Meeting held on 29 June 2017 states that Mr Harris advised that Mayor Clements had ‘no case to answer’ on the Code of Conduct breaches alleged. The report rejected the allegation with the assertion that:

at no point had Mayor Clements:
- Intentionally or maliciously shown disrespect (sic) towards Mr Ayliffe
- acted in a manner during the interview that generated breach of community trust and confidence in the council or
- made personal comment during the interview that it was a private view and not that of the council.

The report then notes the further advice of Mr Harris ‘that any remedy for the allegations made by Mr Ayliffe could not be found via the council’s Code of Conduct process’.

32. Whilst I consider that Deputy Mayor Ricketts had good cause to seek external legal advice regarding what he considered a likely threat of defamation action, a problem arose with the advice also dealing with the Code of Conduct allegations outside the processes laid down in the council’s Procedure.

33. I observe that insofar as the report dismissed the complaint because the Mayor did not intentionally or maliciously show disrespect, the report is misguided because a breach of the Code can occur unintentionally. I further observe that reliance on section 39 of the Local Government Act for dismissing the complaint is also misguided. Section 39 only provides council members with protection from civil liability for an honest act or omission in the exercise of their duties. It is not a defence to a complaint about a breach of the Code.

34. In addition, the Deputy Mayor’s decision to refer the matter to the LGAMLS for resolution created a new layer of authority for the complainant to deal with. This is so because the LGAMLS appeared to take on the role of communicating with the complainant on the Code of Conduct issue as well as the separate civil liability issue within its authority.

35. I note also that while the Deputy Mayor wrote to Mr Ayliffe on 5 July 2017 to assert that ‘it was my assessment alone that there was no case to answer with regards your Code of Conduct Complaint against Mayor Clements’ - Mr Ricketts later relied on the advice given to him by Andrew Harris QC to explain his decision and advance reasons for rejecting the allegations. This is also confirmed in the earlier letter to Mr Ayliffe dated 30 June 2017, where the Deputy Mayor states that he ‘determined to seek professional advice from Mr Andrew Harris QC and based on his advice I have assessed your complaint...’.

36. Mr Ricketts’ statement stands in contrast to the first point in the resolution of the council made at the Special Meeting on 29 June 2017. The resolution dismisses the complaint from Mr Ayliffe citing: ‘no case to answer based on advice sought from Mr Harris QC’. The council now argues that the Special Meeting resolution should have read ‘confirmed by advice’. I consider the wording of the meeting resolution and the same phrase used in the letter of 30 June 2017 to be the intended meaning.

37. In my view, the assessment of the complaint should have been undertaken as a separate exercise and kept distinct from addressing concerns about a potential defamation action.
38. In summary, my view is that:
   - the council’s Procedure was not followed in that upon Mr Ayliffe declining the offer of informal resolution, the complaint should have been referred for independent investigation as required by the Procedure
   - if, as asserted by the council, the complaint was dismissed for being frivolous and/or vexatious (which I don’t accept it was), Mr Ayliffe should have been given reasons for that assessment and an opportunity to respond before the final decision to dismiss was made (as required by principles of procedural fairness which the council Procedure adopts)
   - Mr Ayliffe had clearly and appropriately outlined his complaint with reference to six provisions of the Code and he was entitled to receive a more detailed explanation for it being dismissed than that there was no case to answer.

Opinion

In light of the above, my final view is that, by not undertaking its review of Mr Ayliffe’s complaint in accordance with its Code of Conduct for Elected Members Procedure, the council acted in a manner that was unreasonable and wrong within the meaning section 25(1)(b) and (g) of the Ombudsman Act.

Recommendations

I recommend under section 25(2) of the Ombudsman Act that, within two months from the date of my final report, the council:

1. Issue a public written apology to Mr Ayliffe for the incorrect handling of his Code of Conduct complaint.

2. The council reconsider the assessment of the complaint and either provide Mr Ayliffe with proper reasons for it being dismissed or refer it for independent investigation.

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by 30 March 2018 on what steps have been taken to give effect to my recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

Wayne Lines
SA OMBUDSMAN

9 March 2018
FAMILY LAW AND CHILD WELFARE - CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION - CHILDREN IN NEED OF PROTECTION - PROCEEDINGS RELATING TO CARE AND PROTECTION - OTHER MATTERS

On 1 August 2016, a single Judge of the Supreme Court allowed SB’s appeal against an order made by the Youth Court transferring to the State of Queensland an order that M be under the guardianship of the South Australian Minister for Families and Communities until he attains the age of 18. The appeal Judge set aside the order and restored ancillary orders that allowed SB and his mother access to M on certain terms. A number of unrelated grounds of appeal were dismissed as were four interlocutory applications filed by SB.

SB filed a Notice of Appeal on 19 August 2016 complaining of the appeal Judge’s decision to dismiss the unrelated grounds and the interlocutory applications. The Minister subsequently filed an application seeking to dismiss the Notice of Appeal on the basis that it was an abuse of process, or in the alternative, staying the application until further order.

Subsequently, SB also filed a number of interlocutory applications dated 19 August 2016, 28 October 2016, 25 November 2016, 21 December 2016, 25 July 2016 and a Notice of Appeal dated 25 August 2017. A further Notice of Appeal dated 7 September 2017 was received by the Registrar but not filed.

Held:

1. The Minister’s application seeking to dismiss the Notice of Appeal dated 19 August 2016 as an abuse of process is granted.
2. The Notice of Appeal dated 19 August 2016 is dismissed pursuant to rules 193(b), 295(1)(c) and 295(1)(h) of the Supreme Court Civil Rules 2006.


4. Pursuant to rule 53(3) of the Supreme Court Civil Rules 2006, the Registrar is directed to reject the Notice of Appeal dated 7 September 2017.

Civil

HINTON J.

Introduction

1 On 16 November 2011, Judge Prescott, sitting in the Youth Court, made an order (the Care and Protection Order) under s 38(1)(d) of the Children’s Protection Act 1993 (SA) (the Protection Act) placing M, a boy then nine years old, under the guardianship of the Minister for Families and Communities 1 until such time as M attains the age of 18 (the primary order 2). That order was made with the consent of M’s mother and maternal grandmother, SB. Ancillary orders granting SB and M’s mother supervised access as agreed with the Minister and subject to M’s wishes (the ancillary orders 3) were also made.

2 On 10 August 2015, the Senior Judge of the Youth Court made an order under s 54F of the Protection Act transferring the Care and Protection Order to the State of Queensland (the Variation Order). The intention of the Variation Order was to facilitate M’s placement with relatives who lived in Brisbane and for them to qualify for assistance from the Queensland Department of Communities, Child Safety and Disability Services (the Queensland Authority).

3 On 13 August 2015, SB instituted an appeal to this Court against the Variation Order. That appeal was heard by a single Judge of the Court. On 1 August 2016, judgment on the appeal was delivered in SB’s favour. The appeal Judge set aside the Variation Order and restored the ancillary orders for access to M that were made with the Care and Protection Order on 16 November 2011. All other unrelated grounds of appeal were struck out and four interlocutory applications 4 that had been filed by SB were dismissed.

4 Subsequently, on 19 August 2016, SB filed a Notice of Appeal to the Full Court 5 complaining of the appeal Judge’s decision to dismiss the balance of the grounds of appeal and the four interlocutory applications. The Minister has since filed an application seeking the dismissal of the Notice of Appeal on the basis that it is an abuse of process, or, in the alternative, staying the action until further

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1 Now the Minister for Education and Child Development (the Minister).
2 Made pursuant to s 38(1)(d) of the Protection Act.
3 Made pursuant to s 38(1)(f) of the Protection Act.
4 FDNs 2, 9, 12 and 13.
5 SCCIV-16-1135 FDN 1.
order. I grant the Minister’s application and dismiss the Notice of Appeal. My reasons are set out below.

Five further interlocutory applications instituted by SB since 1 August 2016 have been referred to me by the Supreme Court Registry in addition to two further Notices of Appeal. I would dismiss each of the additional interlocutory applications and the Notice of Appeal dated 25 August 2017. In addition I would direct the Registrar to reject the Notice of Appeal dated 7 September 2017.

**Background and the appeal to this Court**

M was relocated to Queensland by the Minister prior to the making of the Variation Order. The Variation Order was subsequently sought to facilitate support by the Queensland Authority for M and his carers. A transfer order, which the Variation Order was in the main, can only be made under s 54F of the Protection Act if, amongst other things, “the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the order”. The Queensland Authority provided its consent by letter dated 23 July 2015. That consent was made conditional upon:

i. obtaining a child protection order in accordance with s 61 of the Child Protection Act 1999 (Qld) (the Queensland Act);
ii. receipt of a court order to effect judicial transfer of the child protection order to Queensland;
iii. M’s placement remaining viable, stable and appropriate at the point of transfer; and
iv. M’s carer being granted a certificate of approval as foster carers under the Queensland Act.

The Variation Order, to which reference has already been made, stated:

i. the Care and Protection Order be varied to its primary order only; and
ii. the ancillary orders be removed on the basis of procedural necessity to facilitate the transfer of the file to the Queensland Authority.

In her judgment on the appeal to this Court the appeal Judge noted:

… over the course of the proceedings in the Youth Court, it was noted that the carers struggled at times with the care of M. The Queensland Authority had been given

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6 SCCIV-16-1135 FDNs 6 and 12.
8 SCCIV-16-1135 FDN33.
9 Date stamped as received on 8 September 2017.
casework tasks which assisted in facilitating access but they were unable, without registration of the Order in Queensland, to provide support services or intervention to work with the family.

To assist K and her partner [the relatives of M to whom his care in Queensland was entrusted], the Department contracted a private agency, HOPE, to work with the family and specifically with M. In October 2015, despite working with HOPE, K and her partner advised they could no longer care for M on a full time basis but would assist with respite and have M in the school holidays.

At that time, M was to remain in Queensland. The Department originally sought a home placement through the Queensland Authority, however as none was available, on 26 January 2016, M became a boarder at a boys’ college in Queensland.

Due to the breakdown of M’s placement, the Queensland Authority has advised that it needs to reconsider accepting the transfer of the Order due to the instability of the placement and costs associated with M boarding at a private college.

The Queensland Authority has advised that the Department would need to make a new request for the transfer of the Order and again seek conditional consent from the Queensland Authority. The Department considers it unlikely that the required consent will be forthcoming given the Queensland Authority’s intimation that the Department needs to retain case management and responsibility for the costs of the placement.

Subsequently M expressed a desire to attempt reunification with his mother who lives in Victoria. His mother had expressed a similar desire. This possibility was to be explored by the Minister. The appeal Judge was advised that it was highly unlikely that M would remain in Queensland and that given the fluidity of M’s situation the South Australian Department for Education and Child Development was best placed to administer the Care and Protection Order.11

On 13 August 2015, SB, who is unrepresented, filed a Notice of Appeal against the Variation Order. The grounds of appeal were as follows:

1. My access order deleted 10-8-15
2. Transfer of file to Queensland 10-8-15
3. The whole of the order 10-8-15
4. The order and judgment has not been printed and is not available as yet because
5. I was not served a document in trial booklet and
6. Was served kinship care initial assessment report on 10-8-15 just before hearing of 10-8-15 and
7. Not sufficient time

The Notice of Appeal was called on for the purposes of directions on 11 February 2016. The directions hearing was conducted by the Judge who

11 SB, MF v Minister for Education & Child Development [2016] SASC 116 at [30]-[34].
ultimately heard the appeal. She made orders joining M as a party. At the same time the Judge intimated that it was her view that the appeal was against an interlocutory order and that as such, the appeal lay to a single Judge. Subsequently, the respondent advised the Court that notices had been issued under s 78B of the *Judiciary Act 1903* (Cth) as her appeal involved a matter arising under or involving the interpretation of the Constitution.

On 9 May 2016, the Minister filed an interlocutory application seeking orders:

i. declaring that the appeal filed on 13 August 2015 was interlocutory in nature;

ii. dismissing the respondent’s interlocutory applications of 20, 22 and 25 January 2016 (being FDNs 2, 9, 12 and 13);\(^\text{12}\)

iii. dismissing the appeal insofar as it relates to everything other than the deletion of the access order and the order transferring the file to Queensland;

iv. allowing the appeal insofar as it was not summarily dismissed; and

v. setting aside the Variation Order.

That application was supported by M’s legal representative.\(^\text{13}\)

As will be seen, SB’s constitutional argument involves s 109 of the Constitution. The appeal Judge rejected that argument. Her dispositive orders reflect an acceptance of the Minister’s submissions. She recorded those submissions as follows:\(^\text{14}\)

Counsel for the Minister submitted that, in light of the breakdown of M’s placement in Queensland and the fact that the Queensland Authority has indicated it is no longer prepared to take on the administration of the Order, for the administration of the Order to return to the Department it would first have to be registered in Queensland. The Department would then have to issue proceedings in the Queensland Children’s Court to have the matter transferred back to South Australia.

It was submitted that whilst the Order cannot be registered in Queensland the Queensland Children’s Court has no jurisdiction because there is no child protection order or proceeding in Queensland to transfer back to South Australia.

Counsel proposed that in these unusual circumstances, in order to overcome the difficulty or lacuna, the Minister and the appellant can achieve a mutually satisfactory result if the appeal is allowed on a limited basis so that the Variation Order can be quashed or set aside pursuant to s 22(3) of the *Youth Court Act*.

\(^\text{12}\) In file SCCIV-15-959.

\(^\text{13}\) M’s legal representative was appointed as an independent children’s lawyer pursuant to s 48(1) of the Act.

\(^\text{14}\) SB, MF v Minister for Education & Child Development [2016] SASC 116 at [41]-[46].
During the hearing on 24 June 2016, in supporting the Minister’s application, counsel for M stated that in view of the significant change in M’s circumstances it was in M’s best interest for the Order to be administered in South Australia.

An order quashing/setting aside the Variation Order will return the parties to the position they were in prior to the Chief Executive Officer’s application to transfer the Order to Queensland. This means the ancillary orders made by Judge Prescott on 16 November 2011 including the appellant’s supervised access order, will be restored.

Bearing in mind the objects of the Act prescribed by s 3, and noting that M is not receiving any care and support from the Queensland Authority the approach suggested by the Minister is in M’s best interests.

As indicated the appeal was successful in part. The Judge ordered:

1. The appellant’s interlocutory applications FDN 2, 9, 12 and 13 are dismissed.
2. The appeal is allowed for the purposes of setting aside the Variation Order made by the Youth Court on 10 August 2015 thereby restoring the ancillary orders for access to the Order made by Judge Prescott on 16 November 2011.
3. The remaining grounds of the appeal are struck out on the basis that they are incompetent and/or disclose no appealable error for which appellate remedy is available and/or seek relief which this Court cannot give.

If the Minister succeeds on his application to dismiss the Notice of Appeal filed 19 August 2016 no need arises to consider the interlocutory applications subsequently filed by SB because those applications could only be ancillary, procedural or adjectival to the Notice of Appeal. Accordingly, I deal with the Minister’s application first. Before doing so, however, I set out the grounds of appeal which SB seeks to pursue in the Full Court.

The Grounds of Appeal in the Notice of Appeal to the Full Court

As indicated, in her Notice of Appeal filed 19 August 2016, SB appeals the orders dismissing the interlocutory applications subject of FDNs 2, 9, 12 and 13 in SCCIV-15-959 and the dismissal of the balance of her grounds of appeal. She advances 17 grounds of appeal. I reproduce those grounds verbatim:

1. Discrimination
2. Criminal matters in a Civil Court

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15 SB, MF v Minister for Education & Child Development [2016] SASC 116 at [69].
16 FDN 1 in 1135 of 2016.
3. Dispensing with parliamentary legislation

4. Ministerial breaches of the *Children’s Protection Act 1993*

5. Unresolved Constitutional Matter

6. Senior Judge McEwen said that my appeal would have to go to the Full Court

7. Illegal proceedings

8. No Section 38 investigation

9. A complex file cannot be transferred to another state

10. A conflict of interest in the Office of the Attorney-General

11. Disputes between the arguments of Crown Solicitor Teresa Scott and Crown Solicitor TN Golding about who is the applicant of 24-2-2015 and whether or not I am guardian of the child

12. [M] is not a child under any Family Law Order

13. Crown Solicitor TN Golding presenting nonsense to Justice Bampton because he does not know the case or the story or the scenario

14. I am not a child

15. Crown Solicitor TN Golding disputes the only fact established that [M] has 2 guardians, his mother and me

16. Families SA a failure in the public arena

17. Other

**The power vested in a single Judge to reject, stay or dismiss a Notice of Appeal to the Full Court**

SB’s appeal from the single Judge of this Court lies to the Full Court under s 50(1)(a) of the *Supreme Court Act 1935* (SA). The Minister’s application, however, relies upon a different source of power. In this regard the Minister points to rules 53, 131, 192, 193 and 295(1)(h) of the *Supreme Court Civil Rules 2006* (SA) (the *2006 Rules*) as supplying a single Judge of this Court with power to dismiss the Notice of Appeal. These rules, made in the exercise of the rule making power contained in s 72 of the *Supreme Court Act 1935*, are supported, at least in part, by the inherent power this Court possesses to protect its processes from abuse.17

Rule 192 expressly provides this Court with power to stay proceedings if the justice of the case requires, and rule 193(b), to dismiss proceedings if they are frivolous, vexatious or an abuse of process. Proceeding is defined in rule 4 and

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17 *Pt T Bayan Resources TBK v BCBC Singapore Pte Ltd and Others* (2015) 258 CLR 1; *NH v DPP (SA)* (2016) 90 ALJR 978.
includes appellate proceedings. It is tempting to consider what each of frivolous, vexatious and abuse of process mean in isolation in determining the ambit of the power provided by rule 193(b), but in reality the frivolous proceeding – one which does not warrant serious attention – and the vexatious proceeding – one pursued in order to harass a party – may be considered examples of the broader concept of an abuse of process. That concept is not susceptible to concise definition. In fact it is often said that the categories of abuse of process are not closed. Here, however, in considering the ambit and nature of the power contained in rule 193(b) I think it sufficient to refer to the judgment of Deane J in *Staats v United States of America* where, in relation to a power that similarly permitted the High Court to refuse to accept or exercise jurisdiction, his Honour said:

> The rule of law which permeates our system of government requires that all persons have access to the courts of the land…

Nonetheless, considerations of justice, the interests of plaintiffs themselves and the public interest combine to require that there be procedures for insuring that a court can prevent the institution or maintenance of frivolous or vexatious proceedings. The interests of justice demand that a defendant (and those who are alleged to have acted unlawfully on behalf of a defendant) be protected from the cost, time and personal stress involved in defending such proceedings. The experience of those involved in the administration of justice in this country is that a plaintiff who persists in bringing hopeless proceedings is commonly convinced of the righteousness of his or her cause and will suffer increased stress, damage to health and, commonly, financial ruin if proceedings which are clearly foredoomed to fail are not halted at the outset. The public interest demands that court time and facilities, particularly the very limited time and facilities of this Court, are not devoted to pointless and misconceived litigation to the detriment of genuine disputes.

The question arises as to whether a single Judge of the Court may exercise the power contained in either rule 192 or rule 193 in relation to an appeal to the Full Court.

To answer this question, the starting point is rule 295(1) of the *2006 Rules* which enumerates a number of powers which the Court may exercise in relation to an appeal or an application for permission to appeal. Importantly rule 295(3) provides:

> (3) The powers conferred by this rule and any other power which is incidental to the conduct or determination of an appellate proceeding or of an application for permission to appeal, including applications for stays of execution under rule 300 or section 17 of the Enforcement of Judgments Act 1991, may be exercised:

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18 *Slinko v Guardianship and Administration Tribunal* [2006] 2 Qd R 279 at 283 (de Jersey CJ).
19 *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) 165 CLR 197 at 247.
21 *Staats v United States of America* (1992) 66 ALJR 793 at 793. Order 58 r 4(3) was not materially different to rule 53(3) of the 2006 Rules which provides power to strike out documents where they are an abuse of process.
(a) in relation to appeals to be heard by the Full Court, on the hearing of the appeal or application by the Full Court or in interlocutory proceedings before a single judge;

(b) in relation to all other appeals, on the hearing of the appeal or application or in interlocutory proceedings before a single Judge or Master.

The chapeau to rule 295(3) picks up any other power which is incidental to the conduct or determination of an appellate proceeding. In my view, the powers contained in rules 192 and 193 and the inherent power possessed by the Court are powers incidental to the conduct of an appellate proceeding. In *Harris v Caladine*, in a paragraph repeatedly quoted in the High Court, Toohey J described the inherent powers possessed by courts such as this as “incidental and necessary to the exercise of the jurisdiction or the powers so conferred”. Here the powers contained in rules 192 and 193 and the inherent power possessed by the Court may be exercised in subordinate conjunction with the appellate jurisdiction conferred by s 50 of the *Supreme Court Act 1935*.

Mention may also be made of rule 295(1)(h) which includes a power to summarily dismiss the appeal if it is obvious that it cannot succeed and of rule 295(1)(c) which provides that the Court may make, vary or reverse interlocutory orders in relation to the appeal or application for permission to appeal, or vary or reverse interlocutory orders of the court or tribunal from which the appeal arises. In *South Australia v Lampard-Trevorrow* White J observed that an “order for the stay of proceedings, even a permanent stay, is generally regarded as interlocutory in nature.” Whilst White J does not appear to have decided this issue, as the parties agreed he had the power, he nonetheless proceeded to entertain the application made to him, sitting alone, to permanently stay an appeal to the Full Court. I do not understand White J as simply acceding to the parties’ agreed view as opposed to being satisfied that such view was correct. I proceed on the same basis. In my view an order staying proceedings is an order about the course or conduct of an appellate proceeding in that it is an order that the proceeding shall not proceed – it is an order to the effect that the court refuses to exercise jurisdiction.

I proceed on the basis that the power conferred by rules 192 and 193(b) are picked up by rule 295(3), and thus, like the powers contained in rule 295(1), may be exercised by a single judge.

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24 After all it is the first duty of a court to decide if it has jurisdiction to decide an issue; *Federated Engine-Drivers and Firemen’s Association of Australasia v Broken Hill Pty Co Ltd* (1911) 12 CLR 398.
Before leaving rule 295(1)(h) I note that in *Russell v Polites Investments Pty Ltd* Stanley J said:\(^{23}\)

6SCR 295(1)(h) provides that the Court may summarily dismiss an appeal or an application for permission to appeal if it is obvious that it cannot succeed.

In an application for summary dismissal the onus is on the applicant to prove that it is obvious the appeal cannot succeed. The power is to be exercised cautiously and only where it is obvious that the appeal is without merit. Ultimately, the test is fixed by the language of the rule. The court must be satisfied that it is obvious that the appeal cannot succeed before it will make an order for summary dismissal. Generally a judge would not exercise the power unless it is clear beyond argument that the appeal must fail. While some previous judgments of this Court suggest that the power would not be exercised unless the appeal is so defective in form and substance it must be struck out either as failing to invoke the jurisdiction of the Full Court or clearly as an abuse of process, those authorities appear to be informed by the terms of the old r 95.08. The power conferred by that rule was more limited and confined to dismissing appeals which were incompetent.

The terms of 6SCR 295(1)(h) are wider. The power conferred is similar to the power conferred by 6SCR 232 which confers power on the Court to grant summary judgment. That power must be exercised with caution and should not be exercised unless it is clear that there is no real question to be tried. In *O'Brien v Bank of Western Australia Ltd* the Court of Appeal of New South Wales summarised those principles as follows:

The High Court decision in *Spencer v The Commonwealth* [2010] HCA 28; 241 CLR 118 was concerned with s 31A(2) of the Federal Court Act 1976 (Cth) but the following principles stated in it are of general application:

(a) On a summary judgment application, the real issue is whether there is an underlying cause of action or defence, not simply whether one is pleaded (at [23]).

(b) The critical question can be expressed as whether there is more than a “fanciful” prospect of success (at [25]) per French CJ and Gummow J) or whether the outcome is so certain that it would be an abuse of the process of the Court to allow the action to go forward (at [54] in the judgment of the plurality). Demonstration of the outcome of the litigation is required, not an assessment of the prospect of its success (ibid).

(c) Powers to summarily terminate proceedings must be exercised with exceptional caution (ibid at [55]; see also French CJ and Gummow J at [24]).

The power conferred by the rule may be exercised by a single Judge of the Court.

(footnotes omitted.)

The text of rule 192 is different to that of rule 295(1)(h). This is not the case in which to explore the difference. Whatever it may be, I think it obvious that any case falling within rule 295(1)(h) would also fall within the ambit of rule 192.

Rule 117 is a further source of power. Relevantly, it provides:

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\(^{23}\) [2016] SASC 129 at [28]-[30].
117-Power to make orders controlling conduct of litigation

(1) The Court may make any order it considers necessary for the proper conduct of a proceeding or otherwise in the interests of justice.

