

**ADELAIDE HILLS COUNCIL  
ORDINARY COUNCIL MEETING  
Tuesday 27 June 2017  
CONFIDENTIAL AGENDA BUSINESS ITEM**

**Item:** 19.1

**Originating Officer:** Lachlan Miller, Executive Manager Governance & Performance

**Responsible Director:** Terry Crackett, Director Corporate Services

**Subject:** Internal Review of Council Decision – Verrall Road (North) Separate Rate

**For:** Decision

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**1. Internal Review of Council Decision – Verrall Road (North) Separate Rate – Exclusion of the Public**

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except:

- CEO, Andrew Aitken
- Director Engineering & Assets, Peter Bice
- Director Corporate Services, Terry Crackett
- Director Strategy & Development, Marc Salver
- Director Community & Customer Service, David Waters
- Executive Manager Governance & Performance, Lachlan Miller
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 17.1 Internal Review of Council Decision – Verrall Road (North) Separate Rate in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

Section 90(3)(a) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this 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).

Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information and discussion confidential.

## **2. Internal Review of Council Decision – Verrall Road (North) Separate Rate – Confidential Item**

### **SUMMARY**

In November 2016, Council received an application for the internal review of a Council decision being the 24 June 2014 declaration of the 'Verrall Road (North) Separate Rate' as part of the 2014/15 Annual Business Plan and Budget process.

An external consultant was engaged to review the matter and an investigation report has been developed (**Appendix 1**). The investigator has recommended that Council's decision to declare the separate rate was reasonable and should stand.

As the elected Council was the decision maker, under the provisions of the Internal Review of Council Decisions Policy, Council must also be the reviewer and determine whether the decision should be upheld or if other actions or remedies are appropriate.

### **RECOMMENDATION**

#### **Council resolves:**

- 1. That the report be received and noted**
- 2. To determine to uphold Council's 24 June 2014 decision regarding the declaration of the 'Verrall Road (North) Separate Rate'**

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## **1. GOVERNANCE**

### ➤ **Strategic Management Plan/Council Policy**

Goal: Organisational Sustainability  
Strategy: Governance

A key element of the Governance Strategy is to ensure that transparent and responsible decision making occurs within the elected Council and Administration.

### ➤ **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. Section 154 of the Act provides that:

*A council may declare a separate rate on rateable land within a part of the area of the council for the purpose of planning, carrying out, making available, supporting, maintaining or improving an activity that is, or is intended to be, of particular benefit to the land, or the occupiers of the land, within that part of the area, or to the visitors to that part of the area.*

The Internal Review of Council Decisions Policy (the current Policy) was recently revised (28 March 2017) to incorporate revisions based on the Ombudsman’s sector-wide review of internal review processes. As the Verrall Road application was received prior to the current Policy review, the review was commenced and conducted in accordance with the provisions of the previous version dated 8 April 2014 (the previous Policy). Please note that while the provisions of both policies are largely the same, there has been some renumbering and therefore the reference to clauses in the previous Policy will not necessarily correspond to the clauses in the current Policy.

In accordance with clause 8.1.1 of the previous (and current) Policy, the elected Council is the reviewer when the decision being reviewed was made by the elected Council, a Committee of the Council or the CEO.

➤ **Risk Management Implications**

Dealing with internal review applications effectively and in accordance with the provisions of Section 270 and the Policy will assist in mitigating the risk of:

*Poor governance practices occur which lead to a loss of stakeholder (i.e. customer and regulator) confidence and/or legislative breaches.*

Inherent Risk	Residual Risk	Target Risk
Extreme (5C)	Medium (3D)	Medium (3D)

Note that there are many other controls that assist in mitigating this risk.

➤ **Financial and Resource Implications**

The costs associated with managing and investigating Section 270 applications are accommodated in existing budgets and, where required, adjusted via budget reviews.

The cost of the external consultant to investigate the matter was \$4,140. The management of Section 270 applications does require the committal of resources within the Governance & Performance Department.

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

There is a high expectation that complaints and requests for decision reviews are managed in an appropriate manner. These can often be the source of valuable improvement opportunities in the way in which Council delivers services to the community.

➤ **Environmental Implications**

Not applicable.

➤ **Engagement/Consultation with Committee, Regional Subsidiary, Advisory Group and Community**

Not applicable.

## 2. BACKGROUND

On 24 July 2014, the then Council declared a separate rate for the purposes of sealing the northern end of Verrall Road, Upper Hermitage as part of the 2014/15 Annual Business Plan and Budget adoption. The separate rate was known as the 'Verrall Road (North) Separate Rate'.

On 21 November 2016, Council received an application for the internal review from Mr John Coyne of Upper Hermitage regarding Council's separate rate decision (24 July 2014).

As the decision to be reviewed was made by the elected Council, the Mayor (in accordance with clause 8.1.2 of the previous (and current) Policy) determined that the investigation would be conducted by an external party.

Mr Coyne was advised that Council would remit all fines and interest in relation to the separate rate for the period of the internal review (i.e. from date of application to the date a final advice regarding the review outcome is provided).

In March 2017, Mr Ray Pincombe, an external consultant with extensive experience in local government legislation, operations and review, was engaged to conduct the investigation and write the report in relation to the application.

Mr Pincombe completed his investigation and report on 4 May 2017. The report provides considerable detail regarding the processes leading up to and the decisions to adopt the separate rate, the interactions with affected residents (including Mr Coyne), and the processes undertaken in investigating the matter and the investigator's findings and recommendations. The report is at **Appendix 1**.

