

REDACTED FINAL REPORT

Investigation pursuant to referral
Section 24(2)(a) *Independent Commissioner Against Corruption Act 2012*

Public Authority	Roxby Council (the council)
Public Officer	Mr Bill Boehm
Ombudsman reference	2016/00616
ICAC reference	2015/001026
Date of referral	7 January 2016
Issue/s to be assessed	<p>1. Whether the council committed maladministration in public administration by a course of conduct involving inappropriate expenditure and other administrative practices.</p> <p>2. Whether the Administrator of the council committed maladministration in public administration by a course of conduct involving inappropriate expenditure and other administrative practices.</p>

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 a potential issue of maladministration in public administration within the meaning of that Act (the referral).

The referral arose out of a complaint to the Office for Public Integrity.

While the referral gives rise to various matters, it has been referred on the basis that those matters constitute one course of conduct.

Action taken

Using my powers under the *Ombudsman Act 1972*, I have conducted an investigation of the issue in response to the referral by:

- assessing the information provided by the Commissioner
- seeking clarification and further information from the complainant
- seeking and assessing a written response (including documents) from Mr Boehm
- seeking further clarification of issues raised in the investigation from Mr Boehm
- seeking and assessing a written response from [Mr A]
- seeking and assessing a written response from the Hon Lyn Breuer

- seeking and assessing a written response from Dr Paul Heithersay, Deputy Chief Executive, Resource Infrastructure & Investment Task Force, the Department for State Development
- seeking and assessing a written response (including documents) from Mr Les Rochester, former Chair of the Roxby Downs Community Board
- further clarifying Mr Rochester's response with him by telephone
- interviewing by telephone a former council employee
- interviewing by telephone [Ms E], the council's Manager, Corporate Strategy and Governance
- interviewing by telephone [Mr D], the former Family and Youth Coordinator employed by the council
- seeking a response and documents from the Acting Administrator of the council, Mr Geoff Whitbread
- interviewing by telephone Mr David Powell, a member of the council's audit committee and past adviser on certain probity issues, and seeking a written response from him
- attempting to contact one other person suggested by the complainant by telephone
- considering:
 - the ICAC Act and the Ombudsman Act
 - the *Local Government Act 1934*
 - the *Local Government Act 1999*
 - the *Roxby Downs (Indenture Ratification) Act 1982*
 - the *State Records Act 1997*
- preparing a provisional report and providing it to the parties for comment
- considering the responses of the parties to my provisional report
- preparing this final report.

Standard of proof

The standard of proof I have applied in my investigation and this 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 (*Briginshaw*), I have considered the nature of the complaint and the allegations made and the consequences if they were to be upheld. *Briginshaw* recognises that greater care is needed in considering the evidence in some cases;¹ and it is best summed up in the decision as follows:

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

Response to my provisional report

Mr Boehm responded to my provisional report:

- noting that as he was no longer with the council he did not have records or other information available to him and on that basis his comments were based on his best recollections which needed to be taken in the context of the passage of time over a 17 year period and he had no records of times or dates etc.
- stressing his assertion, as quoted in my provisional report, that value for money was obtained in engaging [Mr A] and [Mr B], and referring to the actual hourly and daily rate charged by each of them
- noting that even in hindsight those rates are well below prevailing industry standards of the day, especially considering the remote location of Roxby Downs

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

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

- stating that any objective view of the outcomes shows a high degree of success:
 - in the case of [Mr A], a large raft of projects were successfully delivered, generally on time and within budget
 - in the case of [Mr B], virtually all of his work was in transforming the nature of the community, with considerable success, and in those instances it was not possible to provide a detailed brief as the outcomes had to be created from scratch (e.g. the Community Board Structure and Monitor Community Newspaper, both of which have successfully evolved over time)
- noting that in the circumstances reengagement of [Mr A] and [Mr B] was justified by the price charged, their intellectual knowledge which would have not been replicated by use of other external providers and lack of comparative cost effective options
- acknowledging that ‘in hindsight the lack of documented makes this view not as transparent than could have been the case’
- noting that since 2003 improvements were continually introduced by Mr Boehm over time, a significant improvement on the situation that he inherited
- concurring with my findings in relation to the Town Board, requests to increase transparency and provide more detail on expenditure, contracts with [Ms C], the alleged trip to Queensland and processes arising from the missing documents
- noting my comments in relation to the bullying and sexual harassment allegations, and stating that:
 - he could not recall whether an Equal Opportunity Officer was actually officially appointed but noting that the council office was very small
 - any allegation, if received, would have been followed up and addressed at a staff level immediately
 - since around 2007 the council appointed an external Human Resources Advisor to handle any such issue
- stating in relation to [Ms C] that ‘[p]ut simply I had no direct or indirect involvement and would never contemplate such an action’.

In relation to my provisional finding of maladministration by the council, Mr Boehm referred to his comments on the awarding of contracts to [Mr A] and [Mr B] summarised above and stated:

Whilst in hindsight it may not appear that the council then managed its resources appropriately, due in part in some instances [sic] lack of recorded documentation for the reasons of selection of contractors, I refute the summary that this was “substantial mismanagement” of resources.

In relation to my provisional finding of maladministration against Mr Boehm, Mr Boehm referred to his comments on the awarding of contracts to [Mr A] and [Mr B] summarised above, refuted that he committed ‘substantial mismanagement’ and stated:

The duties of the Administrator are far wider than [sic] this one element. I acknowledge the lack of recorded documentation in some instances could contribute to a finding of mismanagement in relation to then [sic] my official duties but only in relation to one element, but in context of the vast array of other duties that I was required to and successfully perform [sic].

In relation to my provisional finding of administrative error under the Ombudsman Act, Mr Boehm referred to his comments in relation to the bullying and harassment allegations summarised above.

Mr Boehm also ‘absolutely’ refuted the ‘finding’ that documents have been disposed of and any assertion that they have been disposed of wilfully. I address that issue further in the body of my report.

Mr Boehm also made the following points in his response:

- he believed that over a 17 year period he fulfilled what is a very difficult role with distinction and left the council in a very sound, sustainable and strategically well placed footing
- on every occasion when the operations of the council were reviewed by entities such as the Council Auditor, Audit Committee (which was established by Mr Boehm), Roxby Downs Advisory Reference Group, MHM, the Department of Minerals and Energy and others, he always faithfully assisted without any adverse findings
- Mr Boehm's performance was always subject to oversight from the Department of Minerals and Energy; while Mr Heithersay indicated in his response to my investigation that only the Minister could direct the council, and legislatively speaking that is correct, in practice, the Minister would only do so if his department recommended such an action
- additionally, Mr Boehm's initial appointment, contracts of engagement and his performance was entirely overseen by the department; all draft budgets were required to be placed before the department, who along with BHP Billiton were required to approve a budget deficit, and, thereby, effectively, the budget
- on that basis, Mr Boehm considers it was factually incorrect to conclude that in respect of oversight, that the council, and Mr Boehm as Administrator, were subject to minimal oversight compared to other councils
- in Mr Boehm's submissions, such a view would 'go to the heart of the performance of the department' which is directly responsible for advising the Minister; no other council in the State is required to have its budget approved and overseen by the State Government
- as evidence of his commitment to good governance, in 2015 Mr Boehm commissioned an independent review of the role and structure of the position of Administrator; Mr Boehm stated:

I was not required to do so. Indeed, it was an action that should have been instituted by the State Government.

- Mr Boehm's reason for commissioning the independent review was that he realized that the position of Administrator/Chief Executive Officer placed the incumbent in an 'invidious' position; Mr Boehm stated:

This action which[sic] was taken with the full support of the Councils[sic] Audit Committee and I knew that this would invariably likely compromise my then role, prompting in part my resignation from the position in June 2016 so as to aid this process. Subsequently I am led to believe though[sic] media reports that a final report has been accepted by the State Government with the role to be split between Administrator and Chief Executive Officer.

The complainant provided a response to my provisional report:

- submitting that my report should be made public
- expressing the view that, as my report shows Mr Boehm is guilty of maladministration and misconduct, including 'illegally destroying public records', he should be held accountable for his actions and prosecuted appropriately
- stating:

Given the prolonged nature of the conduct of Mr Boehm and direct complaints made by the community to the SA Government, which appear to have been largely ignored, including the missing paperwork that formed the basis of a previous complaint, the government ministers and advisors should be held accountable for their dereliction of duty in protecting the community of Roxby Downs and for continuing to allow the mismanagement of public funds in their office.

- submitting that the findings of my report would strongly support further investigations into the financial operations of the council during Mr Boehm's time as Administrator

and that a forensic audit should be undertaken to determine if interactions between the council and its contractors have been appropriate.

Mr Geoff Whitbread, Acting Administrator of the council responded that each of the recommendations in my provisional report have or are receiving attention. Mr Whitbread noted that the matters in my provisional report relate to events of the past and 'bear little or no relevance' to the current operation of the council. Mr Whitbread also noted that the learnings from the report are useful.

Having considered those responses, my view remains as set out in my provisional report. I have commented on some of the issues raised in the responses to the provisional report in the body of this report.

Background and evidence obtained in the investigation

1. Mr Bill Boehm was employed as Administrator for the council from 26 June 1999 to 3 June 2016.
2. The council was established pursuant to the *Roxby Downs (Indenture Ratification) Act 1982 (the Indenture Act)* and has a unique structure.
3. The Indenture Act gives legislative status to the Indenture Agreement that was entered into between the State Government and Joint Venturers (previously WMC Resources, now BHP Billiton) regarding the Olympic Dam mine and Roxby township.
4. Section 7 of the Indenture Act sets out the interaction between the Indenture Act and other state legislation:

Modification of State law

- (1) The law of the State is so far modified as is necessary to give full effect to the Indenture and the provisions of any law of the State shall accordingly be construed subject to the modifications that take effect under this Act.
 - (2) Without limiting the generality of subsection (1), in the case of any inconsistency between the provisions of any Act or law and of the Indenture, the provisions of the Indenture shall prevail and in particular—
 - (a) the following Acts are to be construed subject to the provisions of the Indenture:
 - (i) the Commercial Arbitration Act 1986; and
 - (ii) the Crown Lands Act 1929; and
 - (iii) the Development Act 1993; and
 - (iv) the Electricity Corporations Act 1994; and
 - (v) the Environment Protection Act 1993; and
 - (vi) the Harbors and Navigation Act 1993; and
 - (vii) the Mining Act 1971; and
 - (viii) the Petroleum Act 1940; and
 - (ix) the Real Property Act 1886; and
 - (x) the Residential Tenancies Act 1995; and
 - (xi) the Stamp Duties Act 1923; and
 - (xii) the Water Resources Act 1990,
 and, to the extent of any inconsistency between the provisions of those laws and of the Indenture, the provisions of the Indenture prevail; ...
5. The position of Administrator is established pursuant to section 12 of the Indenture Act which relevantly provides:

12—Special provisions in relation to local government

- (1) The provisions of clause 23 of the Indenture, and the Local Government Act 1934, as modified by the Indenture, apply in respect

of the municipality to be constituted in pursuance of clause 23 of the Indenture.

- (2) ...
- (3) An Administrator of the municipality shall be appointed by the Minister as contemplated by clause 23(3) of the Indenture, and while local government in the municipality is administered by the Administrator the provisions of Parts 3 to 8 (inclusive) of the Local Government Act 1934 shall not apply in relation to the municipality.
- (4) The Administrator shall be an officer of the Crown and shall, subject to the Indenture and the provisions of the Local Government Act 1934 as they apply to the municipality, be under the control and direction of the Minister but the Crown is entitled to be reimbursed for the costs of employing the Administrator and any other liabilities incurred by it in relation to the administration of the municipality from the funds of the municipality.
- (5) The Administrator shall have the powers, functions and duties of a municipal council in relation to the municipality and, subject to directions of the Minister, shall exercise and discharge those powers, functions and duties in such manner as he[sic] thinks fit.
- (6) ...
- (7) The provisions of subsection (4) do not derogate from limitations on the exercise of powers of local government imposed by the Indenture.

6. Mr Boehm provided to my investigation a detailed background to his role as Administrator which included the information set out below.

7. According to Mr Boehm:

The provisions of Parts 3 to 8 of the *Local Government Act 1934* include those relating to elected members and meetings of a council. The *Local Government Act 1934* has since been replaced by the *Local Government Act 1999* (the Act) and, by virtue of section 12(3) of the Indenture Act, in conjunction with the *Acts Interpretation Act 1915*, the provisions in the Act that are equivalent to those contained in Parts 3 to 8 of the *Local Government Act 1934* do not apply to the Council.

Clause 23 of the Schedule to the Indenture Act reinforces that the Council has all of the powers vested in a council under the Act, subject to limitations specified in the Indenture Act. This clause also provides that the appointment of the Administrator by the Minister is subject to the approval of the Joint Venturers (now BHP Billiton).

Regulation 6 of the Roxby Downs (Local Government Arrangement) Regulations 1997 further reinforces that the Administrator will exercise all the powers and discharge all the functions of the Roxby Council in the name and on behalf of the Roxby Council.

8. Mr Boehm told my investigation:

In legislative terms I am³ required to report direct to the Minister but, for practical purposes report directly to Paul Heithersay, Executive Director Minerals and Energy. Since its establishment, I have received and continue to receive regular oversight and advice from the Roxby Downs Reference Advisory Group (the RDARG) and the Council's Audit Committee.

The role of the Administrator is akin to the role of the Chief Executive Officer and the governing body of a council under the Act. This dual role often creates confusion within the community and gives rise to practical difficulties arising from the fact that the Administrator is required to concurrently perform the potentially conflicting roles of a Mayor and a Chief Executive of a council.

Over the years and through experience, I have sought to minimise the conflict of roles by increasingly seeking the support of staff and engaging trusted 'external advisors' to

³ Mr Boehm's response was provided while he was still employed as Administrator. He has since retired.

assist me in undertaking my role in the interests of the community. The assistance of staff and Council's external advisors has enabled me to remain at arm's length in early decision-making processes so that I can properly consider expert opinions and impartially make a fully informed final decision in the best interests of the community. Under the terms of the Indenture Act and unlike all other councils in South Australia, the Council's budget must be approved by the State Government and BHP Billiton. BHP Billiton must also approve the rates that the Council proposes to levy each year as well as the Council's power and water charges. This has necessarily impacted the degree of transparency that can be implemented by the Council in the annual budget preparation process. In particular, the process of obtaining budget approval, including the amount of any financial (deficit) subsidy provided to the Council by the State and the Joint Venturers are treated as confidential by the parties under the terms of the Indenture and are not available to the public. This is beyond the control of the administrator. As a matter of longstanding practice, accepted by the State Government, Council budget submissions and related correspondence regarding the Council's annual operations that are provided to the State Government are treated as internal working documents and submitted "*in confidence*". The process is that the Government will consider the Council's budget submission and the Council is required to address any supplementary questions that may be asked of it, before the Council is formally advised by the State Government of the budget that has been approved by the State Government and BHP Billiton.

Before 2007 the Council was not required to prepare and consult upon a draft business plan. However, my practice was always to engage with the community to obtain suggestions for inclusion in the forthcoming budget.

Since 2007, the Act has required the Council to prepare and consult upon its draft Annual Business Plan prior to Council adopting its budget. As a result, the Council now prepares the draft Annual Business Plan to highlight to the community its strategic direction and to seek community input into the Plan. There is then opportunity to include changes to the Plan prior to submitting a budget to BHP Billiton and the State Government for approval.

In my experience, the Council's unique budget approval process can and does cause a degree of uncertainty for the community. I am and must always be mindful not to improperly raise expectations within the community when BHP Billiton and the State Government have not had an opportunity to consider the Council's draft Annual Business Plan. This is particularly the case because the Council's ability to commit to the proposals set out therein is contingent upon final budget approval by BHP Billiton and the State Government (i.e. which occurs after the consultation process and, as above, in a confidential manner as required by the State Government and BHP Billiton).

Taking the above into account, the requirements of the Indenture Act relating to the Council's budget approval process add a further degree of complexity to the Council's operations and procedures that are not always easily understood by the community. In essence, they establish a framework whereby the Council is the proponent of the Budget and the State/BHP Billiton, are the decision-makers.

9. According to Mr Boehm, when he was first appointed as Administrator in 1999:
- the council employed two Works Managers and four clerical/administration staff
 - there was no audit committee
 - Mr Boehm was required to perform all other council functions including:
 - Governance
 - Corporate Services
 - Financial Accounts
 - Contract Preparation and Management.

10. Mr Boehm stated:

Simply put, this was an impossible task. As a qualified and experienced Civil and Municipal Engineer and second tier officer at an elected council, I had significant budget management experience but no accounting qualifications. Fortunately, I was able to recruit a Financial Accountant.

Specialist Contractors performed the Council's responsibilities for building surveying, planning and environmental health. Apart from major contracts associated with the management and operation of the Cultural and Leisure Centres, waste management and township maintenance all other works were undertaken by way of purchase orders that were negotiated, traditionally with a single supplier. The Council was and still is, to some degree, lacking in project management expertise. This is the reason why this function has traditionally always been outsourced.

11. Mr Boehm highlighted the factors that impact on the way the council operates including:

- the council's remote location
- the council's size
- cost pressures associated with recruiting and retaining staff
- influences of BHP Billiton as the main industry
- the need for many of the functions that would, in other councils, be carried out by council staff, to be undertaken by external contractors.

12. As Mr Boehm told my investigation:

For instance, since local government staff and labour rates are significantly less than other options on offer in Roxby Downs, it has been virtually impossible to obtain and retain high quality and experienced staff. Indeed, many of the Council's staff have, over the years, pursued employment with the mining company given the mining employment packages far exceed what local government can offer. The mid-level managers that Council can afford to engage are invariably employed with significant housing subsidies and are attracted with flexible employment conditions. These unique variables have meant that it has been impracticable to operate within a 'traditional' local government management model.

13. Mr Boehm explained that, as a result of the factors outlined above, many key tasks that would normally be delegated to Senior Management have been undertaken by External Advisors under contract arrangements which have historically been an hourly or daily rate engagement. According to Mr Boehm:

On some occasions, a fixed fee may be negotiated for a specified project in circumstances where the scope of work or time required can be reasonably predicted. On these occasions my practice has been to 'benchmark' the accepted quote against the general industry standards that prevail at the time, noting that it is often influenced by the following factors:

- Roxby Downs is in a remote location;
- unlike in a city environment there is limited ability to service more than one client simultaneously; and
- there is limited local expertise.

