

# CONFIDENTIAL ITEMS 2003 – OCTOBER 2021

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
165	2 August 2021	Internal Review of a Council Decision – Engagement of Reviewer	<p><u>Pursuant to Section 90(3)(h)</u> Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, Deputy Chief Executive Officer, General Manager Community Services, General Manager Infrastructure, General Manager Planning &amp; Development, Chief Financial Officer, Risk and Governance Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 18.4 Internal Review of a Council Decision – Engagement of Reviewer.</p> <p>The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed with council members.</p> <p>The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because a Council decision has not yet been made in relation to the advice and its subject matter.</p> <p><u>Pursuant to Section 91(7)</u> That having considered Agenda Item 18.4 Process for Internal Review of a Council Decision – Engagement of a Reviewer in confidence under 90(2) and 3(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the discussion, report, attachments and all minutes be confidential be retained in confidence until the outcome of the internal review has been considered by Council and all of the persons who requested an internal review have been advised of the outcome and that this order be reviewed every 12 months.</p>	Discussion, report, attachments and all minutes	<p>The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed with council members.</p> <p>The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because a Council decision has not yet been made in relation to the advice and its subject matter.</p>	Retained in confidence until the outcome of the internal review has been considered by Council and all of the persons who requested an internal review have been advised of the outcome and that this order be reviewed every 12 months.	6 Sep 21	Within 12 months	<i>Report, Attachment and Minutes released on website 7 October 2021</i>

<b>18.4</b>	<b>REPORT TITLE:</b>	<b><u>CONFIDENTIAL REPORT: INTERNAL REVIEW OF A COUNCIL DECISION – ENGAGEMENT OF REVIEWER</u></b>
	<b>DATE OF MEETING:</b>	<b>2 AUGUST 2021</b>
	<b>FILE NUMBER:</b>	<b>DOC/21/108925</b>
	<b>ATTACHMENTS:</b>	<b>1 – DOC/21/118324 - CONFIDENTIAL LEGAL ADVICE KELLEDY JONES LAWYERS 2 - DOC/21/111536 - LIST OF EMAILS RECEIVED IN RELATION TO A REQUEST FOR INTERNAL REVIEW</b>
	<b><u>Key Contact</u></b>	<b>Sue Miller, Risk &amp; Governance Officer</b>
	<b><u>Manager/Sponsor</u></b>	<b>Brian Clancey, Deputy CEO / General Manager Governance, Strategic Projects, Wastewater/Recycled Water</b>

**Community Plan 2020-2035:**

LGG Strategy 1.5 Demonstrate accountability through clear, relevant and easily accessible policies, corporate reporting and legislative compliance.

**Annual Business Plan:**

NIL

**Purpose:**

For Council to determine the reviewer for an internal review of the applications received for a review under section 270 of the Local Government Act 1999 as they relate to Council making its decision to declare the total increase in general rates revenue (excluding growth) for 2021/22.

**Summary – Key Issues:**

- A number of requests have been received from community members for an internal review in relation to decision making at the Council meeting on 5 July 2021 regarding the increase in general rates revenue (excluding growth) for 2021/22.
- All requests and related emails are available for Council Members to view via the Council Members' extranet as advised via email from the CEO 14 July 2021.
- As per Council's 'Internal Review of Council's Decision Policy and Procedure' given the requests relate to decision making at a council meeting Council must determine who will undertake the investigation/review.
- It is recommended that Kelledy Jones Lawyers be engaged for this purpose.

**Recommendation:**

That Council:

**Section 90 (3) (h) Order****1. Pursuant to Section 90(3)(h)**

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, Deputy Chief Executive Officer, General Manager Community Services, General Manager Infrastructure, General Manager Planning & Development, Chief Financial Officer, Risk and Governance Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 18.4 Internal Review of a Council Decision – Engagement of Reviewer.

The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed with council members.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because a Council decision has not yet been made in relation to the advice and its subject matter.

