

OmbudsmanSA

REDACTED FINAL REPORT

Investigation pursuant to referral

Section 24(2)(a) *Independent Commissioner Against Corruption Act 2012*

Public Authority	District Council of Coober Pedy
Public Officer	[the former F&A Manager]
Ombudsman reference	2015/09623
ICAC reference	2015/000777; 2015/000952
Date of referral	13 November 2015
Issue/s to be assessed	<ol style="list-style-type: none">1. Whether the council (including the former F&A Manager) committed an act of maladministration in public administration by failing to pay contractors for work and using grant money for another purpose2. Whether the former F& A Manager of the council committed misconduct in public administration by requesting the ex-Mayor to affix the council's common seal to a debenture3. Whether the former F&A Manager of the council committed misconduct in public administration by providing misinformation and improperly pressuring council members to approve a proposed loan4. Whether the former F&A Manager of the council committed misconduct and maladministration in public administration by failing to submit an application for disaster relief5. Whether the council (including individual officers) committed maladministration in public administration by mismanaging council finances6. Whether the former F&A Manager of the council committed maladministration in relation to a fraud committed against the council by a third party7. Whether the former F&A Manager of the council committed maladministration in public administration by failing to lodge a Business Activity Statement

8. Whether the council (including the former F&A Manager) committed maladministration in public administration by allowing a debt owed by a local corporation to accrue without taking appropriate action
9. Whether the council (including the former F&A Manager) committed maladministration in public administration by remunerating employees for leave to which they were not entitled
10. Whether the council (including the former F&A Manager) committed maladministration in public administration by systemic non-compliance with the *Local Government Act 1999* including audit requirements
11. Whether the council (including the former F&A Manager) committed maladministration in public administration by general mismanagement in relation to work health and safety and risk management

Jurisdiction

This matter was referred to the Ombudsman by the Commissioner pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act), as raising potential issues of misconduct and maladministration in public administration within the meaning of that Act (the referral).

The referral arose out of reports to the Office for Public Integrity (OPI).

The referral gives rise to eleven issues.

Action taken

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

- assessing the information provided by the Commissioner
- seeking a written response from:
 - [the former CEO] of the council
 - [the former F&A Manager]
 - the council
- interviewing by telephone:
 - Cr Paul Athanasiadis
 - Former Mayor of the council, Stephen Staines
 - Cr Boro Rapaic
 - Cr Albert McCormack
- seeking a response from SAPOL and further clarifying that response
- seeking the views of the Commissioner on my draft provisional report
- considering:

- the ICAC Act and the Ombudsman Act
- the Code of Conduct for Council Employees (**the Employee Code of Conduct**)
- the *Local Government Act 1999*
- preparing a provisional report and providing it to the parties for comment
- considering the parties' responses 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

[The former F&A Manager] did not respond to my provisional report.

Mr Staines responded to my provisional report commenting in detail on various factual and procedural issues. I have considered all of the matters raised by Mr Staines and have addressed them as I consider necessary in the body of this report. Mr Staines also made detailed submissions as to whether my final report should be published.

The council responded to my provisional report:

- noting that the council has had an almost complete change in senior management staff since the relevant events
- stating in relation to accounting issues that:
 - the council's new management team is in the process of reviewing all of the services provided by the council, and, where appropriate, undertaking a complete analysis and review of its policies and procedures
 - the council has reviewed its practice of receiving all money into one account, and this will continue
 - the council employs a pool of funds approach to managing its cash flow consistent with various Local Government Association papers on treasury management
 - the council's investing and financing decisions are considered separately with investing decisions being driven by actions included in the Annual Business Plan (which would include any spending requirements to satisfy any grant responsibilities the council has contracted to undertake)
 - annual aggregated income is compared to annual aggregated expenses and a decision made by the council as to the most cost effective manner to fund any shortfall or surplus funds
 - the council will develop a comprehensive treasury management policy in due course to cover my recommendations 1 and 2

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.

