



DISTRICT COUNCIL OF COOPER PEDY

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Dear Sir,

RE Response to letter dated 5th September 2018 Ombudsman's report 2017/12231

The council have requested I respond to your letter relating to the Ombudsman's enquiry by indicating that the current council is clearly not the same council that resolved to sign the Power Purchase Agreement with EDL however in accordance with natural justice a response has been provided on behalf of the council at the time.

In providing that response there is considered to be a serious lack of natural justice attributed to the council of the time. A very unbalanced set of conclusions and therefore recommendations has been articulated based on generally a lack of a thorough investigation and the complicity of the State and Commonwealth government agencies driving the project from the outset.

The council of today would like it to be known that whilst they agree that the council of the day could have been more appropriately guided by the procurement and prudential requirements regrettably the failings of the administration and the strong interference in the process by state and federal politicians and administrations have clearly not been brought to account in this matter.

However not for the reasons mentioned in your letter but rather to assist in addressing the councils financial sustainability request you give consideration to enacting sec 273 of the Local Government Act and urgently appoint an administrator to assist in the serious issues identified in this attached response.

Your respectful consideration of this submission is requested.

You're sincerely

Colin Pitman
Acting CEO

Defence and Mitigation of entering into a Hybrid Power Purchase Agreement Between DCCP and EDL

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SUMMARY

DCCP summary assessment of the situation is that DCCP did make an error of judgement in signing the Power Purchase Agreement with EDL (PPA), however this did not amount to any financial mismanagement of funds. In fact the decision was cost neutral to Coober council.

The councils defence against the allegations and mitigating circumstances for this error are:

- DCCP were unduly and unreasonably pressured by the SA Government (SAG)/Energy Department (DSD), despite many protestations, including letters to Minister Koutsantonis;
- SAG had essentially threatened to withhold RAES funding if Council did not sign;
- The Council do not and were not expected to have the knowledge necessary to evaluate the PPA;
- They had to rely on the advice of others including the Energy Department (DSD), SAG, Kelledy Jones (KJ) the DCCP lawyers, Bestec Prudential Report ARENA and Resonant's Due Diligence report; The "in Daily " article attached supports this view where quotations by Smith are quite explicit in stating "that the state government not only negotiated the deal on behalf of the council but believed it had covered off of on its legal obligations"
- The advice given by DSD repeatedly stated words to the effect of "**Council would be no worse off**" because of RAES subsidies and underwritten by DSD Officers who said that the project/PPA had been reviewed by ARENA and its panel, Deloitte, Parsons Brinkerhoff (PB), the Coordinator General, Crown Solicitors Office (CSO) and "the project was a good deal";
- ARENA's Simon Woods had also given the impression directly to DCCP that they had reviewed the project/PPA with words to the effect of "this is the best project I have reviewed" –
- It is important to note that ARENA undertook a pre grant evaluation of the EDL application for funding by ensuring the pricing for the EDL infrastructure was competitively tendered. This fact was presented by Mr Kay and Frischknecht of ARENA to the SENATE ENVIRONMENT AND COMMUNICATIONS LEGISLATIVE COMMITTEE MEETING ON Tues 23rd of May 2017 (copy attached). DCCP was made aware of this evaluation prior to the decision to award the contract. This fact was not reported in the Ombudsman's report. This evidence runs counter to the final ombudsman's report and discredits the evidence provided by ARENA.
- Kelley Jones (KJ) advice to DCCP in October 2016 was that the project was 'good to go'. Resonant strongly queried this, and KJ did then make amendments and added various 'protections to itself', but still never advised that it was essential that DCCP could not proceed without a positive Prudential and Due Diligence report (as was previously advised in 2014);
- DSD explicitly and repeatedly overruled advice provided by Resonant Solutions, who DCCP engaged to undertake Due Diligence. In so doing, DSD took on the Full role of advisor as well as project proponent. Furthermore DSD had previously asked Resonant to not "derail the project as they had worked on it for many years";
- DSD had clearly demonstrated that this was a DSD driven project in all respects. DSD had requested that DCCP "support" the project, had done all the negotiating and

spent around a 'person year' reviewing this, CSO had spent \$700,000, DSD had engaged Sable without passing on the information to DCCP;