That Council:

2. appoint Mr Michael Kelledy of Kelledy Jones Lawyers to undertake an investigation/review in response to the requests for an internal review in relation to decision making at the Council meeting on 5 July 2021 regarding the increase in general rates revenue (excluding growth) for 2021/22 and to provide a report to council as per attachment 1; and
3. note that a further report will be provided to a future council meeting to enable Council to consider the report that is recommended to be prepared by Michael Kelledy.

**Section 91(7) Order****4. Pursuant to Section 91(7)**

That having considered Agenda Item 18.4 Process for Internal Review of a Council Decision – Engagement of a Reviewer in confidence under 90(2) and 3(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the discussion, report, attachments and all minutes be confidential be retained in confidence until the outcome of the internal review has been considered by Council and all of the persons who requested an internal review have been advised of the outcome and that this order be reviewed every 12 months.

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**Background:**

1. At the Council Meeting held 5 July 2021 Council considered and made resolutions pertaining to the following items:
  - a. Agenda Item 12.5 Public Submissions on the Draft 2021/22 Annual Business Plan and Draft Rating Policy; minute resolution number OM20210705.07; and
  - b. Agenda Item 12.6 Draft 2021/22 Annual Business Plan, Budget and Rating Policy for Adoption; minute resolution number OM20210705.09
2. The full agenda and minutes for the 5 July 2021 council meeting are available on Council's website [www.mountbarker.sa.gov.au](http://www.mountbarker.sa.gov.au) and go to Council, Council Meetings or via the links below:

## Agenda

[https://www.mountbarker.sa.gov.au/\\_data/assets/pdf\\_file/0026/924254/07-05-July-2021-Council-Meeting-Agenda.pdf](https://www.mountbarker.sa.gov.au/_data/assets/pdf_file/0026/924254/07-05-July-2021-Council-Meeting-Agenda.pdf)

## Minutes

[https://www.mountbarker.sa.gov.au/\\_data/assets/pdf\\_file/0040/928786/07-05-July-2021-Council-Meeting-Minutes.pdf](https://www.mountbarker.sa.gov.au/_data/assets/pdf_file/0040/928786/07-05-July-2021-Council-Meeting-Minutes.pdf)

**Discussion:**

3. Council has received a number of requests and related emails (refer attachment 2 for a list of these) for a review of the decisions made mainly in relation to decision making at the Council meeting on 5 July 2021 regarding the increase in general rates revenue (excluding growth) for 2021/22:
  - a. Agenda Item 12.5 Public Submissions on the Draft 2021/22 Annual Business Plan and Draft Rating Policy; minute resolution number OM20210705.07; and
  - b. Agenda Item 12.6 Draft 2021/22 Annual Business Plan, Budget and Rating Policy for Adoption; minute resolution number OM20210705.09
4. Council Members were provided with access to all review requests via the Council Members' extranet, Memos and Communications tab, section *'Request for Review of Council Decision (Section 270) and Related Communications Received'*
5. Council Members are advised to not comment publicly on the process or subject matter of the requests until the process has been completed and parties to the review advised so as not to:
  - a. compromise the integrity of the investigation/review
  - b. place themselves at risk of breaching Council Member Code of Conduct obligations; and
  - c. provide opportunity for future communication by community members with council members as that opportunity will be afforded to those who have forwarded an email to council via the review process as referenced in attachment 1.

6. As previously advised to Council Members via email, Mr Stuart and Mr Clancey met with Michael Kelledy of Kelledy Jones Lawyers on 15 July 2021 and subsequently Mr Kelledy has provided a proposal to undertake the review (attachment 1).
7. As indicated in the proposal from Kelledy Jones Lawyers, Michael Kelledy has the necessary experience to undertake the review and has confirmed that he doesn't have a conflict of interest.
8. Further communication with those who have sent an email in relation to this matter (attachment 2) is occurring to make them aware of the next steps in the process.