14. According to Mr Boehm, his usual processes for engaging External Advisors were:

- via a market testing process (i.e. a tender for a specific scope of works). In some cases, the successful tenderer may, upon successful completion of an initial engagement and as a result of the tenderer's experience and unique knowledge of the Council's operations, be subsequently engaged on an ongoing basis;
- direct engagement of persons that I have known to be capable from previous personal experience; or

- direct engagement arising from a referral from someone else whose reputation I trust.

15. Mr Boehm stated:

On all occasions, any re-engagement of an existing External Advisor is determined by performance and outcomes delivered within the context of the industry standards at the time. Engagement in this manner is undertaken on a professional basis and the question as to whether a personal relationship exists between me or the contractor is an irrelevant consideration and has always been treated as such. Performance, availability, cost and the lack of suitable alternatives are strictly the only criteria.

Cultural and Leisure Precinct and the [Company C]

16. Various projects have been undertaken at the Roxby Downs Cultural and Leisure Precinct (**the Precinct**) to meet community demands. Mr Boehm stated:

All of these projects have been of a complex nature and required the Council to engage a range of experienced contractors from a variety of backgrounds. Further, all projects involved public consultation and input before forming part of the normal budget process. In some instances, following public consultation and as a result of budget constraints, a proposed project did not proceed. An example is the deferral of a commercial extension to the Cultural Centre.

17. Day-to-day management of the Precinct was initially outsourced to various external contractors. The council paid a fixed fee to the contractor who would in turn meet all operating expenses and retained all revenue. According to Mr Boehm:

This is a traditional 'outsource model' that is suited where the scope of services is limited or well defined, however, it later became apparent to me that it is not a model that is necessarily best suited to managing the Precinct.

18. In July 2007 the council assumed responsibility for the Precinct by establishing a separate internal business unit (**Roxby Leisure**) that met all operating expenses and retained all revenue. The council contracted the [Company C] to manage the Precinct. According to Mr Boehm:

The [Company C] ensured that all relevant expenditure for the business unit, including contract payments was managed within the business unit. Council staff ensured that expenses and income were appropriately accounted for and the arrangements were overseen by the Council's external Auditor.

The contract with the Company allowed flexibility for staffing/labour arrangements. Each year the Company submitted [sic] draft business plan and budget for approval by the Council with the ability for the Company to vary labour requirements, subject to agreement by the Council. An example of a draft Budget for Roxby Leisure submitted by the Company is attached (Attachment 2A).

In effect, the Council set the strategic direction of the Precinct and the Company independently sourced the requisite labour to deliver the outcomes required by the Council. The cost of labour (paid by the Council) was agreed annually and at the end of the financial year final contract payments were adjusted where necessary to reflect actual operating staff costs.

19. In July 2011, following a tender for services, the [Company C] entered into a new contract with the council for a three year term together with two rights of renewal for one year each. Under those contractual arrangements, the [Company C] employed all staff of the Precinct. Those staff were not subject to the council's employment conditions. According to Mr Boehm:

The Council did not have authority to direct or influence any person employed by the Company. The Council did, however, monitor performance by the Company of its contract obligations, including human resource management and the manner in which recruitment was undertaken. In doing so, I was satisfied that the Company regularly advertised available positions and/or contract services within the Precinct.

20. Since 2011 the council changed the arrangements for its community library services, transferring operation of those services to within the Precinct. An extension between the cultural and leisure centres was built. As a result of these changes, the Precinct's operations included contract staff as well as council staff working within the same area.
21. The council also upgraded its business management software and integrated the new software into the Precinct's operations, which also led to an increase of council staff functions within the Precinct.
22. According to Mr Boehm:

As a result of the above changes, the Precinct and Council operations became more intertwined. This meant that when Council positions were advertised internally, the Company's staff and existing Council staff were given the opportunity to apply for them.

Following a strategic review of the Precinct conducted for the 2014/15 financial year, the Company's management contract was amended by mutual agreement to allow the Company's staff to voluntarily resign from their position to take up any employment offer by the Council. The Council and the Company ended their contract by[sic] at the end of 2014/15 and at this time, the balance of staff employed at the Precinct became Council employees as of 1 July 2016.

The council's contracts and tendering policies

23. Mr Boehm provided my investigation with copies of the council's contracts and tendering policies, noting that while the previous Administrator had such a policy in place from 1994 (**the 1994 Policy**), Mr Boehm only became aware of that policy when preparing his response to my investigation.
24. Mr Boehm adopted a contracts and tendering policy in May 2003 (**the 2003 Policy**).
25. In 2009 PIRSA commissioned MHM Consultants (**MHM**) to undertake a review of the council's financial and procurement performance (**the MHM review**).
26. In relation to procurement and contract management, the MHM Report identified the following 'common threads':
 - a lack of documentation for tender/quotation assessment
 - a lack of documentation to justify particular procurement approaches adopted
 - a lack of KPIs included in contracts; and
 - lengthy periods during which contracts are not put back on the market.⁴

The MHM Report recommended that the council re-write and implement more effective procurement policies.

27. On 31 August 2015, Mr Boehm adopted a revised contracts and tendering policy (**the 2015 Policy**). While Mr Boehm told my investigation that he seemed to recall that the MHM report was 'actioned immediately', I note that the 2003 Policy was not formally revised until some six years after the MHM report.

⁴ MHM Report at p.7.

28. Mr Boehm's initial response to my investigation stated that the 2015 Policy was adopted by him following an external review by the council's probity auditor. When further queried as to who conducted that external review, Mr Boehm's recollection was that the external review was conducted by Mr David Powell.
29. My investigation sought a response from Mr Powell. Mr Powell provided the council with probity advice on a number of specific issues between 2010 and 2014 and was a member of the council's audit committee in 2011. Mr Powell checked his records and could not recall or find any evidence that he conducted an external review specifically of the council's contracts and tendering policy.
30. According to Mr Powell:
- The only review I have been involved with at Roxby Council, of the Contracts and Tendering Policy, was as a subcontractor to Brian Cunningham & Associates on a report issued 23 December 2010. Bill released the draft report to the audit committee on 2 January 2011, the final on 28 January and a new Tendering procedures manual on 28 January 2011.
31. Mr Powell provided my investigation with a copy of the Brian Cunningham & Associates report (**the Cunningham report**). According to the Cunningham report, Mr Boehm sought a probity audit of a project for design and installation of shade sails at the Roxby swimming center (**the shade sails project**), review of Roxby Leisure's contracts and tendering policy that applied at the time, commentary on a new proposed contracts and tendering policy for the council itself (developed in 2009, and which appears to have been a draft of what would eventually be the 2015 policy).
32. The Cunningham report made general comments about the nature of the proposed contracts and tendering policy, such as that it should be a high level, overarching policy with detailed procedures in appendices.
33. It appears that the document that would eventually become the 2015 policy was considered by the council's audit committee on the following dates:
- 8 July 2010
 - 25 November 2010
 - 22 February 2011
 - 28 August 2015.
34. Mr Boehm told my investigation in relation to the 1994 Policy, the 2003 Policy and the 2015 Policy:

Each of the above policies reflect the Council's obligations under section 49 of the [Local Government] Act, which has been in operation since the Act commenced on 1 January 2000 (with the exception of sub-sections 49(a1) and 49(2)(d) that commenced operation in 2009). Section 49(2)(c) of the Act expressly recognizes that the Council need not undertake a tender process each time it enters into a contract. The most appropriate method of procurement in any given situation is to be determined on a case-by-case basis with regard to the policy that was applicable at the relevant time.

In general terms, the Council's practice is that, except for major contracts, the majority of services are procured by way of purchase orders negotiated with a known, trusted and usually, single supplier. Since my appointment I have steadily worked towards a contractor prequalification system, although for unique engagements, which often apply in relation to for the [sic] engagement of External Advisors, a purchase order arrangement continues to apply.

35. It has been alleged that Mr Boehm engaged in the following course of conduct which constitutes maladministration.

Awarding projects to [Mr A] and [Mr B]

36. It is alleged that:
- for a number of years both [Mr A] of [Company A] and [Mr B] of [Company B] were engaged by Mr Boehm to undertake many projects for the council, some for significant amounts of money
 - Mr Boehm was effectively giving jobs to friends or associates and specifically creating unnecessary projects specifically for the purpose of giving them to [Mr A] and [Mr B]
 - given the unusual level of discretion and the lack of oversight which attached to the role of Administrator, information about how the tenders were awarded and the amount paid to the contractors was not available to the community.
37. The following alleged examples of relevant projects were provided to my investigation by the complainant:
- in 2000 a project to redevelop the Roxby Downs Leisure Centre Aquatic Facility was awarded to [Company A] after the only advertisement for the tender was one advertisement in the Advertiser which allowed two and a half days for the submission of tenders
 - in 2003 Mr Boehm set up a business unit of the council to establish and operate a community newspaper, the Monitor Newspaper (**the Monitor**), and the contract was given to [Company B]; the cost of running the Monitor did not appear anywhere in the council's budget and it has never made a profit, running at a significant loss each year, the losses being picked up by the council
 - Mr Boehm gave [Mr B] a major contract to develop a Community Plan; at [Mr B's] recommendation, in 2004 Mr Boehm dissolved the Town Board which gave directions to him and in 2005 replaced it with the Roxby Downs Community Board (**the Board**), the constitution of which was registered without the Board's final consent and included the right of veto for Mr Boehm over Board decisions
 - in 2005 Mr Boehm set up a business unit to manage and operate the Roxby Downs Leisure Precinct and gave [Mr A] the task; while the contract value is unknown, within two years the centre's losses went from \$800,000 to \$1.1 million each year since then
 - in 2006 [Mr A] was awarded a contract to upgrade the Dunes Café even though it had only been five years since he managed its build
 - [Mr B] was paid with council money to attend community meetings; in March 2008 Mr Boehm attempted to appoint [Mr B] to act on his behalf at Board meetings contrary to the Board's constitution.
38. It was also submitted to my investigation that prior to his appointment as Administrator, Mr Boehm was employed by the Tatiara Council and during that time Mr Boehm was involved in awarding projects to [Mr A] and [Mr B].
39. Mr Boehm responded to my investigation:

I vehemently refute the assertion that I was "*effectively giving jobs to friends or associates and specifically creating unnecessary projects...for the purpose of giving them to [Mr A] and [Mr B]*". This assertion is factually inaccurate and completely without merit.

In general, the Council's engagement of [Messrs A and B] always occurred on the basis of the expertise, standard of work and value for money provided by them. Indeed, the reasons the Council re-engaged [Mr A] and [Mr B] from time to time was because, as a result of their initial engagements, they both had intimate and unique

knowledge and a complete working understanding of the Council's operations and, therefore, were best placed to undertake the relevant work, on a cost-effective basis.

Mr Boehm's previous involvement with [Mr A] and [Mr B] at Tatiara Council

40. According to Mr Boehm:

During my time at the Tatiara Council, I was involved in awarding a contract to a company that employed [Mr A]. To the best of my recollection, the circumstances were as follows:

- the company that employed [Mr A] was awarded an externally advertised contract to manage the Bordertown Swimming Pool. I was employed by the Council as Manager of Environmental Services and was involved in the related tender process. To the best of my recollection the contract was awarded by resolution of the elected body. I did not know of [Mr A] prior to this time;
- [Mr A] was a regional representative of the company Council engaged to manage the pool (the company was involved in managing a number of country swimming pools in Victoria). I had intermittent contact with [Mr A] in connection with the operation of the pool, with the exception of the following circumstances in which his strong performance in and understanding of the management of aquatic facilities were observed by me and the CEO as follows:
 - the Bordertown Swimming Pool developed a calcium build up soon after opening due to the practice of using local groundwater which was from a limestone base. [Mr A] became involved and guided Council through a process to empty the pool and acid wash the calcium build up using other personnel from South Australia. Later other treatments including filter replacements and repairs were pursued through [Mr A's] advice. [Mr A] performed a 'hands-on' role in connection with these projects; and
 - as part of the review of the ongoing needs to operate the Bordertown Swimming Pool, [Mr A], at no additional cost, undertook some preliminary cost estimates for options to improve the pool.

As a result of my professional dealings with [Mr A] during my time at the Tatiara Council, I became familiar with his skillset and aware of his wide-reaching and unique industry experience.

41. [Mr A] confirmed that he did not know Mr Boehm prior to the company for which he then worked tendering for management of the council's swimming pool. [Mr A] told my investigation:

I personally or any company that I was a director of had never been awarded any contract at Tatiara Council and the relationship with Mr Boehm was of a professional nature only.

42. In relation to [Mr B], Mr Boehm told my investigation:

I was involved in awarding [Mr B] a contract during my time at the Tatiara Council. Specifically, in my capacity as the Manager of Environmental Services at Tatiara Council I was required to assist the Council to oversee the hosting of the State's Working Towns Conference. Main speakers that were arranged by the State Government included [Mr B]. Prior to this time I did not know [Mr B].

At a later date, I obtained quotations from multiple service providers, including [Mr B], to progress a proposal by the Bordertown on the Move Committee to establish Bordertown as the Gateway to South Australia. The Council ultimately awarded the contract to [Mr B]. However, I left the Tatiara Council before the project was completed but I am aware that the project was a significant success.

43. Despite making enquiries with other parties, my investigation was not able to contact [Mr B] for comment.

Projects involving [Mr A]

44. Mr Boehm told my investigation that [Mr A] had qualifications and skills that were unique and well-suited for the tasks for which he was engaged and that Mr Boehm was particularly impressed by [Mr A's] knowledge of the recreation industry. Mr Boehm stated:

I initially contacted [Mr A] in or around November 1999 (I knew of [Mr A] through my professional dealings with him at the Tatiara Council in connection with the Bordertown Swimming Pool), to ascertain whether he knew of anyone in South Australia who would have the capabilities to assist the Council in running the Leisure Centre. I then learnt that [Mr A] had left the company that operated the Bordertown Swimming Pool and had established his own small consultancy.

45. Mr Boehm listed the instances where [Mr A] was engaged as an External Advisor (which was 'usually based on a daily or hourly rate in accordance with the prevailing practice of the time'). Mr Boehm further stated that the engagement of [Mr A] as an External Advisor was 'based upon my knowledge and observations of [Mr A's] unique skillset and his quality of work'.

46. Mr Boehm also stated:

As outlined in Section 2.2 above, where an External Advisor was re-engaged, including in the case of [Mr A] and/or the Company, a consistent approach was taken with the decision being based on cost, performance and availability. The decisions were made by me as a matter of necessity given the limited staff support and resources at my disposal at the relevant times.

47. Mr Boehm provided my investigation with details of various projects undertaken by [Mr A]. For each of those projects, [Mr A] was directly engaged as an External Advisor by Mr Boehm. I have summarised those projects below.

Year	Project	Cost
2000	Review of Precinct Operations: <ul style="list-style-type: none"> initial review of operations of the Precinct with a 'review'[sic] to preparing tender documents for re-rendering of the facilities review of the Precinct's swimming facilities 	<p>According to Mr Boehm, a purchase order for the initial review was issued but there is no record. Mr Boehm recalls that the daily rate at the time was between \$400 and \$500, with additional reasonable disbursements (such as travel and accommodation).</p> <p>Mr Boehm provided my investigation with a copy of a purchase order for \$14,350 which related to the review of the swimming facilities.</p>
2003	Expansion of Precinct <ul style="list-style-type: none"> review of the operations of the Precinct in light of a major expansion development of a contract specification assistance to manage the related tender process. 	<p>Unknown, due to lack of documentation, although likely to have been charged at the same daily rate that applied in 2000 (i.e. between \$400 and \$500 per day). According to Mr Boehm, the council order book which documented the engagement had been destroyed.</p>

2005	Contract Management Review <ul style="list-style-type: none"> contract management review - 'Leisure & Culture, Integration of Sports & Recreation Clubs to the Community Forum, Recreation Development for the BHPB expansion at Roxby Downs and Roxby Downs Youth Services Review' 	According to [Mr A's] quote, the costs were \$500 per day principal's fee + \$125 per month for Office Administration in Melbourne - total unclear because purchase order is illegible and term of agreement is unknown.
2006	General Management of Roxby Leisure <ul style="list-style-type: none"> general management of "Roxby Leisure", incorporating the Precinct, Youth Activity Services, Community Arts, Roxby Downs Community Recreation Officer, Project Management of all Councils Recreation & Leisure based on Capital Works Programs and Recreation Development for the BHPB expansion at Roxby Downs 	Unknown, as no documentation provided.
2007	[Company C's] Management of the Precinct <ul style="list-style-type: none"> managing facilities at the Precinct project management by [Mr A] 	According to the Facilities Management Agreement, service charges were identified as total fees of \$184,500, an amount equal to 1.6% of Employee Remuneration accrued during the term and an amount equal to economy class travel and accommodation expenses as expressly contemplated in a Business Plan or with prior approval of the Principal.

48. I simply note at this point, that the above information raises issues in relation to compliance with the State Records Act that are addressed in more detail later in this report.

Arrangements for ongoing management of the Precinct

49. Mr Boehm also provided my investigation with various documents concerning the ongoing management of the Precinct by the [Company C]. Mr Boehm told my investigation:

In 2008 I confirmed previous benchmarking that the annual fee the Company charged for the project management component of the contract at that time, which was \$90,000, was cost effective. The Benchmarking file note I made at the time is evidence of this (Attachment 11).

50. Attachment 11 is a copy of an advertisement for a Manager, Leisure and Culture for a council in Victoria, with a handwritten note which states:

15/5/08

Discussed position with Russell Jones. Newly created on council staff. Salary Package to be offered in the vicinity \$140-\$150K plus 10% performance bonus.

The note is signed and dated 15/5/08.

51. I note at this point that I have not been provided with any other evidence of 'benchmarking' in relation to any of the other engagements outlined in this report.
52. Attachment 12 included an 'Evaluation Summary Form for Purchases < \$50,000' in relation to [Company A]. This document related to a consultancy agreement between the council and [Company A] in 2011. According to Mr Boehm the consultancy agreement was entered after a tender for services.
53. Under the heading 'Policy Criteria' in relation to the 'Purchase Amount' of \$10,001 to \$50,000, the following statements were ticked:
- ✓ Purchase order with at least 2 written quotations from independent suppliers
 - ✓ Price is competitive and/or
 - ✓ Price has been subject to previous market testing or cost benchmarking
 - ✓ Price the supplier has had a previous successful track record in performance (quality and timeliness).
54. Under 'Assessment', the following statements were ticked:
- ✓ Recognised expert in the field of endeavor
 - ✓ Previous experience of performance of the contactor [sic] or supplier with Council related works
 - ✓ Consideration of local knowledge and experience
 - ✓ Qualifications & Experience
 - ✓ **Other relevant factors and comments**
 - ✓ Evaluation of a formal tender or quotation
 - ✓ Outsourced remote from Roxby Downs as expertise not available locally
 - ✓ Previous market testing
 - ✓ Benchmarking rates.

