



I hereby give notice that a Special Council Meeting will be held on:

Date: Tuesday, 14 November 2017
Time: 6.00pm
Location: Council Chambers Minlaton Town Hall
57 Main Street
Minlaton

AGENDA

Special Council Meeting

14 November 2017

A handwritten signature in black ink, appearing to read "Andrew Cameron".

**Andrew Cameron
CHIEF EXECUTIVE OFFICER**

CONFLICT OF INTEREST

Members are reminded of the requirements for disclosure by Members of direct or indirect pecuniary benefit or detriment and non-pecuniary benefit or detriment in relation to a material conflict of interest in accordance with Section 73, or an actual or perceived conflict of interest in accordance with Section 75 of the Local Government Act in items listed for consideration on the Agenda. Section 74 and 75A of the Local Government Act 1999 requires that Elected Members declare any interest and provide full and accurate details of the relevant interest to the Council. In relation to actual or perceived conflicts of interest a member has an obligation to outline how they propose to deal with the actual or perceived conflict of interest prior to consideration of that item on the Agenda.

This requirement does not apply to Ordinary Business Matters prescribed by regulation 8AAA Local Government Act (General) (Accountability and Governance) Variation Regulations 2016.

Each Member of a Council has a duty to vote at all meetings unless excepted by legislation.

The major exception being where a Member has a material conflict of interest.

Agenda

1 **Welcome by Mayor** 5

2 **Opening Prayer** 5

3 **Present** 5

4 **Leave of Absence** 5

5 **Apologies** 5

6 **Conflict of Interest** 5

7 **Visitors to the Meeting**.....

 7.1 Greta Lake

 7.2 Dr John Gray

 7.3 Bill Gill - Black Point Progress Association

CONFIDENTIAL AGENDA..... 7

8 **Confidential Items**..... 7

 8.1 Provision of Legal Advice – Norman Waterhouse Lawyers..... 8

DEBATE AGENDA..... 8

9 **Chief Executive Officer**..... 8

 9.1 Section 270 - Black Point Land Revocation..... 8

10 **Next Meeting**
 Wednesday 13 December 2017

11 **Closure**

1 WELCOME BY MAYOR

Meeting declared opened

2 OPENING PRAYER

3 PRESENT

4 LEAVE OF ABSENCE

Nil

5 APOLOGIES

Cr Tania Stock

6 CONFLICT OF INTEREST

DEBATE AGENDA

CONFIDENTIAL AGENDA**8 CHIEF EXECUTIVE OFFICER****8.1 CONFIDENTIAL ITEMS****PROVISION OF LEGAL ADVICE – NORMAN WATERHOUSE LAWYERS****RECOMMENDATION****Section 90 (3) (h) and (i) Order**

1. That pursuant to Section 90(2) of the Local Government Act 1999, the Council orders, that the public be excluded from the meeting with the exception of the Chief Executive Officer, Executive Assistant to CEO and Mayor, Director Corporate and Community Services, Director Assets and Infrastructure, Director Development Services and Felice D'Agostino – Norman Waterhouse Lawyers.

The Council is satisfied that, pursuant to Section 90 (3) (h) and (i) of the Act, the information to be received, discussed or considered in relation to report 8.1 Provision of Legal Advice is confidential information relating to:

(h) legal advice;

(i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;

Accordingly, the Council is satisfied that the principle which states the meeting be conducted in a place open to the public has been outweighed in the circumstances.

Section 91 (7) Order

2. That having considered report 8.1 Provision of Legal Advice, in confidence under Section 90 (2) and (3) (h) and (i) of the Local Government Act 1999, the Council, pursuant to Section 91 (7) of that Act orders that the agenda report, minutes and supporting documentation relevant to report 8.1 Provision of Legal Advice be retained in confidence for a period of 12 months.

DEBATE AGENDA**9.1 SECTION 270 - BLACK POINT LAND REVOCATION****Document #:** 17/80461**Department:** Executive Services**PURPOSE**

For Council to reconsider the decision made at its meeting of 10 May 2017 regarding the proposed revocation of the community land classification of land located at Black Point, following receipt of a request pursuant to Section 270 of the Local Government Act 1999 for a review of the decision.