- SAG had negotiated the agreement on many occasions without even consulting DCCP;
- DCCP were let down by the contracted CEO Renshaw and LGA advisor Hitchcock, who did not provide the necessary reports from which DCCP may have made a different judgement, and both acted in a manner more consistent with SAG agents rather than acting in the interest of DCCP;
- Hitchcock was in breach of the act by committing DCCP to the PPA without the signed Deed of Grant and not being formally contracted to DCCP;
- DSD denigrated anyone who questioned the project/PPA including Cr Provatidis, Athanasiadis and Rapaic and later Davies of Resonant. This appears to be a case of 'poisoning the well';
- DSD had poor record keeping which allowed financial mismanagement with regards overpayments on the RAES subsidy in the past. In addition DSD have sparse records around key meetings. If DCCP are held to account on this, it equally applies to DSD.
- DSD and Renshaw avoided any community consultation despite repeated requests - Only after the PPA was signed were the community advised of the PPA and that "residents could not connect to the grid and have PV". Under these terms, it is beyond doubt that the community would have rejected the project;
- SAG Officers (DPC) continue interfering in DCCP's choice of consultant by refusing to meet unless Resonant is not present, in what clearly appears to be an attempt to avoid scrutiny or difficult questions.
- All the above clearly demonstrates that SAG Officers were determined to execute the PPA/project no matter. They were driving it, they were the effective owners. They claimed to have done Due Diligence (despite subsequent findings as to its inadequacy). They took on the advisory role and they relied on their experience (which turned out to be minimal), and they cast aside anyone with reasonable questions or doubts. **This cannot be construed as anything but a SAG project, and DCCP were a mere hurdle to its implementation.**

Based on the above, it was not unreasonable for DCCP to rely on SAG and ARENA and thus, regardless of the state of DCCP's paperwork, the outcome would still have been that DCCP had no choice but to sign. Moreover, because of the project being underwritten by SAG, and federal government's agency ARENA there was no easily perceived financial mismanagement by DCCP. The fact that SAG and ARENA after tender got prices so wrong (e.g. capex of \$25m was more realistic than actual \$39m), was not for DCCP to judge.

The Council's assessment of recent reports is they captured key facts and the essence of the project, but got it wrong in with regards to DCCP committing poor administration for the reasons set out above. Further, we believe that the ombudsman's report to the government got it wrong and failed to question key witnesses, failed to present key new evidence, failing to assess actual pricing of a similar PPA in 2016 yet relied on DSD experience which has been found wanting, failed to re-question key witnesses upon new evidence presented. These omissions have contributed to an incorrect recommendation.

It is the intention of this report, to show that there is substantial evidence and weight of argument that DCCP have a solid defence and mitigation against poor administration. It is

unfortunate, that even after the 19th January meeting where council did query the wisdom of the project. Again there was constant pressure by DSD/SAG to proceed and not consider Resonates Final Report in February.

Resonant's report stated that \$85m could be saved. Resonant was not itself proposing any specific technologies (though DSD and SAG tried obfuscating the issue by saying 'Graham' was proposing new technologies not yet ready), but had identified around 8 companies that had more experience than EDL. Resonant then provided EOIs to SAG from Siemens and Epuron that showed that the PPA could be done for nearly half of the EDL bid. SAG dismissed this very credible information in favour of proceeding with the EDL deal regardless of the information before them.

It is understandable that recent reports recognise this substantial waste of public funds, but we believe that the blame rests squarely at the feet of DSD / SAG.

PROJECT PRICING

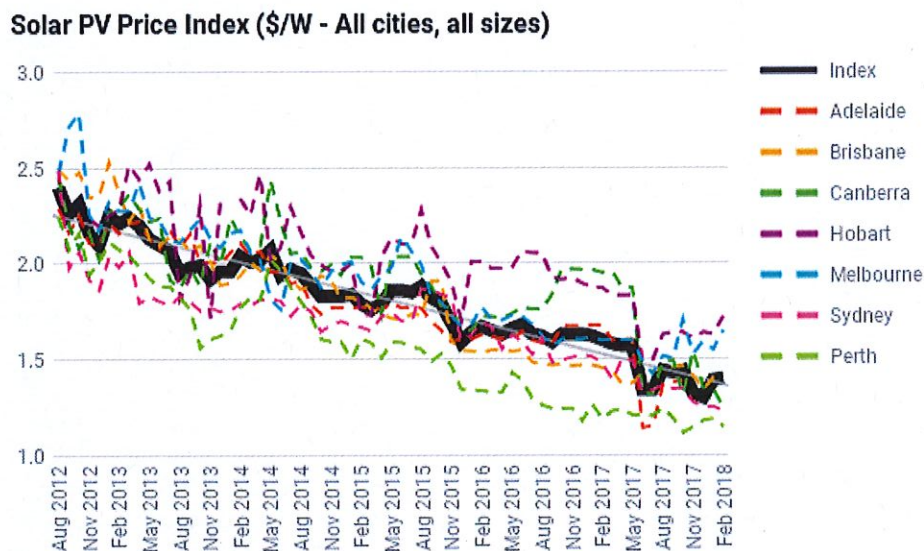
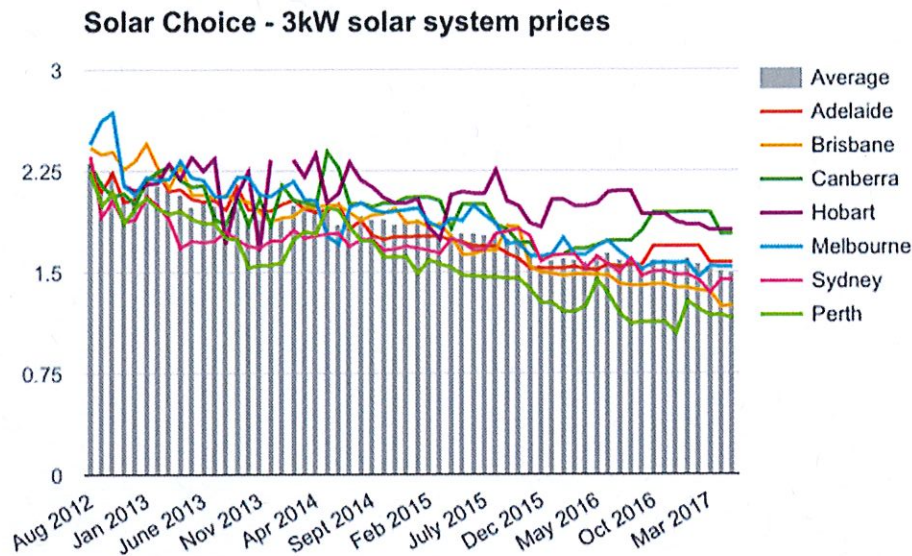
Much of this case hinges on whether the pricing provided by EDL was fair and reasonable at the time of the project being signed.

