



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 post and email: tvm@chariot.net.au

Dear Mr Sennef and Ms James

Your complaint about the Barossa Council (the council)

I refer to my letter dated 20 August 2018 and your letter of response dated 31 August 2018. I have considered your response.

Maladministration

In your response you make a number of allegations of maladministration. I wish to clarify that I do not have jurisdiction to investigate complaints about maladministration unless I receive a referral from the Independent Commissioner Against Corruption. If you wish to complain about maladministration, you may wish to contact the Office for Public Integrity.

Query regarding 'my enquiries'

You seek to know what information I have considered. I advise that all of the information I have considered is set out in my letter of 20 August 2018. I confirm that I considered all of the information provided by you, including your original complaint dated 24 July 2018 and your additional submissions and supporting documentation dated 13 August 2018. I have now also considered your response.

Issue 1

I confirm that I have already considered your 'Response to Ms D'Agostino's Draft Report'. I remain of the view that it was reasonably open for Ms D'Agostino to arrive at the conclusions reached in the s270 report.

You have requested that I assess every historical action the council administration has taken regarding the revocation of the community land status and the land swap. I am not persuaded that it would be a reasonable use of my resources to do so and my reasons for not doing so are explained in my letter of 20 August 2018.

I do not consider there is a public interest in my Office expending resources to investigate whether or not you met with the CEO of the council.

Issue 2

You have requested the opportunity to meet with me. I consider you have been given sufficient opportunities to provide any evidence or submissions you wish and you have not provided any evidence 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.

As you have not provided any further submissions in your response, I remain of the view that it does not appear that Ms D'Agostino failed to comply with the s270 Process.

Issue 3

In your response, you state that it is not reasonable for the council to provide information in its Consultation Report about the proposed Chateau Tanunda development and then dismiss comments from the community on the same issue.

I note that section 7.3.1.1(a) of the s270 report states that the council administration advised Ms D'Agostino that:

All submissions received [from the community during the consultation process] were submitted to the elected body of the Council for its consideration including those which raised issues of planning notwithstanding that the Decision was in relation to the Revocation Matter.

Section 7.3.14(c) of the s270 report states that Ms D'Agostino has concluded:

...there is no information other than the Applicants' assertion that the Council did not take into account all submissions received on the Revocation Matter when before (sic) making the Decision. Indeed when considering the response provided by Council administration and the December Report and attachments it is our view that there is evidence that the Council did take into account all submissions...

I consider that this issue was adequately addressed by Ms D'Agostino. I do not consider you have provided sufficient evidence which would persuade me that the council 'dismissed' comments of the community, or failed to consider the submissions received as part of the community consultation.

Issue 4

In your response, you state that you believe that there are grounds for me to investigate this issue and urge me to consider my criteria for investigation. I do not consider that you have provided any further evidence that would cause me to change my view. Accordingly, I remain of the view that this issue does not meet my criteria for investigation.

Issue 5

You state that this issue alone demonstrates a serious failure to meet expected standards of public administration. While a failure to table a document may potentially be a failure to meet expected standards of public administration, I do not consider that the council's alleged failure to table the Additional Information amounts to a **serious** failure to meet expected standards of public administration. I remain of the view that an investigation of this issue by me would not result in a meaningful outcome.

Outcome of my assessment

In light of my assessment above and on the basis of the evidence available, I do not consider that further enquiries into your complaint by my Office are necessary or justifiable at this time.

Your file will now be closed.

The Ombudsman Act imposes certain obligations¹ 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

4 September 2018

Cc Mr Martin McCarthy
Chief Executive Officer
The Barossa Council
By email: barossa@barossa.sa.gov.au

¹ Ombudsman Act 1972 section 26.