RECOMMENDATION 1**To Note and Consider Application and Submissions**

That Council:

1. notes and considers the application received from Greta Lake under Section 270 of the Local Government Act 1999 seeking a review of the Council's decisions made at its meeting of 10 May 2017 (resolution numbers 117/2017, 118/2017, 119/2017 and 120/2017) in relation to the proposed revocation of the community land classification of land located at Black Point and identified as:
 - 1.1 Allotment 201 Plan 41613 Certificate of Title Volume 5294 Folio 896;
 - 1.2 Allotment 202 Plan 41613 Certificate of Title Volume 5294 Folio 897;
 - 1.3 Allotment 203 Plan 41613 Certificate of Title Volume 5294 Folio 898; and
 - 1.4 Allotment 204 Plan 41613 Certificate of Title Volume 5294 Folio 899,**(the Original Decisions);**
2. notes and considers the submissions made by Dr John Gray for consideration as part of the Council's review of the Original Decisions;
3. notes and considers the submissions made by the Black Point Progress Association for consideration as part of the Council's review of the Original Decisions.

RECOMMENDATION 2**To Reconsider all Information**

That Council:

1. in accordance with the Council's Internal Review of a Council Decision Policy review the Original Decisions by:
 - 1.1 reconsidering the following information that was considered by the Council at the time it made the Original Decisions:
 - 1.1.1 reports of Director Development Services for the 14 September 2016 Council meeting and attachments;

- 1.1.2 Community Engagement Report – Revocation of Community Land Classification Black Point Reserve;
 - 1.1.3 Community Engagement Policy;
 - 1.1.4 petition received by the Council at its meeting of 14 December 2016;
 - 1.1.5 reports of Director Development Services for the 8 February 2017 Council meeting and attachments;
 - 1.1.6 presentation to Elected Member Workshop held on 22 March 2017; and
 - 1.1.7 reports of Director Development Services for the 10 May 2017 Council meeting and attachments;
- 1.2 considering the following additional information:
- 1.2.1 email from Ms Greta Lake to the Council dated 22 May 2017;
 - 1.2.2 email from Ms Greta Lake to Norman Waterhouse Lawyers dated 28 July 2017;
 - 1.2.3 submission by the Black Point Progress Association dated 1 August 2017;
 - 1.2.4 submission by Dr John Gray dated 29 August 2017 and attachments;
 - 1.2.5 legal advice received and considered by the Council at this meeting on a confidential basis in accordance with Section 90(3) (h) (i) of the Local Government Act 1999.

RECOMMENDATION 3

Option A for Determining Review Application

1. That Council having considered (including where relevant, reconsidered) the following information:
 - 1.1 deputations made at this meeting;
 - 1.2 reports of Director Development Services for the 14 September 2016 Council meeting and attachments;
 - 1.3 Community Engagement Report – Revocation of Community Land Classification Black Point Reserve;
 - 1.4 petition received by the Council at its meeting of 14 December 2016;
 - 1.5 reports of Director Development Services for the 8 February 2017 Council meeting and attachments;
 - 1.6 presentation to Elected Member Workshop held on 22 March 2017;
 - 1.7 reports of Director Development Services for the 10 May 2017 Council meeting and attachments;
 - 1.8 Minutes of Council meeting of 10 May 2017;

- 1.9 Internal Review of a Council Decision Policy;
- 1.10 Community Engagement Policy;
- 1.11 email from Ms Greta Lake dated 22 May 2017;
- 1.12 email from Ms Greta Lake dated 28 July 2017;
- 1.13 submissions from Black Point Progress Association dated 1 August 2017;
- 1.14 submissions from Dr John Gray dated 29 August 2017; and
- 1.15 legal advice received and considered by the Council at this meeting on a confidential basis in accordance with Section 90(3) (h) (i) of the Local Government Act 1999,

resolves to:

- 1.16 amend its resolution made at its meeting of 10 May 2017 regarding item 117/2017, namely:

'That Council:

1. *receive the 13 written submissions from authors of the original submissions and the 12 new submissions received from Black Point property owners in response to the extension of the community engagement process for the proposed revocation of community land;*
2. *give approval to proceed with seeking Ministerial approval for the revocation of community land classification over the Council owned property located on Black Point Road, Black Point, being allotment 201, Plan 41613, Certificate of Title Volume 5294 Folio 896;*
3. *authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to the relevant documents necessary to execute the revocation, transfer of properties and licence',*

by deleting paragraphs 2 and 3;

- 1.17 amend its resolution made at its meeting of 10 May 2017 regarding item 118/2017, namely:

'That Council:

1. *receive the 13 written submissions from authors of the original submissions and the 12 new submissions received from Black Point property owners in response to the extension of the community engagement process for the proposed revocation of community land;*
2. *give approval to proceed with seeking Ministerial approval for the revocation of community land classification over the Council owned property located on Black Point Road, Black Point, being allotment 202, Plan 41613, Certificate of Title Volume 5294 Folio 897;*
3. *authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to the relevant documents necessary to execute the revocation, transfer of properties and licence',*

by deleting paragraphs 2 and 3;