A key report done by Parsons Brinkerhoff (PB) on behalf of ARENA was done in May 2014. The report does not assess the PPA, but rather considers only the capex amount as set out in the summary table below:

	Capex (AUD)	Comments
4 MW Wind	14.40	scaled from 3MW
1 MW Solar	3.54	scaled from 2MW
DUPS - enabling tech	2.83	2x800MW
Dynamic Resistor 2.5MW	0.92	incl in DUPS
Battery 0.5MWh/2MW	2.10	incl in DUPS
6.6KV line	0.00	incl in wind price
Existing diesel gensets	0.00	\$400/MWh
Total	23.79	
Total shown in PB report	33.6	
Unexplained difference	9.81	

The amounts provided in this report only add up to \$23.8m, yet PB had in the report stated that the amount of \$33.6m was a reasonable reflection, but the price could go down with tendering. Assuming that \$9.8m was for project management and contingency (though this is excessive), then \$33m for the project at this time is not too unreasonable.

What is most disconcerting is that the Capex crept up to \$39m and SAG and ARENA upon tender did not highlight this increase, nor demand an explanation, but continued to push and endorse the project up to the time it was signed 2 years later. During this same 2 year period, renewables had dropped considerably between 15% and 30% - see graphs below.



This is consistent with a long term trend as well, so should not have come as any surprise to anyone in the renewable industry. Based on this, it would have been reasonable to expect that capex should have come down to around \$25m – which would have been closer (but still not as low) as that provided by Siemens and Ephron.

Thus, the final capex of the PPA was \$39m, whereas based on early estimates by PB and indeed EOIs a price of \$25m would have been fairer.

Resonant advised DSD of this Capex discrepancy, notwithstanding that DSD and SAG should have been fully aware of the decreasing costs of renewables vs the increasing cost of the EDL project. DSD claims “he had not seen the report until 2018”. This is disingenuous, as he had other reports and the summary, they had the key EOIs and could have simply asked for the report – but chose not to. Instead, they relied on EOIs for the Marree project (12x smaller than Coober Pedy and with added complexity), whereas

there were many better examples of similar projects such as Kangaroo Island (which had scaled prices and capex less than half that of Coober Pedy).

The clearest indication of all that EDLs prices were way out of line was that 3 bids by more experienced companies had been received that came in at nearly half of EDL.

The comparisons are equivalent in the sense that the conditions imposed and RECs, subsidies apply to all. Subsequent to this analysis it was noted that the EDL annual charge would be closer to \$6.5m (before RECs, diesel rebates). Siemens and Ephron noted their prices were high and would come down at tender.

Of further importance, and left out of recent reports to the SAG, are the other criteria about experience, SA office, and the upgradability. EDL proposed a unique proprietary DUPS system that is rare worldwide.

