

## Redacted Report

Full investigation pursuant to referral under  
section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012*

Public Authority	The District Council of Robe (the council)
Ombudsman reference	2018/07948
ICAC reference	2019/000055
Date of referral	24 July 2018
Issues	<ol style="list-style-type: none"><li>1. Whether the council committed maladministration in public administration by failing to undertake numerous vehicle procurements in accordance with its policies and the requirements of the <i>Local Government Act 1999</i></li><li>2. Whether the council acted in a manner that was contrary to law or wrong by failing to have appropriate policies and to comply with its policies</li><li>3. Whether the council's failure to maintain records in accordance with the <i>State Records Act 1997</i> was contrary to law.</li></ol>

### Jurisdiction

This matter was referred to the Ombudsman by the Commissioner pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act) as raising potential issues of maladministration within the meaning of that Act (the referral). The referral also covered any misconduct by individual officers in the event that it became apparent during the course of my investigation. I do not consider that there is evidence of individual misconduct and on that basis the focus of this report is the council's alleged maladministration.

The matter was referred to my Office after I reported the matter to the Office for Public Integrity (on the basis of a complaint to my Office by a whistleblower (the whistleblower)).

Section 14B of the Ombudsman Act provides:

#### 14B—Referral of matter by OPI or ICAC

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
  - (a) will be taken to relate to administrative acts for the purposes of this Act; and
  - (b) must be dealt with under this Act as if a complaint had been made under this Act and—

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(i) if the matter was the subject of a complaint or report under the ICAC Act –as if the person who made the complaint or report under that Act was

- Complainant under this Act; or
- (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner's own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.

(2) In this section—

**Commissioner** means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;

**ICAC Act** means Independent Commissioner Against Corruption Act 2012;

**Office** means the Office for Public Integrity under the ICAC Act.

In addition, I have conducted an investigation of issues 2 and 3 using my own initiative powers in section 13(2) of the Ombudsman Act.

### Investigation

My investigation has involved:

- assessing the information provided by the whistleblower
- seeking a response from the council
- considering the council's response to previous enquiries by my Office in relation to a Freedom of Information application concerning the same procurements (**the FOI matter**)
- considering:
  - the council's various contracts and tendering policies, as identified in this report
  - the *Local Government Act 1999*
  - the *State Records Act 1997*
  - the ICAC Act
  - the Ombudsman Act
- preparing a provisional report and providing it to the parties for comment
- 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.<sup>1</sup> 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 ...<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

## Response to my provisional report

None of the parties provided a response to my provisional report. In light of that, my views remain as set out in my provisional report.

## Background

1. The whistleblower alleged that there has been a systemic failure by the council to comply with the council's purchasing policies and the requirements of the Local Government Act (in particular, section 49(2)) in purchasing over 20 vehicles since 2012.
2. Section 49(2) of the Local Government Act relevantly requires that a council's contracts and tenders policy must:

(c) provide for the recording of reasons for entering into contracts other than those resulting from a tender process[.]

### *The 2012 Purchasing Policy - 11 September 2012 - 8 January 2013<sup>3</sup>*

3. The 2012 Purchasing Policy applied to the procurement of all goods, equipment and related services, construction contracts and service contracts and relevantly sets out the following procurement principles:
  - open and effective competition
  - value for money
  - encouragement of the development of competitive local business and industry
  - environmental protection
  - ethical behaviour and fair dealing.
4. The 2012 Purchasing Policy included the following details in relation to purchase methods and requirement:

The following are the "minimum requirements" desired. Additional criteria can be applied.

#### **6.1 Goods and Services not exceeding \$10,000**

A supplier shall be chosen giving consideration to best value not only for the purchase price, but also consideration to the cost incurred in obtaining the goods or service, having regard to quality, suitability and other relevant considerations.

#### **6.2 Goods and Services exceeding \$10,000 but not exceeding \$20,000**

A minimum of two quotations shall be invited so as to ensure a reasonable measure of competition and the most advantageous quotation received having regard to quality, suitability and other relevant considerations. Particulars of those quotations shall be recorded appropriately. Quotes must be recorded on file.

#### **6.3 Goods and Services exceeding \$20,000 but not exceeding \$50,000**

A minimum of three quotations in writing shall be invited so as to ensure a reasonable measure of competition and the most advantageous quotation received, having regard to quality, suitability and other relevant considerations.

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<sup>3</sup> The council also provided my investigation with a policy that appears to have been adopted in August 2011. However, all of the purchases were made after that policy was amended in 2012.

Selected or open tendering can also be used, depending on the circumstances.

- 6.4 Goods and Services exceeding \$50,000 but not exceeding \$100,000**  
Undertake a tender process either by selected or open tender. This process to be approved by the Chief Executive.
- 6.5 Goods and Services exceeding \$100,000**  
Undertake a tender process through public tender invitation through advertisements in the tender pages of newspapers.

The above financial limits apply to an individual transaction. However, where an on-going relationship with a supplier is anticipated, the annual contract amount must be considered and appropriate tendering and approvals put in place based on this annual amount.

The following table classifies the purchase value and purchasing process:

Estimated Value Range	Purchasing Process	Purchasing Method	Type of Contract
Less than \$10,000	No quotation required - purchase directly from supplier	Purchase Order Works Order	Terms and conditions on the back of the purchase/works order form
\$10,001 - \$20,000	A minimum of two quotations	Purchase Order Works Order	Terms and conditions on the back of the purchase/works order form Consultancy Contract
\$20,001 - \$50,000	A minimum of three quotations, or Tender Process	Purchase Order  Works Order Selected Tender  Open Tender	Council Standard Contract  Consultancy Contract
\$50,001 - \$100,000	Tender Process	Selected Tender  Open Tender	Council Standard Contract  Consultancy Contract
\$100,000+	Tender Process	Open Tender	Council Standard Contract

## 7. VARIATIONS TO PURCHASE METHODS AND REQUIREMENTS

The following arrangements may allow variation to the Standard Purchase Methods and Requirements

- 7.1** Council Officers may use the services of businesses recommended by Local Government Association Procurement Services to obtain competitive pricing. This would negate the need for quotes and tenders as Local Government Association Procurement Services has already undergone an extensive competitive tendering process prior to recommendation.
- 7.2** Council may use the services of neighboring Councils in the aim of achieving shared services in the region, whilst ensuring that the supply is cost effective and purchasing is undertaken within an approved purchasing policy.
- 7.3** In all the above cases, the Chief Executive Officer may authorise divergence from the above requirements due to an emergency sole supplier or for any

other cause (particulars of which emergency or other cause shall be indicated in the approval).

A report is to be presented to Council detailing any action which has been taken under Clause 7.3.

## 8. STAFF EXPENDITURE AUTHORISATION

Staff are provided with the responsibility of managing projects under their control. To ensure that staff are able to exercise control, staff and their managers, are provided with up to date financial information relating [to] their budget lines and must report on these budget lines through their manager to Council on a monthly basis.

The following staff have delegated authority to sign purchase orders and contracts for the purchase of goods and services on behalf of Council in line with their project allocations up to the following limits.

5. In relation to Staff Expenditure Authorisation, the Chief Executive was listed as having unlimited expenditure authorisation for purchase of goods and/or services within approved Council budgets, except for any specific requirement nominated by Council as requiring their express approval.
6. Section 9 of the 2012 Purchasing Policy prescribed the quotations and tenders process in some detail and relevantly stated at clause 9.9 that the council is 'not bound to accept the lower or any tender'.
7. The 2012 Purchasing Policy included the following in relation to the selection process:
 

Suppliers will be selected based on an assessment.

  - 10.1 The officer responsible for the tender process will assess tenders on the following criteria:
    - Best value
    - Price/Whole of Life Cost
    - Quality
    - Timeliness of delivery
    - Compliance with legislation (eg OHS&W)
    - Past experience with similar works
    - Technical, managerial, physical and financial resources
    - Any other relevant consideration, given the nature of the good or service.
  - 10.2 The Officer responsible for the tender process will submit a report that
    - summarises the tender assessment and makes a recommendation for approval to:
      1. Council for tenders that relate to projects to the value of \$50,000 and above
      2. The Chief Executive for all other tenders.
  - 10.3 No particular preference will be given to local suppliers of goods or services, since this could contravene Trade Practices Act and Competition Policy principles. All decisions will be based on assessing suppliers in a fair and transparent manner against the above criteria.