In accordance with the provisions of clause 8.4 of the previous (and current) Policy, Mr Coyne has been afforded procedural fairness in regards to having the opportunity to put forward his case via both documentary and verbal evidence. Further, Mr Coyne was provided the opportunity to provide comment in relation to the draft investigation report. This opportunity was not taken up.

## 3. ANALYSIS

The report recommends three actions which have been repeated below:

1. *Based on the information provided and gathered in this review, the decision to declare the separate rate was reasonable and should stand. This was supported by the following:*
  - *The process followed was thorough and covered all necessary elements*
  - *The proposal outlined all the necessary issues for the ratepayers to consider before they were asked to decide whether they supported or opposed the declaration of the separate rate as a funding mechanism for the sealing of the road*
  - *Consideration was given to the impact of the separate rate and options put forward for the ratepayers to defer the payment if they so desired*

- *The views of the affected ratepayers were canvassed and considered prior to the decision including the opportunity to provide written submissions to council during the consultation*
  - *The Council was briefed on the proposal and provided with a copy of the proposal and a summary of responses prior to the matter being included in the report to Council on 24 June 2014, which presented the Annual Business Plan and Budget for adoption. All rating decisions including the declaration of the separate rate for Verrall Road North were made at this meeting.*
2. *That the Council review the consultation process to consider whether any improvements could be made including the timing of the consultation, the type of voting system and the opportunity for a group discussion with representatives of Council prior to the final decision. In addition, a minimum percentage level of support for any proposal could be adopted as part of this process.*
  3. *That Council advise Mr John Coyne as the Applicant of the decision*

As the reviewer for the decision, Council is now required to make a determination in relation to the decision

#### Next Steps

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

#### **4. OPTIONS**

The Council has the following options:

- I. To accept the findings and recommendation of the independent investigator and resolve to uphold the 24 June 2014 Ordinary Council decision regarding the declaration of the 'Verrall Road (North) Separate Rate. (Recommended)
- II. To determine an alternate course of action. (Not Recommended)

#### **5. APPENDICES**

- (1) Section 270 Review – Separate Rate for Verrall Road Construction – Report
- (2) Internal review of Council Decision Policy – Effective from 14 April 2014 to 10 April 2017

**3. Internal Review of Council Decision – Verrall Road (North) Separate Rate – Period of Confidentiality**

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council's decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 17.1 in confidence under sections 90(2) and 90(3)(a) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* that the report, related attachments and the minutes of Council and the discussion and considerations of the subject matter be retained in confidence until the applicant has been advised of Council's determination of the matter, but not longer than 6 months.

Pursuant to section 91(9)(c) of the *Local Government Act 1999*, that Council delegates the power to revoke the confidentiality order either partially or in full to the Chief Executive Officer.

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# **Appendix 1**

*Section 270 Review – Separate Rate for Verrall Road  
Construction - Report*

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**Adelaide Hills  
Council**

**Section 270 Review**

**Separate Rate for  
Verrall Road  
Construction**

## Background

Verrall Road is a road reserve located at Upper Hermitage in the Adelaide Hills Council area. The road has two sections, the southern section which has been bituminised for some years and the northern section which until 2015 was unsealed. The southern section services eight (8) properties and the northern section services six (6) properties.

In early 2014, two ratepayers in the northern section requested that the council bituminise that section and they were advised that the section was low on the council priority list for sealing and it would be some years before it would be considered. After further discussion, the council developed a proposal on the potential for the six property owners to fund the road sealing by way of a separate rate. This would mean that as the road sealing would be funded by the six property owners it would be able to progress much sooner.

As the southern section of the road was due to be resealed in early 2015 this would provide the opportunity to seal the whole of Verrall Road thus making a significant improvement for the property owners. The combination of the two projects would provide some economies of scale for the overall project thus providing some savings for the ratepayers at the northern end. The project at the northern end was expected to cost \$41 500.

For the project to progress it was necessary to consult with the owners of the six properties at the northern end of Verrall Road to assess the level of support for raising a separate rate. This rate would be the method used to charge the six property owners to repay the cost outlaid by the council to fund the project. The council proposed to raise the funds by way of a loan from the LGFA over a period equal to the period of repayment. The overall cost to the property owners would include the overall cost of borrowing the funds to pay for the project including interest.

The council consultation process with the six property owners was in the form of an initial letter to each property owner setting out the process with a proposal for the Verrall Road Separate Rate attached as part of the consultation. The letter and proposal were sent to each property owner by Tim Piper then Director Corporate Services at the Council - on 10 April 2014. The proposal for consultation included the background to the project, and outlined how the project would be funded by a separate rate. It provided information on the difference between the general rating policy and the separate rate and the impact of the separate rate on the six property owners (ratepayers) including how it would be charged, a range of options for the period the rate would be levied and how the rate would be calculated.

Information was also provided on the options available for postponement of payments, remissions and rebates and the accountability of council to ensure the funds raised in the separate rate are expended on repaying the cost of funding the project.

A timetable for the consultation was provided, along with information for the affected ratepayers on how to make a submission on the separate rate proposal, including the timing of any such submissions. Advice was also provided of the holding of a public meeting for consultation in May 2014. This meeting would be held to consider public submissions on the Council Annual Business Plan 2014/15 and this proposal was included in that plan.

An attachment was also provided with answers to questions relevant to the Verrall Road project. These questions included advice on the expectation that support for the proposed separate rate would need to be by consensus or a significant majority of affected property owners.

