

OmbudsmanSA

Enquiries: Ms Ella King  
Telephone: 8226 8699  
Ombudsman reference: 2018/07811

Mr Robbert Sennef and Ms Shelley James  
5 Basedow Road  
TANUNDA SA 5352

By email: [tvm@chariot.net.au](mailto:tvm@chariot.net.au)

Dear Mr Sennef and Ms James

### Your complaint about the Barossa Council (the council)

I refer to your complaint, made to my Office on 24 July 2018. Your complaint raises a large number of issues and sub-issues.

Broadly, your complaint is that you are dissatisfied with the outcome of the section 270 review under the *Local Government Act 1999* (the **s270 review**) which was completed by Ms Felice D'Agostino (the **reviewer**).<sup>1</sup>

Whenever this Office receives a complaint, the matter is assessed as to whether the complaint comes within my jurisdiction, and if so, whether I should exercise my discretion to commence an investigation. I have assessed your complaint and, although it is within my jurisdiction, I have determined that an investigation is not necessary or justified in the circumstances. I explain how I arrived at this decision below.

### *My enquiries*

In my enquiries, my Office:

- assessed the information provided by you
- obtained information from the council
- considered the further submissions provided by you
- considered:
  - the s270 review report
  - the Indenture
  - the council's *Consultation Report Pursuant to section 194 of the Local Government Act 1999* (the **consultation report**)
  - the minutes of the council meeting on 17 July 2018
  - the council's *Internal Review of Council Decisions Process* (the **s270 Process**)
- prepared this letter to you.

<sup>1</sup>

Ms D'Agostino of Norman Waterhouse Lawyers completed the s270 review on behalf of the council.

---

### *My assessment of your complaint*

The first issue is that you complain that the s270 review reached the wrong conclusion. I note that the reviewer concluded 'In our view based on all the matters outlined in this report the Decision is the best and/or preferable decision'. You disagree with this conclusion.

I have considered the s270 review report and I am satisfied that each of the points raised by you have been adequately addressed by the reviewer. Based on the information before me, I consider that the conclusion reached by the reviewer was reasonably open.

You also complain about numerous sub-issues which relate to the council's original decision to proceed with revoking the community land status and to proceed with the land swap (to exchange a parcel of council-owned land with a parcel of land owned by Chateau Tanunda).

You complain:

- the land swap will be a financial detriment to the council as Chateau Tanunda would have had to purchase the land anyway
- you 'have issues with The Barossa Council Assessment Against Disposal of Land or Other Assets Policy'
- it was inappropriate for the council to seek Expressions of Interest prior to the council decision, and it was inappropriate for council employees to work on the project prior to approval from the Minister
- the council entered into discussions with third parties as far back as 2015
- the council considered Certificates of Title, supplied by Chateau Tanunda, which were outdated.

I advise that I do not intend to assess every historical action the council administration has taken regarding the revocation of the community land status or the land swap. I note that the land swap has yet to be finalised and there are a number of actions which are yet to be taken by both the council administration and by Chateau Tanunda. However I will comment generally that it does not appear to be unreasonable for the council administration to take steps to progress the project, notwithstanding that decisions by both the Minister and the elected body were yet to be made in the future.

You also complain about a number of administrative details regarding the s270 report, such as:

- you allege there is a factual error in the s270 report, as you dispute that you met with the Chief Executive Officer of the council. You wish to have the s270 report reissued with a correction
- both the draft s270 report which was provided to you for your comment, and the final s270 report, contained some typographical errors
- the reviewer only made four substantive changes to the draft report in the final report.

I do not consider that any of these issues warrant investigation by me. It is not clear to me that the reviewer accepts your allegation that you never met with the CEO and has provided information about whom you met with both in November 2017 (the CEO) and who was present at individual council meetings (either the CEO or the Acting CEO) in the final s270 review report. Nevertheless following your request, the reviewer forwarded an Erratum to the council as per your request. It does not appear that you requested the reviewer reissue the final s270 report.

The second issue is that you complain that the s270 Process was not followed. You complain that sub-sections (2)-(6) of Clause 4.6 of the 270 Process were not considered by the reviewer.

---

It does not appear that you alleged in your request for a s270 review that:

- the council considered matters which were not relevant or failed to consider matters which were relevant
  - any of the council members were exercising their power in bad faith, for an improper purpose, or while subject to the duress or influence of another person
  - any of the council members had a conflict of interest
- and you have not provided any evidence of the above.

In my view the s270 review report addresses:

- whether the council's decision was based on evidence
- whether the council's decision was reasonable.

It does not appear to me that the reviewer failed to comply with the s270 Process and I do not consider that further enquiries into this issue are necessary or justifiable.

The third issue is that you complain that the public consultation process undertaken by the council was inadequate and that members of the community were confused about what they were being asked to comment on.