### *The 2013 Purchasing Policy - 8 January 2013 to 9 December 2014*

8. The 2013 Purchasing Policy was relevantly in identical terms to the 2012 Purchasing Policy excerpted above.

*The 2014 Purchasing Policy - 9 December 2014 to 9 August 2016*

9. The 2014 Purchasing Policy was relevantly in identical terms to the 2012 Purchasing Policy excerpted above.

*The 2016 Purchasing Policy - 9 August 2016 to March 2018*

10. The August 2016 Purchasing Policy was relevantly in identical terms to the 2012 Purchasing Policy excerpted above.
11. The only amendment was to include the words in bold below:

The above financial limits apply to an individual transaction. However, where an on-going relationship with a supplier is anticipated, the annual contract amount must be considered and appropriate tendering and approvals put in place based on this annual amount. **Provided the goods and services are for individual works and/or projects the above financial limits will apply to an individual transaction. If there are a number of goods and services required from the same contractor for a single project then the accumulated amount will be treated in accordance with Section 6 (e.g. 3 individual services from the same contractor of say \$10,000 each for a single project would be treated as goods and services exceeding \$15,000 but not exceeding \$50,000 and require a minimum of two quotation [sic].**

*The 2018 Purchasing Policy - 20 March 2018 to present*

12. The 2018 Purchasing Policy significantly amended the previous versions of the policy.
13. The 2018 Purchasing Policy set out the following in relation to purchase methods and requirement:

**PURCHASE METHOD AND REQUIREMENT**

The following are the “minimum requirements” desired. Additional criteria can be applied.

**6.1 Goods and Services not exceeding \$15,000**

A supplier shall be chosen giving consideration to best value not only for the purchase price, but also consideration to the cost incurred in obtaining the goods or service, having regard to quality, suitability and other relevant considerations.

**6.2 Goods and Services exceeding \$15,000 but not exceeding \$50,000**

A minimum of two quotations shall be invited so as to ensure a reasonable measure of competition and the most advantageous quotation received having regard to quality, suitability and other relevant considerations. Particulars of those quotations shall be recorded appropriately. Quotes must be recorded on file.

Selected or open tendering can also be used, depending on the circumstances.

**6.3 Goods and Services exceeding \$50,000 but not exceeding \$100,000**

Undertake a tender process either by selected or open tender. This process to be approved by the Chief Executive.

**6.4 Goods and Services exceeding \$100,000**

Undertake a tender process through public tender invitation through advertisements in the tender pages of newspapers.

[...]

The following table classified the purchase value and purchasing process:

Estimated Value Range	Purchasing Process	Purchasing Method	Type of Contract
Less than \$15,000	No quotation required - purchase direct from supplier	Purchase Order Works Order	Terms and conditions on the back of the purchase/works order form
\$15,001 - \$50,000	A minimum of two quotations	Purchase Order Works Order	Terms and conditions on the back of the purchase/works order form Consultancy Contract Council Standard Contract
\$50,0001 +	Tender Process	Selected Tender Open Tender	Council Standard Contract Consultancy Contract

14. Clauses 7, 8, 9 and 10 were in the same terms as the previous versions of the policy.

*The vehicle purchases*

15. I outline below the relevant procurements and the council's response to my investigation concerning each procurement. I address the council's record-keeping practices later in this report.
16. For ease of reference, I have used the same number for the vehicles that the council used in responding to the FOI matter. That said, I have addressed the purchases in approximate chronological order.
17. Unless otherwise specified, a reference to 'the policy' is a reference to the specific policy applying at the relevant time of purchase.

*Vehicle 18 - October 2012 Purchase of a Subaru Outback - \$41,553*

18. Vehicle 18 cost \$41,553.
19. Vehicle 18 was purchased in October 2012. On that basis, the 2012 Purchasing Policy applied which required a minimum of three quotations or a tender process.
20. In response to the FOI matter, the council stated:

This vehicle was purchased as part of the [then] Chief Executive's employment contract.

The existing vehicle was a large FWD that was an expensive vehicle to operate and therefore after discussion with the Elected Members, it was decided to replace the vehicle with a small SUV that was a 2 litre diesel that was more efficient and less expensive to operate.

21. Information provided in response to the FOI matter indicates that at most only two quotes were obtained.
22. The council's response to my investigation stated that:
- two quotations were obtained in accordance with the council's policy
  - while no formal report was provided to the elected members, [the former Chief Executive Officer] 'had discussions with Elected Members'
  - no report was provided to the council as the purchase was in accordance with the policy
  - one quote was for a vehicle similar to the vehicle being replaced, while the other quote was for a smaller diesel powered vehicle which was the vehicle selected.

23. The council has not provided my investigation with any records of discussions with elected members concerning the vehicle purchase.
24. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 21: November 2012 purchase of a Volvo Wheel Loader - \$239,690 (change-over cost \$212,190)*

25. Vehicle 21 was priced at \$239,690, but a trade-in reduced the change-over cost to \$212,190.
26. Vehicle 21 was purchased in November 2012. On that basis, the 2012 Purchasing Policy applied. The 2012 Purchasing Policy required an open tender process.
27. It is not in dispute that the council conducted a tender process in relation to Vehicle 21 as required by the policy. Clause 10.2 of the 2012 Purchasing Policy required that a recommendation for approval be made to the Elected Members. The council has acknowledged that this did not occur.
28. In response to the FOI matter, the council stated:

A search of Councils[sic] records indicate that this matter was not placed before Council seeking their approval to purchase the item of plant and therefore is not in accordance with Council procurement policy.

29. The council's response to my investigation stated that:
  - the council called for tenders for the 'replacement plant'
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - the council did not make the decision in relation to plant purchased.
30. The council was not able to provide my investigation with any evidence that the tender acceptance was approved by the Elected Members as required by clause 10.2 of the policy.

*Vehicle 6: December 2012 purchase of a Ford Territory - \$46,589 (change-over cost \$18,900)*

31. Vehicle 6 was priced at \$46,589, but a trade-in reduced the change-over cost to \$18,900.
32. The vehicle was purchased in December 2012. On that basis, the 2012 Purchasing Policy applied.
33. The council appears to have applied the policy with regard to the changeover cost of \$18,900. I am willing to accept that the council could reasonably base its process on the change-over cost (which was not made clear in the policy at the time). On that basis, the council was required to obtain two quotations (that said, if the full cost of \$46,589 had been incurred, a minimum of three quotations or a tender process would have been required).
34. In response to the FOI matter, the council stated that it had only retained one quotation from [xxxxx]. It appears, however, that the only quotation retained is from [xxxxx].
35. In the Deputy Ombudsman's response in relation to the FOI matter, she concluded:

I note that in relation to the purchase of Vehicle 6 correspondence with two dealerships ([xxxxx] and [xxxxx]) exists, but the communication chains appear incomplete with respect to both. Whilst it seems highly likely that the council once held a written quote from [xxxxx] and a request for [xxxxx] to provide a quote, I accept that it no longer does. There is no evidence to indicate that the council ever obtained a third quote with respect to the purchase of vehicle 6.

36. The council's response to my investigation stated that:
- two quotations were obtained in accordance with the policy
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process.
37. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 3: July 2013 purchase of a Ford Falcon - \$31,495 (change-over cost \$17,995)*

38. Vehicle 3 was priced at \$31,495, but a trade-in reduced the change-over cost to \$17,995.
39. As the vehicle was invoiced in July 2013, I have assumed that the 2013 Purchasing Policy applied.
40. Assuming that the council could rely on the change-over cost of \$17,995, a minimum of two quotations was required.
41. In response to the FOI matter, the council stated:

The quote from [xxxxx] is the only quote that has been retained in the Councils [sic] record system.

42. The council's response to my investigation stated that:
- the council did not obtain the number of quotations as required by the policy
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and were approved by the council when the budget was adopted
  - no report was provided to the council
  - the council was not required to undertake a tender process however the vehicle was not purchased in accordance with the policy
43. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 9: August 2013 purchase of an Isuzu truck - \$265,560*

44. Vehicle 9 cost \$265,560.
45. As the vehicle was invoiced in August 2013, I have assumed the 2013 Purchasing Policy applied.
46. An open tender was required. It is not in dispute that the council conducted a tender process as required by the policy.
47. In response to the FOI matter, the council stated:

A search of Councils [sic] records indicate that this matter was not placed before Council seeking their approval to purchase the item of plant and therefore is not in accordance with Council procurement policy.

48. The council's response to my investigation stated that:
- the council conducted a public tender process
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and were approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
49. The council was unable to provide my investigation with any documented recommendation for the purposes of clause 10.2 of the policy. The council has acknowledged that the Elected Members did not approve the purchase, as required by clause 10.2 of the policy.