- from an operational viewpoint the accounting system is adequate to differentiate between those funds received as grant funds and to adequately record income and expenditure in relation to those grants
- the council's accounting system is used to ensure that only those items of expenditure allowed under the conditions of grant are charged against the income received in respect of the grant; in most cases the largest component of grant usage is in relation to staff employed to deliver services involving employees' remuneration and relevant on[-]costs
- stating in relation to leave issues that:
 - the council is developing a written policy on the treatment of annual leave and long service leave that will ensure that leave is no longer taken in advance
 - the council's management has been instructed that no authorisation of advance payment of any leave type is to be made
 - that instruction is monitored by the payroll officer and any breaches are to be reported to the Chief Executive Officer for immediate action.

Background and evidence obtained in the investigation

1. It is worth noting at the outset that the allegations relate to potentially significant and longstanding issues within the council that have occurred prior to the current Chief Executive Officer's appointment. The council employees involved in the relevant matters are no longer employed by the council. In particular, [the former CEO] was employed as Chief Executive of the council from 22 June 2015 to 4 September 2015 (twelve weeks in total) and [the former F&A Manager] was employed as Finance and Administration Manager of the council between July 2003 and October 2015, with a period as Acting Chief Executive Officer from January 2015 to June 2015.
2. It is also worth noting that it has been recently announced that the Auditor-General will be examining the council's accounts. My investigation has not involved a full forensic audit of the council's accounts as the focus of my investigation has been to make findings in relation to the specific allegations of misconduct and maladministration set out in the referral from the Commissioner. It is important to note that my findings, particularly those relating to the council's compliance with auditing requirements and general mismanagement of council finances, are limited to the terms of the referral.
3. I address each of the allegations separately below.

Alleged failure to pay contractors

4. It was alleged that, as detailed below, the council failed to pay contractors in breach of a State Government funding agreement and other contracts, and used funding for purposes other than for which it was granted. It is alleged that [the former F&A Manager] was responsible for the conduct in question and failed to bring the matter to the council's attention.
5. In early 2015 the council received a grant of \$1.3 million from the State Government specifically for the purpose of work on the Coober Pedy airport (**the airport upgrade**).
6. The funding was granted pursuant to a funding agreement between the Minister for Transport and Infrastructure and the council executed on 18 November 2014 (**the funding agreement**). The then Mayor, Mr Stephen Staines, told my investigation that he did not recall being made aware of the execution of the funding agreement despite

numerous meetings with [the former F&A Manager] and the Chief Executive at the time of execution, Mr Phil Cameron.³

7. The funding agreement relevantly provided:

2. APPLICATION OF FUNDING

The Recipient must only use the Funding for the purpose set out in the Schedule ("Purpose").

3. UNEXPENDED MONEYS

- 3.1 For the purposes of this deed, the Funding Period is the period commencing on the Start Date and, subject to funding being available, will continue until the End Date. The "Start Date" and "End Date" are set out in the Schedule.
- 3.2 At the end of the Funding Period the Recipient must provide a report on the level of any expended Funding.
- 3.3 The Recipient must repay any part of the Funding which is unexpended at the end of the Funding Period to the Minister, unless the Minister gives written approval for the Recipient to retain the money.

[...]

7.OBLIGATIONS OF THE RECIPIENT

The Recipient must:

- 7.1 use the Funding only for the purpose for which the Funding was made...

[...]

PURPOSE

To widen the 1500m long Coober Pedy runway from 18m to 30m to provide a sealed homogenous surface. Re-linemark the 1500m runway to MOS 139 requirements for a 30m runway.

FUNDING PERIOD

Start Date: The date the last of the parties executes this deed
End Date: 27 February 2015.

8. The work was undertaken by a contractor (**the contractor**).
9. The airport upgrade was completed on 30 March 2015.
10. On 28 July 2015 Ms Erica Pasfield, Adviser, Aviation Policy, Department of Planning, Transport and Infrastructure spoke with [the former CEO] regarding funds owing to the contractor.
11. On the same day, [the former CEO] emailed Ms Pasfield (copied to [the former F&A Manager]):

Hello Erica - thank you for your telephone call today regarding funds still owing to [the contractor], by Council. I am advised that the amount is in the order of \$400k.

³ Mr Staines also noted in his response to my provisional report that the decision to enter the funding agreement was passed by resolution of the council on 14 October 2014 and executed on the same day that new council members were sworn in.