Further correspondence was sent to the property owners on 23 April 2014 responding to a question from a property owner regarding the use of a fixed charge which would mean an equal charge per property rather than a rate based on capital value. The letter advised that both options were allowable under the Local Government Act provisions. It also requested responses indicating support for the

separate rate proposal, the period of repayment and whether a six-way equal split would be favoured. This information was requested from affected ratepayers by Friday 16 May 2014.

Following the completion of the consultation period a letter was sent to the property owners notifying them of the results of the consultation. They were advised that four owners supported the proposal and two did not. In addition, they were advised that the general preference was for the rate to be levied over a ten-year period and split equally across the six affected properties. On 20 June 2014, the Director Corporate Services sent an email to all elected members advising them of the results of the consultation and providing them with a copy of the proposal and a summary of the results. It is noted in this summary that two of the property owners were instigators of the original request. This confirmed the information that had been provided in a presentation at a council workshop on 4 June 2014 where the proposal had been discussed as part of the budget process for 2014/15.

The council met on Tuesday 24 June 2014 to consider the Annual Business Plan and Budget and to declare its rates for the forthcoming financial year. As part of this process the council declared a separate rate for Verrall Road (North) for a specified period of ten years commencing from 1 July 2014 based on a fixed charge of \$858 per assessment (rateable property) per year. The declaration also included the assessment record for each of the six properties affected.

The declaration of the separate rate was published in the South Australian Government Gazette on 10 July 2014.

Following this declaration, a letter was sent by the Director of Corporate Services on 23 July 2014 to each property owner advising of the declaration of the separate rate and informing the property owners that rate notices would be sent to them in the short term. They were also advised that the construction works to seal the northern section of Verrall Road were planned for completion in summer months in early 2015. They were advised that some ratepayers had requested the opportunity to repay the rate over a shorter timeframe to save finance costs on the funds borrowed by council to complete the project. A questionnaire was provided to each ratepayer regarding capacity to pay, the option to defer payment, and questions relating to the preferred repayment period. An option to provide extra comments was also included.

A further letter was sent to the property owners at 171 Verrall Road, JA Coyne and BA Zarella on 20 August 2014 requesting a response to the questionnaire sent to them in July. This questionnaire was completed and received by the Council 1 September 2014. As well as answering the questions the property owners raised several issues regarding the proposed resealing project and a request for a response to them.

In the ensuing period (1 September 2014 – 21 November 2016) several emails were sent by Mr John Coyne as one of the property owners to the Council complaining about the rate notices and their unwillingness to pay the separate rate. This culminated in Mr Coyne requesting an internal review of Council decision which is dated 21 November 2016. The review is requested on the decision of Council to seal the road and as the basis of this decision was the declaration of a separate rate to fund the sealing of the road the whole process leading to the sealing of the road was reviewed.

I was engaged by the Adelaide Hills Council to undertake this investigation on 20 March 2017.

### **Issues Raised in the S270 Request for an Internal Review of Council Decision**

This internal review identified the council decision as being made in Nov-Dec 2014 regarding bituminising the northern end of Verrall Road.

The applicant (John A Coyne) has requested a review stating that the Council is requesting payment for bituminising a road that belongs to the Council. The request for review states that the road is a Council asset and ratepayers should not be forced to pay for this type of work. The applicant is a property owner of 171 Verrall Road in conjunction with B A Zarella and lives on the road. As property owners, they have been charged a separate rate for the work done on the road each year from 1 July 2014.

### **Process of Investigation**

The investigation considered all evidence available relating to the process undertaken by the Council leading to the decision to declare a separate rate to fund the sealing of the road surface at the northern end of Verrall Road Upper Hermitage and the subsequent sealing of the road in early 2015. This included the consultation with the affected property owners and the response to that consultation. It also considered the requirements of the "Local Government Act 1999" relating to the declaration of a separate rate.

In addition, consideration was given to the process of advice to the property owners including the applicant after the declaration of the separate rate and any response provided by the applicant.

### **Evidence to which the Investigation has had regard.**

In conducting the review, a wide range of documentation has been assessed. This includes copies of relevant Council letters, the proposal for the separate rate, reports to Council and copies of minutes outlining Council decisions, ancillary documents including consultation survey results, correspondence from the applicant, relevant legislation and the Council Internal Review of Council Decisions Policy.

In addition to the documentation set out above, an interview was held with the current Director of Corporate Services regarding discussions held with the applicant since the Director's commencement and to check whether any further discussion had been held with Council regarding the setting of the separate rate since the original decision. An interview was also conducted with the Applicant to ensure his expectations of this process were clear and their reasoning in making the application was fully understood.

The aim of reviewing this evidence was to attempt to gain a better understanding of all elements of a complex matter and to then reach a decision on whether the process was fair and reasonable for all parties concerned.

### **Facts and Timeline**

- Letter on 10 April 2014 advising of the proposal for separate rate to fund sealing of Verrall Road (Northern end). Attached to this letter was the proposal which provided more detail of what the project was and why a separate rate was being considered as a way of funding it. The proposal also provided detail on the likely impact on the affected ratepayers including the basis of rating, a range of repayment periods and their relevant cost as well as providing options for payment including deferral. A consultation plan and timetable was provided as was a list of likely questions and answers to provide the property owners with more supporting information.