*Vehicle 13: August 2013 purchase of a Mitsubishi Triton - \$33,861*

50. Vehicle 13 cost \$33,861.
51. As the vehicle was purchased in August 2013, the 2013 Purchasing Policy applied.
52. A minimum of three quotations or a tender process was required.
53. Information provided in response to the FOI matter indicates that the council obtained at least three quotations.
54. The council's response to my investigation stated that:
- the council obtained the required number of quotations
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and were approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process.
55. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 19: September 2013 purchase of a Subaru Outback - \$45,062.42 (change-over cost approximately \$20,608.42)*

56. Vehicle 19 was priced at \$45,062.42, but a trade-in reduced the change-over cost to \$20,608.42.
57. As the vehicle was purchased in September 2013, the 2013 Purchasing Policy applied.
58. Assuming that the council could rely on the change-over cost, a minimum of three quotations or a tender process was required.
59. While the Deputy Ombudsman considered that there may be other records pertaining to the procurement that had not been retained by the council, the information provided in response to the FOI matter indicates that the council obtained at least three quotations.

60. The council's response to my investigation stated that:
- three quotations were obtained in accordance with council policy
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process.

61. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 5: May 2014 purchase of a Ford Ranger - \$38,137 (change-over cost \$24,839)*

62. Vehicle 5 was priced at \$38,137, but a trade-in reduced the change-over cost to \$24,839.
63. As the vehicle was invoiced in May 2014, I have assumed that the 2013 Purchasing Policy applied.
64. The policy required a minimum of three quotations, or a tender process.
65. Information provided in response to the FOI matter indicates that the council obtained at least three quotations.
66. The council's response to my investigation highlighted that:
- the council obtained the required number of quotations
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process
67. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 10: July 2014 purchase of an Isuzu ute - \$38,964 (change-over cost \$19,964)*

68. Vehicle 10 was priced at \$38,964 but a trade-in reduced the change-over cost to \$19,964.
69. As the vehicle was purchased in July 2014, the 2013 Purchasing Policy applied.
70. The council appears to have applied the policy with regard to the change-over cost of \$19,964. On that basis, the policy required a minimum of two quotations.
71. Information provided in response to the FOI matter indicates that the council obtained at least two quotations.
72. The council's response to my investigation stated that:
- the council obtained the required number of quotations
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and were approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process

73. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 11: mid to late 2014 purchase of a Kubota Mower - \$50,140 (change-over cost \$40,415.50)*

74. Vehicle 11 was priced at \$50,140 but a trade-in reduced the change-over cost to \$40,415.50.
75. It is unclear when the vehicle was purchased but as the invoice was issued on 18 June 2014, it appeared to have been paid sometime after August 2014. On that basis, I have assumed that the 2013 Purchasing Policy applied.
76. The council appears to have applied the policy with regard to the change-over cost of \$40,415.50. In this instance the policy required a minimum of three quotations, or a tender process.
77. In response to the FOI matter, the council stated:

The purchase of the Kubota Front Deck mower was undertaken through Local Government Association Procurement Vendor Panel. This involves the specification...being loaded on to the LGA Procurement website and interaction with prospective dealers is managed by the panel via their website.

78. Information provided in response to the FOI matter indicates that the council obtained at least three quotations.
79. The council's response to my investigation stated that:
- the council obtained the required number of quotations
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and were approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process.
80. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 4: November 2014 purchase of a Ford Falcon - \$31,504 (change-over cost \$16,393)*

81. Vehicle 4 was priced at \$31,504, but a trade-in reduced the change-over cost to \$16,393.
82. It is unclear when the vehicle was purchased but the invoice was issued on 26 November 2014. On that basis, I have assumed that the 2013 Purchasing Policy applied.
83. The council appears to have applied the policy with regard to the change-over cost of \$16,393. In this instance the policy required a minimum of two quotations.
84. In response to the FOI matter, the council stated:

The quote from [xxxxx] is the only quote that has been retained in the Councils [sic] records system...There is no documentation within the records system relating to correspondence between Council and vehicle dealerships.

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85. The council's response to my investigation stated that:
- the council did not obtain the number of quotations required by the council's policy
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and were approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the council's policy
  - the vehicle was not purchased in accordance with the policy.
86. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 14: May 2015 purchase of a Mitsubishi Triton - \$29,068*

87. Vehicle 14 cost \$29,068.
88. As the vehicle was invoiced in May 2015, I have assumed that the 2014 Purchasing Policy applied.
89. The policy required a minimum of three quotations, or a tender process.
90. Information provided in response to the FOI matter indicates that the council obtained at least four quotations.
91. The council's response to my investigation stated that:
- the council obtained the required number of quotations
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process.
92. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 8: November 2015 purchase of a Hino - \$67,030 (change-over cost \$39,530)*

93. Vehicle 8 was priced at \$67,030 but a trade-in reduced the change-over cost to \$39,530.
94. As the vehicle was invoiced in November 2015, I have assumed that the 2014 Purchasing Policy applied.
95. If the policy was applied on the basis of the change-over cost of \$39,530 a minimum of three quotations, or a tender process was required. That said, contrary to its approach in relation to other procurements, in this particular instance, the council appeared to have assumed that the original price of \$67,030 was the relevant cost for the purposes of the policy.
96. The council's response to my investigation stated that:

- the council sought three quotations, however only received two quotations, stating ‘this relates to the type of light truck being sought which has a longer tray and there are only two types of vehicles on the market within the price range’<sup>4</sup>
- the plant and vehicles to be purchased were part of the council’s Annual Business Plan and Budget and was approved by the council when the budget was adopted
- a report seeking variation to policy was presented to the council
- the council was not required to undertake a tender process

97. The report seeking variation to the policy was included in the council agenda on 11 August 2015 as a late item and relevantly stated:

#### **BACKGROUND**

Council has allocated funds in the 2015/16 Annual Business Plan & Budget to replace the Hino crew cab truck with \$56,000 (net of GST) expenditure allocated to purchase the replacement vehicle and \$18,000 (net of GST) income allocated for the trade in with a net changeover of \$38,000 (net of GST).

#### **DISCUSSION**

The CEO advised Council in Information Report July 2015 regarding the purchase of replacement plant as per Council’s 2015/16 Annual Business Plan & Budget. Council’s Works Operations Coordinator gained three quotes from three South East truck suppliers for replacement of the crew cab truck and the details of the quotes are summarised in the attachment. Quote 3 was accepted as it represented the best result in accordance with the required specification:

Purchase Price	\$58,510 (net of GST)
Trade In	\$25,000 (net of GST)
Change Over	\$33,510 (net of GST)

The \$33,510 is well within the changeover figure of \$38,000 allocated in the 2015/16 Annual Business Plan & Budget.

Council’s Contracts Tenders Purchasing Policy contains the following clauses:

#### **6.3**

##### **Goods and Services exceeding \$20,000 but not exceeding \$50,000**

A minimum of three quotations in writing shall be invited so as to ensure a reasonable measure of competition and the most advantageous quotation received, having regard to quality, suitability and other relevant considerations.

Selected or open tendering can also be used, depending on the circumstances.

#### **6.4**

##### **Goods and Services exceeding \$50,000 but not exceeding \$100,000**

Undertake a tender process either by selected or open tender. This process is to be approved by the Chief Executive.

In relation to the purchase of the replacement crew cab truck, three quotations were sought from South East truck suppliers and achieved the same result as conducting a select tender. If the select tender process was used then the details would be submitted to Council for approval. In this case the three quotations were analysed in accordance with the specification supplied to the three South East truck suppliers and Quote 3 accepted. It should be noted that the changeover figure is well within the changeover amount allocated by Council in the approved 2015/16 Annual Business Plan & Budget.

#### **POLICY IMPLICATIONS**

The purchase of the crew cab truck is a variation to Council’s Contracts Tenders Purchasing Policy.

#### **BUDGET IMPLICATIONS**

<sup>4</sup> It is not clear to me why the council said it only received two quotations as all other documentation suggests that three quotes were obtained.

The crew cab truck changeover of \$33,510 is well within the changeover figure of \$38,000 allocated in the 2015/16 Annual Business Plan & Budget.

### STRATEGIC PLAN

Governance/Financial Sustainability

*Provide leadership, good governance, and efficient, effective and responsive Council services.*

### COMMUNITY CONSULTATION

Nil

98. The report attached the following summary of quotes:

	Crew Cab Truck		
	Quote 1	Quote 2	Quote 3
Truck	67,646.36	64,270.00	48,615.00
Tray	12,340.00	12,340.00	9,895.00
Reversing Camera	300.00	920.00	
UHF Radio	850.00		
Seat Covers	589.00		
Fire Extinguisher		140.00	
VEHTEC Risk Assessment		330.00	
Pre Delivery - mud flaps	1750.00	299.00	
Less Discount	21,000.00	18,895.00	
GST			
<b>Total</b>	<b>62,475.36</b>	<b>59,404.00</b>	<b>58,510.00</b>
Trade in	25,000.00	20,900.00	25,000.00
<b>NET</b>	<b>37,475.36</b>	<b>38,504.00</b>	<b>33,510.00</b>

99. The council received and noted the report and the variation to the policy.

*Vehicle 2: December 2015 purchase of a Ford Everest (\$64,482.60)*

100. Vehicle 2 cost \$64,482.60.

101. As the vehicle was invoiced in December 2015, I have assumed that the 2014 Purchasing Policy applied.

102. The policy required an open or selected tender process.

103. In response to the FOI matter, the council stated:

There is no documentation within the records system relating to a quote for this vehicle...A search of Councils [sic] records indicate that this matter was not placed before Council seeking their approval to purchase the item of plant and therefore is not in accordance with Council procurement policy.