Resonant Solutions (Pty) Ltd

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Energy, Project Management, Engineering

Doc: CP-xls-16-01

Author: G Davies

Date: 08 Feb 2016

Cost Comparison between vendors

Vendor Comparisons

	EDL (EG)	Siemens	Epuron	ZEN/PV	
1 Total Capital	36	26	20	18	Million AUD
2 Ave sell rate	61	36	25	20	c/kWh
3 Total PPA cost p.a.	7.5	4.4	3.1	2.4	M\$/a
4 SAVINGS PA	-	3.1	4.4	5.1	M\$/a
5 TOTAL SAVINGS - 20yrs	-	62.0	88.9	101.1	M\$ Note 1
6 Maximum Liability	208	TBD	TBD	TBD	M\$ Note 2
7 Wind experience	No	Yes	Yes	No	
8 Solar PV experience	No	Yes	Yes	Yes	
9 Battery experience	Yes	Yes	Yes	Yes	
10 Renewable integration experience	No	Yes	Yes	No	Note 3
11 Developer experience	Yes	Some	Some	Some	
12 Diesel experience	Yes	Some	Some	No	
13 SA Office	No	Yes	No	Yes	
14 Use of surplus energy	No	Yes	No	Some	Note 4
15 Upgradeable	Difficult	Yes	Yes	Yes	
16 Diesel capacity increase	44%	0	0	0	Note 5

NOTES

- 1 Using present day value for simplification and comparison. A DCF/NPV to be done later
- 2 This is the maximum exposed theoretical limit based on the PPA contract. 100% diesel less LDs
- 3 This refers to either an inverter, flywheel or DUPS (Diesel Uninterrupted Power Supply)
- 4 Siemens bid includes an electrolyzer for 'free' hydrogen generation. ZEN and PV propose increase batteries
- 5 EDL propose a DUPS system which requires diesel engines. The other vendors intend phasing out diesel
- 6 For comparison purposes, the costs shown are those that will be charged directly by the supplier.
- 7 Diesel Rebates and LGCs are recoverable by DCCP but should be the same regardless of supplier
- 8 Charges (prices) neglect subsidies from ARENA and DSD for comparison purposes.
- 9 ZEN/PV is based on a budget sent to DCCP and verbally communicated to Resonant
- 10 The proposal are subject to finalisation, possible upfront data collection, certain civils and contingency.

Resonant's Estimate of total project savings is \$85M over the project life

This is based on:

It is considered that Zen Energy, are still moving into the integrated renewable space.
Siemens are renowned for being conservative, and they have offered an upper bound
This is a 30% +/- estimate which has been tested against other typical market values
It is also a rough average of the 3 proposals

In summary, recent reports to the government refer to pricing from Smith, but have completely failed to evaluate what was a fair and reasonable price/cost at the time.

This is fundamental to the report, in that it demonstrates Smith as exaggerating his experience was blind to and disparaging of alternatives, obfuscated the key issues and is a compelling witness.

Defence and Mitigation Detail

The key conclusion of a recent report is that DCCP committed poor administration “through its negotiation and execution” of the PPA. Council claim that this is incorrect, or at least that there are mitigating circumstances.

The following set outs reasons for the above claim

- 1) DCCP were unduly pressured into the PPA on the basis that:
 - a. There is little to no evidence throughout the whole process that DCCP themselves negotiated any single clause of the contract. A comparison with the 2004 PPA indicates that every amendment is to DCCP detriment.
 - b. The only amendments that were proposed were by Kelledy Jones (KJ) or Resonant. Amendments of any substance were first raised by Resonant based on a mark-up of the PPA in November 2015.
 - c. DCCP pushed back on many occasions and on each occasion DSD reassured DCCP. DSD never took up the position to ‘bat’ for DCCP against EDL and on many occasions it would appear that their correspondence resembled that of the sales team of EDL.
 - d. DSD attempted to pressurise Resonant within 1 day of Resonant receiving an instruction to independently assess the project. Catherine Way of Renewal SA was tasked with contacting Davies and stated “we have worked on this project for 2 years and do not want it derailed”. Resonant replied “we are tasked to provide an independent assessment and will do so. If the project stacks up as you claim it does, then there is no problem”.
 - e. There is scant evidence that DSD and ARENA after competitive pricing negotiated in DCCP’s favour on any clauses in any document.
 - f. DCCP were told by DSD that SAG (The Ministers office, DSD and Renewal SA), ARENA (and their corporate consultants), EDL (as expected) and KJ agreed that this was a good project. Only Resonant spoke out against it – one can hardly blame DCCP for rejecting Resonant’s advice in favour of DSD and the other bodies.
 - g. DSD failed to advise DCCP that all the other bodies had limited terms of reference and none specifically reviewed the PPA. DCCP were not in a position to really judge this aspect due to all the complexity.
 - h. SAG had clearly stated repeatedly, that they (SAG) would pick up the ‘gap’ and any deficit. They had said that ‘Council carried no risk’. DSD were aware of an EDL letter from the CEO that said “The proposed configuration has been verified and subject to extensive due diligence by Department of State Development and ARENA and their relevant technical consultants” and later “financial risk in respect of the Project is therefore borne by DSD” yet failed to counter this argument by EDL. This is compelling – particularly to a remote Council. EDL then continue “savings achieved would simply reduce the ARENA

subsidy leaving the PPA tariffs unchanged". Again DSD did not reply to the contrary.