The following statements were not ticked:

- Collaborative venture with other parties
 - Previous known experience/testimonials of the performance of the contactor[sic] or supplier
 - Restricted number [sic] potential suppliers of the goods or services
 - Contractor preregistered
 - Cost of works not significant enough to warrant formal quotations
 - Response to emergency situations
 - Time constraints.
55. My investigation has not been provided with copies of the two written quotations from independent suppliers referred to on the Evaluation Summary Form.
56. Under other relevant factors and comments, the following was noted:

Originally part of the Consultancy Component of Tender MW023/10 (Roxby Leisure Business Unit - Management and Staffing Contract for the Roxby Downs Leisure & Cultural Facilities).

On an hourly rate basis tender received was cost competitive compared to submissions received. Contractor has a previous long standing track record with Council in the successful provision of these types of services.

Intellectual property on the operation of Council, the leisure and recreation needs as they link to the strategic development of the town is significant.

57. It has been alleged that the Precinct's losses increased from \$800,000 to \$1.1 million each year after [Company A] took over management. According to Mr Boehm:

It is not possible to definitively quantify the operating losses incurred by the Precinct as the arrangement went from a fixed fee contract where all revenue and expenses were the responsibility of the contactor[sic] to one where Council assumed all of the costs and kept the revenue. Increased costs were attributed to the Council's position that it was necessary to maintain the facilities to a high standard for the long term, as opposed to the previous arrangement when limited maintenance occurred. Also, Council decided to cater for the growing demand within the community and to ensure diversification of services offered, which in turn the Council anticipated, would contribute to economic development. The Company merely managed the facility in accordance with the strategic direction set by the Council and to that end, the inference notion[sic] that losses increased due to [Mr A's] management is absurd.

Ultimately, in 2014/2015, having monitored the performance of the Precinct, the Council determined to manage it in-house, which by this time, had become a viable option in light of the developments that occurred and are outlined in part 3.3 above.

The Dunes Café

58. In relation to the allegation that [Mr A] was awarded a contract to upgrade the Dunes Café at the Precinct (despite the fact that it was only five years since he managed its build), Mr Boehm responded:

[Mr A] was not awarded a specific contract to upgrade the Dunes Café. Rather, [Mr A] project managed the upgrade works as part of his project management role for the facilities within the Precinct. The majority of these works were contracted to local service providers.

The decision to upgrade the Café was made by the Council and the works formed part of the relevant year's (2007/08) budget. The upgrades came about following a review of and in response to the community's needs. Specifically, in this instance, the works necessary for this purpose involved repositioning the cooking area adjacent to an upgraded kitchen to create a more recognizable café that could better perform as a smaller function area, as well as redefining the Visitor Information space.

59. I have not been provided with any documentation in relation to the review of the community's needs referred to by Mr Boehm.
60. According to Mr Boehm, [Mr A] was engaged to undertake the following other specific projects for the council.

2000 - Redevelopment of Roxby Downs Aquatic Facility

61. [Mr A] and 'Pool Link' made a successful joint tender submission for the redevelopment of the Roxby Downs Aquatic Facility.
62. Mr Boehm provided my investigation with a copy of the joint tender submission from [Mr A] and Pool Link. There is no evidence from the information provided of any other parties tendering for the facility.
63. The public Notice of Tender was placed in The Advertiser newspaper on 5 August 2000, with the closing date advertised as 9 August 2000. According to the information provided to my investigation, the advertisement stated:

QUOTATION
ROXBY DOWNS LEISURE CENTRE
AQUATIC FACILITY REDEVELOPMENT

Written quotations are invited and will only be accepted in a sealed envelope marked "Aquatic facility redevelopment" PO Box 124 Roxby Downs SA 5725, and will only be received until 12 noon Wednesday 9 August 2000 for the following.

Quotations are invited for the swimming pool refurbishment as per specifications supplied from the Roxby Downs Council.

The scope of Work is as Follows:

Back wash recovery system,
Backwash sight glass,
Disinfectant System,
Soda ash dosing system,
Increase water return,
Interactive play pool and
Waterslide.

For specification details and other inquiries, please do not hesitate to contact Mr Robert Barker, the Councils[sic] Works Manager.

Neither the highest or lowest nor any Quotation necessarily accepted.

64. According to Mr Boehm:

This, however, was only part of the process as Council also simultaneously undertook a selective tender process with contractors known to the Council that were familiar with the aquatic facilities and were in a position to respond within the time allocated (a copy of the project timetable is included in the documents comprising Attachment 13). In light of the select tender process that was concurrently undertaken, the purpose of the public notice was to demonstrate that the Council was prepared to consider tenders from and award the contract to a person that was not known to it.

The considerations that informed and led to this approach were:

- the submission for funding assistance and subsequent notification, the design and evaluation of design, production of contract specifications, tendering and construction all needed to be carried out in a very tight window to avoid an unnecessary delay in the opening of the pool season, which would have adversely impacted the community and the operator of the pool;
- the project required specialist skills and trades not normally found within one company. This included knowledge of swimming pool filtration and operation, fibre glazing as well as interactive water play features;
- there were very few firms available nationally with the ability to meet the Council's timeframes and the Council's location made attracting alternate service providers exceptionally difficult compared with other capital cities; and
- the Council had invited tenders from two companies, both of which were able to and did respond within the timeframe allocated[.]

Having regard to the above consideration, the approach was taken by the Council in awarding the contract was entirely appropriate in the circumstances. Further it was not at odds with the Council's legal obligations and was not inconsistent with any Council policy that I was aware of at the time.

65. As stated above, Mr Boehm has told my investigation that he was not aware of the 1994 policy until recently. I simply note that the 1994 policy relevantly provided:

3.1 Tendering shall be conducted honestly and in a manner that is fair to all parties involved.

[...]

- 4.2 The Council shall allow sufficient time between inviting tenders and the closing of tenders, for tenderers to make site visits and undertake any other work necessary to allow them to respond fully. The Council shall make the site or "trade ins" if applicable, reasonably available for inspection by tenderers.

2001 - Redevelopment of Council Office and Medical Centre

66. According to Mr Boehm:

Council received \$500,000 funding from the State Government as part of its obligations under the Indenture Act to redevelop the Council Office and former medical centre into a new facility. A key consideration at the time this project was awarded to [Mr A] was that he was undertaking work relating to the redevelopment of the Precinct as part of a project team, which meant that in [sic] the Council was able to capitalize upon his time in Roxby Downs and thereby minimise travel costs. Copies of the quote provided by the [sic] [Mr A] for this work, in addition to Stage 2 of the Leisure Centre Redevelopment (together the Roxby Downs Design and Integration Proposal) are attached.

67. Mr Boehm provided my investigation with a copy of [Company A's] detailed quote and a letter signed by him confirming that the following costing proposal had been accepted by the council:

• Leisure Centre Stage 2 Program	\$30,525
• Council Chamber Re-development	\$10,750
• Design Team Integration	\$1,625
	Plus Principals Fee of \$500 per person per day
• Contract Management Leisure Culture Centre	\$2000
• Travel	At cost rate
• Payment	Monthly invoice.

68. According to Mr Boehm, the only projects that were not awarded directly by Mr Boehm to [Mr A] as an External Advisor were:

- the 2000 redevelopment of the Roxby Downs Aquatic Facility. The award of this contract was overseen by Councils [sic] Municipal Works Manager; and
- the 2011 management contract for the Precinct was awarded by a review panel overseen by an independent Probity Auditor who recommended that the contract [sic] be awarded to the Company.

Projects involving [Mr B]

69. Mr Boehm provided my investigation with details of various projects undertaken by [Mr B].

70. Mr Boehm told my investigation:

[Mr B] has been engaged by Council on an intermittent and regular basis to undertake community and economic development tasks between 2000 and 2009. After 2006 I am aware that [Mr B] had an ongoing role at the Monitor and RoxFM Community Radio but this was as a member of the Monitor Staff and as a station volunteer respectively. Both organisations were, by that time, separate legal entities and employed [Mr B] direct.

[Mr B's] first engagement by the Council was to undertake the Roxby Downs Business Diversification Project (further details regarding this are set out in Part 4 above). This engagement occurred following a publically advertised process and was a jointly funded initiative between the Federal Government, the Joint Venturers and the

Council. [Mr B's] engagement for this project was merit based having regard to his skillset and expertise in community development. A copy of [Mr B's] capability statement that outlines his relevant experience is attached (Attachment 15).

71. Mr Boehm further stated:

..To the extent that I had knowledge of the policies, I consider that the Council complied with the policies in engaging [Mr B].

In particular, the type and scope of work undertaken by [Mr B] varied according to the Council's needs but ultimately, was linked to implementing the recommendations contained in the Roxby Reports. Given [Mr B] was initially engagement[sic] to undertake the BD Project and in light of his experience in preparing the Roxby Reports, he was best placed to undertake this work. Indeed he was the only supplier at the time who had intimate and unique knowledge of the Roxby Reports and the research leading to the recommendations contained within them. This fact alone was reasonable justification for [Mr B's] ongoing engagement by the Council to implement the recommendations. At all times, the nature of [Mr B's] work was known by WMC Resources (later BHP Billiton), Council staff and the community given its open and transparent nature (arising from the fact it involved ongoing community engagement).

72. In 2000 [Mr B] was initially engaged following a publically advertised process to undertake research and preparation of job creation and investment strategies as part of community development for the Roxby Downs Business Diversification Project. The cost of that project was \$27,500(GST exclusive).

73. [Mr B] was further directly engaged by Mr Boehm as an External Advisor for the following projects:

Year	Project	Cost
2002	Implementation of the Action Plan	The only documentation provided was [Mr B's] proposal - according to that proposal, [Mr B] was seeking a fee of \$5500 per month for 8 months (i.e.\$44,000) + airfares and accommodation between Olympic Dam and Adelaide for up to 9 occasions.
2003	Operation of the Monitor	An internal memo by Mr Boehm states: Council has contracted [Mr B] at \$5000 per month (excl gst & expenses) for a range of Creating our Future projects. Any consulting work for the Monitor itself is part of this budget allocation. Neither the contract nor any other documentation relating to this engagement has been provided to my investigation. The term of

		<p>the engagement is unknown.</p> <p>The council also appears to have agreed to cover certain costs and cashflow support.</p>
2004	Ongoing operation and management of the Monitor	<p>A letter to Mr Boehm dated 2 November 2004 stated:</p> <p>As has been our practice in the past I will perform the tasks on a fixed fee basis of \$10,000 plus GST.</p> <p>[...]</p> <p>Included in this fee will be:-</p> <ul style="list-style-type: none"> • preparation of a Marketing Plan for the Outback Fringe • consultation with ROXFM re their local sales requirements and sperical[sic] joint projects with the Monitor. <p>On 3 November 2004, Mr Boehm confirmed the council's agreement to additional contract work in the amount of \$10,000 (plus GST) as well as cash flow support in the amount of \$25,000 (plus GST).</p>
2007/2008	<p>Various projects including:</p> <ul style="list-style-type: none"> • Marketing & Communications Plan for Roxby Downs • Roxby Downs On Line Strategy and rebuild of Council and Community Web Pages • Community Directory Project • Community Consultation and Mentoring • Consultation for Master Plan and EIS process 	<p>According to a letter from Mr Boehm dated 19 June 2007, the council agreed to pay [Company BA] overall consultation fees of \$60,000 per annum (for the 2007-2008 financial year), with the council being responsible for half the rent for housing accommodation (rent unspecified).</p>
2007/2008	Monitor Newspaper Management Arrangements	<p>According to a letter from Mr Boehm dated 19 June 2007, the council agreed</p>

		to pay [Company BA] a \$20,000 retainer supplemented by various bonuses as proposed by [Mr B], and other reimbursements.
2007/2008	Roxby Downs Web Project Proposal <ul style="list-style-type: none"> project management of a 'web project' 	According to a letter from Mr Boehm dated 18 September 2007, the council agreed to pay [Company BA] \$20,000 (exc GST) for design and \$10,000 (exc GST) for content identification and collation, noting that consultancy fees were contained within the terms of [Mr B's] 2007/2008 engagement.
2008/2009	Development and management of various projects: <ul style="list-style-type: none"> stage 2 of a marketing and communications plan economic development support community consultation and mentoring consultation for Master Plan and EIS process 	According to the contract of engagement, the council agreed to pay [Company BA] \$90,000 plus travel and other reimbursements.
2009/2010	Development and management of various projects: <ul style="list-style-type: none"> marketing and communications plan economic development support community consultation and mentoring consultation for Master Plan and EIS process 	According to the contract of engagement, the council agreed to pay [Company BA] \$120,000 plus travel and other reimbursements.

74. Mr Boehm also provided my investigation with:
- an email from [Ms F] including a list of Monitor creditors as at 30 September 2004 (a total amount of \$21,178.91 owing)⁵
 - a report for the Monitor for the period July to October 2004 prepared by [Company BA] (**the [Company BA] report**).
75. The [Company BA] report raised the following issues:
- government and agency advertising was a major consideration in the Monitor's original feasibility and forward sales forecasts and that the flow of advertising revenue slowed considerable in the July - September quarter, and continued into October 2004 due to the lack of Commonwealth Government advertising during the Federal Election
 - despite that, the sales team managed to attract additional advertising which maintained sales levels at about \$9,500 per edition (short of the target for the period of \$11,7230[sic])

⁵ Email from [Ms F] to Mr Bill Boehm, ccd to [Mr B] dated 21 October 2004.

- the [Company BA] report stated:

I must emphasize that while budget forecast has not been achieved the Monitor's sales record is very good. The inability of reaching the budget is, in hindsight, as much a reflection on ambitious budgeting as it is on lower than expected sales.

The current challenge with forecasting is that we do not yet have the benefit of two years sales from which we can recognize any trends. The Monitor's first year bears little resemblance to its current (greater) status with advertisers. In short we are still working out the market.

[...]

The reduction in sales for the first quarter has led to a review of the budget and a reduction in costs for 2004 - 2006 of \$28,000. The reductions are predominately in a rationalization of editorial staff and a review of sales retainer for the Roxby Downs representative.

Despite the reduction in costs the slow down in sales will affect the Monitor's cash flow forecasts. Cash flow was reported in the July Audited Report as a significant challenge for the Monitor. Outstanding accounts have been maintained between \$45,000 and \$50,000 which is considered low against industry standards.

Additional cash flow injections will be required in 2004-2005.

Future Viability and Proactive Strategies

This report is a frank assessment of the Monitor over the past four months, however, it must be recognized the success the paper has been both with readers and advertisers.

As a small business it has had an exceptional growth from a start up grant of \$40,000 and a cash flow allocation of \$110,000. It is a business providing a range of important community services beyond its role as a newspaper, by employing eight people and has an expected turnover of \$300,000 to \$350,000 in its second year.

This is an exceptional result. However commercial realities must be faced. Where to from here?

It is my assessment that[sic] paper is still along[sic] way from reaching its full potential. The high changes in staff have been high even by Roxby Downs standards.

It is my recommendation that a concerted effort to:

- further systemise the operational procedures
- develop and install a 'step by step/sales system that will regularly generate more sales and be easily operable by experienced or inexperienced contractor/staff
- provide training to sales staff in the use of the systems and their own skills
- provide staff training, in the use of operational systems, efficient work flow practices and personal time management.

These actions would place the Monitor on[sic] an optimum operations and sales position.

These procedures need to be in place in early 2005 and reviewed in June 2005.

In the eventuality that the paper is not operating profitably or obviously trending into profitability by this time the paper's operations will need to be completely restructured. This is not expected and I do not advocate that the paper would be lost, more that its services and operations need to be rationalised.

76. In relation to the issues of losses associated with The Monitor being borne by the council, Mr Boehm told my investigation:

- The costs associated with the initial trial run and subsequent operation were contained within the Council budget and were not significant since they were offset by the costs to Council in publishing the Community Newsletter;
- the costs incurred by the Council in connection with the Monitor have always been included in the Council budget and approved by the State Government and the Joint Venturers [.] The arrangement was well known to and supported by both of them as well as the community. The Joint Venturers[sic] support is evidenced in the correspondence attached (Attachment 17A). It was also in recognition of the valuable role the Monitor plays in community and economic development.
- since around 2006 when the financial position of the Monitor stabilized, the Council has not provided any operating grant and has had a fee for service arrangement in place on a commercial basis. Copies of recent Monitor invoices, which evidence the fee for service arrangement are attached (Attachment 17AA);
- when the Monitor was first established, the Council maintained oversight of its operations. In particular, when the Monitor was established as an independent Incorporated Association the Council was represented on the Board of Management, which had the ability to require an independent audit of the Monitor's operations. Audits are undertaken on a yearly basis;
- it was entirely appropriate for the Council to assist in establishing and providing ongoing support for the Monitor. Given its very purpose Council was to respond to the community needs identified at the time. Further, prior to the introduction of the Monitor, the Council produced and mailed out its own 16 Page A4 Newsletter on a monthly basis. As such, establishing the Monitor was an extension of this important Council function; and
- the Council's Strategic Management Plans, Annual Business Plans and Annual Reports formally recognise and include the Council's rationale for supporting Community Media generally - highlighted extracts illustrating this are attached (Attachment 17B). Further, in 2010 the Council adopted a Media Support Policy outlining the manner in which the Council would provide support to local media and the reasons for doing so. A copy of the Media Support Policy is attached (Attachment 17C).

Dissolution of the Roxby Downs Town Board

77. It is alleged that Mr Boehm dissolved the Roxby Downs Town Board (**the Town Board**) upon [Mr B's] recommendation. The Town Board was a council committee.
78. Mr Boehm told my investigation that he did not dissolve the Town Board, noting that it was a decision undertaken voluntarily by the Town Board.
79. The minutes of the Town Board's meeting on 12 February 2003 (which both [Mr A] and [Mr B] attended) record that [Mr B] gave a presentation on the main points of GDS's report entitled 'Creating the Future Projects 2003' which included a recommendation that a community board (**the Community Board**) be formed.
80. The minutes summarise contributions to general discussion by various Town Board members. Mr Boehm is not recorded as having made any contribution to that discussion. The following motion was moved by R Yeeles, WMC, and seconded by P Lindner, a community member, and ultimately carried:
- That the Board recommends to Council that moves be put into place for a Community Board to replace the Town Board.
81. The Community Board was initially formed as a council committee to oversee and lead the development of a community plan. In accordance with an implementation strategy adopted by the Community Board, the council assisted facilitation of establishment of a separate and independent Community Board as an incorporated association.