104. The council's response to my investigation stated that:

- the council policy regarding the need to call for open tenders was not complied with
- the vehicle purchased was an additional capital item in the Childcare budget that was not included when the Annual Business Plan was adopted by the council. The funds for the purchase of this vehicle was provided in accordance with the Childcare funding agreement. The 'plant and vehicle to the purchase of the

vehicle' was reported to the CCOWS [Child Care on Wheels Service] Advisory Group and subsequently the council via the group minutes

- a report seeking variation to policy was presented to the council
- the council did not comply with the policy.

105. The report seeking variation to the policy was included in the council agenda on 11 August 2015 as a late item and relevantly stated:

#### **BACKGROUND**

In the 2014/15 financial year, mobile child care organisations received a \$100,000 grant from the Federal Government for the purchase of a new vehicle suitable for providing a mobile child care service.

#### **DISCUSSION**

CCOWS received a \$100,000 grant from the Federal Government for the purchase of a new vehicle suitable for providing a mobile child care service. CCOWS had to commit to spending the funds before 30 June 2015 and on 23 June 2015 an order was placed with Mac Ford for the purchase of a motor vehicle for \$68,897 (excluding GST) with the vehicle to be delivered later in 2015. The Manager of CCOWS sought 5 quotes on various vehicles and the process met the funding parameters of the Federal Government grant.

Although the seeking of 5 quotes did fully comply with funding parameters of the Federal Government grant and the CCOWS Manager received confirmation from the Federal Department of Social Services, the purchase did not comply with Council policy. Council's Contracts Tenders Purchasing Policy contains the following clauses:

#### **6.3**

##### ***Goods and Services exceeding \$20,000 but not exceeding \$50,000***

A minimum of three quotations in writing shall be invited so as to ensure a reasonable measure of competition and the most advantageous quotations received, having regard to quality, suitability and other relevant considerations.

Selected or open tendering can also be used, depending on the circumstances.

#### **6.4**

##### **Goods and Services exceeding \$50,000 but not exceeding \$100,000**

Undertake a tender process either by selected or open tender. This process to be approved by the Chief Executive.

The vehicle has been ordered and the amount is well within the grant funding of \$100,000 and Council is not required to provide any funds. The CCOWS Manager is now fully aware of Council's tender requirements.

#### **POLICY IMPLICATIONS**

The purchase of the CCOWS vehicle is a variation to Council's Contracts Tenders Purchasing Policy.

#### **BUDGET IMPLICATIONS**

There are no budget implications as the full cost of the CCOWS vehicle is met by the Federal Government grant.

#### **STRATEGIC PLAN**

Governance/Financial Sustainability

*Provide leadership, good governance, and efficient and responsive Council services.*

#### **COMMUNITY CONSULTATION**

Nil.

106. The council did not provide my investigation with any documented recommendation for the purposes of clause 10.2 of the policy.

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*Vehicle 16: June 2016 purchase of a Mondeo - \$34,182.21 (change-over cost \$18,682.21)*

107. Vehicle 16 was priced at \$34,182.21, but a trade-in reduced the change-over cost to \$18,682.21
108. As the vehicle was purchased in June 2016, the 2014 Purchasing Policy applied.
109. The council appears to have applied the policy with regard to the change-over cost of \$18,682.21. In this instance the policy required a minimum of two quotations.
110. In response to the FOI matter, the council stated:
- The documentation provided is the only documentation that has been retained in the Councils [sic] records system.
111. Information provided in response to the FOI matter indicates that the council obtained at least two quotations.
112. The council's response to my investigation stated that:
- the council obtained the required number of quotations
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process.
113. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 20: July 2016 purchase of a Subaru Outback - \$44,911 (change-over cost \$22,911)*

114. Vehicle 20 cost \$44,911, but a trade-in reduced the change-over cost to \$22,911.
115. As the vehicle was purchased in July 2016, the 2014 Purchasing Policy applied.
116. The policy required a minimum of three quotations, or a selected or open tender process.
117. Information provided in response to the FOI matter indicates that the council obtained at least three quotations.
118. The council's response to my investigation stated that:
- the council obtained the required number of quotations
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the council's policy
  - the council was not required to undertake a tender process.
119. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 17: September 2016 purchase of a Subaru Forester - \$32,903.85 (change-over cost \$9,903.85)*

120. Vehicle 17 was priced at \$32,903.85 but a trade-in reduced the change-over cost to \$9,903.85
121. As the vehicle was purchased in September 2016, the 2016 Purchasing Policy applied.
122. Assuming the council could rely on the change-over cost, no quotations were required. Based on the original cost, however, the council was required to obtain at least three quotations.
123. Information provided in response to the FOI matter indicates that the council obtained at least three quotations and that the matter was considered by the elected members.
124. The council's response to my investigation stated that:
  - the council obtained the required number of quotes
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - a report was presented to the council regarding the proposal to trade two vehicles and alter the manner in which the community transport service would be provided
  - the council was not required to undertake a tender process
  - the quotations sought were for a vehicle replacing two existing vehicles.
125. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

*Vehicle 12: August 2017 purchase of a Kubota Front Deck Mower - \$50,465*

126. Vehicle 12 cost \$50,465 (including tax).
127. As the vehicle was invoiced in August 2017, I have assumed that the 2016 Purchasing Policy applied.
128. The policy required an open or selected tender process.
129. In response to the FOI matter, the council stated:

The purchase of the Kubota Front Deck mower was undertaken through Local Government Association Procurement Vendor Panel. This involves the specification...being loaded on to the LGA Procurement website and interaction with prospective dealers is managed by the panel via their website. The documents relating to the purchase of this vehicle were not required to be presented to Council as in accordance with Councils [sic] procurement policy... The net amount of the purchase of the vehicle was less than \$50,000.

130. In the Deputy Ombudsman's response in relation to the FOI matter, she concluded:
 

It appears that the council has erroneously applied clause 6.3 (rather than clause 6.4) of the Policy on the assumption that the net cost was below \$50,000, when according to both the 'creditors to be paid' list and the [xxxxx] invoice the net cost was in fact \$50,465.
131. Information provided in response to the FOI matter indicates that the council used LGA procurement and considered three quotations.

132. [The Works Operation Co-ordinator], provided [the Deputy Chief Executive Officer] and [the former Chief Executive Officer] with a comparison of the three quotations.<sup>5</sup>
133. The council's response to my investigation stated that:
- the council undertook the purchase of the plant using LGA Procurement
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process.
134. The council did not provide my investigation with any documented recommendation to the council for the purposes of clauses 7.3 or 10.2 of the policy.

*Vehicle 15: November 2017 purchase of a Mitsubishi Triton - \$35,019.45 (change-over cost \$22,839.45)*

135. Vehicle 15 cost \$35,019.45, but a trade-in reduced the change-over cost to \$22,839.45.
136. As the vehicle was purchased in November 2017, I have assumed that the 2016 Purchasing Policy applied.
137. The policy required a minimum of three quotations, or a tender process.
138. Information provided in response to the FOI matter indicates that the council obtained at least three quotations. The council also prepared a 'Purchase of New Vehicle' table comparing the quotations.
139. The council's response to my investigation stated that:
- the council obtained the required number of quotations
  - the plant and vehicles to be purchased were part of the council's Annual Business Plan and Budget and was approved by the council when the budget was adopted
  - no report was provided to the council as the purchase was made in accordance with the policy
  - the council was not required to undertake a tender process.
140. As there was no tender process, arguably the requirements of clause 10.2 of the policy did not apply.

#### *Audit Reports*

141. My investigation sought from the council copies of any audit reports in relation to the council's procurement and purchasing processes since 2012 and an outline of steps taken by the council to implement recommended changes.
142. I summarise the information provided by the council as relevant below.
143. On 27 August 2012 the council considered an Interim Audit letter prepared by Galpins Accountants, Auditors and Business Consultants (**Galpins**). The council's audit committee recommended that the council adopt a revised draft purchasing policy. On 11 September 2012 the council adopted the policy in substantially the same terms (i.e. the 2012 Purchasing Policy).

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<sup>5</sup> Email from [the Works Operation Co-ordinator] to [the Deputy Chief Executive Officer] copied to [the former Chief Executive Officer] dated 7 December 2016.