Council have been holding off payment to [the contractor], waiting for other significant payment to its account from State Government (DSD/Service SA) relating to other matters. Unfortunately, the delay that [the contractor] is experiencing is a direct impact from the delay that Council is also experiencing - Council hope to receive payment to its account from Service SA in the next few days at which time this will enable Council to pay its debt owing to both [the contractor] and one other - more a cash flow matter than Council intentionally ignoring its payment to [the contractor].

However [i]f this short timeframe does not suit will you please advise so that Council can consider further.

12. On 30 July 2015 [the former CEO] emailed Ms Pasfield (copied to [the former F&A Manager]):

Hello Erica - further to below, \$200,000 has now been transferred from Councils[sic] account today to [the contractor]. The remaining balance will be forwarded immediately upon receipt by Council of funds from SSA - Council has contacted SSA re gaining their commitment as to a date that funds owing Council will be sent. When we receive that commitment I will forward it to you accordingly.

Council apologises for the delay in finalising payments owing and I would ask that [sic] please pass Councils apology onto [the contractor].

13. On 31 July 2015 Ms Pasfield responded by email to [the former CEO]:

Further to your email advice concerning the outstanding payment owing to [the contractor] for works completed on the Coober Pedy Airstrip Widening project I advise you that full payment must be forwarded for the outstanding amount immediately.

The Coober Pedy Council is in receipt of \$1.27 m (received in instalments) as payment for the project as per advice received from [the former F&A Manager] in May 2015. Council is in breach of the Funding Deed between the Minister for Transport and Infrastructure and the District Council of Coober Pedy as funds received have not been used for the purpose for which funding was made (s7.1).

Council is also in breach of their contractual arrangements entered into with LGA Procurement and the Contractor [...]. Annexure A outlines the Payment Schedule and I have included relevant points below:

Payment Schedule (Annexure A) states:

- Upfront payment of 15%
- No progress payments due to short duration
- At completion a lump sum payment will be made to the contractor for the balance owing allowing for \$50,000 to be withheld for a 90 day defects liability period (retention sum)
- Payments will be made within 30 days of receipt of the invoice.

The project was completed 30 March 2015 and all parties have been more than patient about receiving payment.

Further action will be taken unless Council meets its payment obligations immediately.

14. On the same day, [the former CEO] forwarded Ms Pasfield's email to Mr Staines and added:

Just so your[sic] aware Steve - I've asked [the former F&A Manager] to exhaust all avenues available to Council to find the remaining funds, including exploring options such as short term loans etc - this places Council in a very difficult and awkward situation.

15. On 2 August 2015 Mr Staines responded to [the former CEO] by email:

I appreciate you forwarding this to me and keeping me informed. The matter has been occupying my thoughts for the past few days. There may be an opportunity for us to get a bridging loan from the LGFA in order to meet our immediate financial obligations. [The former F&A Manager] would be aware of how to go about this.

What causes me greater concern is the fact that the grant monies received for a specific purpose were not partitioned from other funds and used for the purpose in which they must be used pursuant to a legally binding contract. This raises many questions for me such as:

How did this occur?

If it was a mistake then we need to put measures in place to stop it happening again.

Or is this [sic] common occurrence? If it is then we need to cease it immediately

What are the potential legalities involved with this situation?

This simply should not have happened.

I have no doubt that managing council's cashflow is a very challenging task considering the high cost and inconsistent income re the electricity distribution. This is represented by our total budget to rates ratio of roughly \$15M:\$1M. However I do not believe that this negates our need to maintain strong financial discipline. In fact, it probably increases the need...

Considering this recent development, we really do need to have the answers to the following questions as a matter of urgency:

1. What is council's current assets? (amounts outstanding[sic] should be broken down into various government departments and clearly state how much and what the monies are owed to us for. [T]his should be followed by rates/water/electricity with domestic and commercial seperated[sic] and total amounts)
2. What is the value of council's current non-current [sic] assets?
3. What are council's current liabilities?
4. What are council's long term liabilities (eg. mortgages, other loans etc.)

As I am sure you are aware, what I am effectively asking for is a Balance Sheet. The Balance Sheet should be 1 page - 2 at most. This should be a very easy task for [the former F&A Manager] (or Khuram) to produce and shouldn't take any longer than 24 hours.

My thoughts are that we should make this happen as a matter of urgency. Happy to hear other suggestions from you though.