**Community Engagement:**

Informing only	Website via council meeting minutes (unless subject to confidentiality orders)
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**Policy:**

Complaints Policy & Procedure  
Internal Review of Council Decision Policy & Procedure

**Long Term Financial Plan:**

N/A

**Budget:**

There is no budget for internal reviews. The estimated fee range to undertake the review as per the methodology outlined in attachment 1 is \$10,350 - \$14,750 excluding GST.

**Statutory/Legal:**

S270 Local Government Act 1999

**Staff Resource Requirements:**

Will be incorporated into staff work plan for the Risk and Governance Officer.

**Environmental:**

Nil

**Social:**

It is important to have a structured process for members of the community to request a review of a Council decision when they are dissatisfied with a decision.

**Risk Assessment:**

There is a risk that the investigation report may be delayed. There is a risk that council member commentary on the subject matter and process may compromise the review, and expose council to reputational damage.

**Asset Management:**

Nil

**Conclusion:**

Council is required to undertake an internal review, consistent with Council policy and procedure, in relation to decision making at the Council meeting on 5 July 2021 regarding the increase in general rates revenue (excluding growth) for 2021/22 and Michael Kelledy of Kelledy Jones Lawyers is well placed to undertake the review and provide a report to council.

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RELEASED

## Attachment 1 to Item 18.4

**Kelley Jones**

T. 08 8113 7100  
Level 6/19 Gilles Street  
Adelaide SA 5000  
GPO Box 2024 SA 5001  
ABN 66 159 460 723  
[kelleyjones.com.au](http://kelleyjones.com.au)

23 July 2021

Mr Brian Clancey  
Deputy CEO/General Manager – Governance, Strategic Projects and Wastewater/Recycled Water  
Mount Barker District Council  
6 Dutton Road  
MOUNT BARKER SA 5251

VIA EMAIL: [bclancey@mountbarker.sa.gov.au](mailto:bclancey@mountbarker.sa.gov.au)

Dear Brian

**SECTION 270 REVIEWS – GENERAL RATES DECLARATION ISSUES**

I refer to our discussions at your offices on 15 July 2021. These related to a significant number of applications for reviews under section 270 of the *Local Government Act 1999*, and, I understand, all pertain to the declaration of general rates. At this point, it is important to note that I have not sighted any of those applications but, based upon our discussions, provide this letter for your consideration.

You have explained that, in those applications, the applicants complain that in making its decision to declare the general rates, the Council has failed in the process requirements upon it, including by not taking into account (or not sufficiently taking into account) all relevant considerations, including, amongst other things, the submissions received as part of the consultation on the draft Annual Business Plan.

In these circumstances, the applications are based on the same or substantially, the same factual background, give rise to similar factual circumstances and relate to the same Council decision and function. Accordingly, as in other matters that I advised you of, it is entirely appropriate for the review of the matters to be undertaken concurrently as one internal review process under the *Internal Review of Council Decisions Procedure (section 270)* ('the Procedure').

However, despite adopting this approach, my proposal is to deal with the findings regarding each application separately in the resultant report.

Accordingly, the scope of the review, will occur in three (3) phases.

**1. Identification of relevant information and collation of documents**

We will contact each of the Applicants to confirm our engagement as External Reviewer and extend an invitation to them to provide further information or documentation to be taken into account in the review.

We will also, at this stage, identify and review the relevant Council documentation, including the processes followed and the reports considered by the Council.

**2. Attendance at Council's offices**

Once the information we have requested has been collated and reviewed and any further material has been received from the applicants, if required, we will attend the Council offices to speak with nominated key Council officers.

We will liaise with you to identify and pre-arrange interview times with relevant officers, if this is necessary.

**3. Preparation and Delivery of Report**

We will assess the processes and procedures that the Council has followed in relation to this matter before making the decision complained of and make an independent assessment of the 'merits' of the decision.

We will prepare a draft Report, setting out a summary of the background to the matter, the evidence received and our preliminary findings, inclusive of recommendations (where applicable).

The draft Report will be provided to you for comment, which will allow for any corrections of fact, together with the incorporation of any necessary additional comments.

