



Report

Full investigation - *Ombudsman Act 1972*

Ombudsman 'own initiative' investigation, section 13(2) *Ombudsman Act 1972*

Council member	Cr Nicholas Brown
Council	District Council of Robe
Ombudsman reference	2023/01663, 2023/01268, 2023/03966
Date reports received	March and July 2023
Issues	<ol style="list-style-type: none">1. Whether Cr Brown had a conflict of interest in relation to the council's discussion of Agenda Item 19.1 on 8 February 2023, which he failed to manage in a transparent and accountable way2. Whether Cr Brown had a conflict of interest in relation to the council's discussion of Agenda Item 19.3 on 8 March 2023, which he failed to manage in a transparent and accountable way3. Whether Cr Brown's actions amount to misconduct in public administration

Jurisdiction

On 3 and 23 March and 21 July 2023, I received reports and a complaint raising concerns about the actions of Cr Brown, Deputy Mayor of the District Council of Robe (**the council**), in relation to the council's then Chief Executive Officer (**CEO**), Mr Holyman. I determined to make enquiries in relation to the issues on my own initiative.

On 29 August 2023, after considering the information obtained, I notified the Mayor of the council that I had determined to conduct a full investigation in relation to Cr Brown's actions. I determined that because a number of reporters had raised similar concerns, I would conduct the investigation on my own initiative, pursuant to section 263A(3) of the *Local Government Act 1999*.

The original reports attracted the protections of the *Public Interest Disclosure Act 2018*.

Investigation

My investigation has involved:

- assessing the information provided by the reporters and complainant
- seeking information from Mayor Ruffell on 9 May, 13 June and 4 August 2023
- seeking responses from Cr Brown on 2 June and 30 August 2023
- considering the Local Government Act and the Ombudsman Act
- providing Cr Brown, the Mayor and the reporters and complainant with my provisional report and considering their responses
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...²

Procedural fairness

I provided a copy of my provisional report to Cr Brown, the Mayor, the reporters and complainant. Most of the recipients acknowledged receipt of the report, however, Cr Brown provided a substantive response. I have considered this response which requested that particular aspects of his account of events be included, or clarified in the report and I have addressed his submissions on these points where necessary in the body of this report. However, the conclusions and recommendations are as foreshadowed in my provisional report.

Background

1. The reporters and complainant have individually raised concerns about Cr Brown's involvement in actions taken by the council in relation to Mr Holyman during December 2022-July 2023. They allege that Cr Brown was motivated by personal interest in relation to his inquiries and the motions he submitted.
2. It is alleged that Cr Brown's personal interest arises from his history as Deputy CEO of the council when Mr Holyman was CEO. Specifically, the following events in that relationship have been raised with my Office:
 - Cr Brown was an unsuccessful candidate for the position of CEO of the council, won by Mr Holyman in early 2019

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

² *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

- in his position as Deputy CEO, Cr Brown was issued with a warning letter in June 2019 by Mr Holyman about a conflict of interest issue
 - the position of Deputy CEO was made redundant under Mr Holyman's tenure and Cr Brown was offered the position of Manager Corporate Services and Finance, but opted to accept a voluntary separation package.
3. It has been alleged that once he was elected to the council in November 2022, Cr Brown told various people he was intending to 'get back' at Mr Holyman and that Cr Brown was the instigator of the council's actions in relation to Mr Holyman.
 4. I turn now to look at the actions taken by Cr Brown in relation to Mr Holyman. On 5 December 2022, shortly after being elected, Cr Brown submitted a Notice of Motion seeking the release of the confidential documents from the Chief Executive Officer Review Committee meeting on 24 August 2022. The Motion also sought to authorise the Deputy Mayor to seek legal advice regarding the Committee's decision to offer Mr Holyman a new four-year contract, just prior to the council's caretaker period.
 5. The Notice of Motion was withdrawn after Mr Holyman lodged an employment dispute. However, after a meeting between the Mayor, Mr Holyman and Cr Brown on 25 January 2023, Cr Brown submitted another Notice of Motion.³ The agenda report indicates this Motion only contained the proposed resolution authorising the Mayor to seek the legal advice. Separately, the Mayor sought legal advice from Kelledy Jones Lawyers about her ability to accept the motion in the situation.
 6. On 6 February 2023, Mr Kelledy provided his advice to the Mayor and also observed that the circumstances meant that Cr Brown had a general conflict of interest in relation to his motion. He said that this did not preclude Cr Brown from participating as long as he could demonstrate he could deal with the matter in a transparent and accountable way, and the issue was one for Cr Brown to manage.
 7. Cr Brown's motion was included as Agenda Item 19.1 for the council meeting on 8 February 2023. The Agenda Report outlined the proposed resolution along with the following: 'Cr Brown comments: Legal advice is requested in relation to irregularities regarding the decision made by the Chief Executive Officer Review Committee.'
 8. Cr Brown says that during the discussion on the motion, a councillor suggested that as Cr Brown had identified the irregularities it would be beneficial if he assisted the Mayor obtain the legal advice. The minutes of the meeting record that the draft resolution was carried with this amendment as follows:

³ In her response dated 24 May 2023 Mayor Ruffell says that after the meeting Cr Brown 're-notified' his proposed Notice of Motions that the council seek legal advice. Cr Brown's response dated 31 October 2023, to my provisional report advises that Mr Holyman's formal dispute did not proceed after the meeting and Cr Brown lodged a new Notice of Motion at the council meeting on 8 February 2023.

19.1 Cr Brown Confidential Motion on Notice

Discussion took place in respect to Item 19.1 'Cr Brown Confidential Motion on Notice'.

Moved Cr Brown
Seconded Cr Denning

That Council authorises the Mayor, with the assistance of the Deputy Mayor, to seek legal advice regarding the Chief Executive Officer Review Committee's decision 24 August 2022 to offer a new four year contract to the Chief Executive Officer commencing on signing of a new employment agreement. (206/2023)

Carried


9. After the Mayor and Cr Brown obtained the legal advice as authorised by the council, Cr Brown drafted a resolution, which was checked by the council's lawyers, prior to him moving the resolution providing for the council to authorise a number of actions.⁴ The following screenshot of the minutes of the council meeting on 8 March 2023 contains the relevant resolution (with an irrelevant action redacted):

19.3 Mayor Receiving Legal Advice

Discussion took place in respect to Item 19.3 'Mayor Receiving Legal Advice'.

Moved Cr Brown
Seconded Cr Wright

That the District Council of Robe having considered Confidential Report No. 19.3 'CEO Legal Advice' approves the following actions:

1. **Authorises the Mayor with the assistance of the Deputy Mayor to engage Kelledy Jones Lawyers to carry out the investigation of the matters identified in the legal advice dated 3 March 2023.**
2. **Authorises the Mayor with the assistance of the Deputy Mayor to suspend the CEO (Mr James Holyman) on pay, with immediate effect, until the matters identified in the legal advice dated 3 March 2023 are investigated, considered and concluded.**
3. 
4. **Authorises the Mayor with the assistance of the Deputy Mayor to appoint a suitable person to act in the office of the Chief Executive Officer until the Deputy Chief Executive Officer returns from annual leave.**
5. **Authorises the Mayor with assistance of the Deputy Mayor to do anything else necessary or incidental to achieving the objectives of this process and/or to deal with matters in or arising from the legal advice dated 3 March 2023. (333/2023)**

Carried

10. Subsequently the Mayor took the actions authorised, with the assistance of Cr Brown. Ms Riddle of Kelledy Jones Lawyers conducted the investigation into Mr Holyman's employment agreement and his actions surrounding it. After the council provided a copy of the investigation report containing Ms Riddle's findings to Mr Holyman's legal representative, an agreement was reached involving his resignation from the council.

⁴ Cr Brown's response dated 18 June 2023, and response dated 31 October 2023, to my provisional report.