82. According to Mr Boehm, the council's lawyers prepared the rules required for incorporation (**the Rules**). According to the Rules, the council does not have a right to veto decisions made by the Board (although I note that the initial version of the Rules stipulated that any changes to the Rules were subject to the consent of the council and BHP Billiton).
83. Mr Boehm also stated:
- ..having regard to the important community functions fulfilled by the Community Board as envisaged in the Community Plan, it was entirely appropriate to establish the Board as an independent legal entity, independent of the Council. Until such time as that could occur, the actions of the Council in establishing the interim Community Board were necessary to facilitate completion of the Community Plan.

Attendance by [Mr B] at community meetings

84. It was alleged that [Mr B] was paid with council funds to attend community meetings.
85. According to Mr Les Rochester, the then-Chair of the Community Board, documents were anonymously provided to him that included details of payment to [Mr B] for attendance at council meetings. As discussed later in this report, those documents were subsequently lost. Despite making enquiries with various of the parties involved, my investigation has not been able to locate or substantiate the content of those documents.
86. Mr Boehm denied that [Mr B] was paid any additional fees over and above his various engagements by the council, noting that attendance at community meetings was a key part of his role and one of the means that enabled the council to engage with the community in relation to the implementation of the recommendation in the Roxby Report. According to Mr Boehm, the meetings attended by [Mr B] included all meetings of the Interim Community Board and the new Community Board to provide appropriate guidance and assist in the establishment of the Community Board forums.

Appointment of [Mr B] to act on Mr Boehm's behalf at Community Board meetings

87. It was alleged that Mr Boehm inappropriately attempted to appoint [Mr B] to act on his behalf at meetings of the Community Board and that, given [Mr B] was a contractor rather than an employee, such an appointment would be contrary to the Board's constitution.
88. According to Mr Boehm:

When the Board was first incorporated, the Administrator was a voting member of the Board and the Rules did not enable me to appoint a representative. From time to time, this placed me in a difficult position given the fiduciary duties owed to the Board by its members.

As a result of these difficulties and in order to resolve the potential conflict in roles, clause 6.2.1.1 of the Board's Rules was amended upon the Council's request to provide that membership of the Board will comprise (amongst other persons) "*the Administrator of the Council or a representative from and nominated by the Council who is a non-voting member of the Board*". Following this change, I wrote to the Board to advise that I had appointed [Mr B] as the Council's nominated representative. This correspondence is attached in addition to correspondence between the Council and the Board addressing the changes to the Rules of the Board, including the change to clause 6.2.1.1 (Attachment 20).

For the reasons outlined above and in the attached correspondence, my decision to appoint [Mr B] to the Board was necessary and appropriate. Indeed, [Mr B] was the logical choice given his experience and the work he had undertaken for the Council. In any event there was no other staff member employed at the Council at the time who had sufficient experience and knowledge to justify an appointment to the Board.

89. Clause 6.2.1.1 of the Community Board's Rules of Association (**the Rules of Association**) currently state that the Board will be comprised of various members including:

the Administrator of the Council or a representative from and nominated by the Council who is a non-voting member of the Board

90. According to the documentation provided to my investigation by Mr Boehm:

- on 4 May 2007 the Community Board sought Mr Boehm's approval to alter clause 6.2.9 of the Rules of Association which at the time provided:

Subject to clause 6.2.6, vacancies for all replacement and retiring Board members shall be by appointment by a Panel comprising the Chair or Deputy Chair of the Board, the Administrator of the Council and the representative Board Member from BHP Billiton appointed under Rule 6.2.1.2

to:

Subject to clause 6.2.6, vacancies for all replacement and retiring Board members shall be by appointment by a Panel comprising the Chair or Deputy Chair of the Board, the Administrator of the Council and the representative Board Member from BHP Billiton appointed under Rule 6.2.1.2 and two other Community Board members.⁶

- on 16 May 2007 Mr Boehm advised that, in his position of Administrator, the council did not agree to the change, noting that rule 6.2.9 was intended to protect the integrity of the Community Board while maintaining 'equality of say' in recruitment with respect to the council, BHP Billiton and the community; Mr Boehm stated:

As you are aware in all other aspects of the Boards [sic] operation the community representatives are virtually completely in control of their own decision making.

In contrast the proposed change could potentially compromise the Board as essentially Board members would be responsible for their own recruitment. In relation to retiring Board members, especially when renominating, accusations of potential bias could be made in favour of existing Board members at the expense of those new members that may wish to take up a position.⁷

- on 12 August 2007 the Community Board sought Mr Boehm's approval to amend various clauses of the Rules of Association including amending clause 6.2.9 as follows:

Subject to clause 6.2.6, vacancies for all replacement and retiring Board members shall be by appointment by a Panel comprising the Chair or Deputy Chair of the Board, the Administrator of the Council **or delegate** [my emphasis] and the representative Board Member from BHP Billiton appointed under Rule 6.2.1.2.⁸

⁶ Letter from [Ms E] to Mr Bill Boehm dated 4 May 2007.

⁷ Letter from Mr Bill Boehm to [Ms E] dated 16 May 2007.

⁸ Letter from Mr Chris Schultz to Mr Bill Boehm dated 12 August 2007.

- on 24 September 2007 Mr Boehm responded in relation to the various proposed amendments, including that he agreed to the proposed amendment to clause 6.2.9 and proposing a change to clause 6.2.1.1 on the following basis:

The Council's solicitors advise that a Board member owes fiduciary and statutory duties to act in the best interests of the Association, regardless of how he or she was appointed or what organisation they represent.

This means that, in legal and governance terms, there is potential for conflict of interest (real or perceived) where the Administrator is both a Council Officer and a Board Member and the best interests of the Council and the Association are not identical.

One way of resolving this conflict is for the Administrator to step out of Board decision-making on any matter of conflicting interests, but then the Board would operate without input from the Council's point of view.

A better resolution is for Rule 6.2.1.1 to be changed to read, '*a representative from and nominated by the Council*' and so permit a delegate to always be available to put the Council's point of view and, if need be, vote on a matter where the interests of the Association and the Council are not identical. I would appreciate the Board giving this change due consideration.

- in March 2008 Mr Boehm verbally advised the Community Board at a board meeting that the best way of resolving any potential conflict of interest was for Mr Boehm to appoint a representative to act as nominated Board member⁹
- on 4 April 2008 Mr Boehm sought confirmation from [Mr B] as to whether he would accept a nomination as council representative¹⁰ and on 6 April 2008, [Mr B] confirmed his acceptance¹¹
- on 17 April 2008 Mr Boehm wrote to Mr Rochester referring to previous correspondence, and noting that, as verbally advised at the March 2008 Board Meeting, the best way to resolve the potential conflict of interest was for Mr Boehm to appoint a representative to act as the council's nominated Board Member, and advising that [Mr B] would be the appointed representative
- on 20 May 2008 Mr Boehm wrote to Mr Rochester, referring to the council's letter of 17 April 2008 and the April Board meeting where as result of the Community Board's actions, [Mr B] was removed from the Board pending the Board seeking advice and clarity on clause 6.2.1.1¹²
- Mr Boehm's letter of 20 May 2008 stated:

I understand that it appears that the crux of the question is whether the representative must be a Council employee?

The relevant clause of the Rules is 6.2.1.1 which provides that one Board member will be the Administrator of the Council or "*a representative from and nominated by the Council*"

Following review of the situation and having obtained legal advice whilst I understand this interpretation and approach, it is not one that is necessarily evidenced by the wording of clause 6.2.1.1. For instance, the Administrator of the Council is legally an Officer of the Crown. Whilst [Mr B] could be made an employee of the Council he has a contract for provision of various community development services and, for the purposes of Section 120 of the *Local Government Act 1999* is treated as an employee for conflict of interest purposes.

⁹ Letter from Mr Bill Boehm to Mr Les Rochester dated 17 April 2008.

¹⁰ Letter from Mr Bill Boehm to [Mr B] dated 4 April 2008.

¹¹ Letter from [Mr B] to Mr Bill Boehm dated 6 April 2008.

¹² Letter from Mr Bill Boehm to Mr Les Rochester dated 20 May 2008.

The issue, therefore, is what is intended by the preposition 'from' and whether a contactor [sic] consultant or an Officer of the Crown may be 'from' the Council just as a Council employee can be said to be.

As a result in absent[sic] any other clarification in the Rules (of which there is none) or an amendment to the Rules (which is a future event), it is appropriately left as a matter for the determination of the Council to choose its representative. This approach is further reinforced by Council's letter of 17 April 2008 which recognises that the Board member appointed by the Council (in fact, all Board members) owe legal and fiduciary duties only to the Community Board when acting as a Board member.

As previously indicated given Ray's intimate knowledge of the Board its role and structure and the community and his engagement for the very purpose of assisting the community I am confident that he can add value to the Board's deliberations. Accordingly I have requested that Ray attend the next Board meeting as Council's nominated representative.

- On 6 June 2008, the Board's lawyers advised that the purported appointment of [Mr B] to the Board was invalid as procedural requirements provided for in the Rules had not been complied with.

91. I understand that [Mr B] was not reinstated to the Board.

Requests to increase transparency and provide more detail on expenditure

92. It is alleged that Mr Boehm consistently refused requests by the Community Board to increase transparency and provide more detail on expenditure. Similarly, it is alleged that when Mr Paul Dunn of Western Mining offered to give financial advice and assistance to the council on budgeting (due to the fact that the council always seemed to be struggling financially), it is alleged that Mr Boehm would not allow Western Mining to see the council's books.

93. Mr Boehm provided my investigation with a copy of the Board's Rules of Association (**the Board Rules**).¹³ According to the Board Rules, the objects and purposes of the Board are:

- 3.1 enquiring into and reporting to the Council and the Community on the functions as described and those matters conferred upon it as set out in these Rules;
- 3.2 acting as the peak community body in Roxby Downs to work towards achieving the community's vision by overseeing the implementation of the Roxby Downs Community Plan (and any succeeding documents);
- 3.3 to ensure the wider community is fully represented by a Community Board and other Community Forums and Partnerships in the skillful and caring implementation of the Roxby Downs Community Plan;
- 3.4 to act as the overseeing body of the Forums and Community Partnerships;
- 3.5 to do all other lawful things incidental or conducive to the attainment of the Objects of the Association.

94. According to the Board Rules, the Board has all the powers conferred by section 25 of the *Associations Incorporation Act 1985* and the power to:

- 4.1 liaise with other government authorities, agencies or instrumentalities, private sector businesses and members of the Community in order to share and exchange information;

¹³ The document provided to my investigation was unsigned but included a note 'Amended and Ratified 31/03/2014'.

- 4.2 to liaise with local media for the purposes of communicating the progress and promotion of the Plan and other activities of the [Board]; and
- 4.3 to develop and implement policies for the management of the Association that are consistent with the Roxby Downs Community Plan.

95. Mr Boehm responded:

I am of the view that at all times Council has responded appropriately to requests for information from the Board. A relevant consideration in the context of responding to requests from the Board regarding proposed future expenditure is whether the Council's budget submission had been approved by the Joint Venturers and/or the State Government at the relevant time and whether the information was publicly available.

[...]

The detail contained within Councils[sic] budgets is significant and meets the standards appropriate to local government.

To the best of my recollection, I have never received any request or offer from Western Mining to provide assistance with the Council's finances. In my view, even if such offer was made, it would be inappropriate for the Council to accept it as to do so would be contrary to Council's interests. This is particularly the case having regard to the Joint Venturers role in approving the Council's rates and certain utility charges and the fact that the Joint Venturers and the Council often have competing financial interests.

96. Mr Boehm also provided that:

Yes, I consider that I have been appropriately transparent about council finances taking into account all relevant policies and legislative requirements, including the budget provisions under the Indenture Act. As above, the Council is required to seek approval of its budget from the State Government and the Joint Venturers, which involves the Council making a confidential budget submission to the State Government. Ideally the submission and the matters to which it relates would be open to the public to increase transparency. However, this is a factor that is outside of the Council's control.

97. Mr Boehm provided a number of documents to support that position. The most relevant of those documents are summarised below:

- on 19 July 2007 the Roxby Downs Community Board wrote to Mr Boehm to provide comment about the Draft Annual Business Plan for 2007/08. This letter provided comment on a range of matters including, Project Priorities, Measuring Performance, Funding the Business Plan, Financial Operations and General. The Board relevantly stated:

General

- It is noted that there has been no consultation with the Roxby Downs Community Board in relation to the development of the Plan, and that it was not identified at the latest Board meeting that the Plan was going to be put out for public comment.
- In order to gain complete community acceptance of this Plan, **a detailed budget breakdown needs to be provided**. The reasons this has not been provided have been outlined in the document, however they should be incorporated into the Plan as soon as possible, and definitely once approval of the budget has been provided by the State Government and BHP Billiton. The Community Board would appreciate the opportunity to review the budget and provide comment.
- on 8 August 2007 Mr Schultz wrote to Mr Boehm about the Council Annual Business Plan stating:

As part of the Community Board submission, it was identified that only very high level budget figures were included in the Business Plan. While it is not a statutory requirement that budget figures are included in the Business Plan, it is the belief of the Community Board that detailed budget figures should be included in the Business Plan to support the listed actions and to provide transparency to the business planning process.

It is acknowledged that Roxby Downs operates differently to other councils, due to requirements of the Roxby Downs (Indenture Ratification) Act. It is also understood that the deficit (the total budget required to supply services to Roxby Downs and meet the requirements of the Business Plan, minus the income from rates and cost recoveries) is funded by BHP Billiton and the State Government, with a 50/50 split.

The Community Board believes that it is important for budgets to be allocated according to the community need. Through the Forums and Partnerships, the Community Board has a good understanding of these issues and could provide valuable critical review of these plans and budgets that would serve to improve community acceptance. The involvement of the Community Board in developing the Business Plan, and the inclusion of budget figures in the Business Plan, would assist this process.

The Community Board proposed in its submission on the Business Plan that it may be possible for the State Government and BHP Billiton to provide an indication to the Council of the deficit that is likely to be funded prior to development of the Business Plan. This would allow for a more considered Business Plan with greater likelihood of acceptance by BHP Billiton, the State Government and the community.

It was suggested at the Community Board meeting on 30 July 2007 that this may also assist BHP Billiton with their budgeting process as they currently need to plan their own expenditures before the Council submits its request.

Letters have been sent to both BHP Billiton and the State Government, requesting their consideration of the suggestion of the Community Board to provide an indication of the deficit that is likely to be funded prior to the development of the Business Plan.

The Community Board recognizes the Council's statement that the process currently followed meets the legal requirements; however the Community Board would encourage the Council to support a system that goes beyond the minimum requirements of the law and allows for the involvement of the community that these decisions ultimately affect.

While it is not possible for the Business Plan process to be changed for the 2007/08 financial year, we believe that it would be possible to implement a revised process for the 2008/09 financial year. The Community Board would welcome the opportunity to work together with Council on the further development of the 2007/08 budget.

The Community Board seeks your support of this proposal.

- on 24 September 2007 Mr Boehm responded by letter to Mr Schultz stating:

Thank-you for your letter of 8 August 2007 and as indicated in Council's earlier response to your draft submission please be assured that your comments have been fully considered when Council adopts its 2007/08 budget as prescribed under section 123(6) of the Local Government Act 1999.

The Council also acknowledges the many additional valuable points made in the letter going to the issue of future annual business plan processes, all of which will be given further and serious consideration for future years when the 2007/08 budget process has been completed.

Whilst, at this stage, there is no capacity (either from a legal or from a good governance perspective) for the Community Board to be involved in the actual preparation of the annual business plan and budget (i.e. the Act prescribes that role as being one solely for the Council) there is certainly capacity for it to be involved in future years in sharing its community information and knowledge with the Council as part of valuable input into the Council's considerations and processes in formulating the Draft Annual Business Plan.

Indeed prior to preparation of the 2007 Annual Business Plan Council requested that the Board prepare a submission for funding so that the Board would be in a position to fulfil its obligations to the community which as you understand is a key role that Council has established for the Board and one which is addressed in the Annual Business Plan.

Please also note that it is my intention to liaise with both Council's auditor and legal advisers to ascertain what can reasonably and permissibly be achieved to improve the processes for the future in a manner which might see the Council undertaking its functions in the same manner as every other SA Council whilst also recognising the unique circumstances of Roxby and the functions and value that the Community Board brings to this Council.

I trust that this assists the Board and as indicated that, in accordance with my sentiments and proposals above, I intend to further and more fully explore with the Community Board over the coming months.

- by letter dated 31 March 2008, Mr Rochester wrote to Mr Boehm on behalf of the Community Board's Budget Sub-committee (**the Budget Sub-committee**) including 'questions needing explanation and clarification by council' for the purposes of the Sub-committee preparing its input into the drafting of the 2008-09 Annual Business Plan and Budget. Those questions related to:
 - the setting up of the Monitor Business Unit of the council (including details of financial assistance by the council)
 - the setting up of the Roxby Leisure Business Unit of the council
 - the contracting by council of [Mr B] and [Company B]
 - expected rate increases for the 2008-09 financial year
 - whether the council had an anticipated percentage growth in the estimated deficit that it would operate under for the 2008-09 financial year to be funded jointly on a 50-50 basis between the State Government and BHP Billiton
- by letter dated 28 April 2008 Mr Boehm wrote to Mr Rochester as Chair of the Community Board. Part of the letter was in regard to the Draft Annual Business Plan:

Draft Annual Business Plan

The process of preparing the draft annual business plan and budget for public consultation purposes is about to commence. As indicated in Councils[sic] letter dated 24 September 2007 you will be aware of the process and the legal obligations upon the Council consequent upon the preparation of and consultation upon the first draft annual business plan last year for the 2007/08 financial year.

The legal advice to the Council is that the legislative imperatives are extremely clear that the Council is the public authority that must develop, own and consult upon its plan which, as you are aware, is an annual distillation of the Council's strategic management plan.