Note-
In addition to the powers specifically mentioned in this rule, the Court's powers to enforce compliance with the rules (rule 12) and the Court's powers to penalise procedural irregularities in costs (rule 13) should be noted.

(2) The Court may (for example)-

... 

(e) strike out a document or proceeding if the Court considers it frivolous, vexatious or an abuse of the process of the Court;

...

The breadth of this power was also considered by Stanley J in Russell v Polites Investments Pty Ltd where he said: 26

Pursuant to 6SCR 117(2)(e) the court may strike out a document or proceeding if the court considers it frivolous, vexatious or an abuse of the process of the court. The definition of “proceeding” in 6SCR 4 includes appeals. “Frivolous” is generally understood to mean something not worthy of serious attention. In Slinko v Guardianship and Administration Tribunal de Jersey CJ held that an appeal is frivolous or vexatious where it is paltry, not warranting serious attention and manifestly futile. The categories of abuse of process are manifold and not closed. They include where a party responsible for prosecuting a matter does not diligently prosecute their claim, where there is no arguable case in fact or in law, or where the claim is certain to fail.

(footnotes omitted.)

27

In Kronen v Commercial Motor Industries Pty Ltd the Full Court referred to rule 117(2)(e) and stated: 27

It is common for court rules to provide for the dismissal of proceedings which are an abuse of process without a hearing and determination of the merits. SCR 117(2) empowers this Court, in the management and control of actions, to strike out documents or proceedings which have been filed if the Court considers them frivolous, vexatious or an abuse of process of the Court.

...

The powers conferred by SCR 117(2) and IPR 60(1) do not finally resolve a controversy by the exercise of judicial power but they confer interlocutory powers which must be exercised judicially. The obligation to proceed judicially includes giving the parties an opportunity to be heard.

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26 [2016] SASC 129 at [31].
27 (2016) 124 SASR 427 at [23]-[26].
Both SCR 117(2) and IPR 60(1) apply to documents that initiate a proceeding, that is to say the substantive proceeding, and an interlocutory step filed in that proceeding…

(footnote omitted.)

The Full Court having confirmed the power contained in rule 117(2)(e) as interlocutory in nature, it may be exercised by the Court constituted of a single Judge. 28

Lastly, resort may also be had to rule 53 which, amongst other things, empowers a Judge of this Court to direct the Registrar to strike from the Court file any filed document if it contains matter that is scandalous, frivolous or vexatious. In Westwill Pty Ltd & Anor v The Barossa Council I had occasion to consider rule 53. 29 I said:

In this Court in Westwill Pty Ltd v Byrt Gray J touched upon the question of when a document would amount to an abuse of process within the meaning of Rule 53. He said:

Rule 53(1) as extracted, provides that a document is an abuse of the process of the Court if it contains matter that is scandalous, frivolous or vexatious. It is apparent from the terms of Rule 53 that the Rule does not operate to limit what may amount to an abuse of the process of the Court. The terms “scandalous, frivolous or vexatious” in this context should be given a wide meaning. It is to be observed that Masters of this Court will generally direct the Registrar to reject a document where pleadings do not disclose an intelligible cause of action, or no intelligible grounds for appeal. Such documents fall within the wide meaning referred to above.

I agree. The rule is made in support of this Court’s inherent power to protect its processes. It is now well settled that a superior court has all control over its own processes, including an ability to prevent or protect itself from abuse or misuse of its processes. In Assistant Commissioner Condon v Pompano Pty Ltd French CJ quoted with approval the following passage from Jacob, “The Inherent Jurisdiction of the Court”:

[T]he essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused. Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute.

The inherent power of a superior court to combat abuse of its processes derives from its fundamental responsibility to administer justice. Given the end that the power serves, it necessarily extends to categories of cases where the processes and procedures of the court, which exist to administer justice with fairness and impartiality, may be converted into instruments of injustice or unfairness. As early as 1883, in R v Burns, Higinbotham J, with whom Stawell CJ and Holroyd J agreed, noted:

… Every court of justice has an inherent power – a duty as well as a power – to take care that the machinery of justice is not abused in such a manner as to prevent justice being done, or allow a scandal to take place…

28 Rule 295(1)(c) of the 2006 Rules.
29 [2016] SASC 189.
30 Westwill Pty Ltd & Anor v The Barossa Council [2016] SASC 189 at [15]-[20].
The High Court has similarly acknowledged this “duty”, noting that “every court is ‘in duty bound to protect itself’ against an abuse of its process”.

Thus, whilst it is axiomatic that all members of the community have access to the courts, that right is not absolute. This Court is clothed with all power necessary to ensure that it is able to fulfil its functions including the taking of appropriate steps to prevent the “persistent advancing of hopeless applications that are abusive and scurrilous and that unnecessarily take up the time of the court to the prejudice of the community in general, and other litigants in particular.” As Deane J indicated, the effective administration of justice is undermined where individuals abuse the processes of the Court by diverting resources from meritorious actions to repeated hopeless applications, devoid of any merit, that do not comply with the rules, and result in the unnecessary incursion of time and expense and the occasioning of unnecessary anxiety. Having said that, sight can never be lost of the fact that it is fundamental to the rule of law that all members of the community have access to the courts. I refer again to Deane J in Staats v United States of America:

One effect of that rule is to empower a Justice of the Court effectively to prevent the institution of proceedings which are vexatious in the sense that it can be seen that they cannot succeed. It is a power which must be exercised with great care and in only a clear case.

Care must be taken in the exercise of the power contained in Rule 53 and it may only be used in a clear case.

(footnotes omitted.)

I remain of this view.

I turn to consider the application of these powers to the Notice of Appeal filed on 19 August 2016.

Consideration

I commence with the observation that the appeal heard by the judge of this Court was confined to complaints relating to the making and existence of the Variation Order. Consistent with this all of the grounds of appeal in the Notice of Appeal before the appeal Judge were aimed in one way or another at the Variation Order or the process resulting in its making. The orders made by the Judge in disposing of the appeal set aside that order and restored the ancillary orders for access to M. The Care and Protection Order was not appealed against. Thus, SB succeeded, obviating the need to consider the interlocutory applications made.

No costs order was made.

The fact that SB succeeded and the Variation Order was set aside suggests, without more, that her appeal to the Full Court is moot and thus the Notice of Appeal filed 19 August 2016 is an abuse of process.
Meaning no disrespect to SB, who clearly has M’s best interests at heart, she does not appear to understand that an appeal is against an order and once such order is set aside, on whatever basis, it ceases to be of any force and effect.

Many of the submissions made by SB before me may be described as complaints regarding the supervision and execution of the Care and Protection Order, including the investigation of possibilities that M reside with certain family members who SB considered were better suited to caring for him. None of these complaints can be entertained on an appeal to the Full Court from the judgment of the single Judge. If there is any forum in which they may be aired, it is the Youth Court on an application under the Protection Act, or, possibly, as part of an application for judicial review.

It may also be said that SB appeared to consider that the powers of this Court on appeal were not circumscribed, but that relief in any respect could be granted if this Court, whether constituted by a single judge or otherwise, was of a different opinion to the judicial officers of the Youth Court or, indeed, the Minister. The appeal being instituted under s 22(1) of the *Youth Court Act 1993* (SA), the appeal Judge was limited to the exercise of the powers contained in s 22(3) and then, only in relation to the judgment, within the meaning of s 22(1), appealed against.

I turn to the individual grounds of appeal.

Grounds one to four, seven and nine to 17, as reproduced above and contained in the Notice of Appeal filed 19 August 2016, may be considered together. Content and meaning to one side, they do not merit serious consideration by the Full Court. None of those grounds can have any consequence for the outcome of the appeal before the appeal Judge such that it is arguable that they might conceivably cause the Full Court to interfere with the orders made by the single Judge. None could result in any different order bearing in mind that the appeal before the single Judge was instituted only in relation to the Variation Order. They may be considered frivolous in that they do not merit serious consideration.

Ground five complains of an “Unresolved Constitutional Matter”. Indeed, in relation to the appeal before the appeal Judge the respondent issued notices as required by s 78B of the *Judiciary Act 1903* (Cth). The appeal Judge summarised the constitutional argument as follows:31

The appellant argues that, as she was the recipient of social welfare payments on M’s behalf while he was in her custody, she was recognised as his guardian in the federal jurisdiction. Her contention appears to be that s 38(2)(a) of the Act is inconsistent with the *A New Tax System (Family Assistance) Act 1999* (Cth).

---

31 *SB, MF v Minister for Education and Child Development* [2016] SASC 116 at [56].
If fresh notices were required to be issued under s 78B in relation to the Minister’s application, that did not occur. In my view, it was unnecessary. In *ACCC v CG Berbatis Holdings Pty Ltd* French J, as he then was, said:32

Section 78B does not impose on the court a duty not to proceed pending the issue of a notice no matter how trivial, unarguable or concluded the constitutional point may be. If the asserted constitutional point is frivolous or vexatious or raised as an abuse of process, it will not attach to the matter in which it is raised the character of the matter arising under the Constitution or involving its interpretation: *Nikolic v MGIC Ltd* [1999] FCA 849; cf *Australian Securities and Investments Commission v White* (Fed C of A, Drummond J, 16 July 1998, unreported).

I understand SB’s argument to be to the effect that because she was M’s guardian for the purposes of receiving benefits under the *A New Tax System (Family Assistance) Act 1999* (Cth) she was the guardian of M for all legal purposes. Consequently, a law of a State that empowered a judge to attribute to her any different status altered, impaired or detracted from the intention of the Commonwealth law and was, under s 109 of the *Constitution*, inoperable. I do not think the argument has merit. More importantly, and even if I am wrong, it is an argument that, the Variation Order having been set aside, could only result in the setting aside of the Care and Protection Order and yet that order was not subject of the appeal before the single Judge. Further, and more to the point, before me SB made plain that she did not quibble with the Care and Protection Order.

In the circumstances it was unnecessary to stop the hearing of the Minister’s application pending the issue of s 78B Notices. Ground five is frivolous in the sense that it does not merit consideration. For the same reasons I would reject SB’s application, if it were necessary to consider that application (and assuming power to provide the relief sought exists), that the matter be removed in to the High Court.

Ground six complains that the appeal ought to have proceeded before the Full Court, as opposed to the single Judge. It is a challenge to the Judge’s determination that the appeal was against an interlocutory order and thus a matter that a single Judge could hear. I do not pause to consider whether the question is arguable. SB wants to pursue the argument but only in relation to the grounds of appeal dismissed and her interlocutory applications. She does not claim that the error infects the order setting aside the Variation Order. What she asks then is that the Full Court determine incidental and subsidiary matters arising in the course of pursuing the substantive relief sought despite that relief being obtained and without it being interfered with. In such circumstances the ground of appeal does not warrant serious consideration.

The eighth ground of appeal contends that “no s 38 investigation” has taken place. The respondent articulated the issue as follows:33

---

There is a problem because my grandson is an illegal prisoner under the Minister because Justice Prescott made an agreement with me and he explained to me that before [M] can be taken off my eldest son, there would have to be an investigation, and when I looked at the Act, he was correct, there has to be a s.38 investigation before the Minister has any power in relation to a child. She can't hold a child in care without a s.38 order.

I take the respondent to contend that had there been a “section 38 investigation”, M would not have been taken from the care of her son and may have been placed in her care. Further, certain unfortunate events in M’s life may also not have occurred had he been in the care of someone different. I appreciate that these issues are of particular importance to the respondent due to the nature of her relationship with M.

The reference to s 38 is a reference to s 38 of the Protection Act. It is pursuant to the power contained in that section that the Youth Court may make a care and protection order. However, where an order is made under s 38(1)(d) placing the child under the guardianship of the Minister until the child attains the age of 18, the powers vested in the Minister by s 51 are enlivened. Amongst other things, those powers permit the Minister to place the child in the care of a family member, an approved foster parent or other suitable person. My understanding is that it is in the exercise of the power contained in s 51 that the Minister has made the arrangements for M to reside and go to school in Queensland and which permits the Minister to explore the possibility of M going to his uncle.

The point is that the Care and Protection Order being in place, no further exercise of the power contained in s 38 is required as a matter of course, unless an application to vary the Care and Protection Order were made. Further, and in any event, any failure to comply with a condition precedent to the exercise of the power contained in s 38 can no longer be of any consequence if such failure is said to infect the Variation Order. That order has been set aside. If it is said that such failure has infected the Care and Protection Order, then that order was not the subject of appeal. Accordingly, the eighth ground of appeal does not warrant the attention of the Full Court.

For the reasons given above, in my view, the Notice of Appeal filed 19 August 2016 should be dismissed pursuant to the powers contained in rules 193(b), 295(1)(c) and 295(1)(h). In the event that I am wrong, I nonetheless consider that the said Notice of Appeal should be struck out under rule 117(1)(e) as an abuse of process.

I turn to the interlocutory applications and Notices of Appeal received subsequent to the Notice of Appeal filed 19 August 2016.

33 Transcript, 6 February 2017, p 6.
34 See for example Transcript, 6 February 2017, pp 28, 32-33.
35 See for example Transcript, 6 February 2017, p 49.
Subsequent Interlocutory Applications and Notices of Appeal

Pursuant to rule 193(b) I dismiss the following interlocutory applications for the reasons given:

i. The interlocutory application, filed 19 August 2016. The application relates to the transfer that was intended under the Variation Order. That order has been set aside.

ii. The interlocutory application, filed 28 October 2016. In this application SB seeks an order removing the matter into the High Court and ancillary orders in addition to orders regarding M’s future care. For the reasons given above the constitutional argument does not warrant consideration by the Full Court. The remaining orders sought are not relief that the Full Court is empowered to provide.

iii. The interlocutory application filed 25 November 2016. This application concerns matters relevant to the conduct of the hearing before me. I gave SB every opportunity to raise all arguments in response to the Minister’s application and in support of her Notices of Appeal and interlocutory applications. Events have overtaken this application. To the extent that SB also seeks legal representation of her choice and requests it occur through Legal Aid, this Court has no power to assist.

iv. The interlocutory application filed 21 December 2016. In this application SB seeks an order “to be allowed a verbal argument” and an order “to protect [M] from being returned to South Australia”. I do not understand SB ever to have been denied procedural fairness. As for the second order, it is not relief that can be granted on any appeal from the orders made by the appeal Judge.

v. The interlocutory application of 25 July 2017. In this document the respondent, inter alia, seeks the setting down of “my review”, her August 2016 appeal to the Full Court and the interlocutory application of 19 June 2017 (being the application filed on 25 July 2017) and ancillary orders. In view of my order regarding the Notice of Appeal of 19 August 2016 and the absence of any power vested in this Court on appeal to conduct a review, this application does not warrant serious consideration and should be dismissed.

With respect to the two additional Notices of Appeal:

36 SCCIV-16-1135 FDN 2.
38 SCCIV-16-1135 FDN 14.
40 SCCIV-16-1135 FDN 30.
The Notice of Appeal filed on 25 August 2017. In this document the respondent, amongst other things, appeals against “[a]ll of the Orders of the Youth Court and the Supreme Court of 2015, 2016 and 2017, including the Order of Judge Roder in his judgment whereby he directs that FDN23 and FDN26 be struck from the file.”

Judge Roder ordered pursuant to rule 53 that FDN 23 and FDN 26 be struck from the file. In truth such order should have been that the Registrar reject FDNs 23 and 26. I have viewed FDNs 23 and 26. But for Judge Roder’s order, I would have exercised the power vested in this Court by rule 53(4) and directed that both documents be struck from the file.

The grounds of appeal articulated in support of this Notice of Appeal are many and traverse a vast array of topics including complaints as to the delay in providing these reasons, the refusal of the Court to accept a neuropsychological assessment of SB, the rejection of the constitutional argument and claims of this Court being in rebellion against the Parliament. My understanding of the grounds and orders sought is that they are focussed upon the Variation Order and the actions of the Minister and not the Care and Protection Order itself. All grounds remain focused on the Variation Order. As I have said, that order has been set aside and no longer exists. This Notice of Appeal does not merit serious consideration. It is frivolous and should be dismissed pursuant to rule 193(b).

The Notice of Appeal received on 8 September 2017 received but not filed. The orders sought are set out in the following terms:

(a) Leave for the affidavit lodged against the order of Judge Roder in August 2017 to be filed;
(b) Leave for Notice of Appeal lodged against the order of Judge Roder in August 2017 to be filed.
(c) Leave for a date set for hearing of my appeal of August 2017.

The fate of this Notice of Appeal is inextricably linked to that filed on 25 August 2017. In view of my conclusion on the Notice of Appeal filed 25 August 2017, pursuant to rule 53(3) of the 2006 Rules I direct the Registrar to reject this Notice of Appeal.

For completeness I note that I have received a voluminous amount of correspondence from the respondent throughout the course of managing this
matter. I have had regard to all of that material, including the submissions put by her and the concerns she addresses.

Conclusion

I order:

1. The application of the Minister filed 23 December 2016 as amended is allowed.
2. The Notice of Appeal filed 19 August 2016 is dismissed.
3. The interlocutory application filed 19 August 2016 is dismissed.
4. The interlocutory application filed 28 October 2016 is dismissed.
5. The interlocutory application filed 25 November 2016 is dismissed.
6. The interlocutory application filed 21 December 2016 is dismissed.
7. The interlocutory application filed 25 July 2017 is dismissed.
8. The Notice of Appeal filed 25 August 2017 is dismissed.
9. I direct the Registrar to reject the Notice of Appeal received on 8 September 2017.

43 SCCIV-16-1135 FDNs 6 and 12.
44 SCCIV-16-1135 FDN 1.
45 SCCIV-16-1135 FDN 2.
46 SCCIV-15-959 FDN 37.
47 SCCIV-16-1135 FDN 14.
49 SCCIV-16-1135 FDN 30.
50 SCCIV-16-1135 FDN 33.
# THE BAROSSA COUNCIL

## INTERNAL REVIEW OF COUNCIL DECISION POLICY

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<th>Corporate Plan Link:</th>
<th>6.2 Ensure that Council’s policy and process frameworks are based on principles of sound governance and meet legislative requirements.</th>
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## 1. Purpose

1.1 The Barossa Council ("Council"), which includes its committees, employees, contractors and Elected Members, make decisions which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

1.2 Council is committed to open, responsive and accountable government. This includes providing processes by which those who believe they have been adversely affected by a Council decision can have their complaints considered.

1.3 Section 270 of the Local Government Act 1999 ("the Act") requires Council to maintain policies, practices and procedures for dealing with requests for service and complaints including a procedure about "the review of decisions of:

   (a) the council;
   (b) employees of the council;
   (c) other persons acting on behalf of the council."

Accordingly, this Policy provides for a procedurally fair, consistent and structured review for any person alleging adverse impact as a result of a decision made by Council or its delegates.

## 2. Scope

2.1 When decisions are subject to review under this Policy

2.1.1 This Policy and its supporting Internal Review of a Council Decision Process commence where a written application for an internal review of a decision, pursuant to Section 270 of the Act is received by Council, or a complaint...
escalates in accordance with Council’s Customer Service Policy and supporting Processes.

2.1.2 Decisions of Council, employees of Council and other persons acting on behalf of Council, may be subject to review under this Policy.

2.1.3 A decision is made when a matter, issue or query is actually determined. Once a matter, issue or query is determined, the decision may be open to review in accordance with this Policy.

2.1.4 The nature of this review is both a merits review and process review which could lead to the original decision being affirmed, varied or revoked.

2.2 When decisions are not subject to review under this Policy

2.2.1 Council action not a decision

Not all actions by Council, its employees or another person acting on behalf of Council will be a decision - and therefore cannot be reviewed. For example, actions taken during the process of decision-making (ie investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions.

2.2.2 Other legislation governs review of specific type of decision

Some decisions made by Council, its employees or on behalf of Council are subject to other review or appeal processes set out in legislation. This Policy cannot override or operate inconsistently with those legislative processes. So where legislation provides for the review of, or appeal from, a type of decision, a decision of that type will not be reviewed under this Policy.

Examples include:

a) objections to valuations made by the Council;
b) appeals against orders made pursuant to Section 254 of the Local Government Act 1999;
c) appeals against the issuing of litter abatement notices under the Local Nuisance and Litter Control Act 2016;
d) appeals against destruction and control orders issued under the Dog and Cat Management Act 1995;
e) review of an expiation notice under the Expiation of Offences Act 1996; and

2.2.3 Other legislation requires specific internal review process

Where legislation provides for a specific way to conduct an internal review process, that process will apply rather than this Policy.

For example, internal review of a determination under the Freedom of Information Act or withdrawal of an expiation notice issued by the Council
under Section 16 of the *Expiation of Offences Act* will be conducted in accordance with those legislative processes.

2.2.4 *Review cannot occur in the circumstances*

Some decisions made by Council, its employee or on behalf of Council are not subject to any review according to either express legislation or by necessary implication where a decision has an immediate effect under legislation from the time the decision is made.

For example, some development approvals under the *Development Act* are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by Council.

2.2.5 *Other Council processes govern review*

In the absence of legislation, where other Council protocols require certain appeal processes, those processes will apply rather than this Policy and supporting process. For example:

- Employment related matters which are conducted in accordance with the Council’s Enterprise Agreement and Human Resources Framework
- Commonwealth Home Support Program Services, where complaint processes are defined in relevant contracts.

2.2.6 *Matters that are frivolous or vexatious, related to employment, or where the applicant does not have sufficient interest in the matter*

In accordance with section 270(4) of the *Local Government Act* 1999, Council or a person assigned to consider the application may refuse to consider an application for review if:-

- The application is made by an employee of Council and relates to an issue concerning his or her employment – these types of matters will be managed in accordance with Council’s Human Resource Management Policy, and associated policies and processes; or
- It appears that the application is frivolous or vexatious; or
- The applicant does not have a sufficient interest in the matter.

2.3 *Alternative methods of resolution*

While Council prefers to work with applicants to resolve requests for internal review promptly and effectively, an applicant will always retain the right to seek other forms of resolution, such as to contact the Ombudsman or the Office for Public Integrity, or to take legal action at any time.
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<th>3. Definitions</th>
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<td><strong>Reviewer</strong></td>
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4. **Policy Statement**

4.1 This Policy is based on five key principles:

- *Fair treatment*: which requires impartiality, confidentiality and transparency at all stages of the process;
- *Accessibility*: through broad public awareness about Council’s policies and processes and a range of contact options, any person can contact Council;
- *Responsiveness*: through the provision of sufficient resources, well trained staff and ongoing review and improvement of Council’s system;
- *Efficiency*: through prompt resolution at an organisational level that reflects the level of complexity; and
- *Co-ordinated approach across Council teams* where the matter under internal review overlaps the responsibilities of various teams.

4.2 Additionally, Council encourages Alternative Dispute Resolution where appropriate and such methods will be undertaken in accordance with Section 271 of the Local Government Act.

4.3 **Application under this Policy relating to Rates**

If Council receives an application for an internal review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with promptly. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the Local Government Act (e.g. remission or postponement of payment, issuing of fines and interest, particular land use categorisation).

Council cannot review its decision relating to the setting and declaration of rates.

4.4 **Remedies**

4.4.1 Where the internal review upholds the applicant’s complaint, a remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy chosen will be proportionate and appropriate to any issues identified and take account of what the applicant is seeking as an outcome.

4.4.2 As a general principle, the applicant will, so far as reasonably practicable, be put in the position he or she would have been in, had the original decision not been made.

4.4.3 Only the Elected Body itself and / or the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial and this will only occur after consultation with the Local Government Association’s Mutual Liability Scheme.
5. **Supporting Process**

Internal Review of Council Decision Process

6. **Related Policies**

Customer Service Policy

7. **Legislation and References**

Sections 270 and 271 Local Government Act 1999
Ombudsman SA: Right of Review: A Guideline Policy and Procedure for Councils (June 2017)

8. **Review**

8.1 This Policy will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council’s need changes.

9. **Further Information**

9.1 This Policy is available on Council’s website at [www.barossa.sa.gov.au](http://www.barossa.sa.gov.au). It can also be viewed electronically at Council’s principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

9.2 Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate officer according to Council’s Complaints Handling Policy (see clause 9.1 above for availability).

Signed: ..........................................................  Dated: 20 August 2019

Mayor Michael Lange
THE BAROSSA COUNCIL
INTERNAL REVIEW OF COUNCIL DECISION PROCESS

Policy Link: Internal Review of Council Decision Policy

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<td>15/42710 *</td>
<td>1/09/2023</td>
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1. Overview

This Process specifically outlines:

- how and when an applicant can request an internal review of a Council decision; and
- the roles and responsibilities of the Council administration, the Internal Review Contact Officer, the Reviewer and the Elected Members to affect a fair, consistent and structured approach in dealing with each request.

