



The Barossa Council

MINUTES OF THE MEETING OF THE BAROSSA COUNCIL

held on Tuesday 21 April 2020 commencing at 9.00am in the Council Chambers, 43-51 Tanunda Road, Nuriootpa

1.1 WELCOME

Mayor Bim Lange declared the meeting open at 9.00am.

1.2 MEMBERS PRESENT

Mayor Bim Lange, Crs Leonie Boothby, John Angas, Crs Tony Hurn, David Haebich, Dave de Vries, Russell Johnstone, Don Barrett, Cathy Troup and Carla Wiese-Smith

1.3 LEAVE OF ABSENCE

Nil

1.4 APOLOGIES FOR ABSENCE

Nil

1.5 MINUTES OF PREVIOUS MEETINGS – FOR CONFIRMATION

MOVED Cr de Vries that the Minutes of the Council meeting held on Tuesday 17 March 2020 and Special Council meeting held Thursday 26 March 2020 at 6.30pm, as circulated, be confirmed as a true and correct record of the proceedings of that meeting.

Seconded Cr Haebich

CARRIED 2018-22/93

1.6 MATTERS ARISING FROM PREVIOUS MINUTES

Nil

1.7 PETITIONS

Nil

1.8 DEPUTATIONS

Nil

MOVED Cr Wiese-Smith that the matter relating to Council meeting of 21 April 2020 agenda item 1.10 Question on Notice – Councillor Angas – Impact of Nil Rate Increase for 2020-21 be brought forward for discussion immediately.

Seconded Cr de Vries

CARRIED 2018-22/94

1.10 QUESTION ON NOTICE – COUNCILLOR ANGAS – IMPACT OF NIL RATE INCREASE FOR 2020-21 B10322

MOVED Cr de Vries that Council receive and note the response and that the question and response be placed in the minutes.

Seconded Cr Troup

CARRIED 2018-22/95

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.

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:

	2020/21	9 Year Impact
No Growth	\$844,374	\$8.719M
Growth	\$584,566	\$6.036M

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 it 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.

MOVED Cr Johnstone that Council suspend proceeding pursuant Regulation 20 of the Local Government (Procedures and Meetings) Regulations so that Council and Officers can discuss the policy responses and discuss the questions outlined in the Chief Executive Officers comments to agenda items 1.9 and 1.10 and provide further direction to the Chief Executive Office on how to frame the budget and business plan to achieve a zero percentage based budget; the suspension shall cease at the conclusion of discussion or 30 minutes whichever occurs first.

Seconded Cr de Vries

CARRIED 2018-22/96

SUSPENSION OF PROCEEDINGS - 9.05am

The Council suspended meeting proceedings at 9.05am.

RECOMMENCEMENT OF PROCEEDINGS - 9.37am

The Council recommenced meeting proceedings at 9.37am.

MOVED de Vries that Council receive and note the response and that the question and response be placed in the minutes.

Seconded Cr Miller

CARRIED 2018-22/97

1.9 NOTICE OF MOTION – COUNCILLOR WIESE-SMITH – ZERO PERCENTAGE RATE INCREASE FOR 2020-21 IN RESPONSE TO COVID-19 AND DROUGHT **B10322**

The Chief Executive Officer made Council aware of correspondence from Mr Rogers on Monday 21 April 2020 and that it was emailed it to Elected Members at 7.54am 21 April 2020.

MOVED Cr Boothby 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 general rate revenue increase for the 2020-21 financial year

and further, that the following policy guidance inform development of the budget and supporting documents:

1. New initiatives shall not proceed unless they are legislatively required, address areas of extreme or high risk or deliver significant savings or efficiencies.
2. Additional loan funding will likely be required to support maintenance of existing services
3. Based on the above policy directives, Council will consider the long term impact as part of its consideration of a draft 2020/21 budget once produced and consider service level reviews, cost reductions and revenue strategies over the next 12 month to address the long term financial plan impact.

Seconded Cr Haebich

CARRIED 2018-22/98

PURPOSE

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

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.

1.10 QUESTION ON NOTICE – COUNCILLOR ANGAS – IMPACT OF NIL RATE INCREASE FOR 2020-21 B10322

Refer to Minute page 2020/197

2. MAYOR

2.1 MAYOR'S REPORT

MOVED Cr Hurn that the Mayor's report be received.