- i. SAG was aware of the EDL correspondence and rather than refute it, reinforced it with their own emails where DSD staff stated "Council would be no worse off".
 - j. There are many instances where the PPA was negotiated between ARENA, EDL, and SAG, where Council were not included – this may have led Council to believe that they were really not part of it, but if they did not sign, they could feel the wrath of SAG and may lose other benefits to the town. There is no clear evidence of the DSD threat of pulling funding, but was verbally stated and implied. In front of KJ and Resonant, Renshaw said "this is Gillman2", "we will be machine gunned", "and we have a gun to our head".
 - k. Nick Smith of SAG stated that 'SAG would step in if there was an issue with the PPA to minimise the RAES exposure'. By this is meant, they would keep watch on EDL and act for DCCP.
- 2) DCCP did not have endless funds to review the PPA, and relied on their lawyers KJ. Unfortunately, KJ did not declare that they had never had any energy, electricity or PPA experience (none of these words appeared on any capability statements, CVs of website at the time). Adam Crichton (ex KJ), went on to say, that Michael Kelledy saw this as an opportunity to get into this market.
 - 3) The PPA and Hybrid project was way beyond what DCCP would be expected to know, and was made more complex by the involvement of ARENA grants, RECs, rebates. No Council should be put in a situation such as this. DCCP did not willingly invite any changes to the current electricity arrangement and indeed were under no pressure to change as electricity was secured until 2019. SAG was overly enthusiastic in wishing to put in renewable energy and saw DCCP as an avenue for this. Ironically, the EOI process showed that in fact a renewable hybrid was the cheapest form of power – just not from EDL.
 - 4) DCCP was a small Council, who had had a number of changes of staff (Refer below). Whilst this is not the fault of DSD or EDL, it was incumbent on DSD to assist to such that DCCP could make an informed opinion. Rather DSD took advantage of this situation to push the project through.
 - 5) SAG and KJ showed reluctance to take minutes or record sessions when requested. This in itself is a concern, but then set a 'precedent' in DCCP also not fully capturing information.
 - 6) There are many questions unanswered. Possible questions for key people appear in a later section but include:
 - a. Adam Crichton, Michael Kelledy, Tracey Riddle of Kelledy Jones;
 - b. Ian Kay or Simon Woods of ARENA;
 - c. Vince Duffy – the originator of the project terms/basis and Director of DSD;
 - d. David Hitchcock (acting CEO but not an employee or paid by DCCP) had the full knowledge of Resonant's report and conclusions, though initially denied this, and were advised of his fiduciary duty. He did not fully inform Council of developments, PPA updates and risks;
 - e. Catherine Way – Manager of Renewal SA who tried to persuade Resonant to "Not derail the project" and later questioned "what was Davies trying to achieve, and was he acting in self-interest?"

- f. Further questions of Renshaw, about what information was presented at 19th January meeting, what happened to records?; The ombudsman did not query the following
 - g. Further questions of Nick Smith after further evidence emerged;
 - h. Gaby Jaksa of CSO at the time of the PPA;
 - i. Sabble for SAG indicated in a series of emails that the project looked ok, but what was their scope and terms of reference?
 - j. Bestec on the terms and conditions of their prudential report
 - k. Siemens to verify that their bid was realistic and would have provided electricity at nearly half the price;
 - l. Epuron to verify that their bid was realistic and would have provided electricity at nearly half the price;
 - m. Zen to verify their bid costs and that it was for 100% renewables;
 - n. Independent technical/commercial/legal energy experts regarding realistic prices of electricity generation, risks, LDs, transfer prices;
 - o. Most surprising of all was that there were no questions of EDL as to their relationships, beneficiaries, who they negotiated with, why EDL believed that DCCP carried no risk and many other questions.
- 7) A recent report put too much weight on the experience of staff of SAG. At the time, it was not unreasonable for DCCP to give SAG credit, but it is now clear the SAG got things badly wrong on pricing, risks, advice etc. Why does the recent report to SAG then give credence to DSD experience with Marree and remote power? At this stage, it appears that SAG still had little experience on wind, solar, SCADA, integration above the 1MW scale. DSD describes Davies work as "rubbish", but Resonant's work has proven correct.
- 8) How did the Project capital go from \$33m in Dec 2015, to \$36m in Feb 2016 to a final value of \$39m when the PPA was signed? Renewables were trending downwards at this stage and capex of \$25m would have been more realistic at the time the PPA was signed. Possibly this increase in capital was somewhat fictitious, and made the project not look like an absolute windfall. \$39m for 5MW of renewables with integration control is a staggeringly high amount as was confirmed by many in the industry.
- 9) **Resonant's role was to INDEPENDENTLY and HOLISTICALLY assess the EDL proposal and if necessary undertake an EOI and tender process. Resonant was NOT promoting a particular technology but was rather the facilitator to find the best procurement approach for DCCP.**
- 10) DSD repeatedly denigrated and rejected Resonant's role, and in so doing by proxy became the defacto advisor and proponent to this project. Furthermore, by advising DCCP that there was no need to go to tender, DSD then took on the role as legal advisor to DCCP.