Following which, the Final Report will be prepared and provided to you as the nominated Council contact. Our recommendation is, that the Final Report be presented to the next Council meeting after receipt and when the Council has considered it and made its decision, that we be instructed to prepare a letter (of a template nature but subject to individual fine-tuning) to each applicant to confirm our review, the findings, recommendation(s) and the Council decision.

**Timeframe**

The review can be conducted exclusively by either myself or Tracy Riddle and if by Tracy, overseen by and co-signed by myself. As you will be aware, we not only have recognised expertise in local government but, relevantly, particular expertise in this very specialised area under the Act.

In addition to the recognition conferred upon me by my legal peers for local government legal work generally but administrative law skills, experience and expertise in particular, I am also a Board member of the relevant 'industry body' RPSA and have been recognised as the leading 'rating' practitioner in SA. Tracy is widely recognised for her skills and product delivery in section 270 reviews whilst enjoying an increasing recognition of her expertise in rating matters. I confirm that Tracy and I were involved in the last two 'multi-applicant' section 270 reviews in SA, each for metropolitan councils.

As you will be aware, as a firm, we have extensive experience in conducting reviews of this nature for both metropolitan and regional councils.

In light of our experience, we are extremely well placed (we would suggest, best placed) to undertake this matter as one review and have the capacity to do so in accordance with the required timeframes. Further, we confirm that we have not, directly or indirectly, previously provided associated advice in this matter and, hence, are not conflicted or subject to any perceived bias in any way.



**Cost**

Noting the scope of the review, our estimated fee range to undertake it, as per the methodology set out above, is **\$10,350 – \$14,750 + GST**.

We would expect that the upper end of this estimated fee, not to be realised but, in any event, the maximum fee for the Council, based on our assessment of the anticipated scope of works would be the actual costs incurred, but not exceeding the maximum. It is important to note that **we do not** engage in unethical practices such as under quoting in the first instance, with a view to securing a matter only to then seek to identify reasons to increase that initial fee proposal.

Our experience and expertise in these areas has always served to protect the interest of our clients and our reports have never been the subject of any adverse findings from any oversight body. Indeed, we are aware that on a number of occasions, the Ombudsman has confirmed our findings and recommendations.

Finally, our position is that, in any event, 'price' is but one factor in the assessment of any fee proposal and experience must always be the superior quantifying consideration.

**Value-added Services**

Upon provision of the final report to Council, we would also be pleased to attend the relevant Council meeting, **at no additional cost**, for the purposes of presenting and explaining our findings and recommendations and responding to any questions.

We look forward to hearing from you.

Yours sincerely

KELLEDY JONES LAWYERS



MICHAEL KELLEDY

Direct Line: 08 8113 7103

Mobile: 0417 653 417

Email: mkelledy@kelledyjones.com.au

Request for review of Council Decision (Section 270) and related communications received