- Letter on 23 April 2014 providing further advice on the proposal with particular emphasis on the option to spread the cost equally across all six affected properties in lieu of charging the rate based on the capital value of the property. This included the projected cost per year of a range of payback options. The request asked the property owners to identify their support or otherwise for the fixed charge and preferred period of repayment. Included in the advice was an outline of the options available to the Council when declaring a separate rate. A request was made for this option to be considered by all property owners when responding to the council regarding their support for the declaration of a separate rate to fund the road sealing project.
- A consultation meeting held in May 2014 to allow community comment on the Annual Business Plan 2014/15. As the road sealing project for Verrall Road (North) and the separate rate were part of this plan the affected property owners could attend this meeting to comment or raise any concerns. The Investigator is not aware of any of the property owners attending this meeting.
- Copies of correspondence via email from five property owners regarding their support or otherwise to the use of a separate rate to facilitate the funding of the road sealing project. Three supported the project and two opposed it. It is noted that the property owners at 171 Verrall Road were identified as having indicated their support by telecall.
- Letter on 28 May 2014 advising of the outcome of the consultation process. This advised that a majority of the six owners supported the proposal (four in support and two against) and that the general preference of the supporters was for the rate to be charged equally over a ten-year period
- An email to all elected members of the Council on 20 June 2014 providing the results of the Verrall Road proposal consultation including a summary of the responses which stated that four property owners including J A Coyne and B A Zarella of 171 Verrall Road supported the proposal and two opposed it. This information had previously been presented at a Council workshop regarding the 2014/15 Budget on 4 June 2014.
- Minutes of the Adelaide Hills Council meeting of Tuesday 24 June 2014. At this meeting the minutes include the declaration of a separate rate for Verrall Road (North). This separate rate was to commence from 1 July 2014 for a specified period of ten years and was in the form of a fixed charge of \$858 per assessment (per year). The assessments of each of the six properties also formed part of the declaration
- A copy of the notice placed in the South Australian Government Gazette on 10 July advertising the declaration of the separate rate to carry out the sealing of the northern end of Verrall Road Upper Hermitage
- Letter on 23 July 2014 advising property owners of the declaration of the separate rate and noting that the resealing project was proposed for the summer months in early 2015. Advice was also given regarding the issuing of rate notices for the 2014/15 financial year. The letter also provided a questionnaire asking the property owners a range of questions on the following
  1. Anticipation of difficulty in paying the separate rate
  2. The need for information on deferring payment
  3. Support for the council continuing to raise the separate rate for remaining nine years
  4. If Q3 wasn't supported did they support one further separate rate for the balance owing
  5. If one rate was raised would they be able to pay in full
  6. Further comments by the respondents
- Letter on 20 August 2014 requesting a response to the questionnaire from the property owners at 171 Verrall Road
- Response to the questionnaire from the property owners at 171 Verrall Road signed by John Coyne. This included the identification of them having difficulty to pay, wanting information on deferral of rates, support for the option for the Council to continue raise separate rates for the

remaining nine years and no to the option of paying the remainder as a lump sum in one year. Mr Coyne also asked four questions at the end of the questionnaire and stated that the rate would not be paid until they (property owners) were satisfied with the response and a favourable outcome

- Several emails from Mr John Coyne complaining about the rate notices and outlining the property owner's refusal to pay them. These emails are in response to the receipt of rate notices for outstanding rates from the Council. These emails were sent on 30 April 2015, 16 December 2015, 9 July 2016 and 27 July 2016.
- An email from Terry Crackett (current Director Corporate Services) to John Coyne advising that the Council had considered the separate rate for Verrall Road as part of the development of the Annual Business Plan for 2016/17. The Council had decided to a no change position meaning the rate was due to be declared again in that year. Mr Crackett further advised that as the council was in the community consultation phase for the Business Plan and Mr Coyne would be able to raise his concerns which would be considered by Council before they made a final decision on the declaration of the separate rate
- An extract from the Consultation report to the Council meeting held on 28 June 2016. The extract included comments made by Mr Coyne on the Verrall Road as part of that consultation, advice that Mr Coyne could speak at the public forum at the meeting and a notation that Council would consider the rate at that meeting. Mr Coyne chose not to speak at the meeting. The consultation report was received by the Council at that meeting. The Council at the meeting after considering the comments in the consultation declared the separate rate for Verrall Road in the same form as the original declaration
- A meeting with John Coyne on 30 March 2017 to enable him to add any further information to the request for review of the decision. The interaction between Mr Coyne and both the previous and current Director Corporate Services was broached and it was noted that in addition to the written information several discussions were held with the previous Director prior to the decision by Council to declare the separate rate to fund the sealing of the road.
- A meeting with Terry Crackett Director of Corporate Services on 4 April 2017 regarding the current situation regarding the Verrall Road Separate Rate. This included the situation regarding repayment by the other affected property owners and the consultation process for the 2016/17 Annual business Plan as outlined above. The interaction between Mr Crackett and Mr Coyne was also discussed.

## **Interviews**

Interviews were held with John Coyne as the initiator of the request for the internal review of the decision and Terry Crackett the Director of Corporate Services regarding the process of this matter and to gain any further information to assist in the investigation

## **Findings**

In making a decision to declare a separate rate it is important for the Council to ensure that the activity they are undertaking is, or is intended to be, of particular benefit to the land or the occupiers of the land, within that part of the area. In this case, the project which the Council was to undertake was of benefit to a specific group of property owners adjoining the council owned land where the improvements were to take place. Although the land, a road reserve, is owned by Council the sealing of this road would provide a benefit to the adjoining property owners.

If the separate rate proposal had not been contemplated, it was stated by the Council staff that the road would not have been sealed under the Council's Asset Management Plan for many years. It is also important to note that there was a request from two affected property owners which provided the

impetus for the consideration of a proposal for a separate rate as a means of repaying Council over time for carrying out the works.