2. Core Components

Complaints Handling Framework and when to use the Internal Review Process
Applying for an Internal Review
Acknowledging an Internal Review Application
Commencing the Preliminary Investigation
Assignment of Application to Reviewer
Review Considerations
After the Review

3. Definitions

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<tr>
<th>Alternative Dispute Resolution</th>
<th>Includes mediation, conciliation or neutral evaluation as defined in Section 271 of the Local Government Act.</th>
</tr>
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<tbody>
<tr>
<td>Applicant</td>
<td>The party lodging the request for Internal Review. Examples include residents, ratepayers, members of a community group, users of Council facilities and visitors to the Council area.</td>
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<tr>
<td>Business Day</td>
<td>A day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays.</td>
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<tr>
<td>Council</td>
<td>The Barossa Council comprising the Mayor, Elected Members and Administration.</td>
</tr>
<tr>
<td>Decision</td>
<td>A position adopted by Council or its delegate after consideration of relevant information.</td>
</tr>
<tr>
<td>Decision-maker</td>
<td>Council or its Delegate responsible for the decision under Internal Review.</td>
</tr>
<tr>
<td>Delegate</td>
<td>A person or committee who has been given power by the Elected Body in an Instrument of Delegation to make a decision on behalf of the Elected Body.</td>
</tr>
<tr>
<td><strong>Electronic Document and Records Management System</strong></td>
<td>(EDRMS). An automated system used to manage the creation and management of physical and electronic documents and records, improving work-flow, and providing evidence of business activities.</td>
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<tr>
<td>---</td>
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<tr>
<td><strong>Elected Body</strong></td>
<td>The Mayor and Elected Members meeting in their decision-making capacity.</td>
</tr>
<tr>
<td><strong>Employee</strong></td>
<td>Includes a person employed directly by Council in a full time, part time or casual capacity (whether that position is permanent, voluntary or contractual).</td>
</tr>
<tr>
<td><strong>External Review</strong></td>
<td>A merits and/or process review by a person or an entity outside of the Barossa Council, eg the Ombudsman, of a decision that was made by the Elected Body or its delegate.</td>
</tr>
<tr>
<td><strong>Internal Review</strong></td>
<td>A merits and/or process review by a person or entity that is part of the Barossa Council, of a decision that was made by the Elected Body or its Delegate.</td>
</tr>
<tr>
<td><strong>Internal Review Contact Officer (IRCO)</strong></td>
<td>IRCO). The initial point of contact for applicants seeking an internal review.</td>
</tr>
<tr>
<td><strong>Merits Review</strong></td>
<td>A process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct or preferable decision.</td>
</tr>
<tr>
<td><strong>Process Review</strong></td>
<td>A review of the correctness of the processes followed in making a decision.</td>
</tr>
<tr>
<td><strong>Procedural Fairness</strong></td>
<td>Is concerned with the procedures used by a decision-maker to reach the decision, rather than the actual outcome reached. It requires a fair and proper process be used when making a decision and due regard to a fair approach to those involved/impacted by a decision. The rules of procedural fairness require:</td>
</tr>
<tr>
<td> </td>
<td>• a hearing appropriate to the circumstances;</td>
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<td> </td>
<td>• lack of bias;</td>
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<td> </td>
<td>• evidence to support a decision; and</td>
</tr>
<tr>
<td> </td>
<td>• inquiry into matters in dispute.</td>
</tr>
<tr>
<td><strong>Reviewer</strong></td>
<td>The delegate responsible for conducting a review of a Council decision.</td>
</tr>
<tr>
<td><strong>Worker</strong></td>
<td>A person is a Worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as;</td>
</tr>
<tr>
<td> </td>
<td>a) An employee; or</td>
</tr>
<tr>
<td> </td>
<td>b) A contractor or sub-contractor; or</td>
</tr>
<tr>
<td> </td>
<td>c) An employee of a contractor or sub-contractor; or</td>
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<tr>
<td> </td>
<td>d) An employee of a labour hire company who has been assigned to work in the person's business or undertaking; or</td>
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<tr>
<td> </td>
<td>e) An outworker; or</td>
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<tr>
<td> </td>
<td>f) An apprentice or trainee; or</td>
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<tr>
<td> </td>
<td>g) A student gaining work experience; or</td>
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<tr>
<td> </td>
<td>h) A volunteer of Council; or</td>
</tr>
<tr>
<td> </td>
<td>i) A person of a prescribed class.</td>
</tr>
<tr>
<td> </td>
<td>[as defined in the WHS Act 2012 (7)].</td>
</tr>
</tbody>
</table>
4. Process

4.1 Complaints Handling Framework and when to use this Internal Review Process

Wherever practicable, customer complaints regarding a Council decision should be referred for immediate resolution to Council’s Customer Service Policy and Complaint Handling Process.

The Complaint Handling Process consists of three tiers to manage and resolve complaints:

4.1.1 Immediate response to resolve the complaint
All Workers are empowered to handle complaints in the first instance and it is preferable that a complaint is dealt with promptly at the initial point of contact and at the appropriate Worker level.

4.1.2 Complaint escalated to a more senior Worker
A complaint will be directed to a senior Worker in the Council, where the complaint would be better handled at that level. This may occur, for example, where a Worker has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council team.

4.1.3 Internal review of a Council decision
An internal review will generally apply when matters cannot be resolved under the other two tiers.

Internal review of a Council decision enables the Council to reconsider all the evidence relied on to make the original decision, and additional available evidence if relevant.

However, a referral directly to this third tier will occur when a decision was:

- made by the Elected Body; or
- referred by the applicant directly to the Ombudsman and the Ombudsman has referred the decision back to the Council for an internal review under Section 270 of the Local Government Act 1999 (“the Act”).

In such cases, the complaint must be dealt with in accordance with this Process.

However, subject to Council’s Internal Review of Council Decisions Policy and this Process, applicants may use the section 270 Internal Review mechanism at any time to review a decision made by Council or on behalf of Council.

4.2 Applying for a review

4.2.1 Who can apply for a review
A person with a sufficient interest in a decision of Council, or its delegate, may make a written application for a review of that decision.

A person who is not the direct subject of a decision may still have a sufficient interest in the decision to seek a review under this Process. For example, a person may...
have a sufficient interest in a Council decision regarding the number of dogs which may be kept within a neighbour’s property.

4.2.2 **Timeframe to apply**
An application for a review of a decision must be made within 6 months of that original decision being made.

However, in exceptional circumstances an application for internal review which is lodged outside of this 6 months may still be considered for internal review by the Council or CEO, as the case may be.

4.2.3 **Assistance for the applicant – Internal Review Contact Officer**
It is essential that no one is excluded from lodging an application for internal review because of difficulties they may have representing themselves.

An Internal Review Contact Officer (IRCO) is appointed by the CEO as the initial point of contact for applicants. The IRCO will be the Governance Advisor or in their absence, a delegate appointed by the CEO.

The IRCO may assist an applicant document their reasons for seeking an internal review, in addition to arranging access to interpreters, aids or advocates to ensure that an applicant is treated equitably.

A person seeking review of a Council decision who attends at the Council’s offices personally or by telephone call, and all written applications for review should be immediately referred to the IRCO.

The role of the IRCO is to:
- explain the process to the applicant and explore alternative options to resolve the matter, such as mediation or conciliation prior to an application for review where possible;
- acknowledge the receipt of an application for review;
- maintain a register of all applications for review received and the outcomes of the applications;
- outline the timeframes involved and the action to be taken in the first instance;
- undertake a preliminary investigation to determine whether the matter falls within the scope of the Policy and Process and what actions have already been taken to try to resolve the matter;
- keep the applicant informed of progress;
- if the matter does not fall within the scope of the Policy and Process, to inform the applicant, and provide alternative avenues of review or appeal, where applicable;
- ensure adequate records are maintained; and
- report to Council at prescribed intervals on all applications lodged for review.
4.2.4 How to apply for a review
While there is no standard template that the applicant needs to use, he or she must set out in writing:
- the decision they are seeking to have reviewed and their interest in that decision;
- the reasons why they believe the decision is wrong;
- what outcome is sought; and
- their daytime contact details.

Although Council can be expected to have information relevant to the matter under internal review, an application may also include new evidence to support the application.

Applications must be made in writing and addressed to the Internal Review Contact Officer and forwarded marked confidential via:

- post to: The Barossa Council, PO Box 867, Nuriootpa SA 5355
- email to: barossa@barossa.sa.gov.au
- fax to: 8563 8461
- in person at the Nuriootpa Office at 48-51 Tanunda Road, Nuriootpa SA 5355 or any of the Council branches at Angaston, Lyndoch, Mount Pleasant and Tanunda.

4.2.4 Cost to apply for a review
There is no fee charged to apply for an internal review.

4.3 Acknowledging an Application for Review
The IRCO will confirm receipt of the internal review application within 5 business days and also advise the applicant of the expected timeframe for processing the matter where possible.

4.4 Commencing the Preliminary Investigation

4.4.1 Within 5 business days of receipt of the internal review application, the IRCO will:

- establish an EDRMS container with agreed restricted access;
- assess whether the application falls within the scope of the Policy and Process and if the matter does not fall within the scope of the Policy and Process, inform the applicant, and provide alternative avenues of review or appeal;
- meet with the CEO to determine a reviewer or if the decision under review was made by the CEO, then with the Mayor or in his/her absence, the Deputy Mayor, to advise of the process (see paragraph 4.5 below);
- create a summary report using the Section 270 Review Record of Investigation template to provide to the appointed reviewer; and
- outline the resources expended to date within the Section 270 Assessment of Resources Schedule.

4.4.2 The IRCO and reviewer will use their best efforts to finalise an internal review within 21 business days. However if the decision is to be reviewed by the Elected Body, a committee, or an external panel or party there may be delays caused by meeting cycle timelines. In more complex cases, an internal review may take longer.

4.4.3 Except where an external party has been appointed as reviewer, the IRCO will regularly inform the applicant of progress, either by email, letter or telephone. The IRCO will record all such contact in the Section 270 Review Record of Investigation.
and Assessment of Resources templates. Where an external party has been appointed as the reviewer, the external party must inform the applicant of progress either directly (preferred) or if this is not possible, via the IRCO.

4.5 Assignment of Application to Reviewer

4.5.1 CEO, Director or Manager as reviewer
Where the decision was made by an Employee of Council (excluding the CEO), the IRCO and CEO will together determine who will be the reviewer. In this case, the reviewer will generally be one of the Directors who have no conflict or previous dealings with the complaint. If this is not possible, a member of the Organisational Management Group will be appointed as the reviewer.

Alternatively but not ordinarily, the CEO may be the reviewer, however, the CEO cannot review a decision he or she has made and such would be referred to the Elected Body.

Also see special circumstances at paragraph 4.5.3 below where an external party would be appropriate.

The IRCO will meet with the reviewer as soon as possible after his or her appointment to discuss the initial investigation, completion of the Assessment of Resources Schedule and Summary Investigation Report and Findings and refer the reviewer to the overarching Policy and this Process. In special circumstances or where an external reviewer is appointed, the IRCO may brief the external reviewer by email and, instead of using the Summary Investigation Report and Findings, refer to the external reviewer’s report.

4.5.2 Elected Body as reviewer
The Elected Body will be the reviewer when the decision being reviewed:

- was made by a Council Committee or the CEO and;
- relates to civic and ceremonial matters and/or;
- can potentially impact a significant proportion of people and/or stated policy positions of Council and/or;
- would be assigned for internal review to an entity or person who would be otherwise conflicted and/or;
- in other circumstances as determined by the CEO or resolution of Council.

In this situation, the IRCO will undertake the practical steps of the internal review regarding facilitation and investigation and complete the supporting documentation outlined in paragraph 4.4 above, to present to the Elected Body for its consideration and decision as reviewer. Where the original decision was made by the Council or a Council Committee, the IRCO will do this in conjunction with the CEO.

Where a request for review has been referred to Council, the applicant will be advised of the date that the report will be presented to the Council and will be given the opportunity to provide a written or verbal submission in relation to the report for Council’s consideration.

4.5.3 External Party as reviewer
Where the decision:

- is a decision of the Elected Body; and/or
- has industry-wide policy impact; and/or
• requires specialist knowledge but Employees with the specialist knowledge
  have an identified conflict of interest in the matter; and/or
• has significant political controversy

the IRCO will make recommendation to the CEO to refer the application to an
expert party / panel together with an estimate of costs. The CEO at his or her
discretion will determine whether it is appropriate in the circumstances to appoint
an external party / panel as reviewer, and approve the estimate of costs in
accordance with Council’s Procurement Policy and supporting processes. Once the
CEO has determined that this should occur, and confirmed the IRCO is authorised
the necessary expenditure to brief the experts, the IRCO can provide the necessary
documentation to brief the expert party / panel.

The IRCO will be seeking a recommendation(s) from the expert party / panel which
will then be referred back to the Elected Body for a final determination on the
review.

The IRCO may consult with the Local Government Association to obtain the name
or names of a recommended expert party or expert parties or panel and refer such
for approval by the CEO or Elected Body.

The budget line to fund the expert party / panel will be paid from the budget of the
Directorate which made the decision under review and where necessary, a budget
adjustment made to cover unbudgeted costs.

4.6 Review Considerations

4.6.1 In carrying out an internal review of a decision, 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.

4.6.2 The reviewer will consider whether the original decision is legally and procedurally
correct having regard to the following (where relevant and not restricted to), that
the original:

• decision maker had the power to made the decision;
• 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;
• 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;
• decision maker had no conflict of interest, bias or perceived bias;
• decision maker ensured that the findings of fact were based on evidence;
• decision was reasonable; and
• decision maker considered any relevant legislation, policies or processes.

The reviewer will also consider whether a different decision based on the evidence
available or new evidence provided or found provides an improved outcome.

4.6.3 Refusal to consider an application
In addition to those matters which fall out of the scope of the overarching Internal
Review of Council Decision Policy, Council or the CEO as the case may be is entitled
under the Local Government Act to refuse to consider an application for review if:
a) the application is made by a Council Employee and relates to an issue concerning his or her employment;

b) it appears that the application is frivolous or vexatious; or

[Note that where a matter has been referred to the Local Government Association Mutual Liability Scheme (LGAMLS) in respect to a claim or potential claim against the Council or in response to a threat of legal action against the Council, an application for review of a decision in connection with that claim or action (including the decision to refer the matter to the LGAMLS) will be vexatious].

c) the applicant does not have a sufficient interest in the matter; or

d) the application for an internal review has been made later than 6 months from when the applicant was advised of the original decision - unless there are exceptional circumstances for Council, or the CEO as the case may be, to allow an internal review process.

Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.

4.6.4 Providing Procedural Fairness
The reviewer will observe the principles of procedural fairness when undertaking the review so that:

- an applicant is entitled to put forward information and materials in support of the application for review;

- an applicant is informed of the proposed outcome of the review, has the opportunity to make submissions to the reviewer on the outcome and have these submissions taken into account; and

- the reviewer must not have a bias or perceived bias when undertaking the review.

4.6.5 Determination of review
When the reviewer is:

- the Elected Body – it should determine whether to affirm, vary or revoke the original decision;

- a Council Employee - they may determine whether to affirm, vary or revoke the original decision if authority to make the decision has been delegated to them. If the reviewer does not have a delegation enabling the making of the decision, then the reviewer should report the outcome of the review to the Elected Body (or delegate) for a determination as to whether the decision should be affirmed, varied or revoked;

- an external person or body –
  
  o if the original decision was made by the CEO, Council Committee Elected Body, then the external person or body should report their recommendation(s) from the review to the Elected Body for a determination as to whether the decision should be affirmed, varied or revoked.
• If the original decision was made by an Employee or a person acting on behalf of Council who is not the CEO, and the power to make the original decision has been delegated by the Elected Body to the CEO, then the external person or body should report their recommendation(s) from the review to the CEO for a determination as to whether the decision should be affirmed, varied or revoked.

In the event that the power to make the original decision has not been delegated to the CEO (i.e., if it has been delegated to an Employee or Council officer directly etc.), or the CEO has a conflict of interest in the matter then the external person or body should report their recommendation(s) from the review to a senior Worker who has been delegated the power to make the original decision for a determination as to whether the decision should be affirmed, varied or revoked.

Note: an external reviewer cannot vary or revoke a decision made by or on behalf of Council.

4.6.6 Remedies
Remedies are available to the reviewer, if it is determined that the original decision was incorrect either legally, procedurally or meritoriously, or that an improved outcome can be determined, in terms of one or more as follows:

• an explanation
• an admission of fault and, where reasonably practicable, a change of decision
• a recommended change to policy, process or practice*
  *note: any changes are ultimately a decision for the Council or CEO, depending on the relevant delegations. The reviewer should liaise with the CEO and/or CMT at the earliest opportunity to make them aware of any potential recommendation and discuss the impact on Council resources should the change be implemented.
• a correction of misleading records
• financial compensation including a refund of any fees**
  **note: only the Elected Body and the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial. This will only occur after consultation by the IRCO with the Local Government Association Mutual Liability Scheme at the earliest possible opportunity in the investigation.
• the waiving of a debt
• the remission of a penalty
• disciplinary action under the relevant Code of Conduct, where appropriate
• referral of a matter to an external agency for further investigation or prosecution if it involves allegations of fraud / corruption
• apology***
  ***note: where circumstances are such that it is not reasonably practicable to return the applicant to his/her original situation, or to rectify the outcome of the decision through application of the above remedies, it may only be possible for the reviewer to recommend that an apology be offered.

If an apology is required and then approved in a resolution by the Elected Body (as reviewer) or by the CEO (if a Director or Manager is the reviewer), it will be included within the determination letter and the applicant will be advised that appropriate action will be taken to
prevent the problem from being repeated.

To support development of a potential remedy, the reviewer may recommend mediation, conciliation or neutral evaluation.

4.6.7 Reporting decision of review to the applicant
Where the Elected Body is the reviewer, the IRCO on its behalf will:

- prepare the Summary Investigation Report and Findings and determination letter to reflect the resolution and forward it to the applicant within 5 days of the Council meeting and

- provide information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an Employee, including the CEO is the reviewer:

- the reviewer will use the relevant content of the Summary Investigation Report and Findings to draft a provisional determination letter and provide this to the IRCO to forward to the applicant with a request for a response for further feedback / new information within 10 business days; and

- if the applicant provides a response, the reviewer must take into consideration any new information, response or feedback provided.

- if the applicant provides no further information within that time, the IRCO will advise the reviewer so that they can confirm the provisional determination in writing, along with information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an external panel / body is the reviewer, the reviewer must provide their full draft report of their provisional determination to the applicant and allow a reasonable opportunity for the applicant to provide a response to the draft report, further feedback or any new information. Any response, further feedback or new information provided by the applicant should be considered by the external panel / body prior to issuing their final report.

Where there are legal or other reasons that warrant confidentiality in relation to the full draft report or Summary of Investigation Report and Findings, either in part or full, the reviewer will ensure that appropriate measures are taken including (but not limited to):

- redacting parts of the full draft report of the provisional determination, or the Summary Investigation Report and Findings (as the case may be) before providing it to the applicant;

- providing the full draft report of the provisional determination, or the Summary Investigation Report and Findings (as the case may be) to the applicant in confidence;

- not providing the full draft report of the provisional determination, or the Summary Investigation Report and Findings (as the case may be) to the applicant. However, the applicant must be informed of the provisional determination of their internal review application and allowed a reasonable
opportunity to respond and/or provide further information in response to the provisional determination.

However, in taking appropriate measures, the reviewer must ensure that procedural fairness is observed in accordance with this Process and the Policy (see in particular paragraph 4.6.4 of this Process).

4.7 After the Review

4.7.1 Updating the Register
The IRCO will update the Register of Section 270 Internal Reviews in Council’s EDRMS to include details of the application and the outcome of the review.

4.7.2 Reporting to the Corporate Management Team
Any recommendations for service improvement agreed by the Council or CEO arising from an internal review process will be actioned by the IRCO to the relevant Director or CEO for implementation.

4.7.3 Reporting to the Elected Body
The Governance Advisor or delegate will prepare and submit to the Elected Body an annual report each July which includes the following information about internal review applications requested within the previous 12 months:

   a) the number of applications for review made;
   b) the kinds of matters to which the applications relate;
   c) the outcome of applications;
   d) a statement to quantify the resources used for each review and associated costs with an attached Assessment of Resources Schedule;
   e) a summary of how the outcomes have been used to improve Council’s customer service, policies and processes; and
   f) such other matters as may be prescribed by the Regulations.

4.7.4 Reporting to the Community
The information outlined in paragraph 4.7.3 above will also be included in Council’s Annual Report as required under the Local Government Act.

5. Training

5.1 Elected Members, Directors and Managers will receive training in this process during their induction and refresher training as required.

6. Documents to Implement Process

Written application to request an Internal Review
Letter to applicant confirming receipt of application
Section 270 Review of Investigation Template (B3812)
Section 270 Assessment of Resources Schedule (B3812)
Section 270 Summary Investigation Report and Findings (B3812)
Determination letter (B3812)
Annual report compiling Section 270 applications and determinations
7. Legislation and References

Local Government Act Section 270

8. Review

8.1 This Process will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council’s need changes.

SIGNED: .................................................. DATE: 20 August 2019

Mayor Michael Lange
4 February 2020.

Ms. Rugiyya Martin,
Governance Advisor,
The Barossa Council,
43 – 51 Tanunda Road,
Nuriootpa SA 5355.

Dear Ms. Martin,

We are applying for a review of a council decision in accordance with The Barossa Council’s Internal Review of Council Decision Policy and Process under Section 270 – Procedures for review of decisions and requests for services under the Local Government Act 1999.

The decision we are seeking to review is the decision taken by the Elected Body at the Ordinary Council Meeting of the 28th of January 2020 7.2.1.6 Indenture Deed – Kell Estate B7081:

"MOVED Cr de Vries that Council authorise the Mayor and Chief Executive Officer to sign, seal and date the Deed, to finalise the matter, as presented at Appendix 1.

Seconded Cr Johnstone CARRIED 2018-22/436"

We have the following concerns about the information provided to the Elected Body contained in the Debate Agenda – Chief Executive Officer 7.2.1.6 Indenture Deed – Keil Estate B7081:
(1) Despite assertions by Mayor Bim Lange at the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020, Late Agenda Item Addendum 7.2.1.6 Indenture Deed – Keil Estate B7081 was not published on The Barossa Council website until Thursday morning the 23rd of January 2020. The remainder of the Agenda for the Ordinary Meeting of The Barossa Council of Tuesday the 28th of January 2020 was published on The Barossa Council website on Wednesday the 22nd of January 2020 as required by the Local Government Act 1999, 3 clear business days prior to the Council Meeting. Monday the 27th of January 2020 was the Australia Day Public Holiday. It is noted that the Indenture Deed was signed by Mr. Robert Homburg, Executor of the Estate of Elma Linda Keil and witnessed by his wife Phyllis, presumably on Wednesday the 22nd of January 2020 and then executed in error by the Mayor of The Barossa Council, Bim Lange and the Chief Executive Officer of The Barossa Council, Mr. Martin McCarthy on Wednesday the 22nd of January 2020.

(2) The Report contained in the Debate Agenda for the Ordinary Council Meeting of The Barossa Council on Tuesday the 28th of January 2020 is misleading. It states: "With Council now having concluded the internal review of that August 2019 decision I have written to the executor outlining that all conditions have been satisfied." In a letter to us dated the 9th of January 2020 the SA Ombudsman, Mr. Wayne Lines stated: "I understand that you wish to lodge a complaint about the outcome of your section 270 internal review application, which was determined by the council on 17 December 2019. You have also stated however, that you do not wish for myself or my Office to complete an assessment of that complaint. You have stated that this is because I had previously declared that I had a conflict of interest. I wish to clarify that I do not consider that I have a conflict of interest that would prevent me from assessing your complaint. In my previous letter to you dated 31 October 2019, I advised you that my Office had engaged the legal services of Ms. D'Agostino and Norman Waterhouse Lawyers for other matters that have been considered by Ombudsman SA. In my letters of 31 October 2019 and of 27 November 2019, I stated that I was of the view that this would not influence my ability to assess your complaint. You have advised that you intend to seek legal advice about how to pursue your complaint, and request that I take no further action in relation to this matter until you have had an opportunity to obtain legal advice. On this basis, I will take no further action in relation to this matter until you have had an opportunity to obtain legal advice. On this basis, I will take no further action in relation to your letter of 30 December 2019. Your correspondence has been placed onto an Ombudsman SA file and I will now close that file." It is our view that Council has not satisfactorily concluded the internal review of that August 2019 decision and that all conditions have not been satisfied.
(3) We wrote a letter to Mayor Bim Lange and emailed it to him on Monday the 27th of January 2020, a copy of which is attached for your reference. At the time 7.2.1.6 Indenture Deed – Keil Estate B7081 arose at the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020, Mayor Bim Lange spoke from the chair saying that the item was sent out within an appropriate time frame. His comment seemed to Shelley who was present at the Council Meeting at the time, to indicate that he had received her email sent the previous day on Monday the 27th of January 2020 and had read the letter. We do not know whether Mayor Bim Lange circulated the letter to elected members prior to the Council Meeting. At the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020, Mayor Bim Lange did not refer to the email or letter he had received from us, he did not read the letter to the Meeting for the benefit of elected members, senior staff or the Meeting Secretary to include in the Minutes of the Meeting and furthermore the letter was not tabled at the Meeting.