The Council does, however, recognize the prominent role and position of the Community Board and, in this regard, invites the Board to suggest projects, actions and expenditure priorities for the Council to fully consider in the preparation of the draft annual business plan. The invitations does not, of course, detract in any way from the rights of the Board to make such submissions as it sees fit during the public consultation process on the draft plan.

In my view, this invitation to the Board recognises the legislative and governance obligations on the Council whilst at the same time recognizing the separate but complimentary functions of the Council and the Board in developing the Roxby Downs community. I trust this proposal will promote continuing constructive dialogue between the Board and the Council and help in overcoming the concerns raised by the Board during the preparation of the 2007/08 annual business plan.

[...]

- by letter dated 28 May 2008, Mr Rochester wrote to Mr Boehm advising that the Community Board did not support the proposal to build a new Aquatic facility and ancillary services as part of the Roxby Recreation and Leisure Precinct for inclusion in the 2008-09 budget
- in a further letter dated 28 May 2008, Mr Rochester wrote to Mr Boehm and submitted the Board's priority list of works and services that it maintained should be included in the coming fiscal year's budget
- in separate letters dated 16 June 2008, Mr Boehm responded to the Community Board's concerns about the Aquatic facility and acknowledged the Board's priority targets for inclusion in the 2008/09 Annual Business Plan and Budget
- by written submission dated 30 June 2008, the Community Board provided feedback to Council regarding the Draft Annual Business Plan 2008-09
- on 21 August 2008 Mr Boehm responded to the Community Board acknowledging the Board's written and verbal submission as part of the public consultation upon the Council's Draft 2008/09 Annual Business Plan.

[...]

As required, all relevant submissions received will be given due consideration by Council as part of the statutory process in adopting the Annual Business Plan which is, of course, a precursor to preparing and finalizing Council's budget under the Local Government Act 1999.

In addition, under the Roxby Downs (Indenture Ratification) Act 1982 Council's budget will be sent to BHP and the State Government for approval. After this process has been completed and final funding support established, Council will formally adopt the Annual Business Plan and the budget and advise the community accordingly.

I do not propose to specifically respond to the many issues raised (and numerous questions asked) in the Boards[sic] submission at this point in time (as is the case with any submissions received) as these will either be included or not able to be addressed as part of the finalization of the process.

The Boards[sic] submission is appreciated and I look forward to a future positive relationship based on mutual trust and respect in the interest of the Roxby Downs Community.¹⁴

- on 8 December 2009 the Community Board wrote to Mr Boehm stating:

The Board has been concerned for some time about the absence of a Council representative at Board meetings. While the Board appreciates the reasons why this has occurred (i.e the potential conflict of interest of having a dual role as both a community member and Council representative) the Board believes that this situation can be overcome if the purpose of attendance is clearly defined. If necessary the Rules of Association can be altered to reflect this change.

The current Board is very inclusive and appreciates the important role that both the Council and BHP Billiton play in the community. For this reason the current Board believes that representation of all parties at Board meetings is fundamental to healthy and fruitful discussions.

The Board would, therefore, like to invite Council back to the table on the understanding that attendance at every meeting may not always be possible. The Board also undertakes to establish protocols on the nature of issues that can be raised by Board members at Board meetings (e.g. personal issues directly connected to Council will not be permitted).

The Community Board's next meeting will take place on 22 February 2010. The Board also plans to have a facilitated workshop to review the Community Plan in mid February. The Board would be delighted if you could also attend this workshop. This year's retiring board members will also be invited to attend. We will confirm the date, time and venue in the near future.

The Board welcomes and values Council's input and commitment and looks forward to your continuing support and input at meetings.¹⁵

- on 25 January 2010 Mr Boehm wrote to the Community Board stating:

Thank you for your letter dated 8 December 2009 inviting Council back to the table to participate in future Community Board Meetings.

I [sic] the Board appreciates that that[sic] potential conflict of interest issues may arise from time to time, given my position as Administrator, and also note the Boards[sic] willingness an[sic] options to overcome these in the interests of achieving more fruitful discussions on matters of community interest.

Accordingly as verbally advised I am appreciative of the offer and confirm my agreement to attend and participate in the future.

The Community Board and associated Forums is seen by Council as a very important part of the local community input into decisions and I look forward to a continued and positive partnership.¹⁶

- on 1 July 2010 a public meeting was held at which members of the community could make verbal submissions prior to the council finalizing the Annual Business Plan for 2010/2011 and adopting the budget; one community member addressed the council, indicating that he was generally happy with the council's vision.¹⁷

¹⁴ Letter from Mr Bill Boehm to Ms Yvette Mooney (Acting Chairperson, Roxby Downs Community Board) dated 21 August 2008.

¹⁵ Letter from [Ms E] to Mr Bill Boehm dated 8 December 2009.

¹⁶ Letter from Mr Bill Boehm to [Ms E] dated 25 January 2010.

¹⁷ Minutes of Public Meeting held on 1 July 2010.

Bullying and sexual harassment allegations

98. It is alleged that there is a history of widespread bullying and sexual harassment within the council and on the part of [Mr A], and that Mr Boehm refused to reprimand [Mr A] in relation to that conduct.
99. Mr Boehm responded:
- I have never received a complaint alleging bullying or sexual harassment about [Mr A] by another member of Council staff. I am not otherwise aware of any such complaints having been made to Council staff.
- The Council has policies in place with respect to bullying and harassment, which include complaint procedures - copies are attached (Attachment 23). If a complaint was received the matter would be followed up and investigated where necessary to determine whether the allegations have substance and/or whether any disciplinary action is required.
- It is not accurate that I have refused to reprimand [Mr A]. I have never been aware of any circumstances that warranted the Council reprimanding [Mr A]. If I was, I would have responded appropriately as the situation required.
100. Mr Boehm's response to my investigation also addressed the issue of bullying and harassment allegations within the [Company C] (which, as set above, had a contractual arrangement with the council). Mr Boehm stated that:
- During the term of the contract with the Company, I was not notified or otherwise aware of any bullying and/or harassment allegations. Had this been the case, all allegations would have been properly investigated and if substantiated, appropriate action would have been taken pursuant to the terms of the contract.
101. My investigator spoke to a former council employee (on the complainant's suggestion) in relation to her knowledge of the issue. The employee states that she personally witnessed [Mr A] making inappropriate comments to female staff members on occasion and expressed the view that it was generally accepted within the council that [Mr A] behaved inappropriately. The employee acknowledged that she was not aware of any such issues being formally raised with Mr Boehm (although expressed the view that he must have been aware of the issues).
102. My investigator spoke to [Mr D], who was contracted by the council for four years as a Family and Youth Coordinator, a role which involved working with families and young people, and counselling and mentoring people from various parts of the local community. [Mr D] told my investigator that issues of bullying and harassment at the Precinct and Dunes Café were raised with him by possibly a dozen women. [Mr D] was not able to confirm that he ever specifically raised those issues with Mr Boehm but considers that Mr Boehm would have been aware of the general issues involving [Mr A's] alleged conduct. [Mr D] did not feel comfortable in raising the issues with Mr Boehm in the absence of his clients' consent. While [Mr D] considered that in many ways Mr Boehm was 'the right man for the job', he also noted that it was 'difficult' to raise such issues with Mr Boehm.
103. [Mr D] referred to an article that he wrote for the Monitor newspaper which generally raised issues of alleged bullying and harassment at the Precinct and the Dunes Café. While I have not been provided with a copy of that article at the date of writing, I understand that [Mr D] considers that Mr Boehm would have been aware of it.
104. Mr Boehm provided my investigation with copies of the council's:
- Equal Opportunity Policy dated May 2003 (**the May 2003 Policy**)

- Equal Opportunity Procedures dated May 2003 (**the May 2003 Procedures**)
 - Discrimination and Harassment Policy & Procedure adopted 14 September 2012 (**the 2012 Policy & Procedure**)¹⁸
 - Violence/Bullying in the Workplace Policy & Procedure adopted 14 September 2013 (**the Bullying Procedure**).
105. My investigator spoke to the [Ms E], Manager Corporate Strategy and Governance at the council who initially could not recall any complaints about [Mr A] being raised with her during Mr Boehm's time at the council, although acknowledged that she was aware of staff having issues with [Mr A] due to informal comments being made from time to time. My investigator raised the fact that the May 2003 Procedures refers to an Equal Opportunity Officer who has 'corporate responsibility for Equal Opportunity matters and will be able to advise and assist you in relation to dealing with any sexual harassment issues.' I queried whether [Ms E] was aware of anyone within the council holding that position. [Ms E] responded that no one within the council held that position.
106. [Ms E] subsequently emailed my investigator, stating:
- As we were previously a small council all HR matters between 1999 and 2011 were handled by the Council Administrator with the assistance of an external HR Advisor (Wayne Coonan). In 2011 my community development role was expanded to include recruitment and HR administration. However, HR matters such as performance issues and grievances continued to be referred to the Administrator who would have referred them to the external HR Advisor for advice and action.
- Around 2008-2009 when I was working in Community Development I recall one occasion when a member of the public informally mentioned to me that she did not like the way [Mr A] had spoken to her. She asked that it not be taken further. Since that time there have been no further occasions either informally or formally where this topic has been raised with me by an employee, employee of [Company C] or a member of the public.
107. My investigator sought a response from [Mr A] and a further response from Mr Boehm in relation to this issue.
108. [Mr A] denied being aware of any complaint of sexual harassment being made against him. [Mr A] referred to having discussed one incident 'relating to [Mr A's] hard line approach which could have been seen as supposed [b]ullying' which Mr Boehm discussed with him and counseled him on 'different courses of action' at the time. [Mr A] referred to another incident during which he had a heated discussion with a male staff member over his conduct and an allegation of bullying was made. According to [Mr A], the matter was referred to the [Company C's] lawyers and was positively resolved within 48 hours. [Mr A] stated:
- At all times Mr Boehm was kept informed of [the allegation] and the measures taken.
109. Mr Boehm responded:
- I do not recall the precise appointments of Equal Opportunity Officer's [sic] at the Roxby Council and cannot add anything by way of advice with respect to the 2003 and 2012 policies a[sic] procedures that are referred to. I am also not aware of or recall any alleged inappropriate comments formal or informal that are alleged to have been made by [Mr A].

¹⁸ [Ms E] of the council also provided my investigation with a document entitled 'Discrimination and Harassment Policy dated 31 January 2011' in essentially the same terms as the 2012 Policy and Procedure.

110. The 2012 Policy & Procedure is a brief document which sets out some broad principles. In relation to complaint handling, the 2012 Policy & Procedure relevantly states:

Council is committed to providing an environment in which staff have confidence to raise concerns and complaints related to equal opportunity legislation. Anyone doing so is entitled to be taken seriously and to have their complaint resolved in a fair and prompt manner.

To ensure that the principles of equal opportunity are achieved, the Equal Opportunity Procedures will assist in the reporting and resolution of complaints of discrimination. Employees may select either an informal or formal set of procedures to follow to assist them in raising grievances. The procedures are set out in the Equal Opportunity Procedures.

111. I understand the reference to 'the Equal Opportunity Procedures' to be a reference to the May 2003 Procedures.

112. The Bullying Procedure is also a brief document. Unlike the 2012 Policy & Procedure, it does not refer to the Equal Opportunity Procedures. In relation to dealing with workplace bullying and violence issues, the Bullying Procedure provides:

Employees who believe they are being bullied or are the object of workplace violence are encouraged to inform the alleged perpetrator that their behavior is offensive, unacceptable, is against company policy and must stop.

Employees also have a range of informal and formal options available to address a workplace bullying and violence issue. Employees who wish to discuss or receive assistance with a workplace bullying or violence issue are encouraged to approach the Company's [sic] management.

Where a complaint of alleged workplace bullying and violence is brought to the Company's [sic] attention, the complaint will be addressed as early as possible.

Contracts for [Ms C]

113. It is alleged that Mr Boehm gave [Ms C] (with whom he was in a relationship) back-to-back contracts for \$49,000 each, on the basis that the relevant policy required any contract over \$50,000 to go to tender. It is alleged that [Ms C] barely turned up for work. It was alleged that the two contracts were for six months each, effectively making a \$100,000 annual position which was not advertised.

114. Mr Boehm denies these allegations. He stated that:

The Council has not awarded any contracts to [Ms C].

I am aware that [Ms C's] consulting entity was engaged by the [Company C] for various short term assignments in and around 2007 and 2008 after [Ms C] responded to a public advertisement for services published by the Company. A copy of the advertisement is attached (Attachment 24).

During this period, the Company managed Council's Roxby Leisure Business Unit.

At no time did I have any involvement in [Ms C's] engagement by the Company.

115. Mr Boehm's response to my investigation specifically addressed whether contracts were awarded to [Ms C] in the amount of \$49,000 for the purposes of avoiding a tender process and whether he was, at that time, in a personal relationship with [Ms C]. Mr Boehm advised my investigation that:

No. This allegation is entirely false. The decision to engage by [Ms C] was made by the Company independent of the Council in conjunction with the Company's role managing the Precinct. I also understand that the actual payments made to [Ms C] are significantly less than this amount.

In any event, the Council's Contracts and Tenders Policy that applied at the time did not specify a specific amount in respect of which a tender process was required. Rather the applicable Policy provided Council flexibility to determine purchase options on a case-by-case basis having regard to the considerations set out therein.

I confirm that [Ms C] is my partner and has been for approximately 10 years.

116. I sought a further response from Mr Boehm, noting that the [Company C] was subject to the council's direction and that the [Company C] was not able to appoint a subcontractor except with the prior approval of the council. I drew attention to Part 6 of the agreement between the council and the [Company C] which provided:

18. **Standards of care:** At all times during the Term, in providing the Services, the Contractor must comply and ensure a Subcontractor and their respective Workers each comply with, in descending order of priority:

- 18.1 any applicable law and mandatory code of practice;
- 18.2 such of the principal's then current policies about occupational health and safety, protection of the environment, procurement of goods and services so far as relevant;
- 18.3 any reasonable directions given by the Principal;
- 18.4 the exercise of reasonable care so as to minimise any nuisance or disturbance or risk of injury to persons or loss or damage to property; and
- 18.5 the provisions of this Agreement other than this clause.

The contractor must promptly and to the satisfaction of the Principal make good or pay compensation for any loss, damage, personal injury or death to the extent caused by a wilful fault or negligence of the Contractor or a Worker.

19. **Subcontractors:** The Contractor must not appoint a Subcontractor except with the prior approval of the Principal, which the Principal may not unreasonably withhold or delay. The Principal's approval of a Subcontractor does not relieve the Contractor from any liability under this Agreement in respect of the performance of this Agreement. If at any time the Principal requires, the Contractor must promptly give to the Principal full particulars (without prices) and all documents or things evidencing the terms of any subcontract for the provision of Services.

117. Mr Boehm responded:

I seem to recall that I previously advised that I had no involvement with the [Company C] engaging my partner [Ms C] for a period and can now reconfirm same. Given my position it would simply be inappropriate for me to exert any influence. It's something that I have never done nor would do and any inference to the contrary is completely false.

I note that you have asserted that in the appointment of subcontractors that the [Company C] was subject to the Council's direction. To the best of my recollection this was not how the operation was conducted as it was essential that there be an independence between the two entities, a situation that I always strived to ensure. Any so called Council direction only related to policies, budgets etc. not down to an operational level.

118. [Mr A] responded to my investigation:

[Ms C] was engaged by [Company C] on a short term 3 month contract in April 2007.

1. The remuneration fee proposed by [Company C] was struck at the rate of \$4500 per month + GST upon presentation of a tax invoice.
2. [Ms C] was engaged via a direct and negotiated process [Company C], having known [Ms C] and the work she performed in her previous role with the RDA Whyalla, prior to her arrival in Roxby Downs.
3. [Ms C's] role was to review, edit draft documentation and assist in the implementation of Company policies and procedures.

119. [Mr A] provided my investigation with an (unsigned) copy of a letter to [Ms C] dated 15 April 2007 offering her business [.....] with a 3 month contract to review and implement the following listed services:

Administration - in consultation with the area coordinators,

- o Review all area procedures in conjunction with the area coordinators for contents, amend current or implement new system, please note all procedures must be authorized by the Roxby Leisure Manager
- o Review and prepare procedures for approval relating to the Child Protection act[sic] as it applies to the operations and management of Council owned Sporting and Recreation, Community Arts and Councils[sic] Youth Service.
- o Review Centre operations manuals, update as required to meet current standards as applies to the operation and management of Council owned facilities, with special attention given to emergency evacuation procedures

HR Management - in consultation with Sarah Barnes

- o Review current site induction plans and procedure, amend current or implement new system
- o Review current staff files, especially training needs analysis, amend current or implement new[sic]
- o Review recruitment procedures, amend current or implement new system.

120. The letter also stated:

By way of remuneration the fee proposed by [Company C] is struck at the rate of \$4500 per month + GST, to be paid on a monthly basis via EFT once your tax invoice has been received.

121. According to [Mr A], [Ms C] performed the tasks allocated in a professional manner, although on one occasion there was a discussion about timeframes. [Mr A] was not aware of any complaints concerning [Ms C's] performance. [Mr A] stated that [Ms C] provided the services contracted in the 3 month period and was remunerated as per the letter of appointment.

122. [Mr A] told my investigation that:

Mr Boehm was advised of the need for specialist support during our regular management meeting on or about May 2007, to which such approval was given to engage a suitable person or company to for[sic] fill the short term role and the expect[sic] cost of such engagement.

Mr Boehm was advised that [.....] had been [the] appointment.

Mr Boehm had no involvement in the appointment, but was advised of progress of the engaged works through the formal monthly reports and regular face to face meeting. In addition the Sports and Recreation Committee also received monthly briefing reports on the centres[sic] operations.

Trip to Queensland

123. It is alleged that Mr Boehm gave \$10,000 each (out of a \$120,000 budget) to [Mr B] and [Mr A] to travel to Queensland to investigate skate parks. Mr Boehm responded by stating that:

No. This allegation is entirely false and unsubstantiated.

Firstly, [Mr B] was never engaged by the Council to investigate skate parks. This was a role undertaken by [Mr A] alone in connection with his project management engagement role.

I have searched and have been unable to locate any record of [Mr A] having travelled to Queensland to investigate[*sic*] skate parks for the Council. I am aware that [Mr A] did investigate examples of skate parks in Victoria for the Council during the time that he was based in Victoria. This culminated in a final design (based on a relocatable design from New South Wales) be adopted and installed within the Council's area in or around 2009. I specifically recall the relocatable option was pursued since at the time, there was a possibility that any skate park may have to have been relocated as a result of the major expansion of the town that was expected to occur as a consequence of the 2008 expansion of the mine that was proposed by BHP Billiton at that time.