FURTHER INFORMATION REQUIRED

Recent reports to SAG failed to gather some critical information from key witnesses.

Some key questions that need to be asked are listed below.

VINCE DUFFY, NICK SMITH, CATHERINE WAY

DCCP maintain that by far the majority of the blame for this project preceding rests with DSD an ARENA officers and/or the Energy Ministers office. Had this project been an economic success, it is most probable that DSD would have claimed it as theirs. Key questions to DSD Officers by the ombudsman of Duffy and Smith and Renewal SA Officer should be prompted by the press articles on this matter. Attached is an article from "In daily " that quotes from a recorded discussion with Nick Smith of DSD relating to the extent of government involvement in the PPA long before the council became involved and the sign off by the state government to the PPA before Coober Pedy council agreed to the contract with EDL

The ombudsman should have included the following questions :

- a) Why did they all refuse to meet with Resonant from December 2015 onwards – particularly in the face of compelling EOIs and the cost of the PPA in a detailed and scathing Due Diligence report on?
- b) Why did they not provide the Sabble report to DCCP?
- c) Why did they not furnish at least summaries of all the Due Diligence work they had done during 2015 and 2016 to DCCP?
- d) Nick Smith was disparaging of Resonant's work. Does he now acknowledge that costs of electricity could have been nearly half?
- e) Catherine Way is now Development Manager at DP Energy. Can she comment on the pricing of remote hybrid projects now that she has more experience?
- f) Was Davies ever referred to as an "agitator" by any DSD officer? If so, ask on what grounds? Was this intended to dissuade DCCP from referencing Resonant's advice?
- g) Why did they not contact Siemens and Epuron to better understand their bids? Smith dismissed Siemens technology as not ready. Why was this said, when Siemens were guaranteeing the price? Epuron had already done hybrid systems, why were they not asked about their wind, Solar and integration work?
- h) Are Siemens known for being high quality? Expensive? If so, it is reasonable to foresee that prices on an open tender could have been below that of Siemen?
- i) Did they contact Resonant the day after Resonant were asked to review the PPA? Why? What did Catherine mean by "we have been working on this project for 2 years and don't want it derailed"? Were they trying to influence an independent study?
- j) Had a Minister or the Premier instructed that this project/PPA shall proceed? Did DSD feel pressured into delivering on this project?
- k) Did they know EDL prior to this project and if so in what context?
- l) Did DSD and ARENA genuinely believe the EDL to be a good deal and for that reason and that reason alone did all they could to get it across the line?

- m) Why did DSD allow EDL to compare the PPA with a 20 year diesel PPA, when not a single industry figure would consider more than 10 years for a diesel only solution? Remote power operator is reducing costs using renewables.
- n) Why did they not get further advice from an independent specialist to verify the potential of Resonates claims regarding Siemens and Epuron instead of simply dismissing them?
- o) Smith/Duffy correspondence referred to Councillors with their own agenda and hijacking. On what basis was this said? Was this because they queried the PPA?
- p) DSD acknowledge that there had been overpayments of the RAES subsidy in the past due to poor record keeping by DCCP and DSD. How did DSD manage to make this oversight? Did this not prejudice the future RAES subsidies? DCCP are accused of poor record keeping, but does this not also apply to RAES?
- q) Have DSD or SAG officers said they will not meet with DCCP if Resonant are present?
- r) Is again a clear indication, that DCCP have by force taken on the role of advisor for DCCP, but moreover are bullying DCCP into 'towing the line'.

MINISTER KOUTSANTONIS

Why did the Minister never respond to Mayor Provatidis critical letter dated 7 December 2016?

Did this not show that yet again, DCCP were concerned about the project?

According to Catherine Way, the EDL proposal RAES scheme and letter was to be signed off by CE and not Cabinet. Why was this changed to Cabinet signing off on this?

KELLEDY JONES

Kelley Jones acted for DCCP through the PPA process. DCCP took legal action against them, however dropped this sometime in mid-2017.