The proposal was considered worthy of consultation with the six affected property owners and the Council staff developing a proposal for consultation to identify whether there was sufficient support to take the proposal to Council for discussion and a decision on the declaration of a separate rate. The consultation started on 14 April 2014 with written submissions required by 16 May 2014. There was a follow up letter sent to the property owners on 23 April 2014 providing options on the term of repayment and the form of the separate rate. The property owners were requested to respond to this request by 16 May 2014.

Each of the six affected property owners is recorded by the Council as having responded to the proposal and the extra information requested in the correspondence over the period of consultation with four being recorded in favour and two against the proposal. Further correspondence was sent to the property owners on 28 May 2014 advising them of the outcome of the consultation and that the general preference of those in support was to have the repayment over spread over ten years and each of the six owners would be paying the same fixed amount. Information on the outcome of the consultation was presented to Council at a workshop on 4 June 2014 and by email on 20 June 2014 and a copy of the proposal was also provided in this email. The proposed declaration of a separate rate for Verrall Road (North) was then presented to the Council as part of the adoption of the Annual Business Plan and Budget on 24 June 2014. The Council declared the separate rate at the meeting.

The process of consultation on this proposal was undertaken at the same time as the community consultation on the Council Annual Business Plan and Budget and the six property owners were invited to make submissions to the Council regarding the proposal. The written correspondence was supported by other contact by the responsible Director by telephone or face to face as required.

There were five responses by property owners in writing via email and gave a good indication that they understood the process and the potential impact and implications for them as property owners. The response recorded for the property owners at 171 Verrall Road was one of support by telecall.

It appears the proposal and its implications were clear enough for the affected property owners to decide in support of or against the proposal. Mr Coyne has been noted in support of the proposal and this is also reflected in his response to the questionnaire provided in July 2014. In this response, he indicates that he would anticipate difficulty paying the rate, wanted more information on deferring the payment and supported the option for Council to raise separate rates for the next nine years as originally proposed. He then posed four questions and stated that he would not pay the \$858 separate rate until satisfied with the response and favourable outcome.

It is also worth noting that all other affected property owners are up to date with payment of the separate rate.

While the consultation process was reasonable and in accordance with the Council policy one issue the Council may wish to consider is the development of a defined policy and procedure for undertaking the process to use a separate rate to charge sections of ratepayers to fund this type of project. While the process was conducted properly it would be even better if there were clear guidelines to follow to ensure procedural fairness to all affected ratepayers. The requirements for what constitutes a sufficient majority especially in this case with a small number of affected owners and the timing of providing alternative options should also be considered. The definition of what a significant majority means would be critical especially where there is a small number of people involved. It is arguable in this case whether four would constitute a significant majority.

As this type of rate is only used in specific circumstances and usually only impacts upon a proportion of ratepayers it should be set out clearly so that it is consistently applied. As a separate rate is an

additional cost to the ratepayer the Council could also increase the length of the consultation and set the minimum level of support that would need to be achieved before it proceeded.

After reviewing all provided documentation and interviewing staff and the applicant the Independent Investigator concludes:

1. That the process undertaken by the Adelaide Hills Council to declare a separate rate in the part of the land encompassing the six Verrall Road properties to enable the sealing of the northern end of Verrall Road was thorough and reasonable.
2. The Council has operated within the legislative requirements in declaring the separate rate
3. The Adelaide Hills Council provided sufficient information to the affected property owners to enable them to understand the full extent of the proposal and its implications.
4. The Council also provided a reasonable time for consultation with the affected property owners and attempted to canvass the views of all parties involved in the process to ensure that the Council had feedback from all affected parties prior to making their decision.
5. The implications for the six property owners including the imposition of a separate rate to repay the total cost of the road sealing project were clearly stated in the letters and the proposal. This is clear in the responses received from them.
6. A range of options to repay the separate rate were proposed and consulted upon during the overall process before the final proposal was presented to Council to declare a separate rate.
7. Documents provided indicate that the Adelaide Hills Council followed proper processes and gathered sufficient evidence and advice both internally and externally on which to base their decision.
8. The Council was made aware of the responses (both positive and negative) of the affected property owners and were aware that a majority supported the proposal. They were also provided with information received from the property owners in that regard. The elected members received a copy of the proposal and were briefed on the matter prior to making the decision to declare the separate rate.
9. While the process undertaken was thorough it may be beneficial to consider the development of a policy and procedure for the use of separate rates to fund projects that would not otherwise be undertaken. This could provide benefits for both the Council and the affected property owners and ratepayers. It would be important to set clear guidelines for the Council staff to follow and to provide potential funders with clear information on the implications of any proposal and how they will be consulted and what their rights and options are. In the consultation process the opportunity for a group discussion with all affected people could also be included. The policy and/or guidelines could also include the process for indicating support or otherwise and ensure that this information is in writing and provided by post or electronically and the level of support required.

During the investigation, there was no evidence to indicate that the Council operated unlawfully or unreasonably.