144. On 31 March 2015 the council considered an Audit Management letter prepared by Galpins which relevantly stated:

1) Tenders

Council's Tender Register needs to be expanded to include details for approvals and also to confirm the numbers of tenders received. One 2013 tender was approved by staff when it should have gone to Council. Council's Contracts and Tender Purchasing Policy needs to be reviewed to clarify if the requirement to go to tender (over \$50,000) is for the gross purchase price or the net changeover price.

[...]

From the Audit Management letter, the following action has taken place:

- The application of the Tender Policy will be reviewed as part of the Internal Control assessment and additional controls will be implemented where necessary. Copies of all Tenders received will be kept in records accordingly and Council will record details of the successful tenderer in the tenders register.

145. The Audit Management letter included the following:

AUDIT AREA	NATURE OF WORK CONDUCTED	FINDINGS	RECOMMENDED ACTION
Tenders	Reviewed Council's tenders policy. Reviewed a sample of tenders for compliance with policy. Reviewed tenders register. Enquired regarding reasons for work not going to tender.	<p>Tender register could be expanded to include details of approvals (eg. date, who approved, who was successful, cost).</p> <p>In one case, where only one tender was received, there was no evidence or documentation to indicate it was the only tender.</p> <p>A tender for more than \$50,000 was approved by staff and should have been referred to Council for approval as per the tenders policy. This occurred in 2013.</p> <p>In one case a motor vehicle was purchased with a net changeover cost of less than \$20,000. Two quotes were obtained as required by the tenders policy. The policy requires three quotes where the cost is between \$20,000 and</p>	<p>Consider recording details of the successful tenderer in the tenders register.</p> <p>Retain documentation confirming the number of tenders received.</p> <p>Confirm that processes are now in place to obtain appropriate approvals for new tenders.</p> <p>Consider clarifying the application of the policy to equipment purchases involving trade-ins.</p>

		<p>\$50,000. The policy does not specify whether the thresholds apply to gross purchase price or net changeover price.</p> <p>No other reportable findings.</p>	
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146. On 4 September 2018 the council considered an Internal Controls report prepared by Galpins. The only issue identified under the heading 'Purchasing, Procurement and Contracting' related to purchase orders not stipulating a dollar value.

*Change-over of the former Chief Executive's car*

147. My investigation asked for information about how often [the former Chief Executive Officer's] car has been changed over since 2012 and why that has been considered necessary.

148. [The former Chief Executive Officer] responded:

The Chief Executives[sic] vehicle has been changed over three times since 2012.

The Chief Executives[sic] vehicle is provided by Council as part of the Chief Executives[sic] Employment Package.

In accordance with standard Local Government practice the vehicle was changed over after travelling approximately 40,000 kilometres. It was considered that changing over the vehicle after this amount of kilometres would provide the best financial return for Council in relation to the trade-in that Council would receive.

Councils[sic] Deputy Chief Executive has undertaken some research in recent years to ascertain if in fact 40,000 kilometres does provide the best financial return for Council. The results of his investigation are inconclusive as the motor vehicle industry is not forthcoming with trade in information thereby allowing accurate comparisons to be made.

Therefore in order to obtain some of our own information the Deputy Chief Executive Officer and I have decided to change our vehicles over at approximately 80,000 kilometres. This has yet to occur but when it does it will hopefully provide Council with some financial data that will assist in making decisions in relation to vehicles that provide the best financial return for Council while still meeting the requirements of senior staff employment packages.

In determining the type of vehicle that is provided to the Chief Executive I am mindful of community perception. There are many vehicles which would provide a better financial return for council when traded in but would not be perceived as appropriate vehicles by some members of the community,

Whilst the vehicles provided to the Chief Executive and Deputy Chief Executive are exclusively for their use in accordance with their employment packages both vehicles are used as local community cars as part of the service provided by the Robe Lions Club and Council to transport local residents to medical appointment[s] in Mr Gambier, Naracoorte and sometimes Adelaide.

In changing over my vehicle I made a decision in 2012 that the replacement vehicle would be both a diesel vehicle and a smaller vehicle that[sic] the one that originally came with the position which has significantly reduced the operating costs of the vehicle.

*The council's processes*

149. The council explained its administrative processes involved in purchasing all goods and services as follows:

- (a) The officer responsible for the function obtains quotations and prices to enable information to be included in draft budgets. The information represented to council during budget discussions includes reference to Councils Long Term Asset Management Plan and detail on the justification for the purchase
- (b) Once council has adopted the budget, including the vehicle and plant purchases, the Management Group of Council determine[sic]:
  - a. The timing of the purchase within the financial year
  - b. In accordance with the procurement policy the process involved (tenders/Quotes etc.)
  - c. The opportunity to partner with our neighbouring councils, and
  - d. Opportunities to use LGA Procurement especially for large projects and pieces of plant because they have improved buying power and can ensure the governance matters associated with purchasing are complied with.
- (c) Depending upon the method of purchase used the tenders or quotes are received and the required documentation is recorded and reports if required presented to Council.
- (d) In either making a decision at officer level or in recommending to Council officers take into consideration:
  - a. Delivery time
  - b. Ability to obtain parts and services locally or at least regionally
  - c. A desire to standardize plant and vehicle makes, and
  - d. Officers are always mindful of community perceptions when purchasing vehicles.
- (e) Once decisions have been made orders are placed for the purchase.
- (f) Upon receipt of an invoice for the purchase, the invoice is signed by the officer responsible for the purchase acknowledging its receipt and then by a senior officer authorizing payment. The officers[sic] level of responsibility's[sic] regarding purchases are contained within the Procurement Policy.

[The Deputy Chief Executive Officer] has the responsibility for oversight of all capital vehicle and plant purchases.

150. When asked whether the council considered that it had appropriately managed public resources in purchasing the vehicles, the council responded:

I believe Council and Councils[sic] senior management has been responsible in its management of the purchasing of vehicles and plant.

Council has since 2012 undertaken the following actions:

- (a) Reviewed and rationalised Councils[sic] heavy plant which saw the disposal of plant that was not suitable for Council operations i.e. vibrating roller and street sweeper, and using contractors to provide the same function.
- (b) Introduced diesel vehicles where suitable to reduce operating costs.
- (c) Downsized the vehicles within Councils[sic] fleet by one and providing the community car service from within existing council vehicle fleet.
- (d) Reduced the number of vehicles within Councils[sic] fleet by one and providing the community car service from within existing council vehicle fleet.
- (e) Investigating when is the most appropriate time to change over vehicles and plant to ensure the best financial return for Council.

...

I acknowledge that I was unaware that I was required to report to Council on the occasions when purchases were made without going to tender. It has been the

administrative practice to purchase goods and services in accordance with Councils Procurement Policy and only report to Council if the Administration is seeking a variation to the policy.

...

While policies and procedure were not totally complied with, I am confident and it has been confirmed by Council's audits, that there is no evidence from[sic] any individual gaining any personal benefit from the manner in which purchasing was undertaken.

151. The council also provided the following responses from [the Works Operation Co-ordinator] and [the Director of Childrens' Services].

152. According to [the Works Operation Co-ordinator]:

In reply to the instructions I was given in relation to the vehicles and plant purchases when I became Works Operations Co-Ordinator.

- I became Works Operation Co-ordinator in February 2008, before then I was Works Supervisor.
- I was first employed by the District Council of Robe in April 1990.
- In the lead up to the 2009/2010 budget I was given and[sic] amount to spend in that financial year. I was told I could only purchase small plant and smaller vehicles (not Grader, Loaders etc.) and to not go over budget.
- In the following financial years I was also given a budget for Plant and Machinery. I believe it was \$400,000 each year.
- Although I was not told this, the impression I got after the first year, was that I understood budgets and was prepared to work within them.
- I was told to pick the machinery I wanted to changeover and stay within budget, This stayed the same for the following years up until 2012.
- I had believed for many years that the average age of the fleet for the District Council of Robe was too old. It wasn't difficult to upgrade machinery when you are in this situation. After the first year in the role I did question the CEO at the time (Bill Hender) about being involved in the formation of the budget for machinery and was told that was his role.  
My role was to decide what was needed, and purchase it. I also asked what role Council had in this. I was told once the budget was approved that was the end of their role. As long as I stayed within budget. The reason for these questions is that I wanted to learn more about all facets of Council that involved my job.
- All purchases of vehicles and machinery by me were done with written quotes from the respective dealers. There may have been a tender for some of the larger machinery in the later years when Bill Hender was CEO.
- I believe that the larger more expensive purchasers[sic] were signed off by the CEO at the time. I would have signed off on some of the purchases.
- All this information is from my memory of events going back ten years, the time frames and amounts of money should be able to be checked. I make no apology if these are found to be incorrect.
- To the best of my knowledge and memory this is a true account of plant and machinery purchases from 2008 until 2012.

153. [The Director of Childrens' Services] stated:

This letter is to clarify the purchase of motor vehicles for use by the mobile child care service.