Key questions for Kelley Jones should have included:

- a) What experience had they in the energy or electricity sector in 2015/16?
- b) Were they qualified to advise on the PPA and if so in what respect?
- c) Why did they not during 2015/6 refer to the advice given in 2014 that DCCP seek a prudential report and due diligence?
- d) What was their opinion of the Bestec report – given that they had advised this?
- e) Why did they not clearly state that the Bestec report was inadequate if that is the case, and why did they not advise for it to be redone?
- f) What amendments to the PPA had they suggested up until Resonant's engagement?
- g) What amendments did they suggest after Resonant's engagement?
- h) Why did they not advise Renshaw that he was a) not authorised to say "we have a deal" on 13th January, b) advise Renshaw that the 19th January meeting was inappropriate and lacked rigour – given its critical nature and sparse documentation?
- i) Why was Hitchcock not informed by KJ of the Resonant report?
- j) Did Tracey Riddle previously work at ICAC?

- k) Did she respond to ICAC in place of Renshaw because her position would provide more credibility?
- l) Who changed the PPA to reflect that the generation license was to become EDL's?
- m) Who gave it away?
- n) When did KJ shred the paper copies and records of DCCP?
- o) On what basis did they destroy this, when DCCP had specifically asked for them?

ARENA

In addition to SAG and its Officers (including Minister, DSD and Renewal SA), ARENA carries a fair degree of blame. While they conducted a tendering processes not reported in the ombudsman's report to determine this was a good project, they failed to make it clear that they did not review the PPA, or, that if they did, they took responsibility for allowing a 'windfall gain' even after they had made an independent tender call.. ARENA did acknowledge (by omission) that no tender had taken place, when in fact it had and it showed ARENA's evidence in a poor light. A further mitigating circumstance for DCCP.

Questions for ARENA should include: The following questions would be useful:

- a) Did Simon Wood say that "this is the best project reviewed"?
- b) Did they review the PPA or not?
- c) How could they be sure there was no windfall if they had not reviewed the PPA when in actual fact they had?
- d) Did they ask EDL to do a competitive tendering process on the EDL components of the bid as reported in the senate committee meeting

HITCHCOCK

Council believe that Hitchcock was not acting in the best interest of DCCP. He was not employed by them, and was 'parachuted in' by and paid for by LGA. The report to SAG is largely correct that Hitchcock was there to execute the PPA, having been duly authorised in a motion by DCCP to do so, however he had received critical information from Resonant and as an energy infrastructure person, would have been expected to advise DCCP accordingly.

The following questions would be useful:

- e) What experience had he with energy and electricity infrastructure?
- f) Who paid his salary while at DCCP?
- g) Who advised him about the PPA and project?
- h) What advice did he receive from DSD and separately from KJ?
- i) What did they say regarding Resonant?
- j) Why did he initially deny receiving information from Resonant and later admit to this?
- k) Why did he not investigate Resonant's claims further – given his experience with said infrastructure?
- l) Did he believe that the PPA represented value for money?

- m) He referred to himself as 'just the messenger' when signing the PPA. Does he believe that is still the case?
- n) Was he aware that he was in breach signing the PPA, without the Deed signed?
- o) Why did he not inform Council of this?

RECTIFICATION ACTION

Coober Pedy council believe when considering the maladministration allegation it is important that the minister note the current council is not the council that that undertook the decision to sign the PPA and if the council elections are successful the council to be elected will be two election cycles from the date of signing the PPA. To impose on the community of Coober Pedy a penalty that denies their democratic right to have a popularly elected council two terms from the date of the signing of PPA agreement could be considered unfair and unjust.

The following mitigating issues that address the matters that arise out of the minister's letter and support the need for a more logical conclusion

1. The council as an elected body has since the signing of the PPA achieved remarkable financial results reducing their operating deficit from \$3.8 mill in 2015/2016 to \$..05 mill in 2016/2017
2. The council have adopted a records policy and appointed a records officer of impeccable qualifications
3. The council have appointed an experienced Acting Mayor with no attachment to the PPA. His appointment was due to the resignation of the mayor after the statutory time limit for a bi election and he and the council have shown outstanding leadership.
4. The appointment of a very experienced officer as acting CEO in May with impeccable credentials due to the recent resignation of the incumbent CEO due to ill health. He has acted as CEO of three of the largest local government subsidiaries reporting to five councils, is a world leader in the industry winning the world water industry award in 2006 and has a history of leadership in the industry. He lives locally
5. The recent appointment of an in house chief financial officer in conjunction with two highly credentialed CPA consultant accountants
6. The introduction of process of renewing the asset management plan, long-term financial plan, internal controls, prudential processes, procurement processes, risk management plan and recasting the chart of accounts, updating all policies and recently completing of the final accounts showing a remarkable financial turnaround.
7. Each staff resignation at a CEO or an officer level was taken as a decision of the individual officer without reference to the incumbent council and it is incorrect to blame the council for the resignations. It has always been difficult to retain professional staff at remote locations.
8. Notwithstanding the lack of adherence to the procurement process for the PPA the prudential process would have identified had it been undertaken that the net financial impact on the council's finances would have been zero with a risk rating which is very low. This would have been due to the undertakings given by the state government to meet the outstanding cost of generated power above the rate income and bad debts with the letter of