Seconded Cr Miller

CARRIED 2018-22/99

3. COUNCILLOR REPORTS

Nil

4. CONSENSUS AGENDA

5. ADOPTION OF CONSENSUS AGENDA

5.1 ITEMS FOR EXCLUSION FROM THE CONSENSUS AGENDA

Nil

5.2 RECEIPT OF CONSENSUS AGENDA

MOVED Cr Hurn that the information items contained in the Consensus Agenda be received and that any recommendations contained therein be adopted.

Seconded Cr Wiese-Smith

CARRIED 2018-22/100

5.3 DEBATE OF ITEMS EXCLUDED FROM THE CONSENSUS AGENDA

Nil

6. VISITORS TO THE MEETING / ADJOURNMENT OF MEETING

6.1 VISITORS TO THE MEETING

Nil

6.2 ADJOURNMENT OF COUNCIL MEETING

Nil

7. DEBATE AGENDA

7.1 MAYOR – DEBATE

Nil

7.2 EXECUTIVE SERVICES - DEBATE

7.2.1. CHIEF EXECUTIVE OFFICER - DEBATE

7.2.1.1 AGENDA MANAGEMENT SYSTEM – BRINGING FORWARD OF PROJECT

B10889

MOVED Cr de Vries 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.

Seconded Cr Wiese-Smith**CARRIED 2018-22/101****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.

REPORTIntroduction

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, Councils 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:

Customisation of Templates and Set Up	\$28,680
Initial Licence Fee	<u>\$10,695</u>
Total	<u>\$39,375</u>

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.

Operating Expenditure	Forward Estimates										
	Starting Year	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Salaries and oncosts											
Materials, Contractors				3,000			3,000			3,000	9,000
IT Licence Fees	0	9,245	9,476	9,713	9,956	10,205	10,460	10,721	10,989	11,264	92,030
IT Support				3,000			3,000			3,000	9,000
Interest											
Total	0	9,245	9,476	15,713	9,956	10,205	16,460	10,721	10,989	17,264	110,030
Other - estimated savings or efficiencies	-37,817	-38,668	-39,538	-40,428	-41,337	-42,267	-43,218	-44,191	-45,185	-46,202	-418,852
Productivity Improvement Ongoing	-37,817	-29,423	-30,062	-24,715	-31,381	-32,063	-26,759	-33,469	-34,196	-28,938	-308,823
Capital Expenditure	Forward Estimates										
	Starting Year	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Contractors / Construction	28,680										
IT Licence Fees	10,695										
IT Support	3,000										
Total	42,375	0	0	0	0	0	0	0	0	0	0
Net Cost/(Saving) of NI	Forward Estimates										
	Starting Year	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Operating Expenditure	0	9,245	9,476	15,713	9,956	10,205	16,460	10,721	10,989	17,264	110,030
Capital Expenditure	42,375	0	0	0	0	0	0	0	0	0	42,375
Estimated Savings or Efficiencies	-37,817	-38,668	-39,538	-40,428	-41,337	-42,267	-43,218	-44,191	-45,185	-46,202	-418,852
Net Cost/(Saving) of NI	4,558	-29,423	-30,062	-24,715	-31,381	-32,063	-26,759	-33,469	-34,196	-28,938	-266,448

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
15. Yorke Peninsula Council

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 Councils 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 and 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.

7.2.1.2

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

Author: Governance Advisor

MOVED Cr Angas 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 may take place by electronic means at the following electronic location via Microsoft Teams as virtual online meetings.

Seconded Cr Hurn

CARRIED 2018-22/102

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.

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 suspend 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 1 - Notice Pursuant to Section 302B 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 published in the South Australian Government Gazette on Tuesday 31 March 2020 (Ref: 20/18405)

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.

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

The Chief Executive Officer made Council aware of further correspondence received from the complainants forwarded overnight and emailed to Elected Members at 7.55am 21 April 2020.

MOVED Cr de Vries that the matter relating to Council meeting agenda item 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* lie on the table pending consideration of the Confidential Council agenda item 8.1.1 titled 'Legal Advice to Council for Council's Consideration – Section 270 of the Local Government Act – Internal Review' and that Council bring forward agenda item 8.1.1 immediately for discussion.

Seconded Cr Wiese-Smith

CARRIED 2018-22/103

8.1 CHIEF EXECUTIVE OFFICER – CONFIDENTIAL 10.17am**8.1.1****LEGAL ADVICE TO COUNCIL FOR COUNCIL'S CONSIDERATION – SECTION 270 OF THE LOCAL GOVERNMENT ACT – INTERNAL REVIEW**

Author: Governance Advisor

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.