Cr Brown's account

11. Cr Brown has provided his account of events in response to my request. He says that after he was elected, he proceeded to review confidential agenda and minutes of the previous council so he was appraised of recent decisions. He says this is how he became aware of the 'full circumstances in which the CEO was offered an employment agreement.'⁵ He says he identified 'a number of irregularities in the agenda/minutes of the Chief Executive Review Committee meeting held (on) 24 August 2022'.⁶ He discussed these irregularities with the Mayor and subsequently drafted and moved the motion to seek legal advice in relation to them, which the council authorised in its meeting on 8 February 2023.
12. Cr Brown says after receiving the legal advice dated 3 March 2023 and a discussion with the Mayor, he drafted the resolution for the council meeting on 8 March 2023, based on the legal advice which was checked by the council's lawyers.⁷ He says during the council meetings on both 8 February and 8 March 2023, all members voted in support of the motions and there were no objections raised.
13. Cr Brown advises that 'I do not believe I had or have a conflict of interest involving the CEO.'⁸ He provides the background to the three events identified in his history with Mr Holyman and says that on the basis of each of these he does not believe an impartial, fair-minded person would think that any of the events might result in him acting in a manner contrary to his public duty. I provide a summary of Cr Brown's submissions in respect of this as follows:
 - in relation to the 'CEO appointment decision' in early 2019, Cr Brown submits:
 - he was generally happy with the selection process, which resulted in the appointment of Mr Holyman
 - the selection process was conducted professionally with the assistance of a Human Resources specialist
 - he was one of six candidates interviewed and believes the council was entitled to appoint the candidate it believed was best equipped for the role
 - in relation to Mr Holyman's warning letter dated 19 June 2019, Cr Brown submits:
 - Mr Holyman was required to act on the complaint he received that Cr Brown had a conflict of interest, and engaged Kelledy Jones Lawyers to undertake the investigation
 - the investigation was conducted professionally and Cr Brown had the opportunity to make a submission
 - the letter acknowledged Cr Brown's contravention of section 120 of the Local Government Act was at the 'lower end of the scale of seriousness' and acknowledged his cooperation during the process⁹
 - in relation to the outcome of the council's restructure in 2019, Cr Brown says:
 - the council initiated a 'Capacity and Capability Review' in August 2019 and engaged the Local Government Association as independent specialists to undertake the review
 - on completion of this report, the CEO sought approval of the council to undertake the restructure which included the removal of the Deputy CEO's position
 - Cr Brown says he gained financially from the restructure as although he was offered the position of Manager Corporate Services & Finance, he

⁵ Cr Brown's response dated 18 June 2023, page 1.

⁶ Ibid, page 3.

⁷ Cr Brown's response dated 18 June 2023 and response to provisional report, dated 31 October 2023.

⁸ Cr Brown's response dated 18 June 2023.

⁹ Mr Holyman's warning letter dated 19/6/19, page 1

accepted a substantial voluntary separation package, and a position at another council.

14. In Cr Brown's response to my provisional report, he indicates he turned his mind to the question of whether he had a conflict of interest in the council's discussion of the relevant motions and says:

I considered the requirements of the Conflict Of Interest provisions at both the February and March 2023 meetings and I believed when considering all the facts, that an impartial fair-minded person would not consider my private interests might have resulted in me acting in a manner contrary to my public interest. As a result of my consideration of the Conflict of Interest provisions, I did not believe I had a conflict of interest.¹⁰

15. In relation to being the instigator of the actions involving Mr Holyman, Cr Brown says he brought the irregularities to the attention of the Mayor and then to the council and is not aware of any other way he could have dealt with the matter. He maintains he came across the information relating to the CEO's contract in the course of generally reviewing recent council decisions, rather than specifically searching for it. In his response to my provisional report Cr Brown provides further information. He advises that he submitted three formal Notices of Motion for the council meeting on 14 December 2022, relating to other matters contained in confidential reports to the previous council.¹¹ He says this is consistent with his account that he was alerted to irregularities in the Chief Executive Review Committee minutes through generally reviewing the confidential reports to the previous council.¹²
16. In response to the allegation that Cr Brown had told various people he was intending to 'get back' at Mr Holyman, Cr Brown advises that he 'completely refute(s) this allegation' and says did not have a conversation with any person where he made such a comment. He says 'I maintain I have no particular grievance against Mr Holyman.'¹³
17. In the course of my investigation, Cr Brown provided me with a copy of a confidential report by the then Acting CEO, John Coombe, for the council meeting on 29 March 2023, relating to the appointment of an interim Chief Executive Officer.¹⁴ In the 'Background' section of this report is a rather ambiguous statement, that: 'it is the considered view of Kelledy Jones Lawyers, the Deputy Mayor does not have a conflict of interest in these matters.' After seeking further information from the Mayor and Cr Brown on this issue, I am satisfied that there was no advice provided by Kelledy Jones Lawyers on the subject of Cr Brown's conflict of interest in relation to his motions on 8 February and 8 March 2023 other than Mr Kelledy's advice to the Mayor dated 6 February 2023, and it is likely the reference in Mr Coombe's report related to the matters considered by the elected members on 29 March 2023.
18. Cr Brown says he only became aware of Mr Kelledy's legal advice to the Mayor upon publication of the agenda for the council meeting on 29 March 2023 and he specifically asked the Mayor to read it sometime after 2 June 2023.¹⁵

Relevant law/policies

19. Section 74 of the Local Government Act, defines a general conflict of interest as follows:

¹⁰ Cr Brown's response dated 31 October 2023, page 3.