On another matter, we need to address Council's shocking record at paying local suppliers. A number of local small businesses that supply goods and/or services to council from time to time have spoken to me about this over the past 6 months. Council often makes local small businesses wait anywhere from 60-90 days and the small business often has to chase Council for payment - often 3 or 4 phone calls - before payment is received. This is not fair on small business and negatively impacts on council's reputation. My opinon[sic] is that we should have 14 day payment terms for local businesses and 60-90 days maximum where the amounts are over \$20k. Suppliers with accounts over \$100k can wait 90 days if need be.

We can sort council's tardy payment record later, right now we need to find t[sic]\$200k to meet our immediate financial obligation to [the contractor] and the SA Government.

Give me a call tomorrow and we can have a chat about it.

Also need to sort out a time for you and I to sit down with [the former F&A Manager] for an hour to talk through the budget including anomolies[sic] in the fees and charges schedule. Once again, I am sure there is some explanation. In future, though, we need to present the information more transparently. I don't think I should need to spend days with a ruler, red pen, highlighter and calculator locating the anomolies[sic]. The information can be

presented clearly, and easily interpretable to anyone with a rudimentary understanding of book-keeping.

Ok...Rant over...

...

16. On the same day, [the former CEO] responded to Mr Staines' email, relevantly commenting on various points:

- in relation to the issue of a bridging loan, [the former CEO] commented:

[the former F&A Manager] has already investigated however time is not on our side

- in response to Mr Staines' query as to how the situation of non-payment occurred, [the former CEO] responded:

The funds received from State Government were clearly not set aside for their intended use. I am advised that the decision to use these funds in other areas was compounded by other pressures including storm events etc.

[The former CEO] generally agreed with Mr Staines that the situation should not have happened, noting that it placed the council in 'an entirely vulnerable position.'

17. According to Mr Staines, he spoke to [the former F&A Manager] who advised that he had used the funds to pay someone else and that money was not typically earmarked for a specific purpose but instead went into a 'general pot'.

18. [The former F&A Manager] responded to my investigation acknowledging that 'at the time this work and payment was meant to be made', he was Finance Manager and Acting Chief Executive Officer of the council.

19. [The former F&A Manager] stated:

- I believe that we did breach the funding deed and the contract with [...] by not paying them [i.e. the contractors] on time.
- In the past (before my time) Council has used separate "Reserve accounts" to partition off funds for specific purposes. This was seen as impractical and overly complex due to the amount of specific grants and funds we received. Again, before my time it was decided to use the one trading account for all funds coming and [sic] out, and use the general ledger accounts to show what money had come in and out and therefore show what the running balances were. There were however instances where a separate account was necessary due to funding requirements.
- As stated above all of Council funds such as grants, electricity and water charges, rates payments etc went into one account and therefore the money would have been used to pay for other accounts of Council. This is was[sic] done because of the tight financial position Council was in from April 2014 due to the disaster flood event in that month. This put Council in a position of having to spend a lot of money in restring[sic] roads and infrastructure in Coober Pedy without any reimbursement by the state (I will discuss later). This cash flow deficit caused us to have to stretch out some creditors for a period of time, including [...].
- [The former CEO] was made aware of this in his 2nd or 3rd week and at that point he asked me to try to find a solution to this issue asap.

20. [The former CEO] confirmed to my investigation that he first became aware of the failure to pay contractors through telephone and/or email contact from Ms Pasfield on 28 July 2015. When asked what steps he took in relation to the late payment once it came to his attention, [the former CEO] responded:

I would have immediately conversed face to face and sent/received emails to and from [the former F&A Manager] requesting that he provide a status for the account and requesting that it be paid immediately as a due account.

21. [The former CEO] also made the following points in response:

- once brought to his attention, the matter of the non-payment became a 'discovered risk' and concern of his, which is why he raised it with the council administration and later the elected body
- the contract was entered prior to [the former CEO's] employment at the council.

Alleged request that the ex-Mayor sign a debenture

22. It was alleged that, as detailed below, [the former CEO] and [the former F&A Manager] inappropriately requested Mr Staines, as Mayor at the time, to sign a debenture for a loan of one million dollars from the Local Government Finance Authority (**the debenture**), thereby breaching clauses 2.2 and 2.7 of the Employee Code of Conduct, which provide that a council employee must:

2.2 Act with reasonable care and diligence in the performance of official duties, as required by Section 109(2) of the *Local Government Act 1999*.