MOVED Cr Wiese-Smith 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.

Seconded Cr Boothby

CARRIED 2018-22/104

RESUMPTION OF OPEN COUNCIL MEETING – 10.29am

The open meeting of Council resumed at 10.29am.

In the matter of Legal Advice to Council for Council's Consideration – Section 270 of the Local Government Act – Internal Review

MOVED Cr de Vries that Council:

- (1) Confidential Resolution
- (2) Having considered this matter in confidence under Section 90(2) of the Local Government Act 1999, makes an order pursuant to Section 91(7), that the agenda report and all attachments other than the minutes relating to this confidentiality order of the Confidential Council Meeting held on 21 April 2020 in relation to item 8.1.1 'Legal Advice to Council for Council's Consideration – Section 270 of the Local Government Act – Internal Review' be kept confidential and not available for public inspection and authorise the Chief Executive Officer to review and revoke the order.

Seconded Cr Hurn

CARRIED CO2018-22/24

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':

MOVED Cr Johnstone 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.

Seconded Cr Wiese-Smith

CARRIED 2018-22/105

MOVED Cr de Vries that 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);
- (ii) 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);
- (iii) The response from the applicants' legal representative dated 4 March 2020 to the Chief Executive Officer's letter dated 20 February 2020 (Attachment 3);
- (iv) 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);
- (v) 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);
- (vi) 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);

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

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

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

(x) 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

(xi) 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.

Seconded Cr Johnstone

CARRIED 2018-22/106

MOVED Cr Angas:

(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.

Seconded Cr Hurn

CARRIED 2018-22/107

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.

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).

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS



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

Risk is mitigated by complying with section 270 of the *Local Government Act 1999* and the provisions of Council's *Internal Review of Council Decision Policy and Process*.

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 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*.

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.

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

The Chief Executive Officer advised there is a typographical error in the background to the report where the date of the meeting of 20 August 2019 has been represented as 20 August 2020. Further the typographical error was transcribed into the recommendation and the date quoted in the recommendation should be 20 August 2019.

MOVED Cr Johnstone 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 prioritisation 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 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 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.

Seconded Cr Boothby

CARRIED 2018-22/108

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.

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:

- (1) That the Council is not satisfied that the applicants, Ms Shelley James and Mr Robbert Sennef do not have sufficient interest in the Decision;
- (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 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



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

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

Risk is mitigated by complying with section 270 of the *Local Government Act 1999* and the provisions of Council's *Internal Review of Council Decision Policy and Process*.

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.

7.2.2 DEBATE AGENDA – FINANCE

7.2.2.1

MONTHLY FINANCE REPORT (AS AT 31 MARCH 2020)

B411

Author: Senior Accountant

MOVED Cr Boothby that the Monthly Finance Report as at 31 March 2020 be received and noted.

Seconded Cr de Vries

CARRIED 2018-22/109

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 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.

Legislative Requirements

Local Government (Financial Management) Regulations 2011 - Reg 9(1)(b)
LGA Information paper no. 25 – Monitoring Council Budget Performance

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.

7.3.2 DEBATE AGENDA – MANAGER COMMUNITY AND CULTURE

7.3.2.1

CONSIDERATION AND ADOPTION OF BAROSSA REGIONAL GALLERY COMMITTEE RESOLUTIONS

B10549

MOVED Cr Boothby that Council, having reviewed the Minutes of the Barossa Regional Gallery Committee meeting held 28 January 2020 adopt the Resolutions contained therein.

Seconded Cr Wiese-Smith

CARRIED 2018-22/110

PURPOSE

Minutes of the Barossa Regional Gallery Committee meeting held 28 January 2020 are presented for the consideration and adoption by Council.

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

Community Plan

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.

8. CONFIDENTIAL AGENDA

8.1.1

LEGAL ADVICE TO COUNCIL FOR COUNCIL'S CONSIDERATION – SECTION 270 OF THE LOCAL GOVERNMENT ACT – INTERNAL REVIEW

Refer minute page 2020/209

9. URGENT OTHER BUSINESS

9.1 REQUEST – LEAVE OF ABSENCE

Nil

10. NEXT MEETING

Tuesday day 19 May 2020 at 9.00am.

11. CLOSURE OF MEETING

Mayor Lange declared the meeting closed at 10.46am.

Confirmed at Council Meeting on 19 May 2020

Date:.....

Mayor:.....