When this service began operation in 2002, the Robe District Council was officially called a "Sponsor" of the service. The Director [i.e. [xxxxx]] has maintained a constant working collaboration with stakeholders, the District Council and in particular the State Branch of the Department of Education and Training. The association with the State Branch was essential, because the service was completely funded through the Federal Government under the BBF (Budget-Based Funding scheme), and the Director reported to the State Funding Manager.

The Director reported monthly and as needed, to both the Council and the State Department regarding all aspects of management of the child care service. The first vehicle purchased for use in the service was taken as an integral necessity for operating a mobile child care service. The vehicle for the Director was subsequently approved by officers from The Department, and was confirmed as an acceptable expense within the "Funding Agreement".

Replacement of vehicles in the subsequent years, was determined by the number of kilometres the vehicles had travelled, the budget discussion with the Advisory Group and the phone confirmation with the State Department. One of the vehicle change-overs for the Service Delivery vehicle was funded by an extra Grant from the Commonwealth Government. There was no instruction from the Council to inform or change this process until the present CEO joined the council in 2012.

Since that time vehicle purchase has followed Council guidelines. Purchase still meets requirements of the Commonwealth Government Funding Agreement but also meets the process covered under the Robe District Council Policy. I have been Director of this service since 2002 and believe that all purchases have been carried out with authority in an open manner and within the arena of knowledge at the time.

### *Maintenance of records*

154. It is clear from the council's response to the FOI matter that it has not consistently maintained records of procurement documents as required by the State Records Act. I discuss the specific records later in this report.
155. My investigation sought an explanation of the council's failure to maintain records. [The former Chief Executive Officer] responded:

In order to answer this question there needs to be an understanding of the organization of Council that existed when I took up the appointment as Chief Executive in July 2012.

Council staff are hardworking, trustworthy and committed to their town and district however they had no effective leadership for many years prior to my commencement and the administration had lost many of the senior staff with corporate knowledge and local government experience.

- Councils[sic] total administration workforce including the Deputy CE and the CE is currently 7.6 FTE's
- From the period 2006 to July 2012 Council employed seven Chief Executive Officers either as full time employees or in an acting position, one of whom was employed for a period of 4.5 years.
- In 2006-2007 Council made redundant/retrenched its three senior management staff and replaced them [with] inexperienced, unqualified staff from within the organization. The replacement staff worked extremely hard but undertook their roles and functions without any training or experience. The Chief Executive for the majority of this time also had no experience in local government management other than serving as an elected member on a neighbouring Council, which meant that staff operated without direction as to the correct process and procedures.
- Between 2006 and 2010 a substantially new Council and Presiding Member were elected. During this period the council was dominated by a Mayor who was not understanding of his role and interfered in the day to day running of Council. This behavior was allowed to occur because the elected members were also inexperienced and all senior staff with any Local Government [e]xperience or knowledge were dismissed from Council.
- Council for this period suffered from a lack of corporate knowledge and were not encouraged to undertake training.
- During this time:
  - Incomplete records were kept including records of Council meeting agenda and minutes

- Council had no delegations register, it had not adopted a suit[sic] of delegations nor did it annually review its delegations
- Council's policy's[sic] in many areas, Work Health Safety, Procurement, Community Consultation, and Records Management, were either non-existent, not annually reviewed and not complied with.
- Staff and elected members were not aware of their responsibilities in relation to record keeping and compliance with the State Records Act.

All of these factors contributed to Councils[sic] records management system being substandard.

These factors all contributed to a culture within the organization that did not know what its responsibilities were and bringing about a change in culture is a difficult process that could not be turned around quickly.

Since July 2012, together with [the Deputy Chief Executive Officer] who started in 2014, Council has dramatically improved its administrative compliance. I appreciate that in 2012, 2013 as the culture and practices of the organization were changing, correct process and procedures especially in relation to procurement may not have been followed simply because not all the issues facing the administration could be attended to at one time.

...

Since taking up the position as Chief Executive in July 2012 and determining that Councils[sic] record keeping was not up to the standards expected the following steps have been implemented:

- (a) Reorganization of the administration duties resulting in one staff member being wholly responsible for the Councils[sic] record system. This has ensured consistency of record keeping.
- (b) Introduction of an electronic records system whereby all council records are registered electronically.
- (c) Training of staff to ensure all records including emails are registering[sic] in Councils[sic] central records system.
- (d) Provided training for elected members in relation to their responsibilities in relating[sic] to record keeping and retention of records within Councils centralized records system.
- (e) Adoption of a suit[sic] of records management policies and procedures [...]
- (f) Engagement of State Records Consultants in relation to:
  - a. Assisting all staff and councils[sic] records management staff to implement a records management system, and
  - b. Undertake on site archiving of Councils[sic] records, this was undertaken annually for 4 years working through councils[sic] old records, archiving and cataloging the records and where required forwarding records to the State Archives
- (g) With the reconfiguration of the Council administration building a site is being prepared in 2018-19 as a records room, temperature controlled, vermin proof which will replace the current records storage located at several sites that are such that records are not correctly preserved.

156. The council provided my investigation with the following policies:

- Electronic Communications Facilities Policy<sup>6</sup>
- Records Management Policy<sup>7</sup>
- Privacy Policy<sup>8</sup>
- Interaction of the Development Act 1993 (SA), the State Records Act 1997 (SA) and the Freedom of Information Act 1991 (SA) with the Copyright Act 1968 (Cth) Policy<sup>9</sup>
- Elected Member Access to Information Policy.<sup>10</sup>

<sup>6</sup> Dated 11 April 2017.

<sup>7</sup> Dated 11 July 2017.

<sup>8</sup> Dated 13 January 2015.

<sup>9</sup> Dated 9 December 2014.

<sup>10</sup> Dated 13 January 2015.

## Relevant law

157. Section 5(4) of the ICAC Act provides:

- (4) *Maladministration in public administration*—
- (a) means—
    - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
    - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
  - (b) includes conduct resulting from impropriety, incompetence or negligence; and
  - (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

158. Section 49 of the Local Government Act provides:

- (a1) A council must develop and maintain procurement policies, practices and procedures directed towards—
  - (a) obtaining value in the expenditure of public money; and
  - (b) providing for ethical and fair treatment of participants; and
  - (c) ensuring probity, accountability and transparency in procurement operations.
- (1) Without limiting subsection (a1), a council must prepare and adopt policies on contracts and tenders, including policies on the following:
  - (a) the contracting out of services; and
  - (b) competitive tendering and the use of other measures to ensure that services are delivered cost-effectively; and
  - (c) the use of local goods and services; and
  - (d) the sale or disposal of land or other assets.
- (2) The policies must —
  - (a) identify circumstances where the council will call for tenders for the supply of goods, the provision of services or the carrying out of works, or the sale or disposal of land or other assets; and
  - (b) provide a fair and transparent process for calling tenders and entering into contracts in those circumstances; and
  - (c) provide for the recording of reasons for entering into contracts other than those resulting from a tender process; and
  - (d) be consistent with any requirement prescribed by the regulations.
- (3) A council may at any time alter a policy under this section, or substitute a new policy or policies (but not so as to affect any process that has already commenced)
- (4) A person is entitled to inspect (without charge) a policy of a council under this section at the principal office of the council during ordinary office hours
- (5) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under this section.

**Whether the council committed maladministration in public administration by failing to undertake numerous vehicle procurements in accordance with its policies and the requirements of the *Local Government Act 1999***

159. I consider that the following procurements were not undertaken in accordance with the relevant policies:

Vehicle	Cost	Policy Requirements	Non-compliance with policy

2012 - Subaru Outback (Vehicle 18)	\$41,553	The 2012 Purchasing Policy required a minimum of three quotations or a tender process.	Only two quotations were obtained and no tender process undertaken.
2012 - Volvo Wheel Loader (Vehicle 21)	\$239,690 (\$212,190 after trade-in)	The 2012 Purchasing Policy required any decision to accept a tender to be approved by the Elected Members.	A tender process was conducted, but the matter was never placed before the Elected Members either before or after the decision was made to accept the tender.
2013 - Ford Falcon (Vehicle 3)	\$31,495 (\$17,995 after trade-in)	The 2013 Purchasing Policy required a minimum of two quotations.	The council has acknowledge that only one quotation was obtained and that it did not comply with the policy.
2013 - Isuzu Truck (Vehicle 9)	\$265,560	The 2013 Purchasing Policy required any decision to accept a tender to be approved by the Elected Members.	A tender process was conducted, but the matter was never placed before the Elected Members either before or after the decision was made to accept the tender.
2014 - Ford Falcon (Vehicle 4)	\$31,504 (\$16,393 after trade-in)	The 2013 Purchasing Policy required a minimum of two quotations	The council has acknowledge that only one quotation was obtained and that it did not comply with the policy.
2015 - Ford Everest (Vehicle 2)	\$64,482.60	The 2014 Purchasing Policy required a selected or open tender process	The council has acknowledged that it did not comply with the policy by conducting a tender process. It appears that the matter only went to the council after the vehicle had been ordered.
2017 - Kubota Front Deck Mower (Vehicle 12)	\$50,465	The August 2016 Purchasing Policy required a selected or open tender process but also allowed for divergence from that requirement by using service of businesses recommended by the Local Government Association Procurement Services	The purchase was not reported to the elected members despite the fact that the net cost was over \$50,000.