124. [Mr A] told my investigation:

To the best of my knowledge and memory there was never a visit to Queensland to review skate parks with [Mr B].

I did however on or about 2005, asked by Council to review and prepare a report to Council on the provision of a Skate Park for Roxby Downs, please refer to Council records. I have attached a copy of this report tabled in 2006, titled "**Filling the Need**", Skate Park, Roxby Downs, 2006. This report was prepared and provided to Council at no additional fee other than the current contract retainer in place at the time.

125. While the 'Filling the Need' report listed various councils and skate parks from interstate, it does not include any reference to any interstate trips to investigate skate parks.
126. My investigation was not able to contact [Mr B] to corroborate Mr Boehm and [Mr A's] version of events.

Processes arising from investigation of missing documents

127. It is alleged that in 2008 Mr Les Rochester, the Chair of the Board, requested and obtained a number of documents in relation to the council's finances. Mr Rochester met with the Hon Lyn Breuer MP and gave her a complete file of those documents. The documents apparently included records of money being paid to 'prop up' [Mr B's] business, money paid to [Ms F], [Company A], [Mr A], [xxxxxxx] along with other 'incriminating' documents. Apparently Ms Breuer met with Minister Paul Holloway to discuss the situation and ask for a forensic audit of the council's books. It is alleged that paperwork was passed to Mr Paul Case, then Chief Executive of the Olympic Dam Task Force to be actioned but nothing came of it. When the matter was followed up, the relevant documents could not be located.
128. Mr Boehm was asked whether the Council received notification of a proposed forensic audit from Minister Holloway's Office or any other party. Mr Boehm advised my investigation that:

I have no knowledge of the documents that were allegedly provided to the Hon Lyn Breuer. I have never received notification of any forensic audit being undertaken or proposed from Mr Holloway's Office or otherwise.

To the best of my knowledge, a forensic audit of the Council's finances has never been undertaken or proposed as suggested. I am aware, however, that in 2009, the State Government Department that oversees the operations of the Council did undertake an external review of the Council's operations. A copy of the report arising from this review and related documentation is attached (Attachment 25).

Attachment 25 was a copy of the MHM Report referred to earlier in this report.

129. In regard to whether the Council was involved in an investigation into missing documents, Mr Boehm stated:

I am not aware of the "missing documents" that have been referred to or, of any investigation relating to them. The Council has not been involved in a recent investigation for missing documents, or any such investigation for that matter.

As indicated in 6.6.1 above, a review of Council operations was undertaken by the State Government in 2009 and [Mr A] in conjunction with Council staff and contractors fully cooperated with the review process. I can also confirm that all of the payments made to Council contractors have been in accordance with the relevant contracts. I reject the assertion that payments were made by the Council to "*prop up [Mr B's] business*" - it is, at best, fanciful.

130. It is alleged that after those enquiries were made, Mr Boehm implemented new processes at the Council making it harder for people to access Council records, including financial documents.
131. Mr Boehm was asked what processes or policies are in place for a person seeking access to Council records, when those processes or policies were first implemented and whether there have been any changes to those processes or policies following the investigation into the missing documents. Mr Boehm replied:

Access to Council records that are not otherwise in the public domain (including by way of being placed on the Council's website) is managed in accordance with the *Freedom of Information Act 1991*. This has always been the case from the time that I was appointed as Administrator. Information regarding freedom of information applications is available on the Council's website, including the Council's Freedom of Information Statement that has been adopted in accordance with the FOI Act (Attachment 26).

Requests to access Council records have always been managed pursuant to the *Freedom of Information Act 1991* and to that end, there has been no change regarding the processes that apply. I have not taken any steps to change the way in which Council records may be accessed in connection with the alleged investigation into 'missing documents'.

132. My investigator sought further clarification from Mr Rochester as to the nature of the documents. According to Mr Rochester:

I received a package on my front door step which contained various financial documents indicating the methods of payment, the sums paid to who etc. It was the first time I had seen this detail. They hadn't been included in council's budget or financials that were available to the public or the Board. These documents were handed to Lyn Breuer who apparently passed them onto Mr Holloway. (Who actually took up a seat on the Roxby Council audit committee when he retired from parliament). Apparently those papers were then lost. I did not keep a copy of them thinking they were safe in Mrs Breuer's hands. I did not know of any investigation into the missing papers. No one ever contacted me about them.

133. Mr Rochester also told my investigator that he recalls that the documents included an accounting spreadsheet which included details of payments to [Mr B] to attend meetings and payments to the Monitor as well. While Mr Rochester did not know who prepared the spreadsheet, he assumed that it was prepared by someone within the council. When asked whether he thought that the spreadsheet had been prepared especially for the purposes of providing information to Mr Rochester, Mr Rochester expressed the view that it is likely that the person had accessed a pre-existing council document.

134. I sought a response from Ms Lyn Breuer (now Mayor of the Whyalla City Council). Ms Breuer provided the following response 'to the best of [her] recollection':

At the time of Mr Les Rochester handing me the documents, in approximately 2008, there had been considerable angst in the Roxby Downs community for some years concerning Administrator, Mr Bill Boehm. I received numerous allegations from all sectors of the community regarding his supposed nepotism, unconscionable conduct and inappropriate practices in allocating contracts, etc. There was also the belief "*if you didn't agree with Mr Boehm, you had no future in the town*".

These were always 'allegations', and while I reported them to the relevant State Government officers, I did not pursue them myself as I believed that it was not my role to do so.

Upon Mr Rochester providing me the information he had compiled, I read as much of this as possible but due to the vast amount of paper files and the inflammatory statements contained within, I chose to pass all documentation onto the relevant State Government officers to action. I had discussed on many occasions the situation with the then Minister, Paul Holloway, and also Mr Paul Case, who was at the time very involved with the Roxby Downs situation, as I believe he may have been heading up the Olympic Dam Taskforce or perhaps working with the Government prior to his appointment in the role.

The file of documents were [sic] handed to either Mr Case or Ministerial staff and Minister Holloway; my current recollection is it was probably Minister Holloway.

135. Ms Breuer also made the following points in response:

- no copies were made of the documents due to the sheer volume and the fact that it was not for Ms Breuer to action anything on the documents
- she considered that the 'inflammatory' nature of the documents meant that they should be handled by lawyers, and not herself
- she was not comfortable about storing that kind of information in her office
- prior to her retirement in 2014, the allegations surfaced again and Ms Breuer undertook a thorough search for the documents but was unable to locate them.

136. Ms Breuer stated:

My recollection of the documents is scant except that they included copies of contract agreements, records of payment details and various allegations as listed above.

I do not recall any specific documents regarding payments for meetings for [Mr B] but I am aware that there were considerable concerns at the time that [Mr B] was receiving exorbitant amounts of money through contracts and deals with Mr Boehm.

My memory of the meeting with Mr Holloway was, as suggested, a request for a forensic audit and a thorough investigation into the practices and behavior of Mr Boehm as the Administrator. I do not believe the Minister gave me confirmation he would do this but said the information would be checked and action decided upon from that.

I was not aware there was an investigation into the missing documents; my only involvement was to check thoroughly whether I had any copies when requested - I offered a couple of suggestions including the contacting of Mr Case to see if he knew what had happened to the paper files. I also indicated to the persons inquiring that there had been at least three Ministers in the portfolio since then and the likelihood of them retaining the information was probably remote.

Unfortunately, I have no further information to provide as this was a long time ago, however, I was frustrated for quite some time after, that no further investigation seemed to have occurred with the information provided.

137. I also sought a response from Dr Paul Heithersay, Deputy Chief Executive, Resource Infrastructure & Investment Task Force, Department for State Development (**the department**). Dr Heithersay was involved in PIRSA's commissioning of review of the council's financial and procurement performance (**the MHM report**) in 2009. I particularly sought information as to whether there was any link between the missing documents and the commissioning of the MHM report.

138. Dr Heithersay provided the following background information in response:

- in mid-September 2014 members of the Roxby Downs Advisory Reference Group (**the Reference Group**)(including Dr Heithersay) met with around 15 members of the Roxby Downs community and was requested by Mr David Kovac to undertake a 'discovery process' for the missing documents
- the department was unable to trace the missing documents at the time or as a result of a recent search undertaken in response to my enquiry
- there is no evidence to support the allegation that the documents were given to Mr Case.

139. Dr Heithersay described the circumstances of the commissioning of the MHM report as follows:

At that time, BHP Billiton was planning a massive expansion of the Olympic Dam mine and processing facilities, and the Roxby Downs town which supports the operations. The government was looking at options regarding the preferred town governance model going forward, and also wanted a better understand[sic] the likely financial sustainability of Council, in that context.

An earlier review, with limited scope, had been done by JAC Comrie P/L, the outcomes from which led to a need for further work in this area. The Minister had earlier appointed the Roxby Downs Advisory Reference Group (RDARG) to provide a degree of oversight over the activities of the Council, primarily by giving the Administrator independent advice in relation to governance and financial matters and to assist the Administrator to perform his duties in accordance with the legislation. Both government and RDARG required more detailed information about the workings of the Council, so the government engaged MHM to do a broader and more detailed review.

140. In relation to the issue of whether there was any connection between the commissioning of the MHM review and the missing documents, Dr Heithersay responded:

I have no knowledge of the existence or otherwise of "*the documents*" (as defined in your letter). An extensive search of the Department's records has failed to find any evidence that these documents existed within either ODF or PIRSA.

It is therefore difficult to think that there could be any connection between the commissioning of the MHM Review and "*the documents*".

Other background information

141. It was also submitted to my investigation by the complainant that:
- in around September 2008, within two months of Mr Case receiving the documents, the Reference Group was formed
 - in October 2008 the Roxby Downs audit committee (**the audit committee**) was established
 - Mr Boehm was originally on the audit committee as an observer but later appointed himself as Chair
 - In 2013 Mr Holloway (no longer the Minister) was appointed to the Reference Group.
142. Dr Heithersay provided my investigation with the terms of reference for the described the Reference Group and described it as follows:
- The RDARG is a body appointed by the Minister for Mineral Resources and Energy to apply a degree of oversight over the activities of the Council, primarily by providing the Administrator with independent advice in relation to governance and financial matters and to assist the Administrator to perform his duties in accordance with the legislation. The Minister at the time the RDARG was formed, the Hon. Paul Holloway, initially appointed members to RDARG in late 2008 and it first met in October 2008.
143. In relation to the establishment of the Reference Group, Mr Boehm responded by stating that:
- It is asserted that the RDARG was established in 2008 as a result of the alleged 'missing documents'. This assertion is factually incorrect. The RDARG was officially established by the Minister Mineral Resources Development in early 2008 following a workshop between representatives of the State government and Council. It was formed with the expressed intention to provide assistance and support to the Administrator given the Administrator's unique legislative role.
144. In regard to the establishment of the audit committee, Mr Boehm advised that:
- The Audit Committee was established pursuant to the Act in 2008.
- At the inaugural meeting I was nominated Chair of the Committee, which I accepted. The inference that I appointed me as Chair is incorrect. However, it quickly became apparent to me that the Council would benefit from 3 independent audit committee members. Accordingly, I stood down as a member of the Committee and 3 independent persons were appointed (Attachment 27).
145. According to Dr Heithersay:
- One key outcome following the Comrie review was pushing the Administrator to implement an effective Audit Committee. This was done in around October 2009.
- The government, through RDARG, partly relied on the newly revamped Audit Committee to ensure matters were appropriately followed up.
- RDARG followed up with the Council and with the Council's Audit Committee. Some of these actions are recorded in the minutes of RDARG meetings.
146. When asked whether he considered that the recommendations of the MHM review were appropriately implemented by the council, Dr Heithersay responded:
- DSD considers that the Roxby Downs Council, led by its Audit Committee, made considerable and appropriate efforts to respond to the recommendations of the MHM Review.

However, it should be noted that the Council does not report to, and is not able to be directed by, the Department. Only the Minister has the power to direct Council - s12(5) of the Roxby Downs (Indenture Ratification) Act holds that, "The Administrator shall have the powers, functions and duties of a municipal council in relation to the municipality and, subject to directions of the Minister, shall exercise and discharge those powers, functions and duties in such manner as he thinks fit."

Mr Boehm's role as administrator

147. Mr Boehm summarised his role as an Administrator as follows:

The position of the Administrator is established under the Indenture Act.

In a normal elected council, council decisions are made by the council acting autonomously. In Roxby Downs, however, the degree of autonomy exercised by the Administrator for and behalf of the Council is always subject to Ministerial direction and, in practice, oversight by the State Government.

The nature of the Administrator's position is difficult and not readily understood. I have consistently attempted to ensure impartiality in decision making and for this purpose, wherever possible have sought and relied upon outside expertise (i.e. by way of engaging External Advisors) and advice from the Audit Committee and the RDARG.

As indicated in previous correspondence to your office dated 16 October 2015, I am also committed to improving governance practices with the Council and I have, for some time been exploring ways to achieve this objective. This has included:

- Engaging the Council's lawyers to prepare a Governance Charter for the Council; and
- On 18 February 2016 I established the Roxby Council Governance Review Committee to examine and report to me upon a range of options, including but not limited to the adoption of a Governance Charter, to improve governance arrangements within the Council. The report is expected to be completed by 30 June 2016 and a copy will be provided to your office.

148. While I accept that in practice the council received input from the Department, and that advice was provided by the Audit Committee and the Reference Group, ultimately, as pointed out by Dr Heithersay above, it was only the Minister that could direct the council and in that respect had 'oversight' of the council. Ultimately, compared to other councils, Mr Boehm was subject to minimal oversight.

149. Mr Boehm also noted that:

- the governance regime for the council that exists today is vastly different to that which existed when he was first appointed as Administrator
- he has made 'vast' improvements to the council's governance practices
- he has sought and acted on legal advice, specifically seeking legal advice to provide clarity on the application of the legislative provisions of the Local Government Act to the council.

Relevant law/policies

150. 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.

151. Section 49 of the Local Government Act provides:

LOCAL GOVERNMENT ACT 1999 - SECT 49

49 – Contracts and tenders policies

- (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.

152. The council's 'Policy Relating to Tenders' that applied from May 1994 to May 2003 (the 1994 Policy) relevantly provided:

4.2 CALL FOR TENDERS

The Council shall allow sufficient time between inviting tenders and the closing of tenders, for tenderers to make site visits and undertake any other work necessary to allow them to respond fully. The Council shall make the site or "trade ins" if applicable, reasonably available for inspection by tenderers.

In the case where tenders are advertised, the advertisement should include the following:

- Advice from where tender documents may be obtained.
- Precise details of where and when tenders shall close.
- Price of purchasing the tender documents, if applicable.
- A non refundable deposit for tender documents if applicable.

4.3 Whilst it shall always be the prerogative of the Council to use any method to select a contractor, contracts would normally be entered[sic] into as a result of one of the following procedures:

4.3.1 Select

The Council may maintain a register of approved contractors/suppliers whose capability has been confirmed, to its satisfaction and from time to time advertise for tenderers to be included in such a register if applicable,

4.3.2 Open

Principals invite by public advertisement without restriction on the number of tenders sought.

4.3.3 Preregistered

The Council may invite expressions of interest in being preregistered for a specific project or specific types of projects. Applicants are evaluated and a small number of those meeting the required criteria are invited to tender.

4.3.4 Invited

The Council may invite tenders from a number of contractors known to have the ability to undertake a project of the type proposed.

4.3.5 Negotiated

The council may negotiate with a single contractor to achieve a desired outcome. Negotiations should be fair to all parties.

[...]

4.9 EVALUATION OF SELECTIONS

Any tender which does not comply with the tender documents is liable to be rejected.

Generally the tender most advantageous to the principal should be considered for acceptance.

The Council may reject a tender provided it acts honestly and with probity in so doing.

Where a tenderer offers an alternative, a comparable price for the alternative shall not be obtained from other tenderers nor shall the alternative be used as the basis for the re-call of tenders.

If the Council decides not to accept any tender and to re-call tenders, the original tenderers shall be advised, as a general principle where appropriate, invited to submit a new tender.

If a previous tender condition which prevented a tenderer from submitting a tender is removed, that tenderer should be permitted to submit a new tender when re-called. Evaluation of tenders and tenderers should include consideration of the following:

- (a) Conformity with the tender documents.
- (b) Value for money.
- (c) Technical, managerial, physical and financial resources.
- (d) Other commitments affecting capacity to carry out the contract.

Each of these factors may have a varying weighting or priority at the absolute discretion of the Council.

Both successful and unsuccessful tenderers shall be advised in writing of the decision and that the tender has been let.

153. The council's 'Contracts and Tendering Policy' that applied from May 2003 until August 2015 (**the 2003 Policy**) relevantly provided:

Service Provision Options

Council has identified the following options for the provision of services:

- Competitive tendering (where applicable) by exposing the provision of Council services to competition through a formal tendering process.
- Contracting out or outsourcing - to an external provider.
- Contestability - involving staff in identifying and adopting productivity improvements in service delivery designed to meet service standards determined through performance measurement, benchmarking and market testing.
- Collaborative ventures - where council joins with other organisations, Local Government authorities, State Government authority or private sector company to jointly deliver a service.
- Commercial activities - projects which may involve the establishment of joint ventures, trusts or partnerships.

In identifying the circumstances in which to apply the above options Council will consider:

- Council's Strategic Management Plan goals and objectives.
- Council's Enterprise Agreement.
- Maintenance to control specific services by Council.
- The risks to Council in adopting the various options.
- The number of competitors in the market place.
- The Council's current service delivery arrangements.
- Council's existing resources
- Council's desire [sic] support local businesses.
- Council's desire to enter into commercial activities or projects.
- Council's desire to promote local community economic development initiatives.

[...]

Contracts and Tenders

When undertaking contract and tender activities Council's decision making process will reflect the following:

- whether tendering will assist Council to achieve its strategic objectives and strategies.
- Customers of the service will not be disadvantaged.
- responsibility of Council for the provision of the service will not be adversely affected.
- it is practical and possible to specify the quality and quantity of the service required to be delivered.
- it is deemed appropriate for Council to continue to ensure the service is provided.
- following the completion of a market analysis, there is scope for the provision of the service by an external provider and there is potential to gain savings not currently available to Council.
- gains (financial and non-financial) are greater than what could be achieved through direct provision of the service by Council.
- the relationship between the service to be contracted or tendered to other related services in the Council.