2.7 Comply with all relevant Council policies, codes and resolutions of which they have been made aware, relevant to their particular role.

23. According to Mr Staines, on 10 August 2015 he was asked by [the former CEO] and [the former F&A Manager] to sign a debenture. The debenture was a binding agreement to enter into a loan for \$1 million (**the loan**). The application for the loan (**the loan application**) had already been signed on the council's behalf (it appears to have been signed by [the former CEO]) on 5 August 2015 without the knowledge of Mr Staines.

24. It was proposed by [the former F&A Manager] and [the former CEO] that Mr Staines and [the former CEO] would sign the debenture by affixing the Common Seal of the council.

25. In response to my provisional report, Mr Staines provided information in relation to a meeting with representatives from the LGFA on 4 August 2015. According to Mr Staines, he was given very short notice of the dinner meeting by [the former CEO] and was under the impression, based on his conversation with [the former CEO], that it was important for Mr Staines to meet with the LGFA representatives. According to Mr Staines:

I found it strange that three senior staff from the LGFA were in Coober Pedy unannounced and that it was so important that I meet with them at such short notice.

I attended dinner with the 3 x senior LGFA staff, [the former F&A Manager] and [the former CEO] - it was pleasant enough - nothing was mentioned about any loan - I didn't think much of it until later - I recorded the event at the time because the lack of notification and the insistence of [the former CEO] that my attendance was important seemed odd to me at the time.

It appears that the loan application to the LGFA was submitted the following day unbeknownst to me.

26. According to Mr Staines, he indicated that he would not sign the debenture until he had read it. According to the report provided to OPI:

[Mr Staines] said that during the meeting he felt that it was [the former CEO] and [the former F&A Manager] against him. [The former CEO] said that he personally was going to sign it and that the LGFA had approved the loan. [The former CEO] suggested that Mr Staines could call the former Mayor (Steven Baines) for advice as he said that this type of

loan (even for such a high figure) had just been signed off by the Mayor and the CEO as usual practice a number of times before.

27. In response to my provisional report, Mr Staines provided further details of his recollection of the meeting based on contemporaneous notes. Mr Staines' response included the following in relation to the events of 10 August 2015:
 - I asked [the former F&A Manager] who needed to sign the loan agreement
 - [The former F&A Manager] said that it was just [the former CEO] and me that needed to sign the loan agreement
 - This heightened my concerns because [the former F&A Manager] didn't need to sign the document but he was responsible for making the loan application. If the advice being given by [the former F&A Manager] was incorrect then it was [the former CEO] and I, as signatories to the document, who would be held accountable
 - I advised them that I needed to take the document away with me to read it properly before signing
 - [...]
 - I rang [the former CEO] at 1:49pm and read to him aloud Section 38 of [sic] Act
 - [The former CEO] said "It has been done before."
 - I said "Just because it has been done before does not make it legal."
 - [The former CEO] agreed and said that it "made it worse" and that he would "look into it".
28. Mr Staines took a copy of the debenture home and read it. His impression was that [the former CEO] and [the former F&A Manager] were not happy about him having a copy. Mr Staines was told (it is not clear by whom) that he had two days, until 12 August 2015, to sign it.
29. On 10 August 2015 Mr Staines emailed [the former CEO] a copy of section 38 of the Local Government Act, the effect of which is that the common seal must not be affixed except to give effect to a resolution of the council.
30. [The former CEO] responded to that email:

Yep thanks Steve - we're going to call a special meeting for Council to resolve to make application for the overdraft.

Mr Staines replied:

Excellent - that makes me feel much more comfortable.

did you get any advice from kelledy jones in regards to the matter?