160. Subject to my discussion of reports required under clause 10.2 of the policy and recording of reasons for the purposes of section 49(2) of the Local Government Act, I

consider that the following procurements were otherwise undertaken in accordance with the relevant policies:

<b>Vehicle</b>	<b>Cost</b>	<b>Policy Requirements</b>	<b>Compliance with policy</b>
2012 - Ford Territory (Vehicle 6)	\$46,589 (\$18,900 after trade in)	The 2012 Purchasing Policy required a minimum of two quotations.	While the council only retained a record of one quotation, I accept it is probable that two quotations were obtained. On the assumption that the council could reasonably rely on the changeover cost, the council complied with the policy.
2013 - Mitsubishi Triton (Vehicle 13)	\$33,861	The 2013 Purchasing Policy required a minimum of three quotations	I accept that at least three quotations were obtained in accordance with the policy.
2013 - Subaru Outback (Vehicle 19)	\$45,062.42 (approximately \$20,000 after trade-in)	The 2013 Purchasing Policy required a minimum of three quotations	While the council may not have retained all records associated with the procurement, I accept that at least three quotations were obtained in accordance with the policy.
2014 - Ford Ranger (Vehicle 5)	\$38,137 (\$24,839 after trade-in)	The 2013 Purchasing Policy required a minimum of three quotations	I accept that it is probable that at least three quotations were obtained in accordance with the policy.
2014 - Isuzu ute (Vehicle 10)	\$38,964 (\$19,964 after trade-in)	The 2013 Purchasing Policy required a minimum of two quotations	I accept that at least two quotations were obtained in accordance with the policy.
2014 - Kubota Mower (Vehicle 11)	\$50,140 (\$40,415.50 after trade-in)	The 2013 Purchasing Policy required a minimum of three quotations	I accept that at least three quotations were obtained in accordance with the policy.
2015 - Mitsubishi Triton (Vehicle 14)	\$29,068	The 2014 Purchasing Policy required a minimum of three quotations	I accept that at least three quotations were obtained in accordance with the policy.
2015 - Hino - (Vehicle 8)	\$67,030 (\$39,530 after trade-in)	The 2014 Purchasing Policy required a minimum of three quotations	While it appears that the council only retained two quotations, I consider that it is probable that at least three quotations were obtained, noting that at least three quotations were requested, and three quotations were referred to in the report to the council. While the council sought a variation to the Policy so as to dispense with the requirement to tender, assuming that the council could rely on the trade-in

			cost, no tender process was required.
2016 - Mondeo (Vehicle 16)	\$34,182.21 (\$18,682.21 after trade-in)	The 2014 Purchasing Policy required a minimum of two quotations	I accept that at least two quotations were obtained in accordance with the policy.
2016 - Subaru Outback - (Vehicle 20)	\$44,911 (\$22,911 after trade-in)	The 2014 Purchasing Policy required a minimum of three quotations	I accept that at least three quotations were obtained in accordance with the policy.
2016 - Subaru Forester (Vehicle 17)	\$32,903.85 (\$9,903.85 after trade-in)	The 2016 Purchasing Policy required a minimum of three quotations (based on the original cost) or no quotations (based on the change-over cost)	I accept that at least three quotations were obtained in accordance with the policy.
2017 - Mitsubishi Triton (Vehicle 15)	\$35,019.45 (\$22,839.45 after trade-in)	The 2016 Purchasing Policy required a minimum of three quotations	I accept that at least three quotations were obtained in accordance with the policy.

#### *Obtaining the requisite number of quotations*

161. Based on the information summarised above, I am satisfied that on three occasions over a period of approximately six years, the council failed to obtain the number of quotations required by the policy. That said, on at least twelve occasions the correct number of quotations was obtained. That is, I am satisfied that, generally, the market was appropriately tested before vehicles were purchased.
162. The whistleblower has submitted that at times the council was not comparing like vehicles. I do not consider that it would be an appropriate use of my resources to ascertain whether that was, in fact, the case.
163. In all of the circumstances, while I consider that the failure of the council to obtain the requisite number of quotes constituted a potential mismanagement of public resources, I cannot be satisfied that the council's practice in that regard resulted in a substantial mismanagement of public resources. My view may have been different, however, if the council administration regularly failed to properly test the market.
164. In the case of Vehicle 2, the council failed to conduct a tender process as required by the policy (only to seek a variation to the policy's requirements once the vehicle was purchased). While it is of concern that the policy was not complied with, I note that:
- the council tested the market by obtaining five quotations
  - the vehicle was purchased using grant funds, and there was some urgency in committing to the expenditure by the end of the financial year
  - it appears that the council was more focussed on complying with its obligations under the grant funding agreement rather than its own policy
  - council administration brought this matter to the elected members' attention and sought approval to diverge from the policy.

*Compliance with clause 10.2 of the policy*

165. In all of its various relevant versions, the policy has included the following requirement:

10.2 The Officer responsible for the tender process will submit a report that summarises the tender assessment and makes a recommendation for approval to:

1. Council for tenders that relate to projects to the value of \$50,000 and above
2. The Chief Executive for all other tenders.

166. Section 9 of the policy has the title 'Quotations and Tenders Process' but refers throughout to tender processes (as opposed to the process of obtaining quotations. Similarly, section 10 of the policy only refers to tender processes). In those circumstances, while it could be made clearer in the policy itself, arguably clause 10.2 only applies to those situations where the council is required to conduct a tender process. I consider that it was reasonably open for the council to interpret clause 10.2 in that way and I have proceeded on that basis.

167. I note with concern that the council administration failed to report three tenders over \$50,000 to the elected members. I do not consider that the council has provided an adequate explanation for those failures. I am particularly concerned that Vehicle 12 was not reported to the elected members after Galpins had raised non-reporting as an issue in March 2015.

168. That said, I consider I cannot be satisfied that council administration's failure to report those three purchases to council in itself resulted in substantial mismanagement of public resources.

*Compliance with section 49(2)(c) of the Local Government Act*

169. Section 49(2)(c) of the Local Government Act provides that a council's contracts and tenders policy must:

- (a) provide for the recording of reasons for entering into contracts other than those resulting from a tender process.

170. In all relevant versions, the policy stated:

Pursuant to Section 49(2) of the Act Council must ensure that any policies on contracts/tenders and purchasing:

...

- Provide for the recording of reasons for entering into contracts other than those resulting from the tender process.

171. While the policy states the requirements of section 49(2) of the Local Government Act, I do not consider that at any time it clearly stated that reasons must be recorded for entering contracts other than by a tender process. I address that issue later in this report.

172. It is, perhaps, not surprising therefore that the council's officers do not appear to have had a practice of recording the reasons for those contracts entered into other than by tender.

173. I am not satisfied, on the evidence before me, however, that this practice necessarily resulted in the substantial mismanagement of resources.

## Opinion

In light of the above, my view is that the council did not commit maladministration in public administration for the purposes of section 5(4)(a)(i) of the ICAC Act by failing to undertake numerous vehicle procurements in accordance with its policies and the requirements of the Local Government Act.

### **Whether the council acted in a manner that was contrary to law or wrong by failing to have appropriate policies and to comply with its policies**

174. As noted above, I do not consider that the policy complied with section 49(2)(c) of the Local Government Act in that, while it referred to that provision, the policy itself did not clearly require that council officers record reasons for entering contracts other than by tender process.
175. As set out above, I consider that the council failed to comply with its policy in relation to:
- Vehicle 18 (2012 purchase of a Subaru Outback) - only two out of three required quotations were obtained
  - Vehicle 21 (2012 purchase of a Volvo Wheel Loader) - a tender process was undertaken but the matter was never put before the elected members
  - Vehicle 3 (2013 purchase of a Ford Falcon) - only one out of two required quotations was obtained
  - Vehicle 9 (2013 purchase of an Isuzu Truck) - a tender process was undertaken but the matter was never put before the elected members
  - Vehicle 4 (2014 purchase of a Ford Falcon) - only one out of two required quotations was obtained
  - Vehicle 2 (2015 purchase of a Ford Everest) - a tender process was not undertaken and the matter only put before the elected members once the vehicle had been ordered
  - Vehicle 12 (2017 purchase of a Kubota Front Deck Mower) - a tender process was undertaken but the matter was never put before the elected members.
176. In relation to those purchases that were not put before the elected members, I have had regard to the council's submission that purchases were within the council's budget as approved by elected members. That said, the requirements of the policy in this regard were clear throughout the relevant period.
177. I consider that the council failed to record its reasons for entering into the following contracts as required by section 49(2)(c) of the Local Government Act:
- Vehicle 18
  - Vehicle 6
  - Vehicle 3
  - Vehicle 13
  - Vehicle 19
  - Vehicle 5
  - Vehicle 10
  - Vehicle 11
  - Vehicle 4
  - Vehicle 14
  - Vehicle 8.
178. I accept that a council is not always bound to accept the lowest quotation and that a decision to purchase may take into account a number of factors. That said, it is essential for the purposes of transparency and accountability that councils record their rationale for purchases as required by section 49 of the Local Government Act.