(4) As referred to previously, the Deed was executed in error by Mayor Bim Lange and Chief Executive Officer Mr. Martin McCarthy on Wednesday the 22nd of January 2020, the day before the late agenda item was published on the Council website and presumably at the same time that it was signed by Mr. Robert Homburg the Executor of the Estate of the late Elma Linda Keil and witnessed by his wife Phyllis. We have some questions about whether it was appropriate for Robert’s wife Phyllis to witness his signature on the undated Deed. Regrettably, Mr. Homburg was under the impression that Council had concluded the internal review of that August 2019 decision when in fact at the time, legal advice was being sought. Following the conclusion of the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020, we wrote independently to Mr Robert Homburg in a letter dated the same day urging him not to finalise the Proposed Indenture Deed with The Barossa Council at least until review processes had been concluded. We also stated that we were still in the process of obtaining legal advice. A copy of this letter is also attached for your information and reference.

(5) We received an emailed letter, dated the 30th of January 2020, from Mayor Bim Lange in response to our email and letter dated the 27th of January 2020, on Thursday the 30th of January 2020 after the conclusion of the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020. We also received a hardcopy of the 30th of January 2020 letter today, Tuesday the 4th of February 2020, a week following The Barossa Council Meeting of the 28th of January 2020. We disagree with the content of Mayor Bim Lange’s letter when he claims that the legal minimum requirements for the posting of the addendum item on The Barossa Council website on Thursday morning the 23rd of January 2020 were met. A minimum of 3 clear business days prior to The Barossa Council Meeting
on the 28th of January 2020 is required. The posting of the addendum on The Barossa Council website on Thursday morning the 23rd of January 2020 enabled two business days' consideration of the late agenda item, Thursday the 23rd of January and Friday the 24th of January 2020. Monday the 27th of January 2020 was the Australia Day Public Holiday and not a business day. The Barossa Council Meeting commenced at 9am on Tuesday the 28th of January 2020. We have already stated in this application that we do not believe that the internal review process was finalised by Council prior to the wrongful execution of the Deed on Wednesday the 22nd of January 2020 by Mayor Bim Lange and Chief Executive Officer, Martin McCarthy. A copy of Mayor Bim Lange’s letter to us dated the 30th of January 2020 is attached for your information and reference.

(6) In the Valuation Report included in the Debate Agenda for The Barossa Council Meeting of the 20th of August 2019, the portion of land owned by Chateau Tanunda proposed to be swapped with The Barossa Council is Certificate of Title Volume 5962 Folio 146 of approximately 8, 241 square metres. We believe the portion of land owned by Chateau Tanunda proposed to be swapped with The Barossa Council is Certificate of Title Volume 5962 Folio 946. This error can be confirmed by referring to the Certificate of Title Document for the land, a copy of which is attached for your information and reference. We consider it to be extraordinary that such an error appeared in the Valuation Report dated the 6th of November 2018. The error has not been picked up since, not by the Chief Executive Officer of The Barossa Council, Mr. Martin McCarthy, not by any of the Elected Members of The Barossa Council, not by the external reviewer appointed by The Barossa Council, Ms. Felice D’Agostino, Principal, Norman Waterhouse Lawyers and not by the Executor of the Estate of the late Elma Linda Keil, Mr. Robert Homburg.

(7) As mentioned previously, the size of the Chateau Tanunda land proposed to be swapped with The Barossa Council is approximately 8,241 square metres. The size of Allotments 11 and 12 subject to the requirements of the Keil Estate Indenture Deed is approximately 13,716 square metres. The apportionment of the Chateau Tanunda land actually occurred long after the legislated community consultation process on the revocation of community land classification process, held in late 2017. In its motion supporting the revocation of community land classification, the Elected Members of The Barossa Council on Tuesday the 19th of December 2017 supported Clause 2 in relation to 7.2.1.1 Revocation of Community Land Classification – Basedow Road, Tanunda B7081:

“MOVED  Cr Lange
(2) That, further to the Independent Assessment at page 1, as the proposed disposal of land is via an exchange of land of the same or similar size and value, and the land currently has little or no market value due to the restrictions of the Dedication of the Keil Trust and the community land classification, the Council dispenses with the requirement of its Disposal of Land and Other Assets Policy at paragraph 4.4.1 (i) to obtain any independent valuations in this matter.

Seconded Cr de Vries CARRIED 2014-18/1269

Since August 2019 when the sizes of the pieces of land to be swapped between The Barossa Council and Chateau Tanunda were revealed in the Valuation Report dated the 8th of November 2018, we have discovered that the relative sizes of the parcels of land cannot be seen to be the same or similar.

(8) At the 28th of January 2020 Barossa Council Meeting there was no discussion or debate on the published Recommendation in the Debate Agenda for the Meeting:

“That Council authorise the Mayor and Chief Executive Officer to sign, seal and date the Deed to finalise the matter, as presented at Appendix 1.”

The Recommendation as proposed was moved by Councillor de Vries, seconded by Councillor Johnstone and carried without discussion or debate. We believe that a Debate Agenda is exactly that, an agenda for debate by elected members. Unfortunately, there have been many, many occasions in the history of The Barossa Council where Agenda Items listed for debate are not discussed or debated by Barossa Council Elected Members. This gives rise to the perception at least that decisions are being made prior to Council Meetings behind closed doors or not being fully considered by Elected Members. If this in fact was the case, then, The Barossa Council Elected Members would be seen to be in breach of the requirements of the Local Government Act 1999. It is also noted that Appendix 1 referred to in the Recommendation, should in fact be Attachment 1.

(9) According to legal advice we received on the 30th of January 2020, the revocation of community land classification decision made by The Barossa Council on the 29th of April 2018 and subsequently reviewed in 2018 was the key decision made in this process and on successful application to the Supreme Court within 6 months of the decision being made for a judicial review, the decision could have been ultimately quashed if it was tainted by an error of law or procedural unfairness. Given the lapse of time since this decision and the expected cost of the process, it is not now an option that we can reasonably pursue at this time. Nevertheless, we believe there is a considerable body of
evidence which has come to light since then which suggests that errors of law and/or procedural fairness can be seen to have occurred.

Given our previous objections to The Barossa Council's appointment of Ms. Felice D'Agostino, Principal, Norman Waterhouse Lawyers as the external reviewer, we do not expect The Barossa Council to appoint Ms. Felice D'Agostino as the external reviewer in this instance.

We look forward to hearing from you.

Yours sincerely,

\[Signature\]
Shelley James

\[Signature\]
Robbert (Bobby) Sennef

Mr. Robert Homburg,

Dear Robert,

We wish to inform you that we wrote to Mayor Bim Lange yesterday by email and urged him to refrain from finalising the Proposed Indenture Deed. A copy of the letter is attached.

At The Barossa Council Meeting held this morning Mayor Lange informed Elected Members that Late Agenda Item – Addendum – Debate Report 7.2.1.6 – Indenture Deed – Keil Estate was sent out within an appropriate timeframe. He did not mention to Elected Members that he had received an email from us, to our knowledge the email was not distributed to Elected Members prior to the Meeting and he did not read the email out to Elected Members at the Meeting. The published Recommendation in the Debate Agenda was moved, seconded and carried without discussion or debate.

We again urge you not to finalise the Proposed Indenture Deed with The Barossa Council at least until review processes have been concluded. We are still in the process of obtaining legal advice.

Yours sincerely,

Shelley James

Robbert (Bob) Sennef

Mayor (Bim) Lange,
The Barossa Council.

Dear Mr. Mayor (Bim),

We are writing to you to seek a deferral of Council’s consideration of late agenda item – Addendum – Debate Report 7.2.1.6 – Indenture Deed – Keil Estate, due to be considered at the Council Meeting tomorrow Tuesday the 28th of January.

We are most unhappy about the short notice given about this item which we note was posted on The Barossa Council website on Thursday morning the 23rd of January. We also note that the Proposed Indenture Deed was signed by Mr. Robert Homburg in his capacity as Executor of the Estate of the late Elma Linda Keil, witnessed by his wife and executed in error by you as Mayor and CEO Mr. Martin McCarthy on Wednesday the 22nd of January 2020.

The Debate Report states:

"With Council now having concluded the internal review of that August 2019 decision I have written to the executor outlining that all conditions have been satisfied."

On the 9th of January 2020, in a letter to us the Ombudsman wrote:

“You have advised that you intend to seek legal advice about how to pursue your complaint and request that I take no further action in relation to this matter until you have had an opportunity to obtain legal advice."
We are currently in the process of obtaining that legal advice. We wrote to Mr. Robert Homburg on Thursday the 23rd of January 2020 to inform him that we were in the process of obtaining that legal advice and to urge him to refrain from finalising the Proposed Indenture Deed, at least until the review processes have been concluded. We urge The Barossa Council to do the same.

Yours sincerely,

[Signatures]

Shelley James

Robbort (Bob) Sennef
30 January 2020

Mrs James and Mr Sennef

Dear Mrs James and Mr Sennef

I refer to your letter of 27 January 2020.

The item to which you refer was issued on 22 January 2020 as an addendum to the agenda, to elected members and to the public through the hard copy public agenda and by being placed on the Council agenda web page on the morning of 23 January 2020. It is to be noted that the legal requirement is for a notice period of three clear days. Therefore, by providing notice on 22 January 2020 and the 23 January 2020 the legal minimum notification requirements have been met.

Further, the matter to which you refer in regard to the internal review has been finalised by Council, but respecting the review, we did not proceed to finalise the Deed until the review had been completed which was undertaken at Council's ordinary meeting 17 December 2019 to which you have received correspondence of the outcome. The renewed Keil Deed will, of course, only take effect when the land transfer is completed.

The matter presented to Council yesterday was administrative in nature given that it was seeking only to give final effect to a prior decision of Council.

Yours sincerely

Mayor Lange
Certificate of Title - Volume 5962 Folio 946

Parent Title(s) CT 5902/823
Creating Dealing(s) T 10391027
Title Issued 01/05/2006 Edition 1 Edition Issued 01/05/2006
Diagram Reference D58229 01

Estate Type
FEE SIMPLE

Registered Proprietor
IVVI PTY. LTD. (ACN: 066 956 198)
OF LEVEL 20 NATIONAL MUTUAL BUILDING 44 MARKET ST SYDNEY NSW 2000

Description of Land
ALLOTMENT 74 DEPOSITED PLAN 58229
IN THE AREA NAMED TANUNDA
HUNDRED OF MOOROOOO

Easements
SUBJECT TO FREE AND UNRESTRICTED RIGHT(S) OF WAY OVER THE LAND MARKED B AND D
SUBJECT TO SERVICE EASEMENT(S) OVER THE LAND MARKED H FOR WATER SUPPLY PURPOSES TO SOUTH AUSTRALIAN WATER CORPORATION (223LG RPA)
TOGETHER WITH FREE AND UNRESTRICTED RIGHT(S) OF WAY OVER THE LAND MARKED A APPURTEENT ONLY TO THE LAND MARKED X

Schedule of Dealings
NIL

Notations
Dealings Affecting Title NIL
Priority Notices NIL
Notations on Plan NIL
Registrar-General's Notes NIL
Administrative Interests NIL
Certificate of Title

Title Reference  CT 5962/946
Status  CURRENT
Easement  YES
Owner Number  70513733
Address for Notices  CARE ESV ACCOUNTING AND BUSINESS ADVISORS 'CITY CENTRE' LEVEL 18, 55 MARKET STREET SYDNEY NSW 2000
Area  1.440HA (CALCULATED)

Estate Type
Fee Simple

Registered Proprietor
IVVI PTY. LTD. (ACN: 066 956 198)
OF LEVEL 20 NATIONAL MUTUAL BUILDING 44 MARKET ST SYDNEY NSW 2000

Description of Land
ALLOTMENT 74 DEPOSITED PLAN 56229
IN THE AREA NAMED TANUNDA
HUNDRED OF MOOROOROO

Last Sale Details
There are no sales details recorded for this property

Constraints
Encumbrances
NIL
Stoppers
NIL

Valuation Numbers

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Notations

Dealings Affecting Title
NIL

Notations on Plan
NIL

Registrar-General's Notes
NIL
Administrative Interests
NIL

Valuation Record
Valuation Number 9671350053
Type Site & Capital Value
Date of Valuation 01/01/2019
Status CURRENT
Operative From 01/07/2011
Property Location Unit 1-3, 9 BASEDOW ROAD, TANUNDA, SA 5352
Local Government BAROSSA
Owner Names IVIVI PTY. LTD.
Owner Number 70513733
Address for Notices CARE ESY ACCOUNTING AND BUSINESS ADVISORS 'CITY CENTRE' LEVEL 18, 55 MARKET STREET SYDNEY NSW 2000
Zone / Policy / Precinct TA - Tourist Accommodation
Water Available Yes
Sewer Available No
Land Use 2640 - Refrigerated Storage / Bond Storage And Warehousing
Description STORAGE WINERY
Local Government Description Commercial - Other

Parcels

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**Building Details**

Valuation Number: 9671350053
Building Style: Not Available
Year Built: Not Available
Building Condition: Not Available
Wall Construction: Not Available
Roof Construction: Not Available
Equivalent Main Area: Not Available
Number of Main Rooms: Not Available
13 February 2020.

Ms. Rugiyya Martin,
Governance Advisor,
The Barossa Council,
43 – 51 Tanunda Road,
Nuriootpa SA 5355.

Re: Section 270 Internal Review – Keil Estate Indenture Deed

Dear Ms. Martin,

Thank you for your letter dated the 6th of February 2020, in response to our application for an Internal Review of a Council Decision 7.2.1.6 Indenture Deed – Keil Estate B7081 dated the 4th of February 2020, which we received on the 11th of February 2020.

We wish to respond to ‘Clarification of matters raised in your application’.

1. The Period of Notice Provided for the Addendum Agenda Item 7.2.1.6 – Indenture Deed – Keil Estate

Our Application
Despite assertions by Mayor Bim Lange at the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020, Late Agenda Item Addendum 7.2.1.6 Indenture Deed − Keil Estate B7081 was not published on The Barossa Council website until Thursday morning the 23rd of January 2020. The remainder of the Agenda for the Ordinary Meeting of The Barossa Council of Tuesday the 28th of January 2020 was published on The Barossa Council website on Wednesday the 22nd of January 2020 as required by the Local Government Act 1999, 3 clear business days prior to the Council Meeting. Monday the 27th of January 2020 was the Australia Day Public Holiday. It is noted that the Indenture Deed was signed by Mr. Robert Homburg, Executor of the Estate of Elma Linda Keil and witnessed by his wife Phyllis, presumably on Wednesday the 22nd of January 2020 and then executed in error by the Mayor of The Barossa Council, Bim Lange and the Chief Executive Officer of The Barossa Council, Mr. Martin McCarthy on Wednesday the 22nd of January 2020.

Your Response

“In your application letter, you allege that the Addendum Agenda Item 7.2.1.6 – Indenture Deed − Keil Estate (the “Addendum”) was published as a late agenda item on The Barossa Council website on the morning of Thursday, 23 January 2020, in contravention of the minimum notice requirements of the Local Government Act 1999.

Section 84 of the Act requires the Chief Executive Officer to publicly display and publish the notice and agenda for a Council meeting on the website at least three clear days before the date of an ordinary Council meeting. The Local Government (Procedures at Meetings) Regulations 2013 (“Regulations”), at Regulation 3 (2) defines a “clear day” to include Saturdays, Sundays and public holidays, but exclude the day on which the notice is given and the day on which the meeting occurs. According to the Act and Regulations, “clear day” does not refer to business days. Please find enclosed an extract of the relevant sections of the Act and Regulations for your information.

I also note that our records show that the Addendum was publicly displayed on Wednesday, 22 January 2020, and uploaded to our website on Thursday, 23 January 2020 at 8.19am. If we go by the latest publication date of Thursday, 23 January 2020, the resulting notification period is still 4 clear days, which satisfies the minimum notification period of the Act and Regulations.”
Our Response

You are correct in your reference to “clear days” including every day of the week including public holidays. We did not find a reference to “clear days” in the Act, however, as you point out they are defined in the Local Government (Procedures at Meetings) Regulations 2013 if you happen to know where to look for them.

Nevertheless, Section 84 of the Local Government Act 1999 requires the publication of a notice and agenda for a council meeting on the website AT LEAST three clear days before the date of an ordinary council meeting. Given that the Indenture Deed was signed on Wednesday the 22nd of January 2020 by the Executor of the Estate of the late Elma Linda Keil, Mr. Robert Homburg, and executed in error by the Mayor, Mr. Michael (Bim) Lange and the Chief Executive Officer, Mr. Martin McCarthy, the day before the agenda item was published on the council website, we still consider that insufficient notice was given to the public in this instance on a matter that The Barossa Council was aware would attract public interest.

2. Conclusion of the internal review of the Council decision of 20 August 2019 on a related matter

Our Application

(2) The Report contained in the Debate Agenda for the Ordinary Council Meeting of The Barossa Council on Tuesday the 28th of January 2020 is misleading. It states: “With Council now having concluded the internal review of that August 2019 decision I have written to the executor outlining that all conditions have been satisfied.” In a letter to us dated the 9th of January 2020 the SA Ombudsman, Mr. Wayne Lines stated: “I understand that you wish to lodge a complaint about the outcome of your section 270 internal review application, which was determined by the council on 17 December 2019. You have also stated however, that you do not wish for myself or my Office to complete an assessment of that complaint. You have stated that this is because I had previously declared that I had a conflict of interest. I wish to clarify that I do not consider that I have a conflict of interest that would prevent me from...
assessing your complaint. In my previous letter to you dated 31 October 2019, I advised you that my Office had engaged the legal services of Ms. D'Agostino and Norman Waterhouse Lawyers for other matters that have been considered by Ombudsman SA. In my letters of 31 October 2019 and of 27 November 2019, I stated that I was of the view that this would not influence my ability to assess your complaint. You have advised that you intend to seek legal advice about how to pursue your complaint, and request that I take no further action in relation to this matter until you have had an opportunity to obtain legal advice. On this basis, I will take no further action in relation to this matter until you have had an opportunity to obtain legal advice. On this basis, I will take no further action in relation to your letter of 30 December 2019. Your correspondence has been placed onto an Ombudsman SA file and I will now close that file.” It is our view that Council has not satisfactorily concluded the internal review of that August 2019 decision and that all conditions have not been satisfied.

Your Response

“Your previous application relating to a decision of the Council at its meeting on 20 August 2019 was considered by Council at its meeting on 17 December 2020 (2019). A determination letter dated 20 December 2019 was provided to you.

The Policy and Process do not consider or treat the investigation of a complaint by the Ombudsman, or any other external agency, as part of Council’s internal review mechanism. The right for an applicant to make a complaint to the Ombudsman is available at any time, and is an independent process to Council’s internal review mechanism.”

Our Response

In the Minutes of the Council Meeting of the 17th of December 2019, in relation to 7.2.1.2 Section 270 Local Government Act – Internal Review of a Council Decision – Matter of Land Exchange with Chateau Tanunda – Basedow Road, Tanunda B10114 it states:
“Following Council’s decision, further appeal rights remain available to the Ombudsman SA should the applicants wish to escalate their concerns.”

We explained to you in some detail that we did not consider it to be appropriate for the SA Ombudsman to consider an appeal from us in relation to the external review. We also explained that we were in the process of receiving legal advice on the matter and we are currently still in the process of acting on that legal advice.

We strongly disagree with the Chief Executive Officer’s statement in relation to the Debate Agenda Report – 7.2.1.6 indenture Deed – Keil Estate B7081:

“With Council now having concluded the internal review of that August 2019 decision I have written to the executor outlining that all conditions have been satisfied.”

3. Letter to the Mayor

Our Application

(3) We wrote a letter to Mayor Bim Lange and emailed it to him on Monday the 27th of January 2020, a copy of which is attached for your reference. At the time 7.2.1.6 Indenture Deed – Keil Estate B7081 arose at the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020, Mayor Bim Lange spoke from the chair saying that the item was sent out within an appropriate time frame. His comment seemed to Shelley who was present at the Council Meeting at the time, to indicate that he had received her email sent the previous day on Monday the 27th of January 2020 and had read the letter. We do not know whether Mayor Bim Lange circulated the letter to elected members prior to the Council Meeting. At the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020, Mayor Bim Lange did not refer to the email or letter he had received from us, he did not read the letter to the Meeting for the benefit of elected members, senior staff or the Meeting Secretary to include in the Minutes of the Meeting and furthermore the letter was not tabled at the Meeting.
Your Response

"I note that the matters raised in your letter to the Mayor were addressed in his response to you dated 30 January 2020. I have also provided further clarification with respect to the definition of "clear days" in item 1, above."

Our Response

The Letter to us from the Mayor, Mr. Michael (Bim) Lange, did not refer to our request, in our letter dated the 27th of January 2020, for a deferral of Late Agenda Item – Addendum – Debate Report 7.2.1.6 – Indenture Deed – Keil Estate. The Mayor’s letter to us was dated Thursday the 30th of January 2020 well after the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020. Further, no explanation has been provided by you as to why the Mayor did not mention that he had received a letter from us dated the 27th of January 2020, whether the letter was drawn to the attention of elected members, why the letter was not read to the Meeting, why the letter was not included in the Minutes of the Meeting and why the letter was not tabled at the Meeting.

4. Execution of the Indenture Deed

Our Application

(4) As referred to previously, the Deed was executed in error by Mayor Bim Lange and Chief Executive Officer Mr. Martin McCarthy on Wednesday the 22nd of January 2020, the day before the late agenda item was published on the Council website and presumably at the same time that it was signed by Mr. Robert Homburg the Executor of the Estate of the late Elma Linda Keil and witnessed by his wife Phyllis. We have some questions about whether it was appropriate for Robert’s wife Phyllis to witness his signature on the undated Deed. Regrettably, Mr. Homburg was under the impression that Council had concluded the internal review of that August 2019 decision when in fact at the time, legal advice was being sought. Following the conclusion of
the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020, we wrote independently to Mr Robert Homburg in a letter dated the same day urging him not to finalise the Proposed Indenture Deed with The Barossa Council at least until review processes had been concluded. We also stated that we were still in the process of obtaining legal advice. A copy of this letter is also attached for your information and reference.

Your Response

"With respect to the conclusion of the previous internal review, please refer to item 2 above.

I also note that the decision you seek to have reviewed relates to Council approving the Execution of the Indenture Deed by the Mayor and Chief Executive Officer under seal. It does not relate to the witnesses used in executing the document. It is not clear how the concerns you have raised in this respect presents a ground for why you believe the Decision is wrong nor is the execution of the document by the Independent party a Council decision."

Our Response

Mr. Robert Homburg, the Executor of the Estate of the late Mrs. Elma Keil was presumably under the impression as reported in the Debate Agenda 7.2.1.6 Indenture Deed – Keil Estate B7081 that:

"With Council now having concluded the internal review of that August 2019 decision I have written to the executor outlining that all conditions have been satisfied. The executor is satisfied with the agreement and executed it."

We contend that Council has not yet concluded the internal review of that August 2019 decision, because appeal rights have not yet concluded, pending legal advice and therefore all conditions have not been satisfied.

We mentioned the potential issue of Mr. Robert Homburg’s wife Phyllis witnessing his signature on the deed, because we are aware that in some circumstances only certain people qualify and can act as witnesses to the signature of certain Deeds."
5. Mayor’s Response

Our Application

(5) We received an emailed letter, dated the 30th of January 2020, from Mayor Bim Lange in response to our email and letter dated the 27th of January 2020, on Thursday the 30th of January 2020 after the conclusion of the Ordinary Meeting of The Barossa Council on Tuesday the 28th of January 2020. We also received a hardcopy of the 30th of January 2020 letter today, Tuesday the 4th of February 2020, a week following The Barossa Council Meeting of the 28th of January 2020. We disagree with the content of Mayor Bim Lange’s letter when he claims that the legal minimum requirements for the posting of the addendum item on The Barossa Council website on Thursday morning the 23rd of January 2020 were met. A minimum of 3 clear business days prior to The Barossa Council Meeting on the 28th of January 2020 is required. The posting of the addendum on The Barossa Council website on Thursday morning the 23rd of January 2020 enabled two business days’ consideration of the late agenda item, Thursday the 23rd of January and Friday the 24th of January 2020. Monday the 27th of January 2020 was the Australia Day Public Holiday and not a business day. The Barossa Council Meeting commenced at 9am on Tuesday the 28th of January 2020. We have already stated in this application that we do not believe that the internal review process was finalised by Council prior to the wrongful execution of the Deed on Wednesday the 22nd of January 2020 by Mayor Bim Lange and Chief Executive Officer, Martin McCarthy. A copy of Mayor Bim Lange’s letter to us dated the 30th of January 2020 is attached for your information and reference.