- 1.18 amend its resolution made at its meeting of 10 May 2017 regarding item 119/2017, namely:

'That Council:

1. *receive the 13 written submissions from authors of the original submissions and the 12 new submissions received from Black Point property owners in response to the extension of the community engagement process for the proposed revocation of community land;*
2. *give approval to proceed with seeking Ministerial approval for the revocation of community land classification over the Council owned property located on Black Point Road, Black Point, being allotment 203, Plan 41613, Certificate of Title Volume 5294 Folio 898;*
3. *authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to the relevant documents necessary to execute the revocation, transfer of properties and licence',*

by deleting paragraphs 2 and 3;

- 1.19 amend its resolution made at its meeting of 10 May 2017 regarding item 120/2017, namely:

'That Council:

1. *receive the 13 written submissions from authors of the original submissions and the 12 new submissions received from Black Point property owners in response to the extension of the community engagement process for the proposed revocation of community land;*
2. *give approval to proceed with seeking Ministerial approval for the revocation of community land classification over the Council owned property located on Black Point Road, Black Point, being allotment 204, Plan 41613, Certificate of Title Volume 5294 Folio 899;*
3. *authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to the relevant documents necessary to execute the revocation, transfer of properties and licence',*

by deleting paragraphs 2 and 3.

RECOMMENDATION 3**Option B for Determining Review Application**

That Council:

1. That Council having considered (including where relevant, reconsidered) the following information:
 - 1.1 deputations made at this meeting;
 - 1.2 reports of Director Development Services for the 14 September 2016 Council meeting and attachments;
 - 1.3 Community Engagement Report – Revocation of Community Land Classification Black Point Reserve;
 - 1.4 petition received by the Council at its meeting of 14 December 2016;
 - 1.5 reports of Director Development Services for the 8 February 2017 Council meeting and attachments;
 - 1.6 presentation to Elected Member Workshop held on 22 March 2017;
 - 1.7 reports of Director Development Services for the 10 May 2017 Council meeting and attachments;
 - 1.8 Minutes of Council meeting of 10 May 2017;
 - 1.9 Internal Review of a Council Decision Policy;
 - 1.10 Community Engagement Policy;
 - 1.11 email from Ms Greta Lake dated 22 May 2017 requesting Section 270 review;
 - 1.12 email from Ms Greta Lake dated 28 July 2017;
 - 1.13 submissions from Black Point Progress Association dated 1 August 2017;
 - 1.14 submissions from Dr John Gray dated 29 August 2017; and
 - 1.15 legal advice received and considered by the Council at this meeting on a confidential basis in accordance with Section 90(3) (h) (i) of the Local Government Act 1999,

resolves to:

- 1.16 affirm its resolution made at its meeting of 10 May 2017 regarding item 117/2017, namely:

‘That Council:

1. *receive the 13 written submissions from authors of the original submissions and the 12 new submissions received from Black Point property owners in response to the extension of the community engagement process for the proposed revocation of community land;*
2. *give approval to proceed with seeking Ministerial approval for the revocation of community land classification over the Council owned property located on*

Black Point Road, Black Point, being allotment 201, Plan 41613, Certificate of Title Volume 5294 Folio 896;

3. *authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to the relevant documents necessary to execute the revocation, transfer of properties and licence',*

for the following reasons:

- Council has followed the requirements of the Act in relation to the Revocation matter.
- in June 2012 Council adopted its 10 year Long Term Financial Plan (the LTFFP) which introduced a 3% financial sustainability levy over and above CPI increases in rates.
- Council had been experiencing large operating deficits for many years previously along with a significant shortfall in spending on asset renewal. After taking advice both internally and externally, Council came to the conclusion that, within the 10 years of the LTFFP, it needed to reach a break even operating result in line with local government industry averages to ensure spending on the renewal of existing assets was sufficiently increased to maintain service levels – again in line with industry averages. Spending on new assets was also reduced significantly in the plan.
- the LTFFP was adopted with Operating Deficits reducing each year with approximately a break even result targeted for the 2022/23 financial year.
- each reiteration of the LTFFP adopted by Council since has also maintained that target after allowing for higher than anticipated rising costs and significant reductions in available ongoing funding from both State and Federal governments.
- each reiteration showed that the levy was required until at least the end of the 2021/22 financial year to achieve Council's industry average.
- there has been significant interest expressed by adjoining property owners, and other interested parties, in the possibility of purchasing the property.
- since the creation of the reserve, the primary use of the reserve is by the adjacent shack owner for access and storage of vehicles and boats.
- the open space reserve has minimal value from a recreational or leisure perspective and has little or no impact on future recreational opportunities for the local or wider community. The land is not being utilised in this manner due to the location of the reserve being at the rear of an existing leasehold shack and both adjoining properties are residential.
- as there is no strategic or operational need to retain ownership of the subject land, Allotment 201 has been identified as being surplus to Council's needs.
- disposal, with the view to sell the property, is considered to be appropriate in this instance.