#### **Recommended Action:**

1. Based on the information provided and gathered in this review, the decision to declare the separate rate was reasonable and should stand. This was supported by the following:
  - The process followed was thorough and covered all necessary elements
  - The proposal outlined all the necessary issues for the ratepayers to consider before they were asked to decide whether they supported or opposed the declaration of the separate rate as a funding mechanism for the sealing of the road
  - Consideration was given to the impact of the separate rate and options put forward for the ratepayers to defer the payment if they so desired

- The views of the affected ratepayers were canvassed and considered prior to the decision including the opportunity to provide written submissions to council during the consultation
  - The Council was briefed on the proposal and provided with a copy of the proposal and a summary of responses prior to the matter being included in the report to Council on 24 June 2014, which presented the Annual Business Plan and Budget for adoption. All rating decisions including the declaration of the separate rate for Verrall Road North were made at this meeting.
2. That the Council review the consultation process to consider whether any improvements could be made including the timing of the consultation, the type of voting system and the opportunity for a group discussion with representatives of Council prior to the final decision. In addition, a minimum percentage level of support for any proposal could be adopted as part of this process.
  3. That Council advise Mr John Coyne as the Applicant of the decision

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## **Appendix 2**

*Internal Review of Council Decision Policy – Effective  
from 14 April 2014 to 10 April 2017*

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# COUNCIL POLICY



## INTERNAL REVIEW OF COUNCIL DECISIONS

<b>Policy Number:</b>	<b>GOV-01</b>
<b>Responsible Department(s):</b>	<b>Governance &amp; Risk</b>
<b>Relevant Delegations:</b>	<b>None</b>
<b>Other Relevant Policies:</b>	<b>Complaints Handling Code of Conduct for Council Employees Council Member Conduct Whistleblowers Protection Fraud &amp; Corruption Prevention</b>
<b>Relevant Procedure(s):</b>	<b>None</b>
<b>Relevant Legislation:</b>	<b>S270 <i>Local Government Act 1999</i></b>
<b>Policies and Procedures Superseded by this policy on its Adoption:</b>	<b>08.11.11, Item 10.5, 325</b>
<b>Adoption Authority:</b>	<b>SPDPC</b>
<b>Date of Adoption:</b>	<b>8 April 2014</b>
<b>Effective From:</b>	<b>14 April 2014</b>
<b>Minute Reference for Adoption:</b>	<b>Item 12.1, 17</b>
<b>Next Review:</b>	<b>No later than January 2016, or as required.</b>

## INTERNAL REVIEW OF COUNCIL DECISIONS

### 1. Introduction

- 1.1. This policy and procedure specifically addresses the manner in which requests for a review of a previous decision of Council will be dealt with, and provides a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council or its agents.
- 1.2. Section 270 of the *Local Government Act 1999* requires Council to maintain “policies, practices and procedures” for dealing with requests for service and complaints including a procedure about “the review of decisions of—
  - (a) the council;
  - (b) employees of the council;
  - (c) other persons acting on behalf of the council.”
- 1.3. Council has a three tier process for managing customer complaints, set out below, which includes immediate, informal resolution as well as established processes for review by senior staff.

#### *Step 1 - Immediate response to resolve the complaint*

All staff are empowered to handle complaints in the first instance and it is preferable that they are dealt with promptly at the initial point of contact and at the appropriate officer level.

#### *Step 2 - Complaint escalated to a more senior officer*

A complaint will be directed to a more senior officer in the Council, where circumstances indicate that the complaint would be more appropriately handled at a higher level. This may occur, for example, where an officer has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council work area.

#### *Step 3 - Internal review of a Council decision by statutory process*

Internal review of a Council decision is available under section 270 of the *Local Government Act 1999*. This is a process established by legislation that enables a Council to reconsider all the evidence relied on to make a decision, including new evidence if relevant. This process is generally a last resort in the complaint handling process, but may also be used in situations which are not able to be resolved by other means, such as a complaint about a decision of the CEO.

- 1.4. Council's Complaints handling is available to the public.

- 1.5. This policy and procedure for review of a decision commences at the point where:
  - A request for the review of a decision is received, or
  - A complaint escalates to Tier 3 under Council's complaint handling policy.
- 1.6. The aim of this policy and procedure, which is available on Council's website, is to ensure a fair, consistent and structured process for any party dissatisfied with a decision which has been made by Council or its agents.
- 1.7. The policy and procedure applies to all Council staff who may be involved in receiving an application for review of a Council decision.

## **2. Key Principles**

- 2.1. The policy and procedure are based on five principles, which are fundamental in the way Council approaches requests for service, complaint handling and reviews of decisions. They are:
  - Fair treatment: which requires impartiality, confidentiality and transparency at all stages of the process
  - Accessibility: to be accessible there must be broad public awareness about Council's policies and procedures and a range of contact options
  - Responsiveness: this will be achieved by providing sufficient resources, well trained staff and ongoing review and improvement of the systems
  - Efficiency: requests and complaints will be resolved as quickly as possible, while ensuring that they are dealt with at a level that reflects their level of complexity
  - Integration of different areas of Council where the matter under review overlaps functional responsibilities.

## **3. Scope**

### **3.1. Application of policy and procedures**

- 3.1.1. This policy and procedure applies when reviewing decisions of Council as outlined below.
- 3.1.2. Council also has defined procedures for dealing with complaints and requests for service. As a general rule, Council will promote these procedures in the first instance as they offer the potential for immediate resolution. An internal review is the third tier in Council's complaints handling process. It will apply:
  - when matters cannot be resolved satisfactorily
  - when a decision has to be reviewed by the elected Council (See 8.1 Assignment of application for review)

### 3.2. Matters outside the scope of the policy and procedures

3.2.1. Other provisions in the *Local Government Act* prescribe appeal arrangements in certain circumstances. For example:

- objections to valuations made by a Council and appeals against orders made pursuant to section 254 of the *Local Government Act*.

3.2.2. Other legislation that has its own prescribed appeal procedures, including:

- the *Development Act 1993*
- the *Freedom of Information Act 1991*.

3.3. While Council prefers to work with its customers to resolve requests for review quickly and effectively, an applicant will always retain the right to seek other forms of resolution, such as contacting the Ombudsman, or taking legal action at any time. Note however that as a general rule, the Ombudsman prefers that matters be addressed by Council in the first instance, unless this is not appropriate in the circumstances.