Attachment 2 to Item 18.4

Saved into Content Manager FOL/21/2382					
No.	Name	Date Received	CM Reference Number	Participation in Public Consultation (Y/N)	Email Acknowledged
1	Mr Brian Calvert	07-Jul-21	DOC/21/110031	Y	7/7/2021
2	Mr Neil Fuller	08-Jul-21	DOC/21/109351	N	13/07/2021
3	Ms Janet Quintrell	08-Jul-21	DOC/21/109359	N	13/07/2021
4	Mr Chris Summers	08-Jul-21	DOC/21/109403	N	9/7/2021
5	Mr John Fennell	08-Jul-21	DOC/21/110128	Y	13/7/2021
6	Mr & Mrs Dayman	09-Jul-21	DOC/21/109517	N	13/07/2021
7	Ms Lesley Taylor	09-Jul-21	DOC/21/109775	N	13/07/2021
8	Mr Graham Rorie	09-Jul-21	DOC/21/109931	N	13/07/2021
9	Mr Justin Griggs and Mrs Julie Griggs	10-Jul-21	DOC/21/110053	N	13/07/2021
10	Mr Bryan Thomas	10-Jul-21	DOC/21/110057	N	13/07/2021
11	Mr Rob Mayne	10-Jul-21	DOC/21/110061	N	13/07/2021
12	Ms Tanya Horn	11-Jul-21	DOC/21/110313	N	13/07/2021
13	Ms Edwina Williams	11-Jul-21	DOC/21/110064	Y	13/07/2021
14	Ms Dedra Parker	11-Jul-21	DOC/21/110228	N	13/07/2021
15	Mr Christian Haarbosch	10-Jul-21	DOC/21/110225	N	13/07/2021
16	Ms Vanessa Warne	12-Jul-21	DOC/21/110456	Y	13/07/2021
17	Ms Pauline Eglinton	12-Jul-21	DOC/21/110977	N	13/07/2021
18	Mr Lee Marcus	12-Jul-21	DOC/21/110080	N	13/07/2021
19	Ms Karyn Steer	12-Jul-21	DOC/21/110497	Y	13/07/2021
20	Mr Kevin Tischer	12-Jul-21	DOC/21/110990	N	14/07/2021
21	Ms Ali Wells-Fechner	12-Jul-21	DOC/21/110736	N	13/07/2021
22	Mr Anthony Hoy	14-Jul-21	DOC/21/111705	N	14/07/2021
23	Ms Fiona Dunstan	15-Jul-21	DOC/21/111922	N	15/07/2021
24	Mr Greg Stone	26-Jul-21	DOC/21/119789	Y	27/07/2021

28/07/2021

<b>18.4</b>	<b>REPORT TITLE:</b>	<b><u>CONFIDENTIAL REPORT: INTERNAL REVIEW OF A COUNCIL DECISION – ENGAGEMENT OF REVIEWER</u></b>
	<b>DATE OF MEETING:</b>	<b>2 AUGUST 2021</b>
	<b>FILE NUMBER:</b>	<b>DOC/21/108925</b>
	<b>ATTACHMENTS:</b>	<b>1.DOC/21/118324 - CONFIDENTIAL LEGAL ADVICE KELLEDY JONES LAWYERS 2.DOC/21/111536 - LIST OF EMAILS RECEIVED IN RELATION TO A REQUEST FOR INTERNAL REVIEW</b>

Moved Councillor Westwood that Council:

Section 90 (3) (h) Order

1. Pursuant to Section 90(3)(h)

Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, Deputy Chief Executive Officer, General Manager Community Services, General Manager Infrastructure, General Manager Planning & Development, Chief Financial Officer, Risk and Governance Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 18.4 Internal Review of a Council Decision – Engagement of Reviewer.

That Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed with council members.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because a Council decision has not yet been made in relation to the advice and its subject matter.

Seconded Councillor Minett

CARRIED  
OM20210802.31

Moved Councillor Morrison that Council:

2. appoint Mr Michael Kelledy of Kelledy Jones Lawyers to undertake an investigation/review in response to the requests for an internal review in relation to decision making at the Council meeting on 5 July 2021 regarding the increase in general rates revenue (excluding growth) for 2021/22 and to provide a report to council as per attachment 1; and
3. note that a further report will be provided to a future council meeting to enable Council to consider the report that is recommended to be prepared by Michael Kelledy.

Seconded Councillor Seager

CARRIED  
OM20210802.32

Moved Councillor Seager that Council:

Section 91(7) Order

4. Pursuant to Section 91(7)

That having considered Agenda Item 18.4 Process for Internal Review of a Council Decision – Engagement of a Reviewer in confidence under 90(2) and 3(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the discussion, report, attachments and all minutes be confidential be retained in confidence until the outcome of the internal review has been considered by Council and all of the persons who requested an internal review have been advised of the outcome and that this order be reviewed every 12 months.

Seconded Councillor Minett

CARRIED  
OM20210802.33

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MEETING DECLARED CLOSED AT 9.26 PM

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MAYOR

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DATE