- 1.17 affirm its resolution made at its meeting of 10 May 2017 regarding item 118/2017, namely:

'That Council:

- 1. receive the 13 written submissions from authors of the original submissions and the 12 new submissions received from Black Point property owners in response to the extension of the community engagement process for the proposed revocation of community land;*
- 2. give approval to proceed with seeking Ministerial approval for the revocation of community land classification over the Council owned property located on Black Point Road, Black Point, being allotment 202, Plan 41613, Certificate of Title Volume 5294 Folio 897;*
- 3. authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to the relevant documents necessary to execute the revocation, transfer of properties and licence',*

for the following reasons:

- Council has followed the requirements of the Act in relation to the Revocation matter.
- in June 2012 Council adopted its 10 year Long Term Financial Plan (the LTFP) which introduced a 3% financial sustainability levy over and above CPI increases in rates.
- Council had been experiencing large operating deficits for many years previously along with a significant shortfall in spending on asset renewal. After taking advice both internally and externally, Council came to the conclusion that, within the 10 years of the LTFP, it needed to reach a break even operating result in line with local government industry averages to ensure spending on the renewal of existing assets was sufficiently increased to maintain service levels – again in line with industry averages. Spending on new assets was also reduced significantly in the plan.
- the LTFP was adopted with Operating Deficits reducing each year with approximately a break even result targeted for the 2022/23 financial year.
- each reiteration of the LTFP adopted by Council since has also maintained that target after allowing for higher than anticipated rising costs and significant reductions in available ongoing funding from both State and Federal governments.
- each reiteration showed that the levy was required until at least the end of the 2021/22 financial year to achieve Council's industry average.
- there has been significant interest expressed by adjoining property owners, and other interested parties, in the possibility of purchasing the property.
- since the creation of the reserve, the primary use of the reserve is by the adjacent shack owner for access and storage of vehicles and boats.
- the open space reserve has minimal value from a recreational or leisure perspective and has little or no impact on future recreational opportunities for the local or wider community. The land is not being utilised in this manner due to the location of the reserve being at the rear of an existing leasehold shack and both adjoining properties are residential.

- as there is no strategic or operational need to retain ownership of the subject land, Allotment 202 has been identified as being surplus to Council's needs.
- disposal, with the view to sell the property, is considered to be appropriate in this instance.

1.18 affirm its resolution made at its meeting of 10 May 2017 regarding item 119/2017, namely:

'That Council:

1. *receive the 13 written submissions from authors of the original submissions and the 12 new submissions received from Black Point property owners in response to the extension of the community engagement process for the proposed revocation of community land;*
2. *give approval to proceed with seeking Ministerial approval for the revocation of community land classification over the Council owned property located on Black Point Road, Black Point, being allotment 203, Plan 41613, Certificate of Title Volume 5294 Folio 898;*
3. *authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to the relevant documents necessary to execute the revocation, transfer of properties and licence',*

for the following reasons:

- Council has followed the requirements of the Act in relation to the Revocation matter.
- in June 2012 Council adopted its 10 year Long Term Financial Plan (the LTFFP) which introduced a 3% financial sustainability levy over and above CPI increases in rates.
- Council had been experiencing large operating deficits for many years previously along with a significant shortfall in spending on asset renewal. After taking advice both internally and externally, Council came to the conclusion that, within the 10 years of the LTFFP, it needed to reach a break even operating result in line with local government industry averages to ensure spending on the renewal of existing assets was sufficiently increased to maintain service levels – again in line with industry averages. Spending on new assets was also reduced significantly in the plan.
- the LTFFP was adopted with Operating Deficits reducing each year with approximately a break even result targeted for the 2022/23 financial year.
- each reiteration of the LTFFP adopted by Council since has also maintained that target after allowing for higher than anticipated rising costs and significant reductions in available ongoing funding from both State and Federal governments.
- each reiteration showed that the levy was required until at least the end of the 2021/22 financial year to achieve Council's industry average.
- there has been significant interest expressed by adjoining property owners, and other interested parties, in the possibility of purchasing the property.