¹¹ Cr Brown says these related the Robe Golf Club, Robe Bowling Club and Airfield leases.

¹² Cr Brown's response dated 31 October 2023, to my provisional report

¹³ Cr Brown's response dated 31 October 2023, to my provisional report

¹⁴ Agenda Item 6.1.4.

¹⁵ Cr Brown's response dated 17 September 2023.

74—General conflicts of interest

(1) Subject to section 75A, for the purposes of this Subdivision, a member of a council has a ***general conflict of interest*** in a matter to be discussed at a meeting of the council if an impartial, fair-minded person might consider that the member's private interests might result in the member acting in a manner that is contrary to their public duty.

(2) For the purposes of subsection (1)—

private interests means any direct or indirect interest of a member that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief;

public duty means the responsibilities and obligations that a member has to members of the public in their role as a member.

20. Section 75B of the Local Government Act applies to elected members' management of general conflicts of interest and requires:

75B—Dealing with general conflicts of interest

(1) If a member of a council has a general conflict of interest in relation to a matter to be discussed at a meeting of the council, the member must deal with the interest in a transparent and accountable way and, in particular, must inform the meeting of—

(a) the member's interest in the matter; and

(b) whether or not the member proposes to participate in the meeting in relation to the matter; and

(c) if the member proposes to participate in the meeting in relation to the matter—

(i) how the member intends to deal with the general conflict of interest, including whether the member intends to vote on the matter; and

(ii) the member's reasons for participating (and, if relevant, voting) in relation to the matter.

21. Section 4(1) of the Ombudsman Act provides me with jurisdiction in relation to misconduct, as follows:

Misconduct in public administration means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.

Whether Cr Brown had a conflict of interest in relation to Agenda Item 19.1 during the council meeting on 8 February 2023, which he failed to manage in a transparent and accountable way

22. As I have outlined, the minutes of the council meeting on 8 February 2023 record that the council resolved to authorise the Mayor, with Cr Brown's assistance, to seek legal advice regarding the Chief Executive Review Committee's decision to offer Mr Holyman a new four year contract on 24 August 2022, prior to the council's caretaker period.

Material conflict of interest

23. Pursuant to section 75 of the Local Government Act, an elected member has a material conflict of interest in a matter to be discussed at a meeting if he or she, or another entity listed in the section, 'would gain a benefit, or suffer a loss, (whether directly or indirectly and whether of a personal or pecuniary nature) depending on the outcome of the consideration of the matter at the meeting.'
24. I have considered whether Cr Brown had a material conflict of interest in relation to Agenda Item 19.1 and Agenda Item 19.3, discussed in the council meetings on 8 February 2023 and 8 March 2023, respectively. In my view there is no indication of a sufficient connection to any relevant benefit or loss on Cr Brown's part in relation to the motions. On that basis I have limited my consideration to whether Cr Brown had a general conflict of interest in the matters concerned.