## 4. Council's commitment

4.1. Council, its committees, staff and contractors make decisions every day which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

4.2. Council is committed to open, responsive and accountable government. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievances considered.

4.3. This policy and procedure will be widely accessible to ensure that customers are fully aware of their right to request the review of a decision and the process that will be followed.

4.4. Everyone will be treated equally, in accordance with good administrative practice. Council's procedures are designed to ensure that:

- Every applicant has the opportunity to make an application for review of a decision covered by this procedure
- An unbiased assessment is undertaken
- Decisions are based on sound evidence
- Applicants receive information about the outcome of the review.

## 5. Interpretation

**Alternative Dispute Resolution** includes mediation, conciliation or neutral evaluation as set out in section 271 of the *Local Government Act*.

**Applicant** is the party lodging the requests for review. Examples include residents, ratepayers, members of a community group, users of Council facilities and visitors to the area.

**Business Day** means a day when the Council is normally open for business, i.e. Monday to Friday, excluding public holidays.

**Council** refers to the Adelaide Hills Council

**Decision** is a position adopted by Council or its employees. It will generally be a judgement reached after consideration of relevant information.

**Decision-maker** refers to the individual or entity responsible for the decision under review.

**Employee** includes a person employed directly by the Council in a full time, part time or casual capacity (whether that position is permanent or contractual) and persons providing services to, or on behalf of, the Council even though they may be employed by another party.

**Reviewer** refers to the individual or entity responsible for resolution of a request for review of a decision.

## 6. Records Management

- 6.1. All documents, notes, photographs and correspondence must be retained and stored in accordance with Council's Records Management protocols as required by Section 125 of the *Local Government Act*.
- 6.2. All applications must be recorded in Council's records management system in such a way that the information can also be analysed for service improvement opportunities.

## 7. Procedure

### 7.1. Making an application

- 7.1.1. An application for a review of a Council decision provides Council with an opportunity to revisit a decision which has aggrieved an interested party. This may include an individual or a group, ratepayer, resident or business owner. Depending on the particular circumstances, it may also include a person who is not the direct subject of the decision (for example, where a Council issues a permit for a person to keep more than the maximum number of dogs permitted under a by-law, a neighbour may seek an internal review of the decision.) Council will determine whether a person has a sufficient interest to apply for an internal review of a decision, on a case-by-case basis.
- 7.1.2. An application for review must be in writing and set out the reasons for applying for the review (that is, why the applicant believes that the decision is wrong). Although Council can be expected to have information and material relevant to the matter under review, an application for review may also include new, relevant information or evidence to support the application.
- 7.1.3. Applicants may wish to use the form prepared by Council (Appendix A).

## **7.2. Assisting with the application for review**

- 7.2.1. It is essential that no one is excluded from lodging an application for review because of any difficulties they may have representing themselves. All staff are expected to offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for the review in writing when circumstances warrant.
- 7.2.2. If necessary arrange access to interpreters, aids or advocates to ensure that an applicant is treated equitably.

## **7.3. Internal Review Contact Officer**

- 7.3.1. An Internal Review Contact Officer (IRCO) appointed by the Chief Executive Officer is the initial point of contact for applicants.
- 7.3.2. The role of the Internal Review Contact Officer is to:
- explain the procedure to the applicant and explore any alternative options to resolve the matter, such as alternative dispute resolution prior to an application for review.
  - acknowledge the receipt of the application
  - maintain a register of all applications for review received and the outcomes of the applications
  - outline the timeframes involved and the action to be taken in the first instance
  - undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter
  - keep the applicant informed of progress
  - ensure adequate records are maintained
  - report to Council at prescribed intervals on all applications lodged for review
- 7.3.3. All applications are to be referred to the IRCO immediately, including meeting with the applicant or transferring a telephone call when contact is first made.

## **7.4. Acknowledging an application for review**

- 7.4.1. The IRCO is responsible for:
- 7.4.1.1. working in conjunction with the appropriately delegated officer to determine how the review will be handled
- 7.4.1.2. advising the applicant of the process to be undertaken and the time of the next contact
- 7.4.1.3. ensuring the application is properly lodged and assigned.

7.4.2. Applications for a review of a decision must be responded to within three [3] business days, acknowledging receipt and advising of the expected timeframe for dealing with the matter. Council will use its best endeavours to ensure that a review of the original decision will be completed within twenty-one [21] business days. However if the decision is to be reviewed by Council, a committee, or an external panel there may be delays caused by meeting cycle timelines. In more complex cases, a review may take longer.

7.4.3. The applicant will be regularly informed of progress, either by email, letter or telephone.

## **7.5. Applications for a review of the impact of rates or services charges**

7.5.1. If Council receives an application for a review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with as a matter of priority. Where circumstances warrant, Council will consider financial relief or the granting of concessions in line with the provisions of the *Local Government Act*.

## **8. Undertaking a Review**

### **8.1. Assignment of applications for review**

8.1.1. The elected Council will be the reviewer:

- when the decision being reviewed was made by the elected Council, a Committee of the Council or the CEO
- when the decision relates to civic and ceremonial matters
- in other circumstances as determined by the CEO or resolution of the Council

8.1.2. Council has delegated to the Mayor the responsibility for determining who will undertake the investigation and the preparation of a report for Council consideration (this may be the CEO, his/her delegate, or an expert party from outside the organisation) and the Mayor will report the determination to the next Council/SPDPC meeting.