- since the creation of the reserve, the primary use of the reserve is by the adjacent shack owner for access and storage of vehicles and boats.
- the open space reserve has minimal value from a recreational or leisure perspective and has little or no impact on future recreational opportunities for the local or wider community. The land is not being utilised in this manner due to the location of the reserve being at the rear of an existing leasehold shack and both adjoining properties are residential.
- as there is no strategic or operational need to retain ownership of the subject land, Allotment 203 has been identified as being surplus to Council's needs.
- disposal, with the view to sell the property, is considered to be appropriate in this instance.

1.19 affirm its resolution made at its meeting of 10 May 2017 regarding item 120/2017, namely:

'That Council:

- 1. receive the 13 written submissions from authors of the original submissions and the 12 new submissions received from Black Point property owners in response to the extension of the community engagement process for the proposed revocation of community land;*
- 2. give approval to proceed with seeking Ministerial approval for the revocation of community land classification over the Council owned property located on Black Point Road, Black Point, being allotment 204, Plan 41613, Certificate of Title Volume 5294 Folio 899;*
- 3. authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to the relevant documents necessary to execute the revocation, transfer of properties and licence',*

for the following reasons:

- Council has followed the requirements of the Act in relation to the Revocation matter.
- in June 2012 Council adopted its 10 year Long Term Financial Plan (the LTFP) which introduced a 3% financial sustainability levy over and above CPI increases in rates.
- Council had been experiencing large operating deficits for many years previously along with a significant shortfall in spending on asset renewal. After taking advice both internally and externally, Council came to the conclusion that, within the 10 years of the LTFP, it needed to reach a break even operating result in line with local government industry averages to ensure spending on the renewal of existing assets was sufficiently increased to maintain service levels – again in line with industry averages. Spending on new assets was also reduced significantly in the plan.
- the LTFP was adopted with Operating Deficits reducing each year with approximately a break even result targeted for the 2022/23 financial year.

- each reiteration of the LTFP adopted by Council since has also maintained that target after allowing for higher than anticipated rising costs and significant reductions in available ongoing funding from both State and Federal governments.
- each reiteration showed that the levy was required until at least the end of the 2021/22 financial year to achieve Council's industry average.
- there has been significant interest expressed by adjoining property owners, and other interested parties, in the possibility of purchasing the property.
- since the creation of the reserve, the primary use of the reserve is by the adjacent shack owner for access and storage of vehicles and boats.
- the open space reserve has minimal value from a recreational or leisure perspective and has little or no impact on future recreational opportunities for the local or wider community. The land is not being utilised in this manner due to the location of the reserve being at the rear of an existing leasehold shack and both adjoining properties are residential.
- as there is no strategic or operational need to retain ownership of the subject land, Allotment 204 has been identified as being surplus to Council's needs.
- disposal, with the view to sell the property, is considered to be appropriate in this instance.

LINK TO STRATEGIC PLAN

Goal: 5 Responsible Governance

Strategy: 5.2 Effective leadership and informed decision making

BACKGROUND

At the Council meeting of 14 September 2016, the Council considered four reports of the Director Development Services regarding the proposed revocation of the community land classification of the Four Allotments (**the Revocation Matter**).

The Council resolved at its meeting of 14 September 2016, as follows in relation to Allotment 201 (with identical resolutions being passed in relation to Allotments 202, 203 and 204):

'That Council:

1. *proceed with the revocation of the Community Land classification over the Council owned property located on Black Point Road, Black Point being allotment 201 Plan 41613, Certificate of Title: Volume 5294 Folio 896 for the purpose of Council selling the land;*
2. *commence the community engagement process being the initial step to the revocation of Community Land classification for allotment 201 Plan 41613, Certificate of Title Volume 5294 Folio 896 for the purpose of Council selling the land.'*

(the September 2016 Resolutions).

A report titled 'Community Engagement Report Revocation of Community Land Classification Black Point Reserve' was prepared and made publicly available for the period 21 September 2016 to 25 November 2016 (**the Community Engagement Report**).