Where Council determines it will use a contract or tender arrangement under this Policy, it will decide whether:

- to adopt a selective or open tender process.
- prepare appropriate documentation to inform potential providers of the service of the necessary information to formulate their tender and the manner in which to submit an offer.
- form a selection panel to consider offers made for the provision of the service.
- the selection panel will make a recommendation to the Administrator.
- manage any complaints arising from the decisions taken by Council consistent with its Internal Review of Decisions Procedures required under the Act.
- Council will make available procedures relevant to specific tendering activities.

7. DOCUMENTATION

To assist in demonstrating that its service provision, purchasing and disposal processes are cost effective, fair, transparent and accountable, and meet community needs, Council will document the reasons for entering into contracts other than those resulting from a tender process.

154. The council's 'Contracts and Tendering Policy' that was adopted in August 2015 (**the 2015 Policy**) relevantly provides:

5.1 Intent to Contract

The Council will only approach the market after gaining budget approval (or if there is no budget allocation then Administrator approval in writing is required) for the proposed expenditure and with the intent to engage a supplier, subject to achieving an acceptable outcome in terms of value for money and risk. Where prices are sought from the market for budgeting purposes only, that intent shall be made clear to the suppliers.

5.2 Expressions of Interest

The Council may request for expressions of interest to test the market or solicit ideas (which is similar to a tender process, except a response is not a binding offer capable of acceptance by the Council to form a contract), If so the Council's intentions for the process should be clearly stated in the expression of interest, so industry is not misled.

5.3 Value for Money

The Council will strive to achieve the best value for money in its procurement activities.

5.4 Risk Management

The Council will adopt sound risk management principles in its contracts and tendering activities consistent with its risk management plan and all relevant risks will be taken into consideration.

[...]

5.6 Probity, Accountability and Transparency

The Council will use its best endeavours to deal with all suppliers and potential suppliers on the basis of mutual trust and respect. To facilitate this, the Council will act in an open and transparent manner in its procurement activities. Suppliers will be treated fairly and equitably in any procurement process which will encourage fair and even competition (in complying with the National Competition policy and all legislation relevant to the procurement process).

5.7 Efficient Procurement Processes

Standard processes and tender and contract documentation will be used wherever possible to ensure consistency. Panel arrangements and pre-qualification of suppliers will

be utilised to improved the efficiency of the tendering process and reduce the impact of repetitive bidding on potential suppliers.

5.8 Use of Local Suppliers

In any procurement process, where all other factors are equal, the Council may favour the engagement of local suppliers; that is those operating within the area of Roxby Downs (or reasonably close locality) to the extent permitted by law. Where a suitable local area supplier is not available then preference may be given to Adelaide based, South Australian based and then Australia based suppliers of goods and services, in that order.

5.9 Emergency Situations

From time to time, Council may have to respond to emergency situations. Under these circumstances the Administrator may decide to take whatever action is required to ensure a prompt and effective procurement is undertaken in the best interests of the Roxby community.

6. PROCUREMENT AND DELIVERY METHODS

6.1 General Tender Conditions

Council will show preference to tender applicants that demonstrate environmentally friendly practices and processes or use environmentally friendly goods, including those made from or containing recycled materials, where price, performance, quality, suitability and other evaluation criteria are comparable.

Alternative offers included in a tender are not to be considered unless specifically provided for in the tender documents.

All tenders will be called in accordance with the documented internal procedures.

6.2 Types of Market Approach

The Council may utilise a number of different market approaches including:

- Open or Public Tendering;
- Selected or approved Tendering:
- Pre Qualified Tenders
- Invited Tenders
- Direct Negotiation with a particular supplier or group of suppliers;
- Joint procurement arrangements with other Councils including use of third party contracts.
- Requests for Expressions of Interest.

6.3 Project Delivery Methods

There are a number of methods of delivery of projects commonly in use which Council may employ including:

- Traditional
- Design and construct
- Management
- Patch Type (Maintenance and Service)
- Relationship
- Financed

Guidance and explanation of these types of delivery methods are available.

6.4 Selection of Procurement Strategy and Contract Type

The procurement strategy including market approach, type and length of contract will be based on a critical analysis of all the relevant factors in the circumstances including, but not limited to:

- value of the acquisition (whole of life cost);
- risk profile of the acquisition;
- cost of the market approach versus the value of the acquisition and the potential benefits;
- size of the market;
- number of competent suppliers;
- capacity of the market to meet the requirements for the life of the contract/project;
- maturity of the market and potential changes;
- Council's leverage in the marketplace;
- rate of technological change in the industry sector;
- innovative nature of the acquisition;
- Council's ability to clearly define required outcomes;
- time constraints; and
- Costs incurred by suppliers in responding to requests.

The chosen strategy will seek to meet the principles previously outlined. The outcome of the analysis and selection of the strategy will be documented. It then requires approval by the Administrator.

6.5 Evaluation Methodology

The evaluation methodology used for a procurement process will be dependent on the objectives of the procurement, the complexity involved, the level of innovation in the industry and the risk profile. Evaluation material will be included in the Tender Document.

6.6 Low Value/Low Risk Acquisitions

For low value/low risk acquisitions, the focus will be on efficiency so that the cost of undertaking the procurement does not outweigh the benefits achieved. In these cases, quotations will generally be sought or the Council might utilise third party contracts such as Strategic Purchasing contracts or State Government contracts if possible.

6.7 Purchase Amounts and Contract Type Recommended

Purchase Amount (excl GST)	Contract Type Recommended
\$1,001 to \$5,000	Purchase order and price competitive
\$5,001 to \$10,000	Purchase Order. If practical obtain at least 2 verbal or written quotations from independent suppliers or substantiate that <ul style="list-style-type: none"> • the price is competitive and/or • has been subject to previous market testing or benchmarking of costs and/or • the supplier has had a previous successful track record in performance both in quality and timeliness.
\$10,001 to \$50,000	Purchase order with at least 2 written quotations from independent suppliers or substantiate that <ul style="list-style-type: none"> • the price is competitive and/or • has been subject to previous market testing or benchmarking of costs and/or

	<ul style="list-style-type: none"> the supplier has had a previous successful track record in performance both in quality and timeliness.
\$100,001 and above	Selected or invited tender or Formal Open/Public tender
<p>In applying the thresholds:</p> <p>(i) sum the total expenditure over the life of the contract, including any extension;</p> <p>(ii) treat a series of related transactions occurring within any 6 months as 1 transaction; and</p> <p>(iii) ignore that all or some of the cost may be funded by other levels of government.</p>	

[...]

155. Section 3(1) of the State Records Act defines an ‘agency’ as ‘a municipal or district council’.
156. Section 3(1) of the State Records Act defines an ‘official record’ as a ‘record made or received by an agency in the conduct of its business...’
157. Section 23(1) of the State Records Act provides:

An agency must not dispose of official records except in accordance with a determination made by the Manager with the approval of the Council.

1. Whether the council committed maladministration in public administration by a course of conduct involving inappropriate expenditure and other administrative practices.

2. Whether the Administrator of the council committed maladministration in public administration by a course of conduct involving inappropriate expenditure and other administrative practices.

158. As the conduct of Mr Boehm was effectively the conduct of the council (due to the unique structure of the council), I have addressed these issues together in this report.
159. This matter has been referred to my Office as a single course of conduct spanning a number of years. While I have approached the matter on that basis, for ease of reference, I have addressed the specific conduct alleged to have constituted the course of conduct separately below.

Awarding projects to [Mr A] and [Mr B]

160. Mr Boehm advised my investigation that he was appointed as the Administrator of the Council in 1999. At the time of his appointment, he was a qualified and experienced Civil and Municipal Engineer and second tier officer at an elected council. He had significant budget management experience but no accounting qualifications.
161. I accept that, as set out in Mr Boehm’s response to my investigation, Mr Boehm had some form of prior professional relationship with both [Mr A] and [Mr B] before commencing at the council.
162. Mr Boehm vehemently refuted the assertion that he was effectively giving jobs to friends or associates. I generally accept that the documentation before me supports Mr Boehm’s assertion that [Mr A] and [Mr B] were engaged for genuine purposes. That said, as discussed below, the documentation provided to my investigation was

significantly incomplete and my comments can only be limited to those direct engagements for which documentation has been supplied. Mostly, the documentation provided to my Office indicates that [Mr A] and [Mr B] submitted reasonably detailed proposals in relation to the various engagements (although I note that I have not been provided with copies of such proposals for all contracts entered into with [Mr A] and [Mr B], and for some contracts, there appears to be no documentation at all). There is no evidence before me that the engagements were a 'sham' or that [Mr A] and [Mr B] did not carry out the tasks that they were engaged to perform.

163. I have had regard to Mr Boehm's statement that whether or not a personal relationship existed with a particular contractor 'is irrelevant' and that '[p]erformance, availability, cost and the lack of suitable alternatives are strictly the only criteria.' I do not accept that whether any relationship existed with a particular contractor is irrelevant and, in my view, Mr Boehm needed to manage any potential conflict of interest appropriately. That said, I accept that due to the size, location and nature of Roxby Downs, it may be more appropriate (and possibly more cost-effective) for a greater reliance on direct engagement of contractors with a proven track record, than in other council areas. I also note that due to the unique structure of the council, Mr Boehm was more reliant on engagement of contractors than may be the case in another council.
164. According to Mr Boehm, the council's engagement of [Mr A] and [Mr B] 'always' occurred on the basis of their expertise, standard of work and value for money provided by them. On the basis of the information provided to my investigation, however, I am not able to be satisfied that Mr Boehm's engagement of [Mr A] and [Mr B] invariably occurred 'on the basis of their expertise, standard of work and value for money'. While it was generally open to Mr Boehm to consider direct engagement of [Mr A] and [Mr B], with some exceptions, there is generally insufficient documentation to show that any appropriate consideration was given as to why it was appropriate to engage [Mr A] and [Mr B] directly, as opposed to undertaking a more open tender process, in relation to any particular project. I also note that the amounts of money paid to [Mr A] and [Mr B] over time were not insignificant.
165. Further, for the reasons below, I am not satisfied that Mr Boehm acted in accordance with relevant policies and procedures as required by the Local Government Act.
166. Mr Boehm's view is that the council complied with relevant policies in awarding contracts to both [Mr A] and [Mr B], to the extent that he had knowledge of those policies. While Mr Boehm himself introduced the 2003 Tender Policy, he stated that he only first became aware of the 1994 Tender Policy when preparing his response for this investigation.
167. The terms of the 1994 Tender Policy were not particularly prescriptive. In that regard, I note that clause 4.3 of the 1994 Tender Policy provided:

Whilst it shall always be the prerogative of the Council to use any method to select a contractor, contracts would normally be entered[sic] into as a result of one of the following procedures:

[..]

4.3.5 Negotiated

The council may negotiate with a single contractor to achieve a desired outcome. Negotiations should be fair to all parties.

168. There was no specific requirement in the 1994 Tender Policy that the council record its reasons for entering into contracts other than those resulting from a tender process

(as was later required by section 49(2)(c) of the Local Government Act introduced in 1999).

169. It is clear that between 2000 and the introduction of the 2003 Tender Policy in April 2003, the council did not have a contracts and tender policy as required by section 49 of the Local Government Act (given that the 1994 Tender Policy did not meet the requirements of section 49). It is also clear that the council entered into the following direct engagements without any regard to, let alone compliance with, such a policy:
- 2000: Review of Precinct Operations by [Company A]: \$14,350
 - 2001: Design and specification preparation and project management of the internal redevelopment of the council office by [Company A]: approximately \$45,000+
 - 2002: Implementation of the Action Plan by [Company BA]: approximately \$44,000+.
170. I consider that Mr Boehm's failure between 2000 and 2003 to implement a contracts and tendering policy and to properly record his reasons for entering into significant contracts outside a tender process, was inappropriate in all of the circumstances and inconsistent with the Local Government Act.
171. I also note that on 6 May 2002, Mr Boehm was provided with legal advice to the effect that section 49 of the Local Government Act applied to the council.¹⁹ The 2003 Tender Policy was put into effect a year later in May 2003. No explanation was provided to my investigation for that delay, and I consider that delay unacceptable.
172. I have also considered whether the contracts with [Mr A] and [Mr B] between 2003 and 2015 were entered into in compliance with the 2003 Tender Policy. Clause 3 of the 2003 Policy provides that 'contracting out or outsourcing to an external provider' is an option for provision of services. Consistent with section 49(2)(c) of the Local Government Act, clause 7 of the 2003 Policy also provided:
- To assist in demonstrating that its service provision, purchasing and disposal processes are cost effective, fair, transparent and accountable, and meet community needs, Council will document the reasons for entering into contracts other than those resulting from a tender process.
- I have not been provided with any contemporaneous record of the council's reasons for entering into the following contracts outside of a tender process:
- 2003: Expansion of the Precinct by [Company A]: unknown cost
 - 2004: Ongoing operation and management of the Monitor by [Company BA]: \$10,000+
 - 2005: Contract Management Review by [Company A]: unknown cost
 - 2006: General Management of Roxby Leisure by [Company A]: unknown cost
 - 2007: [Company C's] management of the Precinct: \$184,5000+
 - 2007/8: Various projects by [Company BA]: \$60,000+
 - 2007/8: Monitor Newspaper arrangements by [Company BA]: \$20,000+
 - 2007/8: Roxby Downs Web Project Proposal by [Company BA]: \$30,000+
 - 2008/9: Development and management of various projects by [Company BA]: \$90,000+
 - 2009/10: Development and management of various projects by [Company BA]: \$120,000+.
173. Given Mr Boehm's failure to record his reasons for entering into those contracts outside of a tender process, I consider that those contracts were entered into contrary

¹⁹ Letter from Mr Andrae Marrocco to Mr Bill Boehm dated 10 May 2002.

to the 2003 Policy. In my view, the generally poor record keeping connotes an unacceptable lack of transparency and accountability.

174. I also observe that, on the basis of the documentation provided to my investigation, there appears to be a pattern of projects being proposed and approved within a relatively short amount of time.²⁰ There is little or no evidence of any rigour on Mr Boehm's part in assessing and approving those projects.
175. Mr Boehm has referred to matters being 'benchmarked'. The only evidence before my investigation in that regard is a file note dated 15 May 2008 relating to the ongoing management of the Precinct by the [Company C].
176. I have also had regard to the fact that MHM Consultants was engaged by the Department of Primary Industries and Resources SA to undertake a review of the Roxby Downs Council's financial and procurement performance, related governance aspects and its financial sustainability. While a previous review of the financial and governance aspects of the council's operations had been undertaken in 2008 by JAC Comrie Pty Ltd (**the Comrie review**), I consider that the findings of the MHM Report were most pertinent to my investigation.
177. On 10 July 2009, the MHM Report was delivered to the Department of Primary Industries and Resources SA. The MHM Report made recommendations to improve the financial and procurement governance of the council which included:
1. Undertake a thorough benchmarking review of council's expenditures;
 2. Undertake a thorough audit of Roxby Leisure and analyse options for outsourcing a range of activities;
 - [...]
 5. Provide senior financial support for the Administrator; and
 6. Document Procurement Policies and ensure major contracts are tested at the next available opportunity.
178. The MHM Report stated:
- A thorough benchmarking review of council expenditure in areas including ICT support and hardware, maintenance, cleaning, waste management and consulting where costs appear excessive and value for money currently received in these areas is also questioned. This review must have the objective of ensuring future levels of expenditure are both appropriate and sustainable and that the best possible value for money is received.²¹
179. In relation to Roxby Leisure, the MHM Report identified that the business had incurred a loss of \$1.6 million in 2007/08 and forecast a loss of \$1.5 million in 2008/09. The MHM report identified various issues with Roxby Leisure and specifically recommended a 'focused and detailed' audit.²² Mr Boehm's response to that issue at the time noted that Roxby Leisure was not a commercial operation intended to make a profit, that it was part of the council's role as a service provider to the local and visiting community and that Roxby Leisure was important in recruitment.²³
180. In relation to procurement and contract management, the MHM Report identified the following 'common threads':
- a lack of documentation for tender/quotation assessment

²⁰ See, for example, the Roxby Downs Web Project Proposal approved on 18 September 2007, the Monitor Newspaper Arrangements approved on 19 June 2007,

²¹ MHM Report at p.5.

²² MHM Report at p.6.

²³ MHM Council Review - Final Report - Response by Council's Administrator dated 13 August 2009 - see pages 10-12.

- a lack of documentation to justify particular procurement approaches adopted
- a lack of KPIs included in contracts; and
- lengthy periods during which contracts are not put back on the market.²⁴

The MHM Report recommended that the council re-write and implement more effective procurement policies. While it appears (based on the information provided to my investigation by Mr Powell) that work was commenced on the redrafting the 2003 policy in 2009, the policy was only formally amended in 2015.

181. In relation to [Company BA], the MHM Report noted:

[Company B] was contracted in 2000 to work with the Roxby Downs Council, at which time it is understood that a public tender was sought. It appears that a new contract between [Company B] and the Council is drawn up yearly, without a formal tender process, or external review of their work. We note that [Mr B] (Company Director) is the Chairperson of the Alcohol and Substance Abuse Partnership, Deputy chair of the Education and Workplace Training Forum, Deputy chair of the Education and Workplace Training Forum, Deputy Chair of RoxFM Community Radio, Member of the Roxby Downs Community Board and Managing Editor of the Monitor.²⁵

182. The MHM Report further observed:

Having requested a copy of the current communications and marketing plan from the Administrator we were advised that it was not yet complete. We were instead provided with an outline of the plan, as mentioned above (see Appendix H). We have reviewed the content of the outline and based on that alone observe that in our opinion it lacks the substance and depth which would be reflective of the cost of \$40,000 in 2008/09 or indeed the \$20,000 previously expended in 2007/08. We note and highlight the further \$30,000 planned to be spent on the plan in 2009/10.

A key activity highlighted by the document is the expected completion of four websites by mid 2008. Those being:

- roxbydowns.com;
- roxbyleisure.com;
- themonitor.com.au;
- roxbydownscouncil.com.au

We do not believe the fees paid to [Mr B] included the cost of building the above websites.

We note and highlight that this contract has not been put to the market since [Mr B] was originally appointed back in 2000.

We requested from the Administrator a CV for [Mr B] and were instead provided with a form of capability statement. Based upon our review of this document and our own separate desk based research we observe that more highly qualified and experienced providers of the range of services provided by [Mr B] exist in the market place and we suggest Council may benefit from testing the market for alternative providers.