General conflict of interest

25. Cr Brown maintains that he did not have a conflict of interest in his motion. He submits that an impartial fair-minded person would not consider the events in his previous employment history with Mr Holyman would result in him acting contrary to his public duty. He maintains he was satisfied the processes involved in these events were fair and not necessarily detrimental to him and involved Mr Holyman acting as he was required to.
26. In applying the test in section 74 of the Local Government Act, the first question I must consider is whether Cr Brown had a private interest in the discussion of Agenda Item 19.1. This Agenda Item involved Cr Brown's motion to obtain legal advice in relation to irregularities he had identified in the Chief Executive Officer Review Committee's decision in its meeting on 24 August 2022, to offer Mr Holyman a new four-year contract. These matters not only concerned Mr Holyman's employment contract with the council but his role in preparing the reports for the Committee's consideration.
27. The definition of private interest in section 74(2) of the local Government Act 'means any direct or indirect interest of a member' but does not include an interest 'that is only a matter of personal opinion or belief.'
28. As I have outlined, Cr Brown and Mr Holyman had previously been in an employment relationship at the council. In his previous role as Deputy CEO, Cr Brown had not only been an unsuccessful candidate for the CEO position won by Mr Holyman but had received a disciplinary warning from Mr Holyman as his Manager. It was also under Mr Holyman's tenure as CEO that Cr Brown's previous position at the council was made redundant. While Cr Brown indicates he accepted the processes involved in these events and does not describe any enmity surrounding them, the test in section 74 of the Local Government Act is one of perception. In my view the nature of the events in Cr Brown's previous employment relationship with Mr Holyman were such that an impartial fair-minded person might consider they could give rise to a grievance on Cr Brown's part. I do not consider the interest I have described is one of 'personal opinion or belief', such as to be captured by the exclusion in section 74(2) of the Local Government Act. Rather, it was an interest that arose due to the personal history between Cr Brown and Mr Holyman and therefore comes within the definition of private interest contained in the legislation.
29. The question I must then consider is whether an impartial fair-minded person might consider that Cr Brown's private interest might result in him acting in a manner contrary to his public duty. In order to satisfy this limb of the test, it is not necessary to establish

that Cr Brown *did* act contrary to his public duty, but rather that his private interest *might* have led to such an outcome. I consider Cr Brown's public duty in this situation was not just to move and vote on the motion seeking legal advice but to act transparently and ensure the council's resolutions and actions were seen to be impartial and free from personal motivations. While Cr Brown says he does not have a particular grievance with Mr Holyman, I consider that an impartial, fair-minded person could consider that Cr Brown might be influenced by his history with Mr Holyman, such that it might have resulted in him acting in a manner contrary to his public duty. This being the case, I consider that Cr Brown had a general conflict of interest in the elected members' discussion of Agenda Item 19.1.

Section 75B Dealing with a general conflict of interest

30. Section 75B of the Local Government Act requires an elected member who has a general conflict of interest in a matter to be discussed at a meeting of a council to deal with the interest in a transparent and accountable way, including informing the meeting of the interest and how the member intends to deal with the conflict. It does not necessitate the elected member leaving the meeting.
31. As Cr Brown did not, as a starting point, inform the meeting of his general conflict of interest in the motion, which was created by his prior employment relationship with Mr Holyman, I consider he did not comply with the requirements of section 75B of the Local Government Act.
32. I consider that even if Cr Brown believed the elected members were familiar with his employment history with Mr Holyman, this does not derogate from his responsibility to identify, declare and manage his conflict of interest in Agenda Item 19.1.

Opinion

In light of the above, I consider that by failing to declare a general conflict of interest in the council meeting on 8 February 2023, Cr Brown contravened section 75B of the Local Government Act, an integrity provision for the purpose of section 263A of the Local Government Act.

Whether Cr Brown had a conflict of interest in relation to Agenda Item 19.3 during the council meeting on 8 March 2023 which he failed to manage in a transparent and accountable way

33. As I have outlined, the minutes of the council meeting on 8 March 2023 record that the council considered the Confidential Agenda Report 19.3 'CEO Legal Advice' and, after Cr Brown moved the relevant motion, the council approved a number of actions drafted by Cr Brown. These included authorising the Mayor with the Deputy Mayor's assistance to engage Kelledy Jones Lawyers to conduct an investigation of issues surrounding the CEO's employment agreement and to suspend Mr Holyman pending the outcome of the investigation.
34. The minutes of the meeting indicate Cr Brown did not declare a conflict of interest and his response to my Office indicates he believed he did not have a conflict of interest in the motion.
35. For the reasons I have provided in relation to the previous issue, I consider an impartial fair-minded person could consider that the nature of Cr Brown's employment history with Mr Holyman constituted a private interest that might have resulted in him acting in a manner contrary to his public duty. He therefore had a general conflict of interest in the council's discussion of Agenda Item 19.3.

Section 75B Dealing with a general conflict of interest

36. As I have noted, section 75B requires an elected member who has a general conflict of interest in a matter to be discussed at a meeting of a council to deal with the interest in a transparent and accountable way, including informing the meeting of the interest and how the member intends to deal with the conflict.
37. As Cr Brown did not inform the council meeting on 8 March 2023 of his interest, nor how he proposed to deal with it and his reasons for participating, I consider he did not comply with his obligations in section 75B of the Local Government Act.