comfort for the 20 year life of the contract granted by the state government

9. Consideration by the Minister to action in accordance with s 273(2)(c)

Not for the reasons mentioned in the attached report or the ombudsman's report the following issues are presented because the council considers it is their fiduciary duty to report on its inability to operate in a manner compliant with all of the provisions of the Local Government Act.

- The Coober Pedy council's outstanding debtors list is proportionally high and is increasing due to the statutory provisions provided in the ESCOSA retail licence for water and power. A large number of ratepayers are using liberally the hardship provisions of the licence and hardship policy to demand concessional repayment plans. At least 140 hardship cases after financial counselling many of whom are not meeting the cost of the current years outstanding rates let alone the historic outstanding debts. The cost of servicing the debt as the result of this shortfall is a cost to the rest of the community. (refer to the attached table)
- The adjustments to the payments by RAES under an arrangement of subsidy post the payment to EDL and a reduction in the payments due to poor expenditure reporting and lack of due diligence by RAES and the council extending back many years has meant the amount now withheld is estimated to be \$2.2 mill. The council does not have the financial resources to fund the amount outstanding of \$3.4 mill due to EDL
- For the foreseeable future the inability of the council to repay the debt incurred due to poor financial management during the years 2012 to 2016 which whilst gradually reducing over the last two years remains at 30th of June at approx. \$6.5 mill (Ref This is likely to be an outcome of auditor general's report)
- The difficulty of a small council such as Coober Pedy to meet the demands of providing the largest number of services for any council in the state. These include airport management, potable water production and retail, power distribution, street lighting, Waste water treatment and retail, Waste collection and sanitary landfill disposal, public health and development control, child care and youth services, Quarry operations, road construction and maintenance and recreation services
- An inequitable share of the FAGS Grants due to inaccurate road lengths used in the formula.
- Delays in natural disaster relief funding from 2016 storm events
- High turnover of professional staff and consultants resulting a loss of continuity of intellectual knowledge

- A generally hostile political environment in the community due to competing development interests
- A generally aging plant and water power infrastructure requiring considerable investment to bring it to a deemed to comply condition.
- A perceived negative assessment of grant applications due to an inability by the council to match the sponsor contribution.

For the reasons mentioned above the road to economic sustainability cannot occur without government intervention

The following options are suggested

To re-establish stability the following is required.

- The council requires stability at a political level for a number of years with a business type approach to recapitalising its operations
- The management of the range of services requires a strategic assessment in conjunction with the government to determine the appropriate method of providing the services to minimise the demands on the council and the community
- The financial capacity of the Coober Pedy community to finance its indebtedness is beyond the political and financial capacity of the council and requires government intervention
- The RAES scheme has been poorly managed by the government and the council an leaves the council with liabilities beyond the councils capacity to meet its financial obligations and requires a more conciliatory attitude by government to resolving the issues particularly as the government were primarily instrumental in the execution of the PPA agreement with EDL
- The litigation which is arising out of competing interests in the township is negative to the orderly development of the township and requires an unbiased approach to the resolution of the issues

Conclusions

Clearly there will be those in the community that believe that the council can as an elected body trade out of this situation however this council is of the view that consideration should be given by the government to establishing a well-supported administrator to work with the current administration on the resolution of the issues mentioned in this report.

	>30 days	60 days	90 days	120 days	>120 days	Total
Electricity	210,827.22	65,771.13	67,010.49	888.32	716,950.83	1,069,447.99
Water usage	69,327.58	57,157.52	32,191.10	19,444.39	67,806.29	245,926.68
Sundry Debtors	31,989.65	1,174,121.74	5,454.34	59,335.42		1,803,051.63
General Rates	336,026.81					336,026.81
Water access charges	78,359.28					78,359.28
Sewerage	14,260.81					14,260.81
NRM Levy	22,464.10					22,464.10
	763,255.45	1,297,050.39	104,655.93	79,668.13	784,757.12	3,569,537.30
Includes >120 days (not specified)						
Includes Credit Balance of \$1,869.52						
Arrears not specified				Cash at Bank	792,098.14	
Includes 1st Qtr RAES bill - \$1,167,940.63				On deposit at LGFA	954,913.84	
				Total Cash	1,747,011.98	
				Undrawn LGFA CAD	1,800,000.00	