The Council undertook the following by way of public consultation following the Council meeting of 14 September 2016:

- a public notice was published in the Yorke Peninsula Country Times on 20 September 2016 and 18 October 2016 regarding the Revocation Matter and seeking written submissions by Friday 25 November 2016 (**the Public Notice**). The Public Notice advised that '*a detailed report in relation to the proposed revocation and future intentions of the land is available for viewing at the Yorke Peninsula Council offices at Maitland, Minlaton, Yorketown and Warooka and on Council's website*'. We understand this report to be the Community Engagement Report;
- by letter dated 15 September 2016, the Council wrote to all Black Point ratepayers and the Black Point Progress Association Inc (**the BPPA**) advising of the September 2016 Resolutions and enclosing a copy of the Public Notice;
- signage was erected on each of the Four Allotments advising of the proposed revocation of the community land classification of the Four Allotments;
- notice was placed on the Council's website and the Council's Facebook page

(the Initial Public Consultation).

At the Council meeting of 14 December 2016, the Council resolved to receive and note a petition received from Graham Dickson on behalf of '*Ratepayers in relation to the proposal for revocation of community land status with 104 signatures*'.

At the Council meeting of 8 February 2017, the Council considered four reports of the Director Development Services regarding the Revocation Matter.

A petition with 104 signatures was received and presented to the Council at its meeting of 14 December 2016.

A public elected member's workshop was held on 22 March 2017 to further consider and analyse the submissions received. Council administration presented comments in relation to the key issues identified from the submissions received.

On or about 7 April 2017, the Council by letter, invited those persons who had made submissions during the Initial Public Consultation and all other ratepayers at Black Point to make a further written submission or a verbal submission to the Council at its meeting of 10 May 2017 and provided with that letter a document titled '*Presentation of Key Issues and Council Comments*' (**the Further Consultation**).

The Council received 13 additional submissions from those persons who had already made a submission and 12 new submissions from persons who had not previously made a submission.

At the Council meeting of 10 May 2017, the Council considered four reports of the Director Development Services regarding the Revocation Matter.

At the Council meeting of 10 May 2017 the Council resolved as follows in relation to Allotment 201 (and passed identical resolutions in relation to Allotments 202, 203 and 204):

'That Council:

1. *receive the 13 written submissions from authors of the original submissions and the 12 new submissions received from Black Point*

property owners in response to the extension of the community engagement process for the proposed revocation of community land;

2. *give approval to proceed with seeking Ministerial approval for the revocation of community land classification over the Council owned property located on Black Point Road, Black Point, being allotment 201, Plan 41613, Certificate of Title: Volume 5294 Folio 896;*
3. *authorise the Mayor and Chief Executive Officer to sign and affix Council's common seal to the relevant documents necessary to execute the revocation, transfer of properties and licence.'*

(the May 2017 Resolutions).

DISCUSSION

The Council has received from Ms Greta Lake by email dated 22 May 2017 a request pursuant to Section 270 of the *Local Government Act 1999* (**the Act**) for a review of the Council's decision made at its meeting of 10 May 2017 regarding the proposed revocation of the community land classification of land located at Black Point described as:

- Allotment 201 Plan 41613 Certificate of Title Volume 5294 Folio 896 (**Allotment 201**);
- Allotment 202 Plan 41613 Certificate of Title Volume 5294 Folio 897 (**Allotment 202**);
- Allotment 203 Plan 41613 Certificate of Title Volume 5294 Folio 898 (**Allotment 203**);
and
- Allotment 204 Plan 41613 Certificate of Title Volume 5294 Folio 899 (**Allotment 204**),

collectively referred to in this report as '**the Four Allotments**'.

Section 270 Local Government Act 1999

Section 270 of the Act requires the Council to, amongst other things, establish procedures for the review of decisions of the Council, employees of the Council and other persons acting on behalf of the Council.

The then Ombudsman stated in 2011:

*'Internal review is a key accountability mechanism for local government. It enables people to test the merits of decisions that affect them.'*¹

The current Ombudsman has confirmed that Section 270 of the Act requires councils to consider the merits of the decision.² Therefore, in the Ombudsman's view, a review of a decision under Section 270 of the Act must include a review of the merits of the decision.

- 1) A merits review requires all aspects of a decision to be reviewed and a determination to be made as to the correct and preferable decision. All the evidence is considered as well as any new evidence.
- 2) Accordingly, taking on board the Ombudsman's views, a review of a decision under Section 270 of the Act should encompass a review of the legality of the decision as well as whether the decision was the best or preferable decision.
- 3) In reviewing the merits of a decision, the Council ought to reconsider all the information that it considered in making the original decision from a fresh perspective

¹ Valuing Complaints: An Audit of Complaint Handling in South Australian Councils, November 2011, page 61.

² Right of Review: An Audit of Local Government Internal Review of Council Decisions Procedure, November 2016, page 44.

as well as any new information to determine the best or preferable decision. This may result in the Council affirming, varying or setting aside the original decision.

