

MEDIA RELEASE – FOR IMMEDIATE RELEASE

Monday 30 July 2018

Outcome of Ombudsman investigation into alleged maladministration in public administration by the District Council of Coober Pedy, the Department of State Development and the former Minister for Mineral Resources and Energy

The Ombudsman has concluded an investigation into, *inter alia*, alleged maladministration in public administration by the District Council of Coober Pedy, the Department of State Development and the former Minister for Mineral Resources and Energy, the Hon Tom Koutsantonis MP, following two referrals from the Independent Commissioner Against Corruption.

The Ombudsman's investigation concerned the decision of the District Council of Coober Pedy to enter into a \$198 million Power Purchase Agreement with a private supplier, Energy Generation Pty Ltd, in the absence of a competitive tender process, as well as certain actions of the Department of State Development and the former Minister for Mineral Resources and Energy that had the effect of subsidising the council in respect of its obligations under the agreement.

The terms of the referrals did not require the Ombudsman to determine whether the Power Purchase Agreement presented value to the council or the State, but to consider whether the actions and processes of the relevant parties relating to the agreement resulted in the substantial mismanagement of public resources.

Views concerning the District Council of Coober Pedy

As a result of the investigation, the Ombudsman formed the view that the District Council of Coober Pedy committed maladministration in public administration through its negotiation and execution of the Power Purchase Agreement.

The Ombudsman identified more than 25 significant errors committed by the council in connection with its negotiation and execution of the agreement, including:

- failure to consider and heed legal advice concerning the project
- failure to observe the terms of established prudential management and procurement policies
- failure to meaningfully consider advice received from a consultant
- failure of the council's senior administration to ensure that the elected body considered and decided upon matters of strategic importance
- failure of the council's governing body to exercise meaningful oversight over the activities of the council's senior administration in respect of the project
- failure of the council's governing body to give meaningful consideration to the terms and consequences of the agreement.

In his final report, the Ombudsman observed (at pages 208–209):

In my view, the practices of the council [...] resulted in the substantial mismanagement of public resources because they caused the council to commit to expend in excess of \$100 million in circumstances where the council did not observe established procurement and prudential processes and did not satisfactorily demonstrate that the transaction presented value for money. [...]

This remains one of the most serious examples of maladministration in public administration I have observed since the relevant provisions of the ICAC Act were enacted.

I remain concerned that the elected body appears unwilling to accept ownership and responsibility for the decision to execute the agreement. [...]

In my view, each of the elected members remaining on the council who participated in that decision should now consider their position.

The Ombudsman has invited the Minister for Transport, Infrastructure and Local Government to consider, *inter alia*, whether to recommend to the Governor that the council be declared to be a defaulting council under section 273(2)(c) of the *Local Government Act 1999*.

The council has indicated that it does not accept the Ombudsman's views in this regard.

The Ombudsman also formed the view that the District Council of Coober Pedy failed to ensure that official records in its custody concerning the project were maintained in good order and condition, in apparent contravention of section 13 of the *State Records Act 1997*, and acted in a manner that was wrong by executing the Power Purchase Agreement in circumstances where that agreement was not considered by the elected body in its final form.

Views concerning the Department for State Development

As a result of the investigation, the Ombudsman formed the view that the Department of State Development did not commit maladministration in public administration through its participation in the development of the Power Purchase Agreement or by recommending to the former Minister for Mineral Resources and Energy that he act to subsidise the payments made by the council under the agreement.

In his final report, the Ombudsman observed (at page 219):

In the circumstances, it is sufficient to say that I do not consider resources were substantially mismanaged by the department in this instance because, some criticisms notwithstanding, I am ultimately satisfied that the department undertook reasonable endeavours to satisfy itself that subsidising the project presented value for money to the State.

However, the Ombudsman formed the view that the department acted in a manner that was wrong by omitting to demonstrate in certain briefings to the former Minister that the agreement executed by the council was fairly and reasonably priced when considered against comparable projects. The department has accepted the Ombudsman's views in this regard.

The Ombudsman recommended that the newly-created Department for Energy and Mining revise its briefing template to address this error.

Views concerning the former Minister for Mineral Resources and Energy

As a result of the investigation, the Ombudsman formed the view that the former Minister for Mineral Resources and Energy, the Hon Tom Koutsantonis MP, did not commit maladministration in public administration by committing the State of South Australia to subsidise payments made by the council under the Power Purchase Agreement.

In his final report, the Ombudsman observed (at page 228):

I consider that it would have been prudent for Mr Koutsantonis to have requested further information from the department as to how it was satisfied that the costs of the agreement were fair and reasonable when considered against comparable alternatives. This question was not specifically addressed in the briefings and it was an important consideration that should have informed Mr Koutsantonis' decision to execute the documents.

Although maladministration in public administration may arise from a public officer's failure to act, I am not satisfied that Mr Koutsantonis' omission to request further information from the department resulted in the substantial mismanagement of public resources in this instance.

The Ombudsman's final report has been published in redacted form and is available on the Ombudsman SA website.

For media enquiries, please contact Ombudsman SA on (08) 8226 8699.