179. I have considered the council's current administrative processes for procurement and note that the Deputy Chief Executive has oversight of all capital vehicle and plant purchases. In my view, that may go some way to ensuring a consistent and compliant approach from now on.

180. I note that the council has stated that:

In either making a decision at officer level or in recommending to Council officers take into consideration:

- a. Delivery time
- b. Ability to obtain parts and services locally or at least regionally
- c. A desire to standardize plant and vehicle makes, and
- d. Officers are always mindful of community perceptions when purchasing vehicles.

181. Clearly, those considerations should not be an exhaustive list. The starting point for any procurement decision should be the procurement principles as set out in the policy which include:

- open and effective competition
- value for money
- encouragement of the development of competitive local business and industry
- environmental protection
- ethical behaviour and fair dealing.

182. Finally, I note with concern that the council does not appear to have implemented Galpins' recommendation in relation to clarifying whether the relevant tender threshold is gross or net purchase price. I consider that is necessary to ensure consistency of approach.

## Opinion

My view is that:

- the council's failure to have a policy that complied with the requirements of section 49(2)(c) of the Local Government Act was contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act
- the council's failure to comply with the policy in:
  - failing to obtain the required number of quotations in relation to vehicles 18, 3 and 4
  - failing to put purchases over \$50,000 before the elected members in relation to vehicles 21, 9 and 12
  - failing to conduct a tender process in relation to vehicle 2
  - failing to record reasons in relation to vehicles 18,6,3,13,19,5,10,11,4,14 and 8
 was wrong for the purposes of section 25(1)(g) of the Ombudsman Act.

I recommend under section 25(2) of the Ombudsman Act that the council:

1. amend the policy to clearly require that reasons must be recorded for entering into any contracts other than those resulting from a tender process
2. develop a template for recording reasons as required by section 49(2)(c) of the Local Government Act
3. amend the policy to clarify whether the relevant threshold is determined by gross or net purchase price
4. remind all council officers of their obligations under the policy, including the need to have regard to the procurement principles.

**Whether the council's failure to maintain records in accordance with the *State Records Act 1997* was contrary to law.**

183. In considering this issue, I have had particular regard to the council's response to the FOI matter and its response to my investigation in relation to records management more generally.

184. I consider it more probable than not that the council failed to maintain the documentation described below.

*2012*

- Vehicle 18 - the request for quote to [xxxxx]
- Vehicle 6 - email communication with [xxxxx] and [xxxxx] (including a quotation from [xxxxx])

*2013*

- Vehicle 3 - request for quotation from [xxxxx]
- Vehicle 19 - as stated in my Deputy's letter on the FOI matter:

The documentation provided by the council reveals an email dated 12 August 2013 that was sent to multiple dealerships inviting their quotes. I accept, however, that it is highly likely that some, if not all, of these dealerships would have provided their quotes by return email having regard to their usual practice with respect to quotes in relation to other vehicle purchases. In addition, I accept that it is highly likely that the council would once have held an original order, an amended order, at least one additional quote (and possibly two additional quotes[footnote omitted] based on the emails with [xxxxx] dated 9 September and 6 September 2013. Based on [xxxxx's] practice in relation to other vehicle purchases it also seems likely that they would have issued an invoice to the council[footnote omitted]. That said, I accept that the council has not retained any additional documents relevant to the purchase of vehicle 19.

*2014*

- Vehicle 10 - the attachments to the emails from [xxxxx] and [xxxxx]
- Vehicle 4 - request for quotation from [xxxxx]

*2015*

- Vehicle 8 - the attachments to the [xxxxx] email
- Vehicle 2 - the quotation from [xxxxx]

*2016*

- Vehicle 16 - council order number 2364 and requests for quotations
- Vehicle 20 - photos of the trade-in vehicle.

185. In my view the documentation would constitute 'official records' for the purposes of the State Records Act being 'made or received by an agency in the conduct of its business'.<sup>11</sup> Section 23 of the State Records Act requires that an agency must not dispose of official records except in accordance with a determination made by the Manager of State Records with the approval of the State Records council.

186. As I have not been provided with any evidence to demonstrate that disposal of those documents occurred in accordance with the State Records Act, I consider that the council's action in disposing of those documents appears to have been contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

<sup>11</sup> Section 3 of the State Records Act.

187. That said, I acknowledge that generally the council has otherwise maintained appropriate records.
188. I also commend the council on the steps it has taken to improve its record-keeping processes which appears to have included extensive consultation with State Records.
189. I have considered the various policies provided to my investigation and in particular I note:
- The Electronic Communication Facilities Policy includes:

**Record Keeping**

Electronic communications which are sent and received in the conduct of Council business are official records of Council and are required to be maintained in good order and condition under the State Records Act 1997. Reference should be made to Council's Records Management Policy for the record keeping procedures to be used to properly record electronic communications.

- The Records Management Policy is comprehensive and includes the following:

Council staff and Council Members must ensure that Council records in any format, including electronic documents and electronic messages, which they personally receive or send are forwarded to the Records Unit to be captured into the Council's record keeping systems. Records must be readily accessible to meet business and accountability requirements. Staff members of the Records Unit are required to follow authorised procedures in carrying out records management functions.

Electronic records are to be captured and maintained as functioning records by preserving their structure, context and content. In order to maintain their value as evidence, electronic records must be inviolate. That is, they cannot be altered or manipulated for as long as they are retained.

Council staff or Council Members who do not comply with this Policy may be subject to disciplinary action under the relevant Code of Conduct and/or subject to criminal or civil proceedings. Council Members and staff should report breaches of this Policy to the Corporate Records Manager.

- The Records Management Policy also provides:

All Council staff and Council Members need to be aware of record keeping requirements that affect the performance and exercise of their duties and functions. The record keeping obligations on Council staff and Council Members include:

- making records to support the conduct of their business activities;
- creating records that would not otherwise be created;
- forwarding records to the Records Unit for capture into paper or electronic record keeping systems;
- learning how and where records are kept within Council;
- not destroying Council records without authority from the Corporate Records Manager;
- not losing records; and
- being aware of records management procedures.

I consider that the council's policies appropriately make clear to council officers their obligations under the State Records Act.

**Opinion**

My view is that the council, in failing to retain official records, acted in a manner that was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

Having regard to the council's explanation of improvements made to its record-keeping processes, I do not consider it necessary to make a recommendation in relation to this issue.

I intend, however, to provide a copy of my report to the Manager of State Records.

## Summary and Recommendations

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

- the council did not commit maladministration in public administration for the purposes of section 5(4)(a)(i) of the ICAC Act by failing to undertake numerous vehicle procurements in accordance with its policies and the requirements of the Local Government Act
- the council's failure to have a policy that complied with the requirements of section 49(2)(c) of the Local Government Act was contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act
- the council's failure to comply with the policy in:
  - failing to obtain the required number of quotations in relation to vehicles 18, 3 and 4
  - failing to put purchases over \$50,000 before the elected members in relation to vehicles 21, 9 and 12
  - failing to conduct a tender process in relation to vehicle 2
  - failing to record reasons in relation to vehicles 18,6,3,13,19,5,10,11,4,14 and 8 was wrong for the purposes of section 25(1)(g) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the council:

1. amend the policy to clearly require that reasons must be recorded for entering into any contracts other than those resulting from a tender process
  2. develop a template for recording reasons as required by section 49(2)(c) of the Local Government Act
  3. amend the policy to clarify whether the relevant threshold is determined by gross or net purchase price
  4. remind all council officers of their obligations under the policy, including the need to have regard to the procurement principles.
- the council's failure to retain official records was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by **26 July 2019** on what steps have been taken to give effect to my recommendations 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 to the Ombudsman.

I have sent a copy of my report to the Manager of State Records.

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*.

A handwritten signature in black ink, appearing to read 'W. Lines', with a stylized flourish at the end.

Wayne Lines  
**SA OMBUDSMAN**

26 April 2019