Your Response

“The matters you have raised at Item 5 of your application letter are addressed at items 1, 2, and 3 above.

Our Response
Our responses to these matters are also addressed at items 1, 2 and 3 above.

6. Valuation Report

Our Application

(6) In the Valuation Report included in the Debate Agenda for The Barossa Council Meeting of the 20th of August 2019, the portion of land owned by Chateau Tanunda proposed to be swapped with The Barossa Council is Certificate of Title Volume 5962 Folio 146 of approximately 8,241 square metres. We believe the portion of land owned by Chateau Tanunda proposed to be swapped with The Barossa Council is Certificate of Title Volume 5962 Folio 946. This error can be confirmed by referring to the Certificate of Title Document for the land, a copy of which is attached for your information and reference. We consider it to be extraordinary that such an error appeared in the Valuation Report dated the 8th of November 2018. The error has not been picked up since, not by the Chief Executive Officer of The Barossa Council, Mr. Martin McCarthy, not by any of the Elected Members of The Barossa Council, not by the external reviewer appointed by The Barossa Council, Ms. Felice D’Agostino, Principal, Norman Waterhouse Lawyers and not by the Executor of the Estate of the late Elma Linda Keil, Mr. Robert Homburg.

Your Response

“The Decision you seek to have reviewed is the decision of Council at its meeting on 28 January 2020 with respect to approval for the execution of the Keil Indenture Deed. The Valuation Report you have referred to was an attachment to the Council meeting agenda item of 20 August 2019, a matter you have previously sought review of. If you are unhappy with the determination of your previous internal review, you are entitled to make a complaint to the Ombudsman.”

Our Response
Please refer to our response at Item 2.

7. The size of the land subject to the land swap

Our Application

(7) As mentioned previously, the size of the Chateau Tanunda land proposed to be swapped with The Barossa Council is approximately 8,241 square metres. The size of Allotments 11 and 12 subject to the requirements of the Keil Estate Indenture Deed is approximately 13,716 square metres. The apportionment of the Chateau Tanunda land actually occurred long after the legislated community consultation process on the revocation of community land classification process, held in late 2017. In its motion supporting the revocation of community land classification, the Elected Members of The Barossa Council on Tuesday the 19th of December 2017 supported Clause 2 in relation to 7.2.1.1 Revocation of Community Land Classification – Basedow Road, Tanunda B7081:

"MOVED Cr Lange

(2) That, further to the Independent Assessment at page 1, as the proposed disposal of land is via an exchange of land of the same or similar size and value, and the land currently has little or no market value due to the restrictions of the Dedication of the Keil Trust and the community land classification, the Council dispenses with the requirement of its Disposal of Land and Other Assets Policy at paragraph 4.4.1 (i) to obtain any independent valuations in this matter.

Seconded Cr de Vries CARRIED 2014-18/1269

Since August 2019 when the sizes of the pieces of land to be swapped between The Barossa Council and Chateau Tanunda were revealed in the Valuation Report dated the 8th of November 2018, we have discovered that the relative sizes of the parcels of land cannot be seen to be the same or similar.
Your Response

"The matter you have raised with respect to the sizes of the land subject to the land swap was part of your previous internal review application (i.e. August meeting decision). The issue was addressed by the external reviewer who conducted the review of your last application, Ms. Felice D'Agostino of Norman Waterhouse Lawyers, in her external review report. This report is publicly available as part of the agenda for the 17 December 2019 Council meeting, a copy of which was provided to you with the determination letter of your last matter, dated 20 December 2019."

Our Response

Please refer to our response at Item 2.

8. Discussion or Debate at Council Meeting

Our Application

(8) At the 28th of January 2020 Barossa Council Meeting there was no discussion or debate on the published Recommendation in the Debate Agenda for the Meeting:

"That Council Authorise the Mayor and Chief Executive Officer to sign, seal and date the Deed to finalise the matter, as presented at Appendix 1."

The Recommendation as proposed was moved by Councillor de Vries, seconded by Councillor Johnstone and carried without discussion or debate. We believe that a Debate Agenda is exactly that, an agenda for debate by elected members. Unfortunately, there have been many, many occasions in the history of The Barossa Council where Agenda Items listed for debate are not discussed or debated by Barossa Council Elected Members. This gives rise to the perception at least that decisions are being made prior to Council Meetings behind closed doors or not being fully considered by Elected Members. If this in fact was the
case, then, The Barossa Council Elected Members would be seen to be in breach of the requirements of the Local Government Act 1999. It is also noted that Appendix 1 referred to in the Recommendation, should in fact be Attachment 1.

Your Response

“Following the determination of your internal review application of a decision of Council of 26 April 2018, you made a complaint to the Ombudsman regarding the outcome of the determination. In your complaint, you raised concerns regarding the level of discussion by Elected Members and was addressed in the Ombudsmans report. In his report, which was presented to Council on 18 September 2018, the Ombudsman states ‘[y]ou complain that only one elected member spoke in the meeting regarding this item and there was no debate…I comment that the fact that there was no debate is not sufficient to substantiate a finding that each individual council member failed to have due consideration of the material which was provided to them for consideration’. The Ombudsmans report is available in the Council agenda associated with that meeting.”

Our Response

We are already aware of the Ombudsman’s comments in relation to this matter. Nevertheless, we are also aware of the requirements of elected members under the “Code of Conduct for Council Members, published by the Minister for Planning for the purposes of Section 63 (1) of the Local Government Act 1999. This Code of Conduct is to be observed by all Council members. Council members must comply with the provisions of this code in carrying out their functions as public officials. It is the personal responsibility of Council members to ensure that they are familiar with, and comply with, the standards in the Code at all times.

PART 1 – PRINCIPLES

1. Higher Principles – Overarching Statement
This part does not constitute separate enforceable standards of conduct.

Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.

Council members will work together constructively as a Council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in Local Government.

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council's community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All Councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the Local Government Act 1999.

Council members will comply with all legislative requirements of their role and abide by this Code of Conduct.”

Please refer to our response at Items 2 and 6. We reiterate that it is simply extraordinary that no elected member of The Barossa Council, no senior staff member of The Barossa Council, neither Valuers Mr. Colin Eldridge and Mr. Darren Rasmus who prepared the Valuation Report dated the 8th of November 2018, nor Ms. Felice D’Agostino, Principal, Norman Waterhouse Lawyers, nor Mr. Robert Homburg, the Executor of the Estate of the late Elma Linda Keil detected the error that the incoming land from Chateau Tanunda was the wrong land.

You have not commented on this matter in your response to our application.

9. Appeal avenues
Our Application

(9) According to legal advice we received on the 30th of January 2020, the revocation of community land classification decision made by The Barossa Council on the 26th of April 2018 and subsequently reviewed in 2018 was the key decision made in this process and on successful application to the Supreme Court within 6 months of the decision being made for a judicial review, the decision could have been ultimately quashed if it was tainted by an error of law or procedural unfairness. Given the lapse of time since this decision and the expected cost of the process, it is not now an option that we can reasonably pursue at this time. Nevertheless, we believe there is a considerable body of evidence which has come to light since then which suggests that errors of law and/or procedural fairness can be seen to have occurred.

Your Response

"It is not clear how this item sets out why you believe that the decision was wrong. Having provided the above clarification and additional information, I ask whether you wish to pursue your internal review application. In the event that you do wish to pursue the matter, in accordance with the Policy and Process, it will be necessary for the Chief Executive Officer to consider whether your application is frivolous or vexatious.

I ask that you please respond to me in writing, or in the event that you have any questions."

Our Response

Firstly, we have responded to you in writing as you have requested.

Secondly, we do not consider that our application for an Internal Review of a Council Decision is frivolous or vexatious.

"Frivoulous" is defined as "paltry", "trumpery", "trifling", "futile", "given to trifling", "not serious", "silly".
We have always treated the issues of the revocation of community land classification, matter of land exchange with Chateau Tanunda and the Indenture Deed – Keil Estate seriously and with the concern due to issues of importance and relevance to the Barossa community and ourselves and our children’s children.

"Vexatious" is defined as "not having sufficient grounds for action and seeking only to annoy defendant".

We believe that we do have grounds for action.

At the very least, the Decision is wrong because it seeks to receive the wrongly identified land as Chateau Tanunda land.

We reiterate that on the basis of legal advice we are taking action to establish whether this decision and the earlier related decisions may have been tainted by errors of law or procedural unfairness. We have yet to make an assessment of these matters.

We wish to make some comments on Section 270 Part 2 – Internal Review of council actions of the Local Government Act 1999.

"270 – Procedures for review of decisions and requests for services"

(a1) A council must develop and maintain policies, practices and procedures for dealing with –

(a) any reasonable request for the provision of a service by the council or for the improvement of a service provided by the council: and

(b) complaints about the actions of the council, employees of the council, or other persons acting on behalf of the council.

(a2) The policies, practices and procedures required under subsection (a1) must be directed towards –

(a) dealing with the relevant requests or complaints in a timely, effective and fair way; and

(b) using information gained from the council’s community to improve its services and operations."

We believe that The Barossa Council has not used information gained from its community, in many instances from us, to improve its services and operations. To the contrary, it has made it very difficult for us to genuinely and meaningfully participate in a
We reiterate that given our previous objections to The Barossa Council’s appointment of Ms. Felice D’Agostino, Principal, Norman Waterhouse Lawyers as the external reviewer, we do not expect The Barossa Council to appoint Ms. Felice D’Agostino as the external reviewer in this instance.

We look forward to hearing from you.

Yours sincerely,

Shelley James

Robbert (Bob) Sennef
7.2.1 CHIEF EXECUTIVE OFFICER - DEBATE

7.2.1.4
SECTION 270 LOCAL GOVERNMENT ACT – INTERNAL REVIEW OF COUNCIL DECISION – MATTER OF BIG PROJECT PRIORITISATION AND FINANCIAL MODELLING

B10703

Author: Governance Advisor

PURPOSE
Council is asked to receive and consider the Chief Executive Officer’s findings, applicants’ submissions and all other correspondence between Council officers and the applicants, as regards an application made to review Council’s decision of 20 August 2019 to review the work to prioritise and financially model the Big Project Next Phase and endorse the associated plan.

RECOMMENDATION
That Council, having received and considered:

(i) the application letter dated 10 February 2020 seeking a review, pursuant to section 270 of the Local Government Act 1999, of Council’s decision of 20 August 2019 to review and endorse and prioritise and financial modelling of the Big Project (Attachment 1);

(ii) letter from Council officer to the applicants dated 14 February 2020, acknowledging receipt of their application (Attachment 2);

(iii) letter from the Chief Executive Officer to the applicants dated 27 March 2020 (Attachment 3);

(iv) Submission made by the applicants dated 5 April 2020 (Attachment 4);

(v) Further letter from the Chief Executive Officer to the applicants dated 7 April 2020 (Attachment 5); and

(vi) the agenda, attachments and associated minutes of the Council meeting held on 17 March 2020 in relation to item 7.2.1.4 and titled ‘Section 270 Local Government Act – Internal Review of Council Decision – Matter of Big Project Prioritisation and Financial Modelling’ (Attachment 6).

and Council having given due consideration to whether or not the applicants, Ms Shelley James and Mr Robbert Sennef, who have made an application for internal review pursuant to section 270 of the Local Government Act to review Council’s decision of 20 August 2020 to review the work to prioritise and financially model the
Big Project Next Phase and endorse the associated plan (the “Decision”), has sufficient interest in the Decision:

(1) That Council is satisfied that the applicants, Ms Shelley James and Mr Robbert Sennef do not have sufficient interest in the Decision on the basis that:

(a) the applicants have stated their interest is that of being electors and residents in the township of Tanunda, and that they live near the land proposed for the Barossa Culture Hub project;

(b) the applicants’ stated interest in the Decision is not over and above the interest of an ordinary resident/elector in the Council’s area;

(c) there is no basis for the Council to use its discretion to consider the application notwithstanding the applicants do not have a sufficient interest in the Decision;

(2) That the Council refuse to consider the application to review the Decision pursuant to section 270 of the Local Government Act, on the basis that the applicants do not have sufficient interest in the Decision.

(3) That the Chief Executive Officer notify the applicants of Council’s decision and reasons why Council has refused to consider the application.

REPORT

Background
At its meeting on 20 August 2020, Council resolved to review and endorse the prioritisation and financial modelling of The Big Project, the Decision being:

MOVED Cr Johnstone

(1) That Council having considered, reviewed and analysed The Big Project masterplans, community needs and benefits as gathered through the master planning and community engagement processes over the past 33 months, financial modelling and ability to fund projects, economic development opportunities, third party and grant funding alignment endorse the “Target Next Phase Priorities and Associated Analysis – August 2019” document as presented at the Attachment.

(2) That Council noting that current 2019-20 financial year programs being the Angaston Railway Station masterplan implementation, Tanunda Recreational Park acceleration works, Nuriootpa Centennial Park multi-use change rooms and Old Talunga Recreation Park tennis/netball upgrades are approved projects that are below the thresholds of the Prudential Management Policy under to Section 48(aa1) of the Local Government Act for a full independent prudential report proceed as budgeted.

(3) That Council noting that the “Target Next Phase Priorities and Associated Analysis – August 2019” include some projects that are above the expenditure threshold for a full independent prudential management report as contemplated by the Prudential Management Policy under to Section 48(aa1) of the Local Government Act undertake the required full prudential management report as outlined by Clause 4.3 of the policy on the remaining
projects in totality and that the Chief Executive Officer proceed to engage an
independent consultant to undertake the work.

(4) That Council acknowledge that the target plan will be adjusted and revised
depending on the availability and success of grant applications, annual
funding allocations, changing community need, and resourcing needs to
deliver this aspirational target plan.

(5) That the Mayor release a public statement relative to this resolution of Council.

Seconded Cr Angas

On 16 September 2019, Council administration received an application from Ms Helen
Szuty, to carry out an internal review of the aforementioned Decision, pursuant to
section 270 of the Local Government Act 1999 (the “Act”). Pursuant to Council’s
Internal Review of Council Decision Policy and Process (the “Policy” and “Process”
respectively), the CEO appointed an external reviewer to undertake an assessment
of the matter and provide recommendations.

The external reviewer’s report and recommendations on that matter was presented
to Council at its meeting on 17 March 2020, and after considering the matter, Council
refused the application due to Ms Szuty not having a sufficient interest in the matter.
Extracts of the agenda, attachments and associated minutes of that meeting are
attached at Attachment 6 to this report.

However, prior to the external reviewer’s report being finalised, by letter dated 10
February 2020, the applicants, Ms Shelley James and Mr Robbert Sennef requested a
review of the same Decision, based on substantially the same grounds as Ms Szuty’s
application. Ms James and Mr Sennef’s application letter is attached at Attachment 1
to this report.

Introduction
The Act provides at section 270(4) that Council may refuse to consider an application
for review if, amongst other things, ‘the applicant does not have sufficient interest in
the matter’. Similarly, the Policy sets out the considerations of section 270(4) at clause
2.2. The Process also states at clause 4.2.1 that ‘[a] person with a sufficient interest in
a decision of Council, or its delegate, may make a written application for a review of
that decision’. However, the Process also notes that ‘[a] person who is not the direct
subject of a decision may still have a sufficient interest in the decision to seek a review
under this Process. For example, a person may have a sufficient interest in a Council
decision regarding the number of dogs which may be kept within a neighbour’s
property’.

Council should bear in mind that the Policy and Process note that ‘[r]efusing an
application for review will not be done lightly and reasons for the refusal will document
the evidence on which a refusal is based’.

Discussion
In their application, Ms James and Mr Sennef claim that they believe they have a
sufficient interest in the Decision. By letter dated 27 March 2020 at Attachment 3, the
Chief Executive Officer, noted that:
- the application related to another internal review application made by Ms
  Helen Szuty (and this is indeed confirmed by the applicants in their application)
  which was reviewed by Council at its March meeting;
- the two applications are largely identical;
• both Ms James and Ms Szuty met together with Council’s Governance Advisor on 13 March 2020 to discuss the progress of Ms James and Mr Sennef’s application;
• in their application, the applicants had not stated an interest that was over and above that of Ms Szuty;

and accordingly notified the applicants of his position that the applicants do not have sufficient interest in the Decision. Further, the CEO proposed to present the application to the Elected Body for consideration, with a recommendation that it be refused on the basis that the applicants do not have sufficient interest in the Decision.

Procedural fairness was observed throughout the process as the applicants were told of the CEO’s findings, reasons for his findings and proposal to be put to the Elected Body, and provided an opportunity to make submissions on the CEO’s findings, prior to the matter being presented to the Elected Body.

The applicants’ submission is attached hereto at Attachment 4.

Should Council consider that the applicants have sufficient interest it should instruct the Chief Executive Officer appropriately with the following recommendation to be considered in that case in place of the recommendation in the report:

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<tr>
<th></th>
<th>Recommendation</th>
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<tr>
<td>1</td>
<td>That the Council is not satisfied that the applicants, Ms Shelley James and Mr Robbert Sennef do not have sufficient interest in the Decision;</td>
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<tr>
<td>2</td>
<td>That Council directs the Chief Executive Officer to appoint an external reviewer to carry out a review of the Decision, in accordance with Council’s Internal Review of Council Decision Policy and Process; and</td>
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<tr>
<td>3</td>
<td>That the Chief Executive Officer notify the applicants of Council’s decision.</td>
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**Summary and Conclusion**

Council is asked to receive and consider the Chief Executive Officer’s findings, the applicants’ submission and all other attachments to this report and determine whether or not to refuse the application on the basis that the applicants have a sufficient interest in the Decision. In the event that Council determines not to refuse the application, it should direct the Chief Executive Officer to proceed with the application pursuant to the Policy and Process.

**ATTACHMENTS OR OTHER SUPPORTING REFERENCES**

| Attachment 1 – application letter received 10 February 2020 (20/19573); |
| Attachment 2 – acknowledgement of receipt letter from Council officer to the applicants dated 14 February 2020 (20/19571); |
| Attachment 3 – letter from the CEO to the applicants dated 27 March 2020 (20/19570); |
| Attachment 4 – submission made by the applicants dated 5 April 2020 (20/19568); |
| Attachment 5 – further letter from the CEO to the applicants (20/19567); |
| Attachment 6 – Extract of agenda report, attachments and associated minutes of the Council meeting held on 17 March 2020 (20/14643 and 20/15349) |

**COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS**

Community Plan

Community and Culture
Corporate Plan
2.3 Support and promote community involvement and networks and provide opportunities for participation in local decision making.
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, Sections 270

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

The total cost accrued with respect to this matter will be reported via the annual reporting requirements.

COMMUNITY CONSULTATION
The Barossa Regional Culture Hub draft Master Plan underwent public consultation, and the results of the consultation were presented to Council at its meeting on 27 June 2018, whereupon Council endorsed the Draft Master Plan subject to amendment and budget considerations, and determined to move ahead with the next stages of the project.

Council decisions relating to the Barossa Culture Hub, as well as the related Chateau Tanunda land exchange matter (made by Council at its Special Meeting of 26 April 2018 and 27 June 2018 respectively) have both been previously reviewed pursuant to Section 270 of the Local Government Act 1999, with the current applicant initiating the review of the aforementioned Barossa Culture Hub decision. An external reviewer was appointed to conduct an investigation and present their recommendations to Council, in both cases. In both instances, Council resolved that the original decision made by Council was the best and/or preferable decision and reaffirmed the original decisions.

It should also be noted that the Ombudsman’s office received complaints in relation to those matters, and made an assessment that:

- the conclusion reached in relation to the section 270 review was reasonably open to the reviewer;
- in relation to the complaints received, based on the evidence available, it did not appear that Council had acted in a way that was unlawful, unreasonable or wrong within the meaning of the Ombudsman Act 1972.

Since then, the applicants have made multiple requests for review, with the latest matter having been considered by Council at its meeting held on 19 December 2019.
14 February 2020

Shelley James and Robbert Senneff

Dear Shelley and Bob,

APPLICATION FOR AN INTERNAL REVIEW OF A COUNCIL DECISION UNDER SECTION 270 OF THE LOCAL GOVERNMENT ACT – BIG PROJECT PRIORITISATION AND FINANCIAL MODELLING

I refer to and acknowledge receipt of your application for an internal review of a Council decision under section 270 of the Local Government Act 1999, received at our Nuriootpa office on Monday, 10 February 2020. The decision you are seeking a review of is the decision of Council at its meeting on 20 August 2019, with regards to the next steps of the Big Project prioritisation and financial modelling (item 7.2.1.8 on the Council meeting minutes and hereinafter referred to as the “Decision”).

Council’s Internal Review of Council Decision Policy and Process (the “Policy” and “Process” respectively) set out the mechanism and procedure for how such internal review requests will be carried out. Copies of the Policy and Process are enclosed for your information.

Please note that we are seeking legal advice on this matter. We will be in touch with you in due course.

Please do not hesitate to contact me in writing (email rmartin@barossa.sa.gov.au) if you have any questions.

Sincerely,

Rugiyaa Martin
Internal Review Contact Officer
Governance Advisor
The Barossa Council

Enc.-
Internal Review of Council Decision Policy
Internal Review of Council Decision Process
# THE BAROSSA COUNCIL
## INTERNAL REVIEW OF COUNCIL DECISION POLICY

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<th>Corporate Plan Link:</th>
<th>6.2 Ensure that Council’s policy and process frameworks are based on principles of sound governance and meet legislative requirements.</th>
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<td>Chief Executive Officer</td>
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<td>Previous Approval Date(s):</td>
<td>20/11/2012; 21/10/2015; 17/10/2017</td>
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<td>Governance Advisor</td>
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<td>Next Review Date:</td>
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1. **Purpose**

1.1 The Barossa Council ("Council"), which includes its committees, employees, contractors and Elected Members, make decisions which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

1.2 Council is committed to open, responsive and accountable government. This includes providing processes by which those who believe they have been adversely affected by a Council decision can have their complaints considered.

1.3 Section 270 of the Local Government Act 1999 ("the Act") requires Council to maintain policies, practices and procedures for dealing with requests for service and complaints including a procedure about "the review of decisions of:

(a) the council;
(b) employees of the council;
(c) other persons acting on behalf of the council."

Accordingly, this Policy provides for a procedurally fair, consistent and structured review for any person alleging adverse impact as a result of a decision made by Council or its delegates.

2. **Scope**

2.1 **When decisions are subject to review under this Policy**

2.1.1 This Policy and its supporting Internal Review of a Council Decision Process commence where a written application for an internal review of a decision, pursuant to Section 270 of the Act is received by Council, or a complaint

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escalates in accordance with Council’s Customer Service Policy and supporting Processes.

2.1.2 Decisions of Council, employees of Council and other persons acting on behalf of Council, may be subject to review under this Policy.

2.1.3 A decision is made when a matter, issue or query is actually determined. Once a matter, issue or query is determined, the decision may be open to review in accordance with this Policy.

2.1.4 The nature of this review is both a merits review and process review which could lead to the original decision being affirmed, varied or revoked.

2.2 When decisions are not subject to review under this Policy

2.2.1 Council action not a decision

Not all actions by Council, its employees or another person acting on behalf of Council will be a decision - and therefore cannot be reviewed. For example, actions taken during the process of decision-making (i.e. investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions.

2.2.2 Other legislation governs review of specific type of decision

Some decisions made by Council, its employees or on behalf of Council are subject to other review or appeal processes set out in legislation. This Policy cannot override or operate inconsistently with those legislative processes. So where legislation provides for the review of, or appeal from, a type of decision, a decision of that type will not be reviewed under this Policy.

Examples include:

a) objections to valuations made by the Council;
b) appeals against orders made pursuant to Section 254 of the Local Government Act 1999;
c) appeals against the issuing of litter abatement notices under the Local Nuisance and Litter Control Act 2016;
d) appeals against destruction and control orders issued under the Dog and Cat Management Act 1995;
e) review of an expiation notice under the Expiation of Offences Act 1996; and

2.2.3 Other legislation requires specific internal review process

Where legislation provides for a specific way to conduct an internal review process, that process will apply rather than this Policy.

For example, internal review of a determination under the Freedom of Information Act or withdrawal of an expiation notice issued by the Council.
under Section 16 of the Expiation of Offences Act will be conducted in accordance with those legislative processes.

2.2.4 Review cannot occur in the circumstances

Some decisions made by Council, its employee or on behalf of Council are not subject to any review according to either express legislation or by necessary implication where a decision has an immediate effect under legislation from the time the decision is made.