1. LEGISLATIVE REQUIREMENTS

1.1 Community Land

- The Act provides at Section 193(1) that:
 - (1) *All local government land (except roads) that is owned by a Council or under a Council's care, control and management at the commencement of this section (**the commencement date**) is taken to have been classified as community land unless –*
 - (a) *the Council resolves to exclude the land from classification as community land within three years after the commencement date; and*
 - (b) *the land is unaffected by the provisions of a reservation, dedication, trust or other instrument that would prevent or restrict its alienation.*
- Local government land is defined in the Act as land owned by a council or under Council's care, control and management.
- Section 194 of the Act provides that the Council may revoke the classification of land as community land in accordance with the procedure set out in that section.
- Section 194(2) of the Act provides that before the Council revokes the classification of land as community land:
 - (a) *the council must prepare and make publicly available a report on the proposal containing:*
 - (i) *a summary of the reasons for the proposal; and*
 - (ii) *a statement of any dedication, reservation or trust to which the land is subject; and*
 - (iii) *a statement of whether the revocation of the classification is proposed with a view to sale or disposal of the land and, if so, details of any Government assistance given to acquire the land and a statement of how the council proposes to use the proceeds; and*
 - (iv) *an assessment of how implementation of the proposal would affect the area and the local community;*
 - (v) *if the council is not the owner of the land - a statement of any requirements made by the owner of the land as a condition of approving the proposed revocation of the classification; and*
 - (b) *the Council must follow the relevant steps set out in its public consultation policy.*
- After the Council has complied with the requirements of Section 194(2) of the Act, the Council must submit the proposal with a report on all submissions

made as part of the public consultation process to the Minister and, if the Minister approves the proposal, the Council may make a resolution revoking the classification of the land as community land.

1.2 Public Consultation

- The Council's Community Engagement Policy that applied in September 2016 (**the CEP**) provided for four engagement levels. The Community Engagement Plan Level 2 means '*obtain feedback on preferences when there are options available*'.
- The CEP provides that in relation to a Community Engagement Plan Level 2, the Council will consult through:
 - 1.2..1 Council's website;
 - 1.2..2 media releases;
 - 1.2..3 letter or survey to primary and/or secondary properties;
 - 1.2..4 letter/email or survey to Progress Association;
 - 1.2..5 copies of major reports or plans made available at Council offices;
 - 1.2..6 report to Council summarising submissions for formal Council decision.
- Further, the CEP provides for a minimum three week period in relation to a Community Engagement Plan Level 2.

2. REVIEW

2.1 The Council has an Internal Review of a Council Decision Policy (**the Review Policy**).

2.2 Clause 4.3 of the Review Policy provides:

'The Elected Council is the Reviewer and/or a person appointed by the Elected Council as the Reviewer, when the decision being reviewed was made by the Elected Council or a Committee of the Council.

...'

2.3 Clause 4.5 of the Review Policy provides:

'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 and determine whether a different decision would be more appropriate, based on the evidence.

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 purpose 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.'

- 2.4 The Applicant was invited to provide further material or information in relation to the Review Application. The Applicant responded by email dated 28 July 2017.
- 2.5 The Black Point Progress Association and Dr John Gray provided submissions which they have requested be considered as part of the Council's consideration of the Review Application.

3. APPLICANT SUBMISSIONS

- 3.1 The Applicant makes the following submissions as part of the Review Application.

- ***Disposal of the Land***

The Applicant submits that there is confusion over how the Four Allotments will be disposed of and who will have purchasing rights of the land. The Applicant refers to submissions made by existing lease holders of land adjacent to the Four Allotments who made submissions in favour of the Revocation Matter on the basis that they be given a first right of refusal to purchase one or more of the Four Allotments. The Applicant submits that none of the documents issued by the Council or the reports presented to the Council clarified this issue.

- ***Open Space Development***

The Applicant submits that the Council did not sufficiently address as part of the public consultation and its decision making processes the reasons why the Council has not invested or developed the Four Allotments into usable open space reserves in accordance with its legislative obligations under Section 7(b) of the Act and why the Council would not do so in the future.

The Applicant also refers to the '*initial legislative requirement imposed on the Developer (Prodec) to provide open space as part of the development at Black Point*' and '*that land vested in the Council for the purpose of providing residents and visitors to the area (Black Point) with a recreational space*'.

The Applicant is critical of the Council for selling '*prime land*' vested in the Council and failing to develop the land in accordance with its obligations.

