

**ADELAIDE HILLS COUNCIL  
ORDINARY COUNCIL MEETING  
TUESDAY 23 SEPTEMBER 2014  
CONFIDENTIAL AGENDA BUSINESS ITEM**

**Item:** 18.1

**Originating Officer:** Lachlan Miller, Manager Governance and Risk

**Responsible Director:** Tim Piper, Director Corporate Services

**Subject:** Internal Review of Council Decision - Fehring

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**1. Internal Review of Council Decision - Fehring – Exclusion of the Public**

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public, with the exception of appropriate Council staff:

CEO, Andrew Aitken  
Director Strategy & Development, Marc Salver  
Director Corporate Services, Tim Piper  
Director Engineering & Assets, Deb Richardson  
Director Community & Customer Service, David Waters  
Manager Governance & Risk, Lachlan Miller  
Minute Secretary, Leanne Llewellyn

be excluded from attendance at the meeting for Agenda Item 18.1 (Internal Review of Council Decision - Fehring).

The Council is satisfied that, pursuant to section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), because it would disclose the personal details of the internal review applicant prior to Council having reviewed the subject decision.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because consideration of the item in a public forum would unreasonably disclose the personal details of the internal review applicant prior to the matter being determined.

## 2. Internal Review of Council Decision - Fehring – Confidential Item

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### SUMMARY

Brad and Anne Fehring have lodged an application for the Internal Review of a Council Decision under Council's policy of the same name. The subject decisions related to (1) the creation of a 'commercial rate' and (2) the decision to separate the property in two different addresses (i.e. 69 and 69A Onkaparinga Valley Road, Woodside).

As the first decision is a decision of Council, the entire application is presented for Council's determination.

### RECOMMENDATION

**That Council resolves:**

1. That the report be received and noted
2. To determine to uphold the Council's original decisions:
  - a. to create a commercial differential rate for 2013/14 which is applied to 69 Onkaparinga Valley Road, Woodside for 2013/14; and
  - b. to separately rate 69 and 69A Onkaparinga Valley Road, Woodside.
3. That the CEO will write to the applicant setting out the Council's determination and options for further redress.

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### 1. GOVERNANCE

#### ➤ Strategic Management Plan/Council Policy

Goal 4	A Recognised Leading Performer
Key Issue 4.1	Leadership
Key Action 4.1.4	Meet legislative, regulatory and good governance responsibilities & obligations

#### ➤ Legal Implications

Section 270(1) of the *Local Government Act 1999* requires that Council must establish procedures for the review of decisions by council; employees of council; and other persons acting on behalf of council. In this regard Council has adopted the Internal Review of Council Decisions Policy.

Chapter 10 of the Act sets out the provisions regarding rates and charges on land.

➤ **Risk Management Implications**

Dealing with internal review applications effectively will assist in mitigating the risk of:

*Poor complaint handling processes which lead to stakeholder (i.e. customer and regulator) dissatisfaction*

➤ **Financial and Resource Implications**

There are no specific financial implications in relation to the processing of the internal review application.

➤ **Customer Service and Community/Cultural Implications**

There is a high community expectation that rates are levied in a fair and equitable manner that is consistent with the requirements of the Local Government Act

➤ **Environmental Implications**

Not applicable.

➤ **Community Engagement/Consultation**

In accordance with s123 of the Act, Council consults on its annual business plan and budget prior to its adoption. The draft document sets out, amongst other items, the rates structure and policies for the financial year.

## 2. **BACKGROUND**

Brad and Annie Fehring have owned 69 Onkaparinga Valley Road for many years.

In 1994, they received development approval to convert the existing dwelling into a café and then, subsequently, approval to construct a 2 storey dwelling at the rear of the property.

Initially, the dwelling and the café were occupied by the Fehring family, and, as such, the property was considered one rateable assessment.

In early 2013, Council became aware that the café and the dwelling had been leased to different third parties (i.e. separate occupations). In accordance with the provisions of the *Local Government Act 1999* (to be discussed in the Analysis section), separate assessments were created being:

Assessment 4603 – Shop – Café – 69 Onkaparinga Valley Road  
Assessment 20524 – Flat – Residential – 69A Onkaparinga Valley Road

Council and the Fehring family have had a number of dealings regarding the CWMS charges levied on the assessments however this is not the subject of the internal review application.