For example, some development approvals under the Development Act are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by Council.

2.2.5 Other Council processes govern review

In the absence of legislation, where other Council protocols require certain appeal processes, those processes will apply rather than this Policy and supporting process. For example:

- Employment related matters which are conducted in accordance with the Council's Enterprise Agreement and Human Resources Framework
- Commonwealth Home Support Program Services, where complaint processes are defined in relevant contracts.

2.2.6 Matters that are frivolous or vexatious, related to employment, or where the applicant does not have sufficient interest in the matter

In accordance with section 270(4) of the Local Government Act 1999, Council or a person assigned to consider the application may refuse to consider an application for review if:

- The application is made by an employee of Council and relates to an issue concerning his or her employment – these types of matters will be managed in accordance with Council's Human Resource Management Policy, and associated policies and processes; or
- It appears that the application is frivolous or vexatious; or
- The applicant does not have a sufficient interest in the matter.

2.3 Alternative methods of resolution

While Council prefers to work with applicants to resolve requests for internal review promptly and effectively, an applicant will always retain the right to seek other forms of resolution, such as to contact the Ombudsman or the Office for Public Integrity, or to take legal action at any time.
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<th><strong>3. Definitions</strong></th>
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<td><strong>Alternative Dispute Resolution</strong></td>
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4. **Policy Statement**

4.1 This Policy is based on five key principles:

- **Fair treatment**: which requires impartiality, confidentiality and transparency at all stages of the process;
- **Accessibility**: through broad public awareness about Council’s policies and processes and a range of contact options, any person can contact Council;
- **Responsiveness**: through the provision of sufficient resources, well trained staff and ongoing review and improvement of Council’s system;
- **Efficiency**: through prompt resolution at an organisational level that reflects the level of complexity; and
- **Co-ordinated approach across Council teams** where the matter under internal review overlaps the responsibilities of various teams.

4.2 Additionally, Council encourages Alternative Dispute Resolution where appropriate and such methods will be undertaken in accordance with Section 271 of the Local Government Act.

4.3 **Application under this Policy relating to Rates**

If Council receives an application for an internal review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with promptly. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the Local Government Act (eg remission or postponement of payment, issuing of fines and interest, particular land use categorisation).

Council cannot review its decision relating to the setting and declaration of rates.

4.4 **Remedies**

4.4.1 Where the internal review upholds the applicant’s complaint, a remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy chosen will be proportionate and appropriate to any issues identified and take account of what the applicant is seeking as an outcome.

4.4.2 As a general principle, the applicant will, so far as reasonably practicable, be put in the position he or she would have been in, had the original decision not been made.

4.4.3 Only the Elected Body itself and / or the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial and this will only occur after consultation with the Local Government Association’s Mutual Liability Scheme.
5. Supporting Process

Internal Review of Council Decision Process

6. Related Policies

Customer Service Policy

7. Legislation and References

Sections 270 and 271 Local Government Act 1999
Ombudsman SA: Right of Review: A Guideline Policy and Procedure for Councils (June 2017)

8. Review

8.1 This Policy will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council’s need changes.

9. Further Information

9.1 This Policy is available on Council's website at www.barossa.sa.gov.au. It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

9.2 Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate officer according to Council’s Complaints Handling Policy (see clause 9.1 above for availability).

Signed: [Signature]

Mayor Michael Lange

Dated: 20 August 2019

Internal Review of Council Decision Policy approved by Council on 20 August 2019
THE BAROSSA COUNCIL
INTERNAL REVIEW OF COUNCIL DECISION PROCESS

Policy Link: Internal Review of Council Decision Policy

<table>
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<th>Chief Executive Officer</th>
<th>Previous Approval Date(s):</th>
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<tbody>
<tr>
<td></td>
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<td>17/09/2013</td>
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<td>15/42710*</td>
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1. Overview

This Process specifically outlines:

- how and when an applicant can request an internal review of a Council decision; and
- the roles and responsibilities of the Council administration, the Internal Review Contact Officer, the Reviewer and the Elected Members to affect a fair, consistent and structured approach in dealing with each request.

2. Core Components

Complaints Handling Framework and when to use the Internal Review Process
Applying for an Internal Review
Acknowledging an Internal Review Application
Commencing the Preliminary Investigation
Assignment of Application to Reviewer
Review Considerations
After the Review

3. Definitions

<table>
<thead>
<tr>
<th>Alternative Dispute Resolution</th>
<th>Includes mediation, conciliation or neutral evaluation as defined in Section 271 of the Local Government Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>The party lodging the request for Internal Review. Examples include residents, ratepayers, members of a community group, users of Council facilities and visitors to the Council area.</td>
</tr>
<tr>
<td>Business Day</td>
<td>A day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays.</td>
</tr>
<tr>
<td>Council</td>
<td>The Barossa Council comprising the Mayor, Elected Members and Administration.</td>
</tr>
<tr>
<td>Decision</td>
<td>A position adopted by Council or its delegate after consideration of relevant information.</td>
</tr>
<tr>
<td>Decision-maker</td>
<td>Council or its Delegate responsible for the decision under Internal Review.</td>
</tr>
<tr>
<td>Delegate</td>
<td>A person or committee who has been given power by the Elected Body in an instrument of Delegation to make a decision on behalf of the Elected Body.</td>
</tr>
<tr>
<td><strong>Electronic Document and Records Management System</strong></td>
<td>(EDRMS). An automated system used to manage the creation and management of physical and electronic documents and records, improving work-flow, and providing evidence of business activities.</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td><strong>Elected Body</strong></td>
<td>The Mayor and Elected Members meeting in their decision-making capacity.</td>
</tr>
<tr>
<td><strong>Employee</strong></td>
<td>Includes a person employed directly by Council in a full time, part time or casual capacity (whether that position is permanent, voluntary or contractual).</td>
</tr>
<tr>
<td><strong>External Review</strong></td>
<td>A merits and/or process review by a person or an entity outside of The Barossa Council, eg the Ombudsman, of a decision that was made by the Elected Body or its delegate.</td>
</tr>
<tr>
<td><strong>Internal Review</strong></td>
<td>A merits and/or process review by a person or an entity that is part of The Barossa Council, of a decision that was made by the Elected Body or its Delegate.</td>
</tr>
<tr>
<td><strong>Internal Review Contact Officer (IRCO)</strong></td>
<td>The initial point of contact for applicants seeking an internal review.</td>
</tr>
<tr>
<td><strong>Merits Review</strong></td>
<td>A process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct or preferable decision.</td>
</tr>
<tr>
<td><strong>Process Review</strong></td>
<td>A review of the correctness of the processes followed in making a decision.</td>
</tr>
</tbody>
</table>
| **Procedural Fairness** | Is concerned with the procedures used by a decision-maker to reach the decision, rather than the actual outcome reached. It requires a fair and proper process be used when making a decision and due regard to a fair approach to those involved/impacted by a decision. The rules of procedural fairness require:  
- a hearing appropriate to the circumstances;  
- lack of bias;  
- evidence to support a decision; and  
- inquiry into matters in dispute. |
| **Reviewer** | The delegate responsible for conducting a review of a Council decision. |
| **Worker** | A person is a Worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as;  
a) An employee; or  
b) A contractor or sub-contractor; or  
c) An employee of a contractor or sub-contractor; or  
d) An employee of a labour hire company who has been assigned to work in the person's business or undertaking; or  
e) An outworker; or  
f) An apprentice or trainee; or  
g) A student gaining work experience; or  
h) A volunteer of Council; or  
i) A person of a prescribed class.  
[as defined in the WHS Act 2012 (7)]. |
4. Process

4.1 Complaints Handling Framework and when to use this Internal Review Process

Wherever practicable, customer complaints regarding a Council decision should be referred for immediate resolution to Council's Customer Service Policy and Complaint Handling Process.

The Complaint Handling Process consists of three tiers to manage and resolve complaints:

4.1.1 Immediate response to resolve the complaint
All Workers are empowered to handle complaints in the first instance and it is preferable that a complaint is dealt with promptly at the initial point of contact and at the appropriate Worker level.

4.1.2 Complaint escalated to a more senior Worker
A complaint will be directed to a senior Worker in the Council, where the complaint would be better handled at that level. This may occur, for example, where a Worker has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council team.

4.1.3 Internal review of a Council decision
An internal review will generally apply when matters cannot be resolved under the other two tiers.

Internal review of a Council decision enables the Council to reconsider all the evidence relied on to make the original decision, and additional available evidence if relevant.

However, a referral directly to this third tier will occur when a decision was:

- made by the Elected Body; or
- referred by the applicant directly to the Ombudsman and the Ombudsman has referred the decision back to the Council for an internal review under Section 270 of the Local Government Act 1999 ("the Act").

In such cases, the complaint must be dealt with in accordance with this Process.

However, subject to Council’s Internal Review of Council Decisions Policy and this Process, applicants may use the section 270 Internal Review mechanism at any time to review a decision made by Council or on behalf of Council.

4.2 Applying for a review

4.2.1 Who can apply for a review

A person with a sufficient interest in a decision of Council, or its delegate, may make a written application for a review of that decision.

A person who is not the direct subject of a decision may still have a sufficient interest in the decision to seek a review under this Process. For example, a person may...
have a sufficient interest in a Council decision regarding the number of dogs which may be kept within a neighbour's property.

4.2.2 **Timeframe to apply**
An application for a review of a decision must be made within 6 months of that original decision being made.

However, in exceptional circumstances an application for internal review which is lodged outside of this 6 months may still be considered for internal review by the Council or CEO, as the case may be.

4.2.3 **Assistance for the applicant – Internal Review Contact Officer**
It is essential that no one is excluded from lodging an application for internal review because of difficulties they may have representing themselves.

An Internal Review Contact Officer (IRCO) is appointed by the CEO as the initial point of contact for applicants. The IRCO will be the Governance Advisor or in their absence, a delegate appointed by the CEO.

The IRCO may assist an applicant document their reasons for seeking an internal review, in addition to arranging access to interpreters, aids or advocates to ensure that an applicant is treated equitably.

A person seeking review of a Council decision who attends at the Council’s offices personally or by telephone call, and all written applications for review should be immediately referred to the IRCO.

The role of the IRCO is to:

- explain the process to the applicant and explore alternative options to resolve the matter, such as mediation or conciliation prior to an application for review where possible;
- acknowledge the receipt of an application for review;
- maintain a register of all applications for review received and the outcomes of the applications;
- outline the timeframes involved and the action to be taken in the first instance;
- undertake a preliminary investigation to determine whether the matter falls within the scope of the Policy and Process and what actions have already been taken to try to resolve the matter;
- keep the applicant informed of progress;
- if the matter does not fall within the scope of the Policy and Process, to inform the applicant, and provide alternative avenues of review or appeal, where applicable;
- ensure adequate records are maintained; and
- report to Council at prescribed intervals on all applications lodged for review.
4.2.4 How to apply for a review
While there is no standard template that the applicant needs to use, he or she must set out in writing:
- the decision they are seeking to have reviewed and their interest in that decision;
- the reasons why they believe the decision is wrong;
- what outcome is sought; and
- their daytime contact details.

Although Council can be expected to have information relevant to the matter under internal review, an application may also include new evidence to support the application.

Applications must be made in writing and addressed to the Internal Review Contact Officer and forwarded marked confidential via:
- post to: The Barossa Council, PO Box 867, Nuriootpa SA 5355
- email to: barossa@barossa.sa.gov.au
- fax to: 8563 8461
- in person at the Nuriootpa Office at 48-51 Tanunda Road, Nuriootpa SA 5355 or any of the Council branches at Angaston, Lyndoch, Mount Pleasant and Tanunda.

4.2.4 Cost to apply for a review
There is no fee charged to apply for an internal review.

4.3 Acknowledging an Application for Review
The IRCO will confirm receipt of the internal review application within 5 business days and also advise the applicant of the expected timeframe for processing the matter where possible.

4.4 Commencing the Preliminary Investigation

4.4.1 Within 5 business days of receipt of the internal review application, the IRCO will:
- establish an EDRMS container with agreed restricted access;
- assess whether the application falls within the scope of the Policy and Process and if the matter does not fall within the scope of the Policy and Process, inform the applicant, and provide alternative avenues of review or appeal;
- meet with the CEO to determine a reviewer or if the decision under review was made by the CEO, then with the Mayor or in his/her absence, the Deputy Mayor, to advise of the process (see paragraph 4.5 below);
- create a summary report using the Section 270 Review Record of Investigation template to provide to the appointed reviewer; and
- outline the resources expended to date within the Section 270 Assessment of Resources Schedule.

4.4.2 The IRCO and reviewer will use their best efforts to finalise an internal review within 21 business days. However if the decision is to be reviewed by the Elected Body, a committee, or an external panel or party there may be delays caused by meeting cycle timelines. In more complex cases, an internal review may take longer.

4.4.3 Except where an external party has been appointed as reviewer, the IRCO will regularly inform the applicant of progress, either by email, letter or telephone. The IRCO will record all such contact in the Section 270 Review Record of Investigation.
and Assessment of Resources templates. Where an external party has been appointed as the reviewer, the external party must inform the applicant of progress either directly (preferred) or if this is not possible, via the IRCO.

4.5 Assignment of Application to Reviewer

4.5.1 CEO, Director or Manager as reviewer

Where the decision was made by an Employee of Council (excluding the CEO), the IRCO and CEO will together determine who will be the reviewer. In this case, the reviewer will generally be one of the Directors who have no conflict or previous dealings with the complaint. If this is not possible, a member of the Organisational Management Group will be appointed as the reviewer.

Alternatively but not ordinarily, the CEO may be the reviewer, however, the CEO cannot review a decision he or she has made and such would be referred to the Elected Body.

Also see special circumstances at paragraph 4.5.3 below where an external party would be appropriate.

The IRCO will meet with the reviewer as soon as possible after his or her appointment to discuss the initial investigation, completion of the Assessment of Resources Schedule and Summary Investigation Report and Findings and refer the reviewer to the overarching Policy and this Process. In special circumstances or where an external reviewer is appointed, the IRCO may brief the external reviewer by email and, instead of using the Summary Investigation Report and Findings, refer to the external reviewer’s report.

4.5.2 Elected Body as reviewer

The Elected Body will be the reviewer when the decision being reviewed:

- was made by a Council Committee or the CEO and;
- relates to civic and ceremonial matters and/or;
- can potentially impact a significant proportion of people and/or stated policy positions of Council and/or;
- would be assigned for internal review to an entity or person who would be otherwise conflicted and/or;
- in other circumstances as determined by the CEO or resolution of Council.

In this situation, the IRCO will undertake the practical steps of the internal review regarding facilitation and investigation and complete the supporting documentation outlined in paragraph 4.4 above, to present to the Elected Body for its consideration and decision as reviewer. Where the original decision was made by the Council or a Council Committee, the IRCO will do this in conjunction with the CEO.

Where a request for review has been referred to Council, the applicant will be advised of the date that the report will be presented to the Council and will be given the opportunity to provide a written or verbal submission in relation to the report for Council’s consideration.

4.5.3 External Party as reviewer

Where the decision:

- is a decision of the Elected Body; and/or
- has industry-wide policy impact; and/or
• requires specialist knowledge but Employees with the specialist knowledge have an identified conflict of interest in the matter; and/or
• has significant political controversy

the IRCO will make recommendation to the CEO to refer the application to an expert party / panel together with an estimate of costs. The CEO at his or her discretion will determine whether it is appropriate in the circumstances to appoint an external party / panel as reviewer, and approve the estimate of costs in accordance with Council’s Procurement Policy and supporting processes. Once the CEO has determined that this should occur, and confirmed the IRCO is authorised the necessary expenditure to brief the experts, the IRCO can provide the necessary documentation to brief the expert party / panel.

The IRCO will be seeking a recommendation(s) from the expert party / panel which will then be referred back to the Elected Body for a final determination on the review.

The IRCO may consult with the Local Government Association to obtain the name or names of a recommended expert party or expert parties or panel and refer such for approval by the CEO or Elected Body.

The budget line to fund the expert party / panel will be paid from the budget of the Directorate which made the decision under review and where necessary, a budget adjustment made to cover unbudgeted costs.

4.6 Review Considerations

4.6.1 In carrying out an internal review of a decision, 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.

4.6.2 The reviewer will consider whether the original decision is legally and procedurally correct having regard to the following (where relevant and not restricted to), that the original:

• decision maker had the power to made the decision;
• 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;
• 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;
• decision maker had no conflict of interest, bias or perceived bias;
• decision maker ensured that the findings of fact were based on evidence;
• decision was reasonable; and
• decision maker considered any relevant legislation, policies or processes.

The reviewer will also consider whether a different decision based on the evidence available or new evidence provided or found provides an improved outcome.

4.6.3 Refusal to consider an application

In addition to those matters which fall out of the scope of the overarching Internal Review of Council Decision Policy, Council or the CEO as the case may be is entitled under the Local Government Act to refuse to consider an application for review if:
a) the application is made by a Council Employee and relates to an issue concerning his or her employment;

b) it appears that the application is frivolous or vexatious; or

[Note that where a matter has been referred to the Local Government Association Mutual Liability Scheme (LGAMLS) in respect to a claim or potential claim against the Council or in response to a threat of legal action against the Council, an application for review of a decision in connection with that claim or action (including the decision to refer the matter to the LGAMLS) will be vexatious].

c) the applicant does not have a sufficient interest in the matter; or

d) the application for an internal review has been made later than 6 months from when the applicant was advised of the original decision - unless there are exceptional circumstances for Council, or the CEO as the case may be, to allow an internal review process.

Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.

4.6.4 Providing Procedural Fairness
The reviewer will observe the principles of procedural fairness when undertaking the review so that:

- an applicant is entitled to put forward information and materials in support of the application for review;

- an applicant is informed of the proposed outcome of the review, has the opportunity to make submissions to the reviewer on the outcome and have these submissions taken into account; and

- the reviewer must not have a bias or perceived bias when undertaking the review.

4.6.5 Determination of review
When the reviewer is:

- the Elected Body - it should determine whether to affirm, vary or revoke the original decision;

- a Council Employee - they may determine whether to affirm, vary or revoke the original decision if authority to make the decision has been delegated to them. If the reviewer does not have a delegation enabling the making of the decision, then the reviewer should report the outcome of the review to the Elected Body (or delegate) for a determination as to whether the decision should be affirmed, varied or revoked;

- an external person or body -
  - if the original decision was made by the CEO, Council Committee Elected Body, then the external person or body should report their recommendation(s) from the review to the Elected Body for a determination as to whether the decision should be affirmed, varied or revoked.
If the original decision was made by an Employee or a person acting on behalf of Council who is not the CEO, and the power to make the original decision has been delegated by the Elected Body to the CEO, then the external person or body should report their recommendation(s) from the review to the CEO for a determination as to whether the decision should be affirmed, varied or revoked.

In the event that the power to make the original decision has not been delegated to the CEO (i.e. if it has been delegated to an Employee or Council officer directly etc.), or the CEO has a conflict of interest in the matter then the external person or body should report their recommendation(s) from the review to a senior Worker who has been delegated the power to make the original decision for a determination as to whether the decision should be affirmed, varied or revoked.

Note: an external reviewer cannot vary or revoke a decision made by or on behalf of Council.

4.6.6 Remedies
Remedies are available to the reviewer, if it is determined that the original decision was incorrect either legally, procedurally or meritously, or that an improved outcome can be determined, in terms of one or more as follows:

- an explanation
- an admission of fault and, where reasonably practicable, a change of decision
- a recommended change to policy, process or practice*
  *note: any changes are ultimately a decision for the Council or CEO, depending on the relevant delegations. The reviewer should liaise with the CEO and/or CMT at the earliest opportunity to make them aware of any potential recommendation and discuss the impact on Council resources should the change be implemented.
- a correction of misleading records
- financial compensation including a refund of any fees**
  **note: only the Elected Body and the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial. This will only occur after consultation by the IRCO with the Local Government Association Mutual Liability Scheme at the earliest possible opportunity in the investigation.
- the waiving of a debt
- the remission of a penalty
- disciplinary action under the relevant Code of Conduct, where appropriate
- referral of a matter to an external agency for further investigation or prosecution if it involves allegations of fraud / corruption
- apology***
  ***note: where circumstances are such that it is not reasonably practicable to return the applicant to his/her original situation, or to rectify the outcome of the decision through application of the above remedies, it may only be possible for the reviewer to recommend that an apology be offered.

If an apology is required and then approved in a resolution by the Elected Body (as reviewer) or by the CEO (if a Director or Manager is the reviewer), it will be included within the determination letter and the applicant will be advised that appropriate action will be taken to
prevent the problem from being repeated.

To support development of a potential remedy, the reviewer may recommend mediation, conciliation or neutral evaluation.

4.6.7 Reporting decision of review to the applicant
Where the Elected Body is the reviewer, the IRCO on its behalf will:

- prepare the Summary Investigation Report and Findings and determination letter to reflect the resolution and forward it to the applicant within 5 days of the Council meeting and
- provide information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an Employee, including the CEO is the reviewer:

- the reviewer will use the relevant content of the Summary Investigation Report and Findings to draft a provisional determination letter and provide this to the IRCO to forward to the applicant with a request for a response for further feedback / new information within 10 business days; and
- if the applicant provides a response, the reviewer must take into consideration any new information, response or feedback provided.
- if the applicant provides no further information within that time, the IRCO will advise the reviewer so that they can confirm the provisional determination in writing, along with information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an external panel / body is the reviewer, the reviewer must provide their full draft report of their provisional determination to the applicant and allow a reasonable opportunity for the applicant to provide a response to the draft report, further feedback or any new information. Any response, further feedback or new information provided by the applicant should be considered by the external panel / body prior to issuing their final report.

Where there are legal or other reasons that warrant confidentiality in relation to the full draft report or Summary of Investigation Report and Findings, either in part or full, the reviewer will ensure that appropriate measures are taken including (but not limited to):

- redacting parts of the full draft report of the provisional determination, or the Summary Investigation Report and Findings (as the case may be) before providing it to the applicant;
- providing the full draft report of the provisional determination, or the Summary Investigation Report and Findings (as the case may be) to the applicant in confidence;
- not providing the full draft report of the provisional determination, or the Summary Investigation Report and Findings (as the case may be) to the applicant. However, the applicant must be informed of the provisional determination of their internal review application and allowed a reasonable
opportunity to respond and/or provide further information in response to the provisional determination.

However, in taking appropriate measures, the reviewer must ensure that procedural fairness is observed in accordance with this Process and the Policy (see in particular paragraph 4.6.4 of this Process).

4.7 After the Review

4.7.1 Updating the Register
The IRCO will update the Register of Section 270 internal Reviews in Council’s EDRMS to include details of the application and the outcome of the review.

4.7.2 Reporting to the Corporate Management Team
Any recommendations for service improvement agreed by the Council or CEO arising from an internal review process will be actioned by the IRCO to the relevant Director or CEO for implementation.

4.7.3 Reporting to the Elected Body
The Governance Advisor or delegate will prepare and submit to the Elected Body an annual report each July which includes the following information about internal review applications requested within the previous 12 months:

- the number of applications for review made;
- the kinds of matters to which the applications relate;
- the outcome of applications;
- a statement to quantify the resources used for each review and associated costs with an attached Assessment of Resources Schedule;
- a summary of how the outcomes have been used to improve Council’s customer service, policies and processes; and
- such other matters as may be prescribed by the Regulations.

4.7.4 Reporting to the Community
The information outlined in paragraph 4.7.3 above will also be included in Council’s Annual Report as required under the Local Government Act.

5. Training

5.1 Elected Members, Directors and Managers will receive training in this process during their induction and refresher training as required.

6. Documents to Implement Process

Written application to request an Internal Review
Letter to applicant confirming receipt of application
Section 270 Review of Investigation Template (B3812)
Section 270 Assessment of Resources Schedule (B3812)
Section 270 Summary Investigation Report and Findings (B3812)
Determination letter (B3812)
Annual report compiling Section 270 applications and determinations
7. Legislation and References

Local Government Act Section 270

8. Review

8.1 This Process will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council's need changes.

SIGNED: [Signature]  
DATE: 20 August 2019

Mayor Michael Lange
14 February 2020

Shelley James and Robbert Sennef

Dear Shelley and Bob,

APPLICATION FOR AN INTERNAL REVIEW OF A COUNCIL DECISION UNDER SECTION 270 OF THE LOCAL GOVERNMENT ACT – BIG PROJECT PRIORITISATION AND FINANCIAL MODELLING

I refer to and acknowledge receipt of your application for an internal review of a Council decision under section 270 of the Local Government Act 1999, received at our Nuriootpa office on Monday, 10 February 2020. The decision you are seeking a review of is the decision of Council at its meeting on 20 August 2019, with regards to the next steps of the Big Project prioritisation and financial modelling (item 7.2.1.8 on the Council meeting minutes and hereinafter referred to as the “Decision”).