I note that the adequacy of the community consultation process was canvassed in the s270 review report and it was determined that the community consultation had been appropriate and had exceeded the minimum requirements imposed by the council's Public Consultation Policy, regarding both the timeframe for submissions and the engagement methods employed. It does not appear to me that the council acted in a way that was unlawful, unreasonable or wrong by not also facilitating a public meeting.

You complain that the council did not follow the *Council Boundary Change Proposals - Engagement and Consultation Guideline* which was released by the Electoral District Boundaries Commission of SA. I advise that this a separate agency constituted under different legislation. The Guideline is not applicable to the council.

You complain:

It is obvious from the submissions received that the community was unsure what they were commenting on. We were informed repeatedly at the 14 November 2017 meeting...that we were not to comment on the Proposed Chateau Tanunda Development even though it was the subject of the formal Consultation Report. We were informed that we could only comment on the Revocation of Community Land classification matter and the Proposed Community Land Swap with Chateau Tanunda.

I accept that the Consultation Report provides background information about the circumstances surrounding the need for community consultation on revoking the Community Land status, and the reasons the revocation is to be considered by the council. The Consultation Report also provides detailed information regarding the proposed use of the land by Chateau Tanunda if the revocation of community land and the land swap were to proceed.

Section 4 of the Consultation Report explains the reason for the community consultation and states:

The Act requires Council to consult with its community over proposals to revoke land from the Community Land classification framework.

The community consultation letter states:

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 relevant development approvals.

...

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...

Whilst I accept that this process, and the relevance of individual steps in the process, may be confusing for some members of the community, it appears that the council provided sufficient information to clearly convey the matters under consultation.

The fourth issue is that you complain that the elected body considered the s270 review report at the council meeting on 17 July 2018 and did not give due consideration to the item before proceeding to affirm its previous decision. You complain that only one elected member spoke in the meeting regarding this item and there was no other debate. The council has indicated there is no official audio recording of the meeting. 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. I note that the agenda and supporting documentation is provided to elected members prior to a council meeting.

When considering whether I should investigate an issue, I have regard to certain criteria, including:

- whether the alleged administrative error amounts to a serious failure to meet expected standards of public administration
- whether the circumstances of the complaint are likely to arise again
- whether the complaint relates to matters of public safety and security, the economic well-being of South Australia, the protection of public well-being and/or the rights and freedoms of citizens
- whether the complainant has suffered significant personal loss
- the likelihood of collecting sufficient evidence to support a finding of administrative error.

In this case, I note that the final decision of the council was consistent with the finding of the s270 review report, and note the difficulties in demonstrating that the council members did not turn their minds to a full consideration of the documents and evidence provided to them. In the circumstances, I do not consider that this issue meets my criteria for investigation.

The fifth issue is that you complain that the document 'Additional Information for the Consideration of The Barossa Council' was not formally tabled by the council at the council meeting on 19 December 2017. You complain:

Shelley was asked to provide the Additional Information prior to the Council Meeting which she did. She was required to provide at least 12 copies of the Additional Information, one copy for each Elected Member, and several other copies for staff, which she did.

She was NOT asked to formally table the "Additional Information[...]" otherwise she would have done so.

I do not consider that this issue warrants enquiry by me. I note you are not alleging that the council failed to provide the copies of the Additional Information to the council members. I do not consider that investigation of this issue could lead to any meaningful outcome for either of the complainants, having regard to the events that have occurred since 19 December 2017.

***Outcome of my enquiries***

In light of my assessment above and on the basis of the evidence available, it does not appear to me that the council has possibly acted in a way that is unlawful, unreasonable or wrong within the meaning of the Ombudsman Act. Accordingly, I do not consider that further enquiries into your complaint by my office are necessary or justifiable at this time.

I understand that this may not be the outcome you wanted, but on the evidence currently available to me, I do not think further enquiries would achieve a different result.

I intend to end my consideration of your complaint at this time, unless you are able to identify an error in my assessment of the matter. If you think you are able to identify such an error, I ask you to contact my Office by **27 August 2018** with your reasoning. If you do not contact my Office within that time, I will close the file.

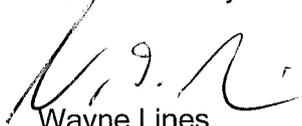
The Ombudsman Act imposes certain obligations<sup>2</sup> on my Office and others, including complainants and officers in an agency, to keep information about my assessment confidential.

However, if I consider that disclosure of that information is in the public interest, then I may authorise or require its disclosure.

In my opinion, there is a public interest in disclosure of my decisions under the Ombudsman Act. Therefore, once I have closed the file, I authorise disclosure of this letter by the parties as they see fit.

I have sent a copy of this letter to the council.

Yours sincerely



Wayne Lines  
**OMBUDSMAN SA**

20 August 2018

Cc Mr Martin McCarthy  
Chief Executive Officer  
The Barossa Council  
By email: [barossa@barossa.sa.gov.au](mailto:barossa@barossa.sa.gov.au)

---

<sup>2</sup> *Ombudsman Act 1972* section 26.