8.1.3. Where the elected Council is not the reviewer, a review methodology to suit the nature of the internal review to be undertaken will be chosen from the following:

- CEO or his/her delegate
- A panel comprised of Council Members and Senior Staff
- A panel of experts external to the organisation
- The assistance of an external person

8.1.4. Wherever possible and appropriate, Council will seek to involve an external person or panel to assist with the review, including the enlistment of employees of other Councils.

## **8.2. Role of reviewer**

8.2.1. The role of a reviewer is to review the decision in question to ensure that the decision-maker complied with the following procedural requirements and made the best possible decision in the circumstances:

- The decision must be within a power properly conferred on the decision-maker under the relevant Act.
- A decision-maker must consider all matters which are relevant to the making of the decision and not take into account matters which are not relevant to the decision.
- A decision-maker must not make a decision or exercise a power or discretion in bad faith or for an improper purpose.
- A decision-maker must ensure that findings of fact are based on evidence.
- Decisions must be reasonable.
- Those who may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice.
- A decision-maker must properly consider the application of existing policies.
- A decision-maker must not exercise a discretionary power at the direction of another person.

## **8.3. Review process**

8.3.1. In carrying out a review of a decision, the reviewer will consider all the information and material that was before the original decision-maker and any additional relevant information or material provided by the applicant. The reviewer will 'stand in the shoes' of the original decision-maker and make the best decision available on the evidence.

8.3.2. This means the reviewer will do more than simply consider whether the decision is legally and procedurally correct. The reviewer will also consider whether a different decision would be better, based on the evidence. The process of merits review, as described above, will typically involve a review of the facts that support a decision, including any new evidence that may come to light.

## **8.4. Providing 'Procedural Fairness'**

8.4.1. Council will observe the principles of procedural fairness (also called 'natural justice') when exercising its statutory powers which could affect the rights and interests of individuals.

#### 8.4.2. Put simply, 'procedural fairness' involves:

- Giving an applicant a right to put their case forward. This will generally involve giving an applicant the opportunity to provide all relevant documentary evidence, rather than an oral hearing
- Ensuring that the reviewer does not have a personal interest in the outcome (is not biased) and
- Acting only on proper evidence that is capable of proving the case.

### 8.5. Giving Reasons

8.5.1. While there is no statutory requirement to give reasons for a decision, Council will provide reasons for the decision of the reviewer where practicable.

8.5.2. Council will always give reasons to explain the outcome where:

- A decision is not in accordance with published policy;
- A decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way; or
- Conditions are attached to any approval, consent, permit, licence or other authorisation.

### 8.6. Refusing an application for review

8.6.1. A council, or a person assigned to consider the application, may refuse to consider an application for review if—

- the application is made by an employee of the council and relates to an issue concerning his or her employment; or
- it appears that the application is frivolous or vexatious; or
- the applicant does not have a sufficient interest in the matter.

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

## 9. Remedies

9.1. Where the review of a decision upholds the applicant's grievance, an appropriate remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy chosen will be proportionate and appropriate to the failure identified.

9.2. As a general principle the applicant will, so far as possible, be put in the position he or she would have been in, had the decision not been made. This may mean changing a decision. Where circumstances are such that it is not possible to return to the original situation, or to rectify the outcome of the decision, it may only be possible to offer an apology.

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- 9.3. The range of other possible outcomes includes:
- an explanation
  - mediation
  - an admission of fault
  - a change to policy, procedure or practice
  - a correction of misleading records
  - financial compensation, including a refund of any fees
  - the waiving of a debt
  - the remission of a penalty
  - disciplinary action
  - referral of a matter to an external agency for further investigation or prosecution.
- 9.4. The remedy or response may be one, or a combination of these actions. The chosen remedy will be proportionate and appropriate to the failure in service and take account of what the applicant is seeking as an outcome of the review.
- 9.5. If an apology is required it will be done promptly and the applicant advised that appropriate action will be taken to ensure the problem is not repeated.
- 9.6. Compensation will only be offered in cases where the loss or suffering is considered substantial. The Council itself and the CEO are the only people authorised to offer financial compensation and this will only occur after consultation with the Local Government Association Mutual Liability Scheme.
- 9.7. When advising an applicant of the outcome of a review, information will also be provided about alternative remedies, including any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman.

## **10. Reporting**

- 10.1. All applications will be recorded in Council's records management system in such a way that the information can also be analysed for service improvement opportunities.
- 10.2. The IRCO records the following information about all applications for review:
- the number of applications for review made
  - the kinds of matters to which the applications relate
  - the outcome of applications
  - such other matters as may be prescribed by the regulations.

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- 10.3. The IRCO will submit a report to Council annually about section 270 applications for review of a decision, including:
- the number of applications for review made under this section
  - the kinds of matters to which the applications relate
  - the outcomes of applications under this section.
- 10.4. The IRCO will also provide information on how the outcomes have been used to improve Council's customer service, policies, procedures and practices.
- 10.5. This information, as specified in section 270(8), will be included in Council's Annual Report.

## **11. Further information**

- 11.1. This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website [www.ahc.sa.gov.au](http://www.ahc.sa.gov.au). Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

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**Appendix A**  
*Request for  
S270 Internal Review of Council Decision Form*

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# Adelaide Hills Council - Request for S270 Internal Review of Council Decision Form



## Customer Details

Customers Name: ..... Date.....

Residential Address: .....

.....

Postal Address: .....

*(if different)* .....

Telephone: ..... (M).....

E-mail: .....

## Details of Council Decision

Date of Council Decision:.....

Council Decision: .....

.....

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.....

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Reasons for requesting review: .....

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.....

.....

.....

Your interest in the matter: .....

.....

.....

Signed:..... Date:.....

Printed Name: .....