Council’s Internal Review of Council Decision Policy and Process (the “Policy” and “Process” respectively) set out the mechanism and procedure for how such internal review requests will be carried out. Copies of the Policy and Process are enclosed for your information.

Please note that we are seeking legal advice on this matter. We will be in touch with you in due course.

Please do not hesitate to contact me in writing (email rmatin@barossa.sa.gov.au) if you have any questions.

Sincerely,

Rugiyya Martin
Internal Review Contact Officer
Governance Advisor
The Barossa Council

Enc.-

Internal Review of Council Decision Policy
Internal Review of Council Decision Process
THE BAROSSA COUNCIL
INTERNAL REVIEW OF COUNCIL DECISION POLICY

<table>
<thead>
<tr>
<th>Corporate Plan Link:</th>
<th>6.2 Ensure that Council's policy and process frameworks are based on principles of sound governance and meet legislative requirements.</th>
</tr>
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<tbody>
<tr>
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</table>

1. Purpose

1.1 The Barossa Council ("Council"), which includes its committees, employees, contractors and Elected Members, make decisions which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

1.2 Council is committed to open, responsive and accountable government. This includes providing processes by which those who believe they have been adversely affected by a Council decision can have their complaints considered.

1.3 Section 270 of the Local Government Act 1999 ("the Act") requires Council to maintain policies, practices and procedures for dealing with requests for service and complaints including a procedure about "the review of decisions of:

(a) the council;
(b) employees of the council;
(c) other persons acting on behalf of the council."

Accordingly, this Policy provides for a procedurally fair, consistent and structured review for any person alleging adverse impact as a result of a decision made by Council or its delegates.

2. Scope

2.1 When decisions are subject to review under this Policy

2.1.1 This Policy and its supporting Internal Review of a Council Decision Process commence where a written application for an internal review of a decision, pursuant to Section 270 of the Act is received by Council, or a complaint...
escalates in accordance with Council's Customer Service Policy and supporting Processes.

2.1.2 Decisions of Council, employees of Council and other persons acting on behalf of Council, may be subject to review under this Policy.

2.1.3 A decision is made when a matter, issue or query is actually determined. Once a matter, issue or query is determined, the decision may be open to review in accordance with this Policy.

2.1.4 The nature of this review is both a merits review and process review which could lead to the original decision being affirmed, varied or revoked.

2.2 When decisions are not subject to review under this Policy

2.2.1 Council action not a decision

Not all actions by Council, its employees or another person acting on behalf of Council will be a decision - and therefore cannot be reviewed. For example, actions taken during the process of decision-making (i.e. investigations, requests for further information, internal consideration of the matter or referral of the matter to an external adviser) are not decisions.

2.2.2 Other legislation governs review of specific type of decision

Some decisions made by Council, its employees or on behalf of Council are subject to other review or appeal processes set out in legislation. This Policy cannot override or operate inconsistently with those legislative processes. So where legislation provides for the review of, or appeal from, a type of decision, a decision of that type will not be reviewed under this Policy.

Examples include:

a) objections to valuations made by the Council;

b) appeals against orders made pursuant to Section 254 of the Local Government Act 1999;

c) appeals against the issuing of litter abatement notices under the Local Nuisance and Litter Control Act 2016;

d) appeals against destruction and control orders issued under the Dog and Cat Management Act 1995;

e) review of an expiation notice under the Expiation of Offences Act 1996; and


2.2.3 Other legislation requires specific internal review process

Where legislation provides for a specific way to conduct an internal review process, that process will apply rather than this Policy.

For example, internal review of a determination under the Freedom of Information Act or withdrawal of an expiation notice issued by the Council.
under Section 16 of the Expiation of Offences Act will be conducted in accordance with those legislative processes.

2.2.4 Review cannot occur in the circumstances

Some decisions made by Council, its employee or on behalf of Council are not subject to any review according to either express legislation or by necessary implication where a decision has an immediate effect under legislation from the time the decision is made.

For example, some development approvals under the Development Act are intended to have operative effect from the time the decision is made and are not capable of being varied or revoked by Council.

2.2.5 Other Council processes govern review

In the absence of legislation, where other Council protocols require certain appeal processes, those processes will apply rather than this Policy and supporting process. For example:

- Employment related matters which are conducted in accordance with the Council’s Enterprise Agreement and Human Resources Framework
- Commonwealth Home Support Program Services, where complaint processes are defined in relevant contracts.

2.2.6 Matters that are frivolous or vexatious, related to employment, or where the applicant does not have sufficient interest in the matter

In accordance with section 270(4) of the Local Government Act 1999, Council or a person assigned to consider the application may refuse to consider an application for review if:-

- The application is made by an employee of Council and relates to an issue concerning his or her employment – these types of matters will be managed in accordance with Council’s Human Resource Management Policy, and associated policies and processes; or
- It appears that the application is frivolous or vexatious; or
- The applicant does not have a sufficient interest in the matter.

2.3 Alternative methods of resolution

While Council prefers to work with applicants to resolve requests for internal review promptly and effectively, an applicant will always retain the right to seek other forms of resolution, such as to contact the Ombudsman or the Office for Public Integrity, or to take legal action at any time.
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4. Policy Statement

4.1 This Policy is based on five key principles:

- **Fair treatment:** which requires impartiality, confidentiality and transparency at all stages of the process;

- **Accessibility:** through broad public awareness about Council’s policies and processes and a range of contact options, any person can contact Council;

- **Responsiveness:** through the provision of sufficient resources, well trained staff and ongoing review and improvement of Council’s system;

- **Efficiency:** through prompt resolution at an organisational level that reflects the level of complexity; and

- **Co-ordinated approach across Council teams** where the matter under internal review overlaps the responsibilities of various teams.

4.2 Additionally, Council encourages Alternative Dispute Resolution where appropriate and such methods will be undertaken in accordance with Section 271 of the Local Government Act.

4.3 Application under this Policy relating to Rates

If Council receives an application for an internal review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with promptly. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the Local Government Act (eg remission or postponement of payment, issuing of fines and interest, particular land use categorisation).

Council cannot review its decision relating to the setting and declaration of rates.

4.4 Remedies

4.4.1 Where the internal review upholds the applicant’s complaint, a remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy chosen will be proportionate and appropriate to any issues identified and take account of what the applicant is seeking as an outcome.

4.4.2 As a general principle, the applicant will, so far as reasonably practicable, be put in the position he or she would have been in, had the original decision not been made.

4.4.3 Only the Elected Body itself and / or the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial and this will only occur after consultation with the Local Government Association’s Mutual Liability Scheme.

Internal Review of Council Decision Policy approved by Council on 20 August 2019

This electronic copy is the approved version and is stored in Council’s Record Management System (HPE Content Manager). Printed copies are considered uncontrolled. Before using a printed copy please verify that it is the current version.

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5. Supporting Process

Internal Review of Council Decision Process

6. Related Policies

Customer Service Policy

7. Legislation and References

Sections 270 and 271 Local Government Act 1999
Ombudsman SA: Right of Review: A Guideline Policy and Procedure for Councils (June 2017)

8. Review

8.1 This Policy will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council’s need changes.

9. Further Information

9.1 This Policy is available on Council’s website at www.barossa.sa.gov.au. It can also be viewed electronically at Council’s principal office at 43-51 Tanunda Road, Nuriootpa and all Council branches, during ordinary business hours. A copy of this Policy can be obtained at those venues upon payment of a fixed fee.

9.2 Complaints regarding this Policy or its application can be made to the Customer Service team on 8563 8444 or barossa@barossa.sa.gov.au at first instance, who will refer you to the most appropriate officer according to Council’s Complaints Handling Policy (see clause 9.1 above for availability).

Signed: _______________________________ Dated: 20 August 2019
Mayor Michael Lange
THE BAROSSA COUNCIL
INTERNAL REVIEW OF COUNCIL DECISION PROCESS

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<td>HPE Content Manager Ref:</td>
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1. Overview

This Process specifically outlines:

- how and when an applicant can request an internal review of a Council decision; and
- the roles and responsibilities of the Council administration, the Internal Review Contact Officer, the Reviewer and the Elected Members to affect a fair, consistent and structured approach in dealing with each request.

2. Core Components

Complaints Handling Framework and when to use the Internal Review Process
Applying for an Internal Review
Acknowledging an Internal Review Application
Commencing the Preliminary Investigation
Assignment of Application to Reviewer
Review Considerations
After the Review

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<td>c) An employee of a contractor or sub-contractor; or</td>
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<td>d) An employee of a labour hire company who has been assigned to work in the person’s business or undertaking; or</td>
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<td>e) An outworker; or</td>
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<td>f) An apprentice or trainee; or</td>
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<td>g) A student gaining work experience; or</td>
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<td>h) A volunteer of Council; or</td>
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<td>i) A person of a prescribed class.</td>
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<td>[as defined in the WHS Act 2012 (7)].</td>
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4. Process

4.1 Complaints Handling Framework and when to use this Internal Review Process

Wherever practicable, customer complaints regarding a Council decision should be referred for immediate resolution to Council's Customer Service Policy and Complaint Handling Process.

The Complaint Handling Process consists of three tiers to manage and resolve complaints:

4.1.1 Immediate response to resolve the complaint
All Workers are empowered to handle complaints in the first instance and it is preferable that a complaint is dealt with promptly at the initial point of contact and at the appropriate Worker level.

4.1.2 Complaint escalated to a more senior Worker
A complaint will be directed to a senior Worker in the Council, where the complaint would be better handled at that level. This may occur, for example, where a Worker has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council team.

4.1.3 Internal review of a Council decision
An internal review will generally apply when matters cannot be resolved under the other two tiers.

Internal review of a Council decision enables the Council to reconsider all the evidence relied on to make the original decision, and additional available evidence if relevant.

However, a referral directly to this third tier will occur when a decision was:

- made by the Elected Body; or
- referred by the applicant directly to the Ombudsman and the Ombudsman has referred the decision back to the Council for an internal review under Section 270 of the Local Government Act 1999 ("the Act").

In such cases, the complaint must be dealt with in accordance with this Process.

However, subject to Council's Internal Review of Council Decisions Policy and this Process, applicants may use the section 270 Internal Review mechanism at any time to review a decision made by Council or on behalf of Council.

4.2 Applying for a review

4.2.1 Who can apply for a review
A person with a sufficient interest in a decision of Council, or its delegate, may make a written application for a review of that decision.

A person who is not the direct subject of a decision may still have a sufficient interest in the decision to seek a review under this Process. For example, a person may
have a sufficient interest in a Council decision regarding the number of dogs which may be kept within a neighbour’s property.

4.2.2 Timeframe to apply
An application for a review of a decision must be made within 6 months of that original decision being made.

However, in exceptional circumstances an application for internal review which is lodged outside of this 6 months may still be considered for internal review by the Council or CEO, as the case may be.

4.2.3 Assistance for the applicant – Internal Review Contact Officer
It is essential that no one is excluded from lodging an application for internal review because of difficulties they may have representing themselves.

An Internal Review Contact Officer (IRCO) is appointed by the CEO as the initial point of contact for applicants. The IRCO will be the Governance Advisor or in their absence, a delegate appointed by the CEO.

The IRCO may assist an applicant document their reasons for seeking an internal review, in addition to arranging access to interpreters, aids or advocates to ensure that an applicant is treated equitably.

A person seeking review of a Council decision who attends at the Council’s offices personally or by telephone call, and all written applications for review should be immediately referred to the IRCO.

The role of the IRCO is to:

- explain the process to the applicant and explore alternative options to resolve the matter, such as mediation or conciliation prior to an application for review where possible;
- acknowledge the receipt of an application for review;
- maintain a register of all applications for review received and the outcomes of the applications;
- outline the timeframes involved and the action to be taken in the first instance;
- undertake a preliminary investigation to determine whether the matter falls within the scope of the Policy and Process and what actions have already been taken to try to resolve the matter;
- keep the applicant informed of progress
- if the matter does not fall within the scope of the Policy and Process, to inform the applicant, and provide alternative avenues of review or appeal, where applicable;
- ensure adequate records are maintained; and
- report to Council at prescribed intervals on all applications lodged for review.
4.2.4 How to apply for a review

While there is no standard template that the applicant needs to use, he or she must set out in writing:

- the decision they are seeking to have reviewed and their interest in that decision;
- the reasons why they believe the decision is wrong;
- what outcome is sought; and
- their daytime contact details.

Although Council can be expected to have information relevant to the matter under internal review, an application may also include new evidence to support the application.

Applications must be made in writing and addressed to the Internal Review Contact Officer and forwarded marked confidential via:

- post to: The Barossa Council, PO Box 867, Nuriootpa SA 5355
- email to: barossa@barossa.sa.gov.au
- fax to: 8563 8461
- in person at the Nuriootpa Office at 48-51 Tanunda Road, Nuriootpa SA 5355 or any of the Council branches at Angaston, Lyndoch, Mount Pleasant and Tanunda.

4.2.4 Cost to apply for a review

There is no fee charged to apply for an internal review.

4.3 Acknowledging an Application for Review

The IRCO will confirm receipt of the internal review application within 5 business days and also advise the applicant of the expected timeframe for processing the matter where possible.

4.4 Commencing the Preliminary Investigation

4.4.1 Within 5 business days of receipt of the internal review application, the IRCO will:

- establish an EDRMS container with agreed restricted access;
- assess whether the application falls within the scope of the Policy and Process and if the matter does not fall within the scope of the Policy and Process, inform the applicant, and provide alternative avenues of review or appeal;
- meet with the CEO to determine a reviewer or if the decision under review was made by the CEO, then with the Mayor or in his/her absence, the Deputy Mayor, to advise of the process (see paragraph 4.5 below);
- create a summary report using the Section 270 Review Record of Investigation template to provide to the appointed reviewer; and
- outline the resources expended to date within the Section 270 Assessment of Resources Schedule.

4.4.2 The IRCO and reviewer will use their best efforts to finalise an internal review within 21 business days. However if the decision is to be reviewed by the Elected Body, a committee, or an external panel or party there may be delays caused by meeting cycle timelines. In more complex cases, an internal review may take longer.

4.4.3 Except where an external party has been appointed as reviewer, the IRCO will regularly inform the applicant of progress, either by email, letter or telephone. The IRCO will record all such contact in the Section 270 Review Record of Investigation
and Assessment of Resources templates. Where an external party has been appointed as the reviewer, the external party must inform the applicant of progress either directly (preferred) or if this is not possible, via the IRCO.

4.5 Assignment of Application to Reviewer

4.5.1 CEO, Director or Manager as reviewer
Where the decision was made by an Employee of Council (excluding the CEO), the IRCO and CEO will together determine who will be the reviewer. In this case, the reviewer will generally be one of the Directors who have no conflict or previous dealings with the complaint. If this is not possible, a member of the Organisational Management Group will be appointed as the reviewer.

Alternatively but not ordinarily, the CEO may be the reviewer, however, the CEO cannot review a decision he or she has made and such would be referred to the Elected Body.

Also see special circumstances at paragraph 4.5.3 below where an external party would be appropriate.

The IRCO will meet with the reviewer as soon as possible after his or her appointment to discuss the initial investigation, completion of the Assessment of Resources Schedule and Summary Investigation Report and Findings and refer the reviewer to the overarching Policy and this Process. In special circumstances or where an external reviewer is appointed, the IRCO may brief the external reviewer by email and, instead of using the Summary Investigation Report and Findings, refer to the external reviewer's report.

4.5.2 Elected Body as reviewer
The Elected Body will be the reviewer when the decision being reviewed:

- was made by a Council Committee or the CEO and;
- relates to civic and ceremonial matters and/or;
- can potentially impact a significant proportion of people and/or stated policy positions of Council and/or;
- would be assigned for internal review to an entity or person who would be otherwise conflicted and/or;
- In other circumstances as determined by the CEO or resolution of Council.

In this situation, the IRCO will undertake the practical steps of the internal review respecting facilitation and investigation and complete the supporting documentation outlined in paragraph 4.4 above, to present to the Elected Body for its consideration and decision as reviewer. Where the original decision was made by the Council or a Council Committee, the IRCO will do this in conjunction with the CEO.

Where a request for review has been referred to Council, the applicant will be advised of the date that the report will be presented to the Council and will be given the opportunity to provide a written or verbal submission in relation to the report for Council’s consideration.

4.5.3 External Party as reviewer
Where the decision:

- is a decision of the Elected Body; and/or
- has industry-wide policy impact; and/or
• requires specialist knowledge but Employees with the specialist knowledge have an identified conflict of interest in the matter; and/or
• has significant political controversy

the IRCO will make recommendation to the CEO to refer the application to an expert party / panel together with an estimate of costs. The CEO at his or her discretion will determine whether it is appropriate in the circumstances to appoint an external party / panel as reviewer, and approve the estimate of costs in accordance with Council’s Procurement Policy and supporting processes. Once the CEO has determined that this should occur, and confirmed the IRCO is authorised the necessary expenditure to brief the experts, the IRCO can provide the necessary documentation to brief the expert party / panel.

The IRCO will be seeking a recommendation(s) from the expert party / panel which will then be referred back to the Elected Body for a final determination on the review.

The IRCO may consult with the Local Government Association to obtain the name or names of a recommended expert party or expert parties or panel and refer such for approval by the CEO or Elected Body.

The budget line to fund the expert party / panel will be paid from the budget of the Directorate which made the decision under review and where necessary, a budget adjustment made to cover unbudgeted costs.

4.6 Review Considerations

4.6.1 In carrying out an internal review of a decision, 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.

4.6.2 The reviewer will consider whether the original decision is legally and procedurally correct having regard to the following (where relevant and not restricted to), that the original:

• decision maker had the power to made the decision;
• 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;
• 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;
• decision maker had no conflict of interest, bias or perceived bias;
• decision maker ensured that the findings of fact were based on evidence;
• decision was reasonable; and
• decision maker considered any relevant legislation, policies or processes.

The reviewer will also consider whether a different decision based on the evidence available or new evidence provided or found provides an improved outcome.

4.6.3 Refusal to consider an application

In addition to those matters which fall out of the scope of the overarching Internal Review of Council Decision Policy, Council or the CEO as the case may be is entitled under the Local Government Act to refuse to consider an application for review if:
a) the application is made by a Council Employee and relates to an issue concerning his or her employment;

b) it appears that the application is frivolous or vexatious; or

[Note that where a matter has been referred to the Local Government Association Mutual Liability Scheme (LGAMLS) in respect to a claim or potential claim against the Council or in response to a threat of legal action against the Council, an application for review of a decision in connection with that claim or action (including the decision to refer the matter to the LGAMLS) will be vexatious].

c) the applicant does not have a sufficient interest in the matter; or

d) the application for an internal review has been made later than 6 months from when the applicant was advised of the original decision - unless there are exceptional circumstances for Council, or the CEO as the case may be, to allow an internal review process.

Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.

4.6.4 Providing Procedural Fairness

The reviewer will observe the principles of procedural fairness when undertaking the review so that:

- an applicant is entitled to put forward information and materials in support of the application for review;

- an applicant is informed of the proposed outcome of the review, has the opportunity to make submissions to the reviewer on the outcome and have these submissions taken into account; and

- the reviewer must not have a bias or perceived bias when undertaking the review.

4.6.5 Determination of review

When the reviewer is:

- the Elected Body – it should determine whether to affirm, vary or revoke the original decision;

- a Council Employee - they may determine whether to affirm, vary or revoke the original decision if authority to make the decision has been delegated to them. If the reviewer does not have a delegation enabling the making of the decision, then the reviewer should report the outcome of the review to the Elected Body (or delegate) for a determination as to whether the decision should be affirmed, varied or revoked;

- an external person or body –
  
  o if the original decision was made by the CEO, Council Committee Elected Body, then the external person or body should report their recommendation(s) from the review to the Elected Body for a determination as to whether the decision should be affirmed, varied or revoked.
If the original decision was made by an Employee or a person acting on behalf of Council who is not the CEO, and the power to make the original decision has been delegated by the Elected Body to the CEO, then the external person or body should report their recommendation(s) from the review to the CEO for a determination as to whether the decision should be affirmed, varied or revoked.

In the event that the power to make the original decision has not been delegated to the CEO (i.e. if it has been delegated to an Employee or Council officer directly etc.), or the CEO has a conflict of interest in the matter then the external person or body should report their recommendation(s) from the review to a senior Worker who has been delegated the power to make the original decision for a determination as to whether the decision should be affirmed, varied or revoked.

Note: an external reviewer cannot vary or revoke a decision made by or on behalf of Council.

4.6.6 Remedies

Remedies are available to the reviewer, if it is determined that the original decision was incorrect either legally, procedurally or meritously, or that an improved outcome can be determined, in terms of one or more as follows:

- an explanation
- an admission of fault and, where reasonably practicable, a change of decision
- a recommended change to policy, process or practice*
  
  *note: any changes are ultimately a decision for the Council or CEO, depending on the relevant delegations. The reviewer should liaise with the CEO and/or CMT at the earliest opportunity to make them aware of any potential recommendation and discuss the impact on Council resources should the change be implemented.
- a correction of misleading records
- financial compensation including a refund of any fees**
  
  **note: only the Elected Body and the CEO are authorised to offer financial compensation in cases where there is a loss that is considered substantial. This will only occur after consultation by the IRCO with the Local Government Association Mutual Liability Scheme at the earliest possible opportunity in the investigation.
- the waiving of a debt
- the remission of a penalty
- disciplinary action under the relevant Code of Conduct, where appropriate
- referral of a matter to an external agency for further investigation or prosecution if it involves allegations of fraud / corruption
- apology***

  ***note: where circumstances are such that it is not reasonably practicable to return the applicant to his/her original situation, or to rectify the outcome of the decision through application of the above remedies, it may only be possible for the reviewer to recommend that an apology be offered.

If an apology is required and then approved in a resolution by the Elected Body (as reviewer) or by the CEO (if a Director or Manager is the reviewer), it will be included within the determination letter and the applicant will be advised that appropriate action will be taken to
prevent the problem from being repeated.

To support development of a potential remedy, the reviewer may recommend mediation, conciliation or neutral evaluation.

4.6.7 **Reporting decision of review to the applicant**

Where the Elected Body is the reviewer, the IRCO on its behalf will:

- prepare the **Summary Investigation Report and Findings** and determination letter to reflect the resolution and forward it to the applicant within 5 days of the Council meeting and

- provide information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an Employee, including the CEO is the reviewer:

- the reviewer will use the relevant content of the **Summary Investigation Report and Findings** to draft a provisional determination letter and provide this to the IRCO to forward to the applicant with a request for a response for further feedback / new information within 10 business days; and

- if the applicant provides a response, the reviewer must take into consideration any new information, response or feedback provided.

- if the applicant provides no further information within that time, the IRCO will advise the reviewer so that they can confirm the provisional determination in writing, along with information about alternative remedies, including any rights of appeal, the right to seek an external review by the Ombudsman or to make a complaint to the Office for Public Integrity.

Where an external panel / body is the reviewer, the reviewer must provide their full draft report of their provisional determination to the applicant and allow a reasonable opportunity for the applicant to provide a response to the draft report, further feedback or any new information. Any response, further feedback or new information provided by the applicant should be considered by the external panel / body prior to issuing their final report.

Where there are legal or other reasons that warrant confidentiality in relation to the full draft report or **Summary of Investigation Report and Findings**, either in part or full, the reviewer will ensure that appropriate measures are taken including (but not limited to):

- redacting parts of the full draft report of the provisional determination, or the **Summary Investigation Report and Findings** (as the case may be) before providing it to the applicant;

- providing the full draft report of the provisional determination, or the **Summary investigation Report and findings** (as the case may be) to the applicant in confidence;

- not providing the full draft report of the provisional determination, or the **Summary Investigation Report and Findings** (as the case may be) to the applicant. However, the applicant must be informed of the provisional determination of their internal review application and allowed a reasonable
opportunity to respond and/or provide further information in response to the provisional determination.

However, in taking appropriate measures, the reviewer must ensure that procedural fairness is observed in accordance with this Process and the Policy (see in particular paragraph 4.6.4 of this Process).

4.7 After the Review

4.7.1 Updating the Register
The IRCO will update the Register of Section 270 internal Reviews in Council’s EDRMS to include details of the application and the outcome of the review.

4.7.2 Reporting to the Corporate Management Team
Any recommendations for service improvement agreed by the Council or CEO arising from an internal review process will be actioned by the IRCO to the relevant Director or CEO for implementation.

4.7.3 Reporting to the Elected Body
The Governance Advisor or delegate will prepare and submit to the Elected Body an annual report each July which includes the following information about internal review applications requested within the previous 12 months:

a) the number of applications for review made;
b) the kinds of matters to which the applications relate;
c) the outcome of applications;
d) a statement to quantify the resources used for each review and associated costs with an attached Assessment of Resources Schedule;
e) a summary of how the outcomes have been used to improve Council’s customer service, policies and processes; and
f) such other matters as may be prescribed by the Regulations.