183. I observe that the bulk of the direct engagements of [Mr A] and [Mr B] occurred before the MHM Review.

184. I have also specifically considered whether the tender process for the redevelopment of the Roxby Downs Aquatic Facility was appropriate.

²⁴ MHM Report at p.7.

²⁵ MHM Report at p.34.

185. I have noted Mr Boehm's submission that the purpose of the public notice was to 'demonstrate that the Council was prepared to consider tenders from and award the contract to a person that was not known to it'.
186. I consider that the time allowed for responses was insufficient, and I simply note that the process was contrary to the 1994 Policy which provided at 4.2:
- The Council shall allow sufficient time between inviting tenders and the closing of tenders, for tenderers to make site visits and undertake any work necessary to allow them to respond fully...
187. While at the time, the 1994 Policy was in place and Mr Boehm was apparently not aware of that policy, as discussed above, the council did not have in place any other contracts and tendering policy for the purposes of section 49 of the Local Government Act.
188. If the council had had in place a policy for the purposes of section 49, it would have provided for a 'fair and transparent process' for calling tenders and entering contracts. In my view, the short time frame for responding was entirely inadequate and not fair to tenderers without prior knowledge of the matter.
189. I have also specifically considered the Evaluation Summary Form for contract MW023/11. The purchase amount was identified as being between \$10,001 to \$50,000. It appears that the council agreed to MW023 on the basis of individual service charges for five years between 2011 and 2016. While each of the service charges for those years was under \$50,000, the combined total was over \$150,000.²⁶ In those circumstances, I do not consider it appropriate to characterize the purchase amount as being between \$10,001 to \$50,000. Nor do I agree that 'cost of works was not significant enough to warrant formal quotations'.
190. The relevant engagements of [Mr A] were:
- 2000 - Review of Precinct Operations:

There is no documentation to demonstrate why direct engagement rather than tender was appropriate or any record of the total cost of the initial review phase or any record of actual expenditure (i.e. a purchase order) for the initial review phase.
 - 2003 - Expansion of Precinct

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. There is no record of actual expenditure. It is particularly concerning that the council order book which documented the engagement has been destroyed.
 - 2005 - Contract Management Review

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. While a purchase order was provided to my investigation, it was illegible.
 - 2006 - General Management of Roxby Leisure

²⁶ Letter from Mr Bill Boehm to [Mr A] dated 16 July 2014.

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. No documentation has been provided to my investigation of the terms of the agreement with [Company A]. There is no record of actual expenditure. It is particularly concerning that there appears to be no record of an engagement which would presumably entail significant expenditure on the part of the council.

- 2007 - Facilities Management Agreement

There is no documentation to demonstrate why direct engagement rather than tender was appropriate which is particularly concerning considering that the Facilities Management Agreement was for an amount exceeding \$184,500.

191. The relevant engagements of [Mr B] were:

- 2002 - Implementation of the Action Plan

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. The only documentation provide was [Mr B's] proposal and there does not appear to be any record of actual expenditure.

- 2003 - Operation of the Monitor

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. Neither the contract nor any documentation (other than an internal memo by Mr Boehm) was provided to my investigation. The term of the engagement is unknown and there does not appear to be any record of actual expenditure.

- 2004 - Ongoing operation and management of the Monitor

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. While the terms of the agreement have been recorded by letter, there is no evidence of any proposal by [Mr B] or any record of actual expenditure.

- 2007/2008 - Various projects

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. While the terms of the agreement have been recorded by letter, there is no evidence of any detailed proposals by [Mr B] or any record of actual expenditure.

- 2007/2008 - Monitor Newspaper Management Arrangements

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. While the terms of the agreement have been recorded by letter, there is no evidence of any proposal by [Mr B] or any record of actual expenditure.

- 2007/2008 - Roxby Downs Web Project

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. While the terms of the agreement have been recorded by letter, and there is a brief proposal by [Mr B], there is no record of actual expenditure.

- 2008/2009 - Development and management of various projects

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. While the terms of the agreement have been recorded in a contract of engagement, there is no record of any proposal by [Mr B] or record of actual expenditure.

- 2009/2010 - Development and management of various projects

There is no documentation to demonstrate why direct engagement rather than tender was appropriate. While the terms of the agreement have been recorded in a contract of engagement, there is no record of any proposal by [Mr B] or record of actual expenditure.

192. Given that Mr Boehm was not subject to the usual oversight of an elected body, and was solely responsible for the engagements, I am particularly surprised that he appears not to have created or, possibly, maintained documentation to demonstrate that he had properly assessed whether a particular contract should be subject to tender on a case by case basis, and complied with all relevant policies.

The Town Board

193. I have considered whether Mr Boehm inappropriately dissolved the Town Board upon [Mr B's] recommendation. I accept Mr Boehm's explanation that he did not dissolve the Town Board, which is consistent with the minutes of the meeting at which the relevant decision was made.

194. I cannot be satisfied on the evidence before my investigation that [Mr B] was paid additional fees over and above his various engagements with the council. While I note that Mr Boehm denies that allegation, as I have been unable to contact [Mr B], or gain access to the missing documents, I am unable to corroborate that issue. In all of the circumstances, I do not consider that further investigation of this issue is necessary or justifiable (also noting that it is but one aspect of an overall course of conduct considered by my investigation).

195. I also accept, based on the correspondence provided to my investigation, that Mr Boehm did not have any inappropriate motive in appointing [Mr B] to act on his behalf at community meetings, and that he was acting on legal advice in that regard.

Requests to increase transparency and provide more detail on expenditure

196. It is alleged that Mr Boehm consistently refused requests by the Board to increase transparency and provide more detail on expenditure and when offered advice and assistance on budgeting from Western Mining, Mr Boehm refused.
197. Mr Boehm provided a sample of correspondence between himself and the Board regarding Council's preparation of the 2007/08 and 2008/09 Annual Business Plans and budgets.
198. Having reviewed that correspondence, I accept that Mr Boehm advised the Board that there was no capacity (either from a legal or good governance perspective) for the Board to be involved in the actual preparation of the annual business plan and budget. Mr Boehm further advised the Board that his legal advice was that the legislative imperatives were clear in that the council was obligated to develop the annual business plan and budget. However, Mr Boehm invited the Board to make submissions during the public consultation process on the draft plan.

199. Mr Boehm stated that to the best of his recollection he never received a request or an offer from Western Mining to assist with the Council's finances. He stated that, even if he did, it would have been inappropriate for the Council to accept.
200. Having considered Mr Boehm's responses to these matters and the sample of correspondence provided, I am of the view that Mr Boehm did not act or respond inappropriately in his dealings with the Board. I accept Mr Boehm's reasoning for not accepting any financial advice from Western Mining, noting the potential conflict of interest between the council and Western Mining.

Bullying and sexual harassment allegations

201. In regard to the allegation that there is a history of widespread bullying and sexual harassment within the council and on the part of [Mr A], Mr Boehm responded by stating that he had never received a complaint alleging bullying or sexual harassment about [Mr A] or a member of council staff.
202. While none of the past or current council staff my investigation interviewed could recall any formal complaints being made to Mr Boehm (and no records of any formal complaints were provided to my investigation), the view was expressed that informal comments were made, and that Mr Boehm ought to have been aware of the allegations involving [Mr A].
203. While I am satisfied that it is likely that Mr Boehm was aware that certain staff had issues with [Mr A's] behavior, given that no formal complaints appear to have been made to the council in relation to allegations involving [Mr A], I do not consider that Mr Boehm's failure to take action constitutes maladministration for the purposes of the ICAC Act.
204. That said, I consider that the process for making such complaints in relation to bullying and violence (as opposed to discrimination and harassment) was not clear and comprehensive given that the effect of the Bullying Procedure was that staff's only recourse in relation to bullying and violence complaints appears to have been to approach 'management'. I also consider that the council erred in failing to appoint an Equal Opportunity Officer for the purposes of the May 2003 Policy.

Contracts for [Ms C]

205. Mr Boehm confirmed that [Ms C] is his partner and has been for approximately 10 years.
206. According to Mr Boehm, the Council did not award any contracts to [Ms C]. Rather, [Ms C's] consulting entity was engaged by the [Company C] for various short-term assignments in and around 2007 and 2008 after [Ms C] responded to a public advertisement by the company. In support of his statement, Mr Boehm provided a copy of an advertisement that was published in The Monitor on 26 July 2007. From review of the document provided, the advertisement was seeking Expressions of Interest to establish a list of pre-qualified contractors who could be called upon to undertake some of the specialist works for Roxby Leisure. [Mr A] was identified in the advertisement as the point of contact for further enquiries.
207. This advertisement coincided with the signing of a Facilities Management Agreement between the Council and the [Company C] for the period 1 July 2007 to 30 June 2009. The agreement was executed on 30 July 2007 by Mr Boehm (for Council) and [Mr A] (for the company).

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208. According to Mr Boehm, the Company acted independently of the Council in engaging [Ms C]. In Mr Boehm's initial overview of contract management with the Company, he affirmed that the contract with the Company allowed flexibility for staffing/labour arrangements, however the Company had to submit a draft business plan and budget for approval by the Council.
209. In regard to whether payments in the amount of \$49,000 were received by [Ms C] for the purpose of avoiding the tender process, Mr Boehm indicated he had some knowledge of the payments made to [Ms C] stating he understood the payments were significantly less than this amount. It is unclear whether Mr Boehm ascertained this knowledge from his relationship with [Ms C] or from [Mr A] carrying out his obligations under the agreement between Council and the [Company C], or both.
210. I accept that [Ms C] was engaged by the [Company C] rather than the council. The only evidence before my investigation of a contract between the [Company C] and [Ms C] indicates that her employment was for three months only and for a sum of considerably less than \$49,000. Both [Mr A] and Mr Boehm denied that Mr Boehm was involved in that appointment and I have no evidence to the contrary.
211. I understand Mr Boehm's recollection to be that, contrary to the requirements of the agreement between the council and the [Company C], he was not involved in approving [Ms C]. I have no evidence that he was involved in that process.
212. In all of the circumstances, I do not consider that further investigation of this allegation is necessary or justifiable.

Trip to Queensland

213. Mr Boehm responded to my investigation that the allegation that [Mr A] and [Mr B] were given \$10,000.00 each to investigate skate parks in Queensland is entirely false. Mr Boehm stated that [Mr B] was never engaged by Council to investigate skate parks but this was a role undertaken by [Mr A] in connection with his engagement as a project manager. Mr Boehm states that he has conducted a search but has been unable to locate any record of [Mr A] travelling to Queensland to investigate skate parks on behalf of Council. Mr Boehm stated he is aware that [Mr A] did investigate examples of skate parks in Victoria during the time he was based there.
214. [Mr A] did not recall any trip to Queensland, and I noted that his 'Filling the Need' report made no mention of any trip interstate to investigate skate parks.
215. In the absence of any documentary evidence, the allegation that both [Mr B] and [Mr A] received payments of \$10,000.00 to travel to Queensland is unable to be substantiated.

Processes arising from investigation of missing documents

216. Mr Boehm responded to these allegations by stating that he was not aware of the missing documents or of any investigation relating to them. Despite my investigation's enquiries, I have not been able to determine with any precision the content of the missing documents.
217. Mr Boehm told my investigation that he did not take any steps to change the way in which council records may be accessed in connection with the alleged investigation into missing documents.

218. Mr Boehm advised my investigation that 'requests to access Council records have always been managed pursuant to the *Freedom of Information Act 1991* and to that end, there has been no change regarding the processes that apply'.
219. I have not been provided with any other evidence to the contrary.
220. In all of the circumstances, I consider that the allegation that Mr Boehm implemented new processes at Council making it harder for people to obtain access to council records, including financial documents, cannot be substantiated.
221. However, from the information available, I simply note that it appears that other processes were implemented around this time to improve governance processes at the Council (such as establishment of the Roxby Downs Audit Committee and the Reference Group and the MHM review).

Whether the council committed maladministration in public administration

222. My investigation has considered the allegations against Mr Boehm as a course of conduct over a number of years. As Mr Boehm was effectively acting as the council (which is a public authority), I have considered whether the practices, policies or procedures of the council resulted in substantial mismanagement of public resources. I have also considered whether Mr Boehm's conduct as a public officer involved substantial mismanagement in or in relation to the performance of his official functions.
223. My view is that the council's ongoing practice of directly engaging [Mr A] and [Mr B] for a large number of significant projects (as outlined above) over a number of years without going to tender resulted in substantial mismanagement of public resources.
224. While I accept that there was a genuinely-held perception in the Roxby Downs community that Mr Boehm was effectively 'giving jobs to his mates', that allegation has not been substantiated. Given the concerning lack of documentation, however, it is not possible in retrospect to determine whether the council received best value for money by those various engagements. Regardless, by failing to properly test the various proposals by [Mr A] and [Mr B] (or as it appears, in some situations, to even obtain a proposal), I consider the council did not manage its resources appropriately. I consider that the mismanagement was substantial, noting in particular the number of direct engagements and significant amount of money involved.
225. In reaching that view, I have noted Mr Boehm's comments that he considers that the engagements of [Mr A] and [Mr B] were justified and successful. I also acknowledge that various improvements were introduced by Mr Boehm and reviews of council processes were undertaken at Mr Boehm's instigation.
226. The lack of accountability and transparency is particularly concerning, especially given the fact there was only limited oversight of Mr Boehm. I have noted Mr Boehm's comments that he was subject to oversight of the department particularly in relation to budget issues. I note, however, that there was not the same oversight by community representatives (i.e. elected members) as with other councils.
227. In my view, it is not surprising that there was considerable community mistrust in relation to the council's processes in directly engaging [Mr A] and [Mr B]. In that regard, I note the comments in the Comrie report about the impact on a community of a lack of transparency and accountability:

RD Council has not since inception had an elected council. This is unusual in Australia. Typically it occurs because the elected body has been dismissed as a last

resort in order to resolve a local political problem. During this period an appointed Administrator makes all decisions on behalf of the entity. If a local government operates for a very long period of time with an Administrator it creates risks with the potential blurring of the lines between the roles of a chief executive and governing body. Without other compensating arrangements being in place it must mean less transparency by accountability of the local government to its community and a lower sense of ownership of it by the community. In RD Council's case opportunities exist to reduce such risks. Notwithstanding this it is important to recognise the diligent and successful performance of the incumbent within the current environment.

228. For the reasons set out earlier in this report, I also consider that the various contracts were entered into contrary to the council's tender policies and the requirements of section 49(2)(c) of the Local Government Act.

Whether Mr Boehm committed maladministration in public administration

229. I consider that Mr Boehm's conduct in:
- entering the various contracts without tendering or given proper consideration to tendering
 - failing to keep proper records in relation to those contracts
 - failing to implement a tender policy between 2000 and 2003
 - failing to comply with tender policies once implemented
- constituted substantial mismanagement in or in relation to his official functions as Administrator.

Administrative error under the Ombudsman Act

230. While I note that no formal complaints were received in relation to [Mr A's] alleged conduct, it does not appear that the council had appropriate processes in place to address complaints of bullying and harassment. In particular, I consider that the council's failure to have in place a clear, comprehensive and appropriate procedure for dealing with bullying and violence, the council acted in a way that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.
231. I also consider that by failing to appoint an Equal Opportunity Officer for the purposes of the May 2003 Policy, the council acted in a way that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.
232. I also note with considerable concern that certain documentation regarding the various direct engagements of [Mr A] and [Mr B] has been destroyed. 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'.²⁷ 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.
233. 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.
234. I have noted Mr Boehm's response to my provisional report in relation to this issue. For the purposes of clarification, I do not consider there is any evidence that Mr Boehm personally or willfully destroyed records. Instead, my finding is in relation to the council itself, and based on Mr Boehm's own acknowledgment that a council order book has been destroyed.

²⁷ Section 3 of the State Records Act.

Conclusion

In light of the above, I consider that:

- the council committed an act of maladministration in public administration within the meaning of section 5(4) of the ICAC Act in that its practices and procedures in directly engaging [Mr A] and [Mr B] for various projects resulted in substantial mismanagement of public resources
- Mr Boehm committed an act of maladministration in public administration within the meaning of section 5(4) of the ICAC Act by the following conduct which constituted substantial mismanagement in or in relation to performance of his official functions as Administrator of the council:
 - entering the various contracts without tendering or having given proper consideration to tendering
 - failing to keep proper records in relation to those contracts
 - failing to implement a tender policy between 2000 and 2003
 - failing to comply with tender policies once implemented
- the council acted in a way that was wrong within the meaning of section 25(1) of the Ombudsman Act by:
 - failing to have in place a clear, comprehensive and appropriate procedure for dealing with claims of bullying and violence, thereby acting in a way that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act
 - failing to appoint an Equal Opportunity Officer for the purposes of the May 2003 Policy, thereby acting in a way that was wrong for the purposes of section 25(1)(g) of the Ombudsman Act
 - disposing of records other than in accordance with the State Records Act, thereby acting in a manner that appears to have been contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Recommendations

As Mr Boehm is no longer employed by the council, I do not consider it necessary to make any recommendations in relation to his conduct as an individual.

I recommend that:

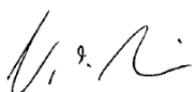
1. the council review its current contracts and tendering policy (i.e. the 2015 policy) having regard to the requirements of section 49 of the Local Government Act and to amend the policy to clearly provide that reasons must be recorded for entering into contracts other than those resulting from a tender process
2. the council review its violence and bullying policy and procedure (i.e. the Bullying Procedure) to provide a more detailed process for dealing with complaints about violence and bullying including identifying particular staff to whom complaints can be made (including a number of alternative staff in the event that the complainant is not comfortable complaining to a particular staff member) and a detailed process and timeline for how the council will deal with such complaints
3. the council appoint a designated Equal Opportunity Officer, appropriately trained to handle complaints of discrimination and harassment
4. the council remind all staff of their obligations under the State Records Act.

Final comments

I intend to send a copy of my report to the Minister for Mineral Resources and Energy as required by section 25(3) of the *Ombudsman Act 1972*. I will also send a copy of my report to the Minister for Local Government.

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by 9 June 2017 on what steps have been taken to give effect to my recommendations; and, if no such steps have been taken, the reason(s) for the inaction.

While I have noted the complainant's comments seeking prosecution and a forensic audit, in all of the circumstances, I do not intend to take further action in that regard, noting in particular that my investigation did not find any evidence of dishonesty on Mr Boehm's part.



Wayne Lines
SA OMBUDSMAN

8 March 2017