- ***Pre-determination***

The Applicant is concerned the Council has predetermined the outcome of this matter prior to undertaking the two community consultation processes on the basis of the '*strong percentage of the community that were opposed to the land revocation in the first consultation stage*'. The Applicant considers that the consultations were undertaken as a '*token effort*' and a decision had already effectively been made prior to the conclusion of the community consultation.

4. BLACK POINT PROGRESS ASSOCIATION INC SUBMISSIONS

- 4.1 The Black Point Progress Association Inc (**BPPA**) makes the following submissions which it titles '*Errors of Process*':

- the Community Engagement Report is inadequate to constitute the report the Council is required to prepare and make publicly available under Section 194(2)(a) of the Act. In particular, the Community Engagement Report does not make reference to an assessment of how implementation of the proposal will affect the area and the local community. In this regard, the BPPA

submits *'The Council has received no report in relation to the impact that this decision will have on Black Point's infrastructure being its sewerage and water systems, as a result of creating nine additional residences.'*;

- the Council has not complied with Section 194(2)(b) of the Act, namely it has not followed the relevant steps set out in its Public Consultation Policy. In particular BPPA submits that the Council chose Community Engagement Plan Level 2 in relation to Allotments 201 and 202 and Community Engagement Plan Level 3 in relation to Allotments 203 and 204 however, it submits, the Council did not undertake a Community Engagement Plan Level 3 consultation process and ought to have in relation to all Four Allotments;
- the reports are misleading in referring to 2.4% of total reserve land at Black Point being the amount constituting the land the subject of the proposal and submits that it is in fact *'100% of the beach front land in the bay at Black Point'*.

5. DR JOHN GRAY SUBMISSIONS

5.1 Dr John Gray has made the following submissions in relation to this matter as follows:

- there is no information on the impact on water and sewerage infrastructure in relation to creating nine additional residences;
- the Council has not followed its CEP. Dr Gray makes similar submissions in relation to the reference to the Community Engagement Plan Level 2 and Community Engagement Plan Level 3 in the Council officer reports. Dr Gray further submits that the entire process should have been a Community Engagement Plan Level 3 and this did not occur;
- the Council has ignored the submissions from the community;
- the Council's proposal to sell the Four Allotments would be 'financially negligent and not a true market value for the ratepayers assets as this would only be achieved on an open market when current Crown lease holders' properties have been removed and the lots sold unencumbered of buildings and land management restrictions.';
- the Council has not undertaken a risk assessment in relation to the financial compensation that some members of the public who have made submissions have indicated they will pursue;
- the developer Prodec has also 'indicated they will seek compensation as they feel that Council obtained these blocks under duress during the original free holding';
- the Council has not complied with Sections 193 and 194 of the Act and refers in particular to the requirement to follow the relevant steps set out in the Council's Public Consultation Policy and Section 194(2)(a)(iv).

COMMUNITY ENGAGEMENT PLAN

Not applicable.

CONSULTATION PROCESS

In preparing this report, the following Yorke Peninsula Council Officers were consulted:

- Chief Executive Officer

In preparing this report, the following external parties were consulted;

- Norman Waterhouse Lawyers
- Greta Lake
- Dr John Gray
- Black Point Progress Association

POLICY IMPLICATIONS

PO037 Internal Review of a Council Decision

BUDGET AND RESOURCE IMPLICATIONS

- Independent External Section 270 Review Costs of \$4,000

RISKS/LEGAL/LEGISLATIVE/ IMPLICATIONS

Local Government Act 1999 Section 194 (2)(a), Section 201 (2)(iii) and Section 270

ATTACHMENTS (UNDER SEPARATE COVER)

1. **Request for Internal Review - Black Point Land Revocation - Greta Lake - 22/05/2017**
2. **Development Services Reports - Council Meeting - 14/09/2016**
3. **Community Engagement Report - Proposed Revocation of Community Land - Black Point**
4. **Petition - Black Point Land Revocation - 14/012/2016**
5. **Development Services Reports - Council Meeting - 08/02/2017**
6. **Presentation to Elected Member Workshop - Black Point Proposed Land Revocation - 22/03/2017**
7. **Development Services Reports - Council Meeting - 10/05/2017**
8. **Minutes - Council Meeting - May 2017 - 10/05/2017**
9. **PO037 - Council Policy - Internal Review of a Council Decision**
10. **Submission - Revocation of Community Land Black Point - Greta Lake - 28/07/2017**
11. **Submission - Revocation of Community Land Black Point - Black Point Progress Association - 01/08/2017**
12. **Submission - Revocation of Community Land Black Point - Dr John Gray - 29/08/2017**