Opinion

In light of the above, I consider that by failing to declare a general conflict of interest in the council meeting on 8 March 2023, Cr Brown breached section 75B of the Local Government Act, an integrity provision for the purpose of section 263A of the Local Government Act.

Whether Cr Brown's actions as outlined amount to misconduct in public administration

38. Section 4(1) of the Ombudsman Act provides me with jurisdiction in relation to misconduct in public administration, which is defined as an 'intentional and serious contravention of a code of conduct.' I consider that the integrity provisions of the Local Government Act constitute a code of conduct for the purposes of this definition.
39. As my provisional view is that Cr Brown breached section 75B of the Local Government Act, I have also considered whether his actions constitute misconduct under the Ombudsman Act. In my view, Cr Brown's failure to deal with his conflict of interest in a transparent and accountable way was serious and it had serious consequences for the council. This is because Cr Brown's involvement in a matter where he had an undisclosed conflict of interest created the perception that the council's actions in relation to Mr Holyman were not independent nor impartial. However, given Cr Brown's view was that the circumstances did not give rise to a general conflict of interest on his part, I believe it would be difficult to establish the intentional element of the test for misconduct. I have therefore determined that Cr Brown's actions do not constitute misconduct in public administration.

Final Comment - the Mayor's role

The reporters also raised a concern that the Mayor failed to take action in relation to Cr Brown's conflict of interest.

I note the Mayor received Mr Kelledy's advice on 6 February 2023 in which he raised the issue of a conflict of interest on the part of Cr Brown. She then sought further clarification from Mr Kelledy about her responsibilities at the upcoming meeting and was advised that it was a matter for Cr Brown how he handled the issue.

In my view Mr Kelledy's clarification was directed at Cr Brown's responsibility for *management* of his conflict of interest in the meeting. I consider that this did not prevent the Mayor raising the *fact* of Mr Kelledy's advice with Cr Brown prior to the meeting. While the Mayor advises she cannot recall whether she spoke with Cr Brown about Mr Kelledy's advice,¹⁶ Cr Brown advises he was not aware of the existence of it until 29 March 2023 and

¹⁶ Letter from Mayor dated 23 June 2023, page 4.

did not read it until later in June 2023.¹⁷ In my view these accounts indicate the Mayor did not make Cr Brown aware of the legal advice prior to the meeting. While I believe it would have been consistent with the Mayor's role as principal member of the council to have raised the issue with Cr Brown, given the context and nature of the advice, I do not consider her failure to do so amounts to a contravention of her duty to 'act with reasonable care and diligence in the performance and discharge of official functions and duties.'¹⁸ I have therefore determined not to take further action in relation to this issue.

Summary and Recommendations

In light of the above, my final view is that:

- Cr Brown breached section 75B of the Local Government Act by failing to manage his general conflict of interest in Agenda Items 19.1 and 19.3 at the council meetings on 8 February and 8 March 2023, respectively, in a transparent and accountable way.

To remedy this error, I make the following recommendations:

- that pursuant to section 263B(1)(i) and of the Local Government Act, Cr Brown issue a public apology at a meeting of the council
- that pursuant to section 25(2) of the Ombudsman Act, that the council provide my final report to a public meeting of the council within two ordinary meetings after the meeting on 8 November 2023.

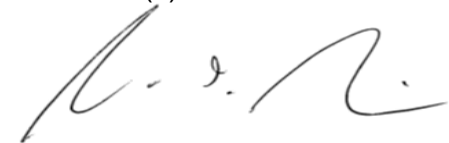
In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by 16 February 2023 on what steps have been taken to give effect to my recommendation/s above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided.

Pursuant to section 263B(2) of the Local Government Act, if a council member fails to comply with a council requirement made as a result of an Ombudsman recommendation such as that above, the council member will be taken to have failed to comply with Chapter 5 Part 4 of the Local Government Act. In this event, the council is to ensure that a complaint is lodged against the member with the South Australian Civil and Administrative Tribunal.

I have also sent a copy of my report to the Minister for Local Government as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines
SA OMBUDSMAN

7 November 2023

¹⁷ Cr Brown's response dated 17 June 2023.

¹⁸ Local Government Act, s62(2).