## Internal Review Application

The Fehrings are seeking the internal review of the following council decisions:

1. The declaration of a commercial rate (which applies to the café under the land use code 2 – Commercial). It is taken that the query applies to the 2013/14 rate declaration given that it was most recent to the time the review application was lodged; and
2. That the property was separated into 69 and 69A Onkaparinga Valley Road, Woodside (Assessments 4603 and 20524 respectively)

The Manager Governance and Risk has performed the roles of Internal Review Contact Officer (as appointed by the CEO in accordance with 7.3.1) and as the investigator as appointed by the Mayor in accordance with 8.1.2 of the Policy).

The preliminary findings of the review (as outlined in the Analysis section below) have been communicated to Mr Fehring on two occasions leading up to the preparation of the report.

### **3. ANALYSIS**

#### Declaration of a commercial rate for the 2013-14 budget

Section 153(1)(b) states that a council may declare differential general rates on rateable land within its area for a particular financial year. Further under s153(2) the council must consider issues of consistency and comparability across the council area.

As the basis of differential rating, s156(1) provides that differential rates may vary (a) according to the use of the land. Land use codes are assigned by the State Valuation Office staff in undertaking valuations. The identification of properties for valuation can be at the Valuer-General's initiative or at the request of Council staff.

The land use code assigned to the café (Assessment 4603 – 69 Onkaparinga Valley Road) by the State Valuation Office was land use code 2 – Commercial. There has been no suggestion from the owners that the activities that occur on site (and the resultant land use code) are not commercial.

In adopting its 2013-14 annual business plan and budget on 25 June 2013, Council unanimously resolved (125/13)

*Pursuant to Sections 153(1)(b) and 156(1)(a) of the Act the Council declares the following differential general rates for the financial year ending 30 June 2014 on rateable property within the Council area, based upon the capital value of the land and varying according to land use categories in accordance with Regulation 10 of the Local Government (General) Regulations 1999:*

*4.4.1 On rateable land assigned Category 1, 7, 8 & 9 (Residential, Primary Production, Vacant and Other), a rate of 0.2680 cents in the dollar of the capital value of such land;*

*4.4.2 On rateable land assigned Category 2, 3, 4, 5 and 6 (Commercial and Industrial) a rate of 0.3080 cents in the dollar of the capital value of such land.*

On the above basis, the declaration of a differential general rate for a property with a commercial land use category (as was the case for Assessment 4603) was legal and valid.

It is proposed that Council uphold its original decision on the matter.

#### Separation of the property into 69 and 69A Onkaparinga Valley Road

Section 148(1)(a) of the Act states that rates may be assessed against any piece or section of land subject to separate ownership or occupation.

Council's practice is that, as it becomes aware of separate tenancies within a property, it liaises with the State Valuation Office for a valuation with the separate percentages for the occupations.

Mr Fehring has confirmed with Council that the café and the dwelling are occupied by different tenants. On this basis and applying the provisions of s148(1), separate assessments have been created and are rated accordingly.

As a result of the above, the creation and rating of Assessments 4603 and 20524 is legal, valid and consistent with Council's practice.

It is proposed that Council uphold its original decision on the matter.

#### Next Steps

Following Council's determination of this matter, correspondence will be sent to the applicant setting out Council's determination on the review, providing the reasons for the determination; and providing information regarding further avenues of appeal/complaint.

#### **4. OPTIONS**

1. Council has the option to accept the recommendations contained in this report.
2. Council may wish to amend any/all aspect(s) of the recommendations.

#### **5. APPENDICES**

Nil

**3. Internal Review of Council Decision - Fehring – Period of Confidentiality**

**That having considered Agenda Item 18.1 (Internal Review of Council Decision - Fehring) in confidence under section 90(2) and 90 (3)(a) of the Local Government Act 1999, the Council, pursuant to section 91(7)(b) of that Act, orders that the documents and reports pertaining to this matter be retained in confidence until the applicants have been advised of Council's determination of the matter, but not longer than 6 months.**