4.7.4 Reporting to the Community
The information outlined in paragraph 4.7.3 above will also be included in Council’s Annual Report as required under the Local Government Act.

5. Training

5.1 Elected Members, Directors and Managers will receive training in this process during their induction and refresher training as required.

6. Documents to Implement Process

Written application to request an Internal Review
Letter to applicant confirming receipt of application
Section 270 Review of Investigation Template (B3812)
Section 270 Assessment of Resources Schedule (B3812)
Section 270 Summary Investigation Report and Findings (B3812)
Determination letter (B3812)
Annual report compiling Section 270 applications and determinations
7. Legislation and References

Local Government Act Section 270

8. Review

8.1 This Process will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within four (4) years or more frequently if legislation or Council’s need changes.

SIGNED: ___________________________ DATE: 20 August 2019

Mayor Michael Lange
27 March 2020

Ms Shelley James and Mr Robert Sennef

Dear Shelley,

APPLICATION FOR INTERNAL REVIEW OF A COUNCIL DECISION UNDER SECTION 270 OF THE LOCAL GOVERNMENT ACT – BIG PROJECT PRIORITISATION AND FINANCIAL MODELLING

I refer to previous correspondence and your application, pursuant to section 270 of the Local Government Act 1999 and received on 10 February 2020, for a review of the Council decision at its meeting on 20 August 2019, relating to the Big Project Prioritisation and financial modelling (the “Decision”).

This matter has been referred to me, pursuant to Council’s Internal Review of Council Decision Policy and Process (the “Policy” and “Process” respectively).

You have stated in your application that it relates to another internal review application made by Ms Helen Szuty that was considered by Council at its March meeting. I note that the two applications seek review of the same Council Decision, for the same reasons, and are almost identical, except that your application contains the external reviewer’s draft report as an attachment. I also note that you and Ms Szuty together met with Council’s Governance Advisor on 13 March 2020 to discuss the progress of your application.

Ms Szuty’s application was considered by Council at its meeting on Tuesday, 17 March 2020. Council resolved:

MOVED Cr de Vries that Council, having received and considered the documents:

(i) The independent external party review report and attachments provided by the external reviewer, Ms Felice D’Agostino of Norman Waterhouse Lawyers on 25 February 2020 as regards an application made to review Council’s decision of 20 August 2019 to review the work to prioritise and financially model the Big Project Next Phase and endorse the associated plan (Attachment 1);

(ii) The agenda and attachments, and associated minutes relating to agenda item 7.2.1.8 of the Council meeting of 20 August 2019, being the Chief Executive Officer Report titled ‘The Big Project Prioritisation and Financial Modelling – The Next Phase’ (Attachment 2);

and Council having given due consideration to whether or not the applicant, Ms Helen Szuty, who has made an application for internal review pursuant to section 270 of the Local Government Act to review Council’s decision of 20 August 2019 to review the work to prioritise and financially model the Big Project Next Phase and endorse the associated plan (the “Decision”), has sufficient interest in the Decision:

(1) That Council is satisfied that the applicant, Ms Helen Szuty does not have sufficient interest in the Decision on the basis that:
(a) the applicant has stated her interest is that of being a resident and elector in the Council's area and having experience in local government and an interest in democracy, good governance, transparency, accountability and community engagement;

(b) the applicant's stated interest in the Decision is not over and above the interest of an ordinary resident/elector in the Council's area;

(c) there is no basis for the Council to use its discretion to consider the application notwithstanding the applicant does not have a sufficient interest in the Decision;

(2) That the Council refuse to consider the application to review the Decision pursuant to section 270 of the Local Government Act, on the basis that the applicant does not have sufficient interest in the Decision.

(3) That the Chief Executive Officer notify the applicant of Council's decision and reasons why Council has refused to consider the application.

Seconded Cr Angas

CARRIED 2018-22/66

Please find attached the Council minutes, agenda and attachments for your reference.

In your application, you have stated that you 'believe you have sufficient interest in the Decision', however you have not detailed what that interest is.

Due to your application being almost identical to Ms Szuty's application, and because you have not stated an interest that is over and above that of Ms Szuty, it is my position that you do not have sufficient interest in the Decision. Accordingly, I propose to present your application to Council for consideration with a recommendation that it be refused on the basis that you do not have sufficient interest in the Decision.

As a matter of procedural fairness, before doing so, I seek any submission you wish to make, limited to my recommendation, as to why you think the application should not be refused. Please provide your response in writing at the very latest by 5pm Wednesday 8 April 2020. Please note that due to Council's response to Covid-19, we would prefer any written correspondence to be by email to barossa@barossa.sa.gov.au.

Once received, your response will be presented to Council at its next available meeting for consideration, along with your application and correspondence to date on this matter. Of course, upon consideration, if Council determines to allow your application to proceed in accordance with the Policy and Process, we will notify you accordingly.

Sincerely,

[Signature]

Martin McCarthy
Chief Executive Officer
The Barossa Council

Enc. Extract of Council meeting agenda and attachments – item 7.2.1.4 – 17 March 2020

Extract of Council meeting minutes – item 7.2.1.4 – 17 March 2020
5 April 2020.

Mr. Martin McCarthy,
Chief Executive Officer,
The Barossa Council,
43 – 51 Tanunda Road,
Nuriootpa SA 5355.

Dear Mr. McCarthy,

We note your letter dated Friday the 27th of March 2020 in response to our application dated the 10th of February 2020 for an Internal Review of a Council Decision under Section 270 of the Local Government Act – Big Project Prioritisation and Financial Modelling.

We received your letter on Wednesday the 1st of April 2020.

In your letter dated the 27th of March 2020 you state:

“In your application, you have stated that you ‘believe you have sufficient interest in the Decision’, however you have not detailed what that interest is.”

We believe that not only are we ratepayers and residents of Tanunda, but also, because we live adjacent to the Proposed Barossa Regional Culture Hub and the Proposed Chateau Tanunda Hotel Development at Basedow Road Tanunda, that we have sufficient interest in the Decision.

We believe that you are already very familiar with the precinct of Tanunda in which we live, therefore, we believed that it would be unnecessary for us to spell this out to you in our application.

Later in your letter dated the 27th of March 2020 you state:
“Due to your application being almost identical to Ms Szuty’s application, and because you have not stated an interest that is over and above that of Ms Szuty, it is my position that you do not have sufficient interest in the Decision. Accordingly, I propose to present your application to Council for consideration with a recommendation that it be refused on the basis that you do not have sufficient interest in the Decision.”

We stand by our reasons, detailed in our application dated the 10th of February 2020, requesting an Internal Review of a Council Decision under Section 270 of the Local Government Act – Big Project Prioritisation and Financial Modelling.

We note that for the Ordinary Meeting of The Barossa Council on the 17th of March 2020 the published Debate Agenda featured both 7.2.1.1 Prudential Management Report – Final – Targeted Next Phase Priorities and Associated Analysis of The Big Project as adopted in August 2019 (The Target Plan) B5601 and 7.2.1.4 Section 270 Decision – Matter of Big Project Prioritisation and Financial Modelling B10150 without reference to our application dated the 10th of February 2020 with regard to the same matters.

We further note that in relation to 7.2.1.1 Prudential Management Report – Final – Targeted Next Phase Priorities and Associated Analysis of The Big Project as adopted in August 2019 (The Target Plan) B5601 the Minutes of the Council Meeting held on Tuesday 17 March 2020 record that it was:

“MOVED Cr de Vries that Council having considered the Prudential Management Report pursuant to Section 48 of the Local Government Act, which outlines the financial, economic, risk and strategic and operational alignment of the Target Next Phase Priorities note the sustainable outcomes of the plan based on the plan assumptions and that Council continue to manage the Target Plan in accordance with principles and findings of the Prudential Management Report.

Seconded Cr Johnstone CARRIED 2018-22/60”

We further note that in relation to 7.2.1.4 Section 270 Decision – Matter of Big Project Prioritisation and Financial Modelling B10150 the Minutes of the Council Meeting held on Tuesday 17 March 2020 record that it was:

“MOVED Cr de Vries that Council, having received and considered the documents:

(i) The independent external party review report and attachments provided by the external reviewer, Ms Felice D’Agostino of Norman Waterhouse Lawyers on 25 February 2020 as regards an application made to review Council’s decision of 20 August 2019 to review the work to prioritise and financially
model The Big Project Next Phase and endorse the associated plan (Attachment 1);

(ii) The agenda and attachments, and associated minutes relating to agenda item 7.2.1.8 of the Council meeting of 20 August 2019, being the Chief Executive Officer Report titled ‘The Big Project Prioritisation and Financial Modelling – The Next Phase’ (Attachment 2);

and Council having given due consideration to whether or not the applicant, Ms Helen Szuty, who has made an application for internal review pursuant to section 270 of the Local Government Act to review Council’s decision of 20 August 2019 to review the work to prioritise and financially model The Big Project Next Phase and endorse the associated plan (the “Decision”), has sufficient interest in the Decision:

(1) That Council is satisfied that the applicant, Ms Helen Szuty does not have sufficient interest in the Decision on the basis that:
   (a) the applicant has stated her interest is that of being a resident and elector in the Council’s area and having experience in local government and an interest in democracy, good governance, transparency, accountability and community engagement;
   (b) the applicant’s stated interest is not over and above the interest of an ordinary resident/elector in the Council area;
   (c) there is no basis for the Council to use its discretion to consider the application notwithstanding the applicant does not have a sufficient interest in the Decision;
(2) That the Council refuse to consider the application to review the Decision pursuant to section 270 of the Local Government Act, on the basis that the applicant does not have sufficient interest in the Decision.
(3) That the Chief Executive Officer notify the applicant of Council’s decision and reasons why Council has refused to consider the application.

Seconded Cr Angas

CARRIED 2018-22/66”

We note that Part 2 – Internal Review of council actions, Section 270 – Procedures for review of decisions and requests for services states:

“(a1) A council must develop and maintain policies, practices and procedures for dealing with –

(a) any reasonable request for provision of a service by the council or for the improvement of a service provided by the council; and
(b) complaints about the actions of the council, or other persons acting on behalf of the council.

(a2) The policies, practices and procedures required under subsection (a1) must be directed towards –

(a) dealing with the relevant requests or complaints in a timely, effective and fair way; and

(b) using information gained from the council’s community to improve its services and operations.”

We do not believe that you have dealt with our application for an Internal Review of a Council Decision under Section 270 of the Local Government Act – Big Project Prioritisation and Financial Modelling in a timely, effective and fair way as required by Section 270 (a1) and (a2) of the Local Government Act 1999.

We have forwarded a copy of this letter to the Ombudsman SA for his attention.

Yours sincerely,

Shelley James

Robbert (Bob) Sennef

Cc: Ombudsman SA.
7 April 2020

Ms Shelley James and Mr Robbert Sennef

By email:

Dear Shelley and Bob,

APPLICATION FOR REVIEW UNDER SECTION 270 OF THE LOCAL GOVERNMENT ACT – BIG PROJECT PRIORITISATION AND FINANCIAL MODELLING

Thank you for your letter of 5 April 2020, providing your response to my proposal to put to the Elected Body to refuse to undertake a further review pursuant to section 270 of the Local Government Act 1999, in relation to a decision regarding the Big Project prioritisation and financial modelling.

Your submission will be presented to the Council for its consideration at its next ordinary meeting on 21 April 2020, together with your application and correspondence to date. Please note that the notice and agenda for the meeting will be published on Council’s website [www.barossa.sa.gov.au](http://www.barossa.sa.gov.au) at least three clear days prior to the meeting, and will include the place and time of the meeting.

Following Council’s consideration of this matter, I will advise you of the outcome.

Sincerely,

[Signature]

Martin McCarthy
Chief Executive Officer
The Barossa Council
7.2.2 DEBATE AGENDA – FINANCE

7.2.2.1 MONTHLY FINANCE REPORT (AS AT 31 MARCH 2020)

B411

Author: Senior Accountant

PURPOSE
The Uniform Presentation of Finances report provides information as to the financial position of Council, including notes on material financial trends and transactions.

RECOMMENDATION
That the Monthly Finance Report as at 31 March 2020 be received and noted.

REPORT
Discussion
The Monthly Finance Report (as at 31 March 2020) is attached. The report has been prepared comparing actuals to the Original adopted budget 2019/20 and incorporating the Revised Budgets for September and December.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES
Attachment 1: Monthly Finance Report 31 March 2020

Policy
Budget & Business Plan and Review Policy

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Corporate Plan
How We Work – Good Governance

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

6.3 Align operational strategy to strategic objectives and measure organisational performance to demonstrate progress towards achieving our goals.

6.4 Ensure that decisions regarding expenditure of Council’s budget are based on an assessment of whole of life costs, risks associated with the activity and advice contained within supporting plans.

6.9 Provide access to Council’s plans, policies and processes and communicate with the community in plain English.

6.16 Provide contemporary internal administrative and business support services in accordance with mandated legislative standards and good practice principles.
FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Financial
To enable Council to make effective and strategic financial decisions, a regular up to date high level financial report is provided.

COMMUNITY CONSULTATION
Community Consultation was part of the original budget adoption process in June 2019, as per legislation. This report is advising Council of the monthly finance position compared to that budget.
MONTHLY FINANCE REPORT
AS AT 31 MARCH 2020
FOR YEAR ENDING 30 JUNE 2020

<table>
<thead>
<tr>
<th>Notes</th>
<th>Original Budget (Full-Year)</th>
<th>Revised Budget (Q2) (Full-Year)</th>
<th>Actual Result (Year-to-Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>% Actual Expenditure to Original</td>
<td>$'000</td>
<td>$'000</td>
<td>$'000</td>
</tr>
</tbody>
</table>

Uniform Presentation of Finances

OPERATING ACTIVITIES:

Operating Income 38,457 39,012 36,966
Less Operating Expenses 70.74\% (37,737) (38,828) (26,696)
Operating Surplus / (Deficit) 720 184 10,270

CAPITAL ACTIVITIES:

Net Outlays on Existing Assets Capital
Capital Expenditure on Renewal and Replacement of Existing Assets 1) 54.05\% (6,139) (6,191) (3,318)
Add back Depreciation, Amortisation & Impairment 7,664 7,664 5,748
Add back Proceeds from Sale of Replaced Assets 305 305 166
Subtotal 1,830 1,778 2,596

Net Outlays on New and Upgraded Assets Capital
Capital Expenditure on New and Upgraded Assets 1) 45.50\% (12,700) (13,501) (5,778)
Add back Amounts Received Specifically for New and Upgraded Assets 5,194 1,393 2,471
Add back Proceeds from Sale of Surplus Assets 0 0 409
Subtotal (7,506) (12,108) (2,898)

Net Lending/(Borrowing) for the Financial Year (4,956) (10,146) 9,968
Total % Capital Budget Spent 48.28\%

Reconciliation for the movement in Net Lending / (Borrowing)

Original 2019/20 Full Year Budget Net Lending / (Borrowing) (4,956)
Carried Forward Budget Adjustments: Report on Financial Results. Funds were held for these projects in cash and investments at 30 June 2019. (6,960)
September 2019 Budget Review: Funds required for these items will increase Council’s cash and investments. (691)
December 2019 Budget Review: Funds required for these items will decrease Council’s cash and investments. 2,491

Full Year Revised Budget - Net Lending / (Borrowing) (10,146)

NOTES

1) 2019/20 Capital Expenditure spent to end of March includes:
- Angaston Cemetery Niche Wall $11k
- Angaston Hall Flooring $13k
- Barossa Visitor Centre Interpretative Display/Video Wall $1k, Car Park Sealing - Design Only $20k
- Bridges (including Footbridges) $297k
- Bushgardens Quad Bike $12k
- CWMS $401k
- Depot Upgrades $86k
- Drainage $631k
- Footpaths $52k
- Mt Pleasant Main Street $156k
- Nuriootpa Centennial Park Authority Change Rooms $70k, Half Basketball Court $6k
- Nuriootpa Dog Park $41k
- Nuriootpa Office Air Conditioning $44k, LED Lighting Replacement $8k, Work space improvements $7k
- Nuriootpa Cricket Nets $114k
- Nuriootpa Swimming Pool Tiling $50k
- Playground Equipment $12k
- Road Resealing $314k
- Reserves Irrigation $59k
- Sealed Roads $2,215k
- Talunga Recreation Park Oval Irrigation $15k
- Talunga Tennis Courts Reseal/Drainage $10k
- The Big Project - Angaston Railway Precinct $1,567k
- The Big Project - Angas Recreation Park $15k, Junior Oval $27k
- The Big Project - Barossa Culture Hub $54k
- The Big Project - Lyndoch Recreation Park $32k, Upgrade Lighting $7k
- The Big Project - Tanunda Recreation Park - Oval $7k, Show Hall Upgrade $1,406k, Electrical Upgrade/Lighting $672k
- The Rex Solar Panels $5k, Disabled Parking $1k
- Tolley Reserve Skate Park Half Pipe $103k
- Williamstown QVJP Bridge Entrance Landscaping $18k, Internal Roadways $42k

642
7.3.2 DEBATE AGENDA – MANAGER COMMUNITY AND CULTURE

7.3.2.1 CONSIDERATION AND ADOPTION OF BAROSSA REGIONAL GALLERY COMMITTEE RESOLUTIONS
B10549

PURPOSE
Minutes of the Barossa Regional Gallery Committee meeting held 28 January 2020 are presented for the consideration and adoption by Council.

RECOMMENDATION
That Council, having reviewed the Minutes of the Barossa Regional Gallery Committee meeting held 28 January 2020 adopt the Resolutions contained therein.

REPORT
The consideration and adoption of recommendations of Council committees requires assessment by Council to ensure compliance with Council obligations under section 6(a) of the Local Government Act.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES
Minutes of the Barossa Regional Gallery Committee meeting held 28 January 2020

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Corporate Plan
How We Work – Good Governance

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

6.9 Provide access to Council’s plans, policies and processes and communicate with the community in plain English.

Legislative Requirements
Local Government Act 1999

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS
Council’s adoption of committee resolutions is a risk management tool. There are no financial or resource management consideration.

COMMUNITY CONSULTATION
Not required under legislation or Council’s Public Consultation Policy.
MINUTES
THE MEETING OF THE BAROSSA REGIONAL GALLERY COMMITTEE NO 139
held at the Barossa Regional Gallery, 3 Basedow Road, Tanunda
Tuesday 28th January 2020 commencing at 7.00pm

1.0 Welcome by Chairman:
Steve welcomed all present to the meeting.

1.1 Present:
Steve Kaesler, Kirsty Hage, Cathy Troup, Sally Goers Fox, Peter Heuzenroeder Paul Schluter, Robert Bader and Marie Rothe

1.2 Apologies:
Elizabeth Henderson and David Proeve

2.0 Previous Minutes:
The Minutes of the meeting held 26th November 2019 were accepted as a true and correct record of the proceedings of that meeting.
Moved Kirsty Hage, seconded Peter Heuzenroeder - All agreed

2.1 Business arising from the Minutes:
Nil

3.0 Correspondence:
In: Email through Steve from CEO Martin McCarthy re Public Interest Disclosure Policy. Email tabled and read at Meeting.
Notification from Raelene Falland on behalf of the Tanunda RSL for use of Hall on ANZAC Day for Service.
Out: Steve is responding to Foundation Barossa’s letter tabled and discussed at last meeting.

4.0 Reports:

4.1 Exhibitions:
- First Meeting of the year of Exhibition Committee held today. Transition time for the two new Gallery workers - Rowena Sloane and Cara Boehm.
- All preparation work for upcoming Exhibitions nearing completion - awaiting a couple of confirmations.
- The Collection is being rotated around the Gallery with each new Exhibition.
- Sally reported that Kirsty and her are in contact with FUMA (Flinders University Museum of Art) and have requested some art of ‘Iltja Njarra’ from Alice Springs. 20 pieces of the Hermannsburg Artwork borrowed will be for sale when at the Gallery. Other Artwork from FUMA and personal collections for later Exhibition will not be available for sale. The obtaining of such artwork and historic information is very tricky with ‘white man’ presenting this artwork and showing ‘Arunda’ work in another Aboriginal area.
- Exhibition of Katie Bradley is 13th February at 5.30pm.
- Exhibition of Sabine Deisen & Liam Davies-Brown - date yet to be advised.

4.2 Programming:
- A new Programming Committee has been formed - to look after use of Gallery spaces, Hall, Events, workshops etc.
- Kirsty announced that the Adelaide Fringe Programme will have ‘Regional Fringe on Tour’ in the Barossa Valley on the 14th, 15th and 16th February.
- Three Events to be held at the Gallery :- Sat Feb. 15th - Child friendly Juggling Act
  Sun Feb.16th - Vocali
  Sun Mar. 8th - Illumina Voices - Acapella Group. The Gallery has purchased their show.
- A Programme for Events in the Barossa has been produced for the public.

4.2 Strategic Planning & Actions:
- Council are applying for the next round of BBRF Funding - same as last time - latest round has emphasis on drought affected areas. Executive are still going ahead with application and focusing on being Creative Health related.
4.3 **Strategic Planning & Actions: cont.**
- The Committee raised that despite any further Grants, that would like the air conditioning to the premises be reconsidered for action. The major concern is the expensive upgrade of the electrical supply to the premises. Upgrading the supply to the premises is very important as the supply is at capacity, and the air conditioning upgrade cannot proceed without it.
- Federal Government has released a ‘Drought Affected for Funding List. We are included on that list. If not successful in this next Funding - Council will consider different funding for items e.g. air Conditioning.

4.4 **Kirsty’s Corner:**
- Kirsty reported that the new staff Rowena & Cara are settling into their respective positions.
- The office space is being moved downstairs to the area beside the shop (present storeroom). It will allow direct vision to the shop, privacy and air conditioning.
- Rowena has activated a clean-out of the rear annex, dispersing items no longer required and now items are well organised and there is now more storage space.
- Michael Collett has painted Gallery 2 in a dark grey for the current exhibition and for the foreseeable future. The colour has been well received.
- The upstairs area (former office space) will now be an informal meeting area, a 1 on 1 meeting area and music lesson area.
- Kirsty is instigating measures to tighten event/workshop etc application process incl charges, lease or licences for the building.
- Kirsty is also involved in the restructure and recommendations for the various Council Committees. Looking at current Sec 41 Committees, which are not for profit- don’t manage funds to be more advisory bodies. As such will continue to meet and discuss their area of responsibility and advise the Council. There would be a less formal approach - instead of minutes - notes to be kept, still have access to funds allotted to their area all through Kirsty. Kirsty will bring the Formatted Paper to the next meeting for this committee to discuss in more detail. A special time will be allotted in the next meeting.

4.5 **Liedertafel:**
Liedertafel in recess until end of February - AGM.

4.6.1 **Finance:**
- Kirsty reported that finance tracking well with new staff members. The shop stock is at capacity. Workshop finally self sufficient. Exhibition costs have been allocated to cover exhibitions that require finance to be held at the Gallery. Kirsty is presently drawing up the new budget.

4.6.2 **Cookbooks:**
Cookbooks are now managed through the Gallery Shop - Council. Looking for new outlets to sell books. All enquiries through Kirsty.

4.7 **RSL:**
- On April 25th Tanunda RSL will hold ANZAC mid morning Service in Hall as usual.

4.8 **Building & Maintenance Report:**
- Steve reported that Rob Neis has properly fixed hand rail to passage wall and replaced light bulbs.
- The gallery will be inspected for any asbestos in the next day.

4.9 **Organ:**
- Summer heat has affected the organ and some adjustments had to be made.

5.0 **Other Business:**
- No other Business.

5.1 **Meeting Closed:** 8.15pm
**Date:** 28th January 2020
**Chairperson:** Steve Kaesler  **Minute Secretary:** Marie Rothe
**Next Committee Meeting:** Tuesday 24th March 2020
8.1 CHIEF EXECUTIVE OFFICER - CONFIDENTIAL

8.1.1 LEGAL ADVICE TO COUNCIL FOR COUNCIL’S CONSIDERATION – SECTION 270 OF THE LOCAL GOVERNMENT ACT – INTERNAL REVIEW

The matter of the agenda item being legal advice to Council pursuant to Section 90(3)(h) of the Local Government Act 1999 (“the Act”) being information that must be considered in confidence in order to ensure that Council maintains legal professional privilege.

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 the information must be considered in confidence in order to maintain legal professional privilege.
On balance, the above reasons 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.

**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, ICT System Administrator, ICT Support Officer, and the Minute Secretary, in order to consider in confidence a report relating to Section 90(3)(h) of the Local Government Act 1999, relating to 8.1.1 ‘Legal Advice to Council for Council’s Consideration – Section 270 Of The Local Government Act – Internal Review’ being information that must be considered in confidence in order to ensure that the Council maintains legal professional privilege; 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 maintain legal professional privilege.