[The former CEO] further responded:

No I enquired further re previous overdraft process and found this to be an acceptable process forward.
31. According to Mr Staines, [the former CEO's] response at a meeting with [the former F&A Manager] and Mr Staines on 12 August 2015:

..was to 'lecture' him [i.e. Mr Staines] and say that it is not Mr Staines's job to research the Act and that all the problems within the Council arise from the councillors themselves.⁴
32. Mr Staines also said that at that meeting [the former CEO] advised that he was relying on [the former F&A Manager's] advice regarding the process of the loan application and

⁴ Information initially provided to my investigation reported [the former F&A Manager] as having 'lectured' Mr Staines. Mr Staines has subsequently clarified that he recalled [the former CEO] 'lecturing' him.

that [the former F&A Manager] had made the mistake. Mr Staines stated the following to my investigation:

- I asked [the former F&A Manager] about the Wednesday deadline for the loan application that had, according to [the former F&A Manager], been imposed by the LGFA
- [the former CEO] expressed his confusion also and joined with me in questioning [the former F&A Manager] on this point
- [the former F&A Manager] said that that advice was incorrect also and gave a nonsensical answer to explain it away - his explanation did not make sense
- [the former F&A Manager] apologized again for providing incorrect advice
- The meeting ended.

33. [The former F&A Manager] told my investigation:

- Yes, both myself and [the former CEO] [i.e. [the former CEO]] (under my instruction) asked the Mayor to affix the common seal and sign the debenture.
- Yes we did instruct him we had 2 days to sign (more information below)
- I do not believe it to be appropriate
- It was not common practice for this to be done. In the past this is what happened:
 - All loans/debentures were presented to Council at budget adoption for their consideration. All information about what they were for, duration [sic] costs were presented.
 - If the loans were agreed to all motions would be made at budget meeting to enable them during the year.
 - Therefore at any time during that year we could source the loan through the LGFA and have all documents signed and approved by the CEO and the Mayor,
 - In this case it was my fault for getting the process wrong. I went to the LGFA to secure loan funds for the purpose of making up the cash flow short fall that we had at the time. And due to the added stress and pressure I had inadvertently missed the first step of presenting the loan proposal to Council. I at 2 special Council meetings confessed my mistake at doing this and explained that this is not [the former CEO's] mistake but mine
 - The reason why we told the Councillors that they had 2 days was because the LGFA had a settlement date each month of the 15th or 16th that if we missed would have meant[sic] had to wait one more month for the funds.

34. [The former CEO] responded to my investigation:

I attended a meeting with Mayor Staines, and Director of Finance and Administration, [the former F&A Manager] to consider further a proposal by Council's administration, for Council to take out an additional \$1,000,000 loan with the LGFA. Following that discussion and subsequent questioning, I recall becoming increasingly uneasy with either the Mayor, or myself as Councils[sic] new CEO, approving any financial documentation, until such time that the Director Finance and Administration could demonstrate to both the Mayor and I that he had covered off on all governance and legislative requirements that needed to be considered in approving such a loan. I requested that this be done immediately and that he ([the former F&A Manager]) report back to me the following day so that I could converse with Mayor Staines accordingly. The Director Finance and Administration advised me that he had mistakenly erred in his prior advice to the Mayor and myself and that the documents could only be signed by the Mayor and CEO following ratification by the full Council. Prior to receiving this further advice from [the former F&A Manager], both the Mayor and I had taken it upon ourselves individually and independently of each other to look more closely at the relevant legislation and agreed with [the former F&A Manager's] reviewed and subsequent advice. As such, the loan proposal was later presented to and ratified by the full Council, I recall a split decision in which the Mayor was called upon to make a casting vote, which he did in favour of Council entering into an agreement to borrow a further \$1,000,000 and subsequently the loan documentation was signed by both the Mayor and CEO, affixing the Common Seal of Council, pursuant to Section 38 of the LGA.

35. In response to the allegation that Mr Staines was told he had two days to sign the debenture, [the former CEO] stated:

I have no recollection of making any such statement to the Mayor. I was focused on ensuring that all governance and legislative requirements had been appropriately considered by the Director Finance and Administration prior to placing any proposal before the full Council. I do however recall that there were time pressures from a number of sources at the time, pertaining to payment by Council of overdue accounts.

36. [The former CEO] acknowledged that the relevant legislation makes it clear that it was not appropriate for either the Mayor or the Chief Executive to use the common seal without prior ratification or approval of the council. Given the brief nature of [the former CEO's] employment with the council, he was unable to comment on whether such an approach was common practice.

Alleged misinformation and inappropriate pressure on council members

37. It was alleged that, as detailed below, [the former F&A Manager] inaccurately told council members at a special meeting that they only had 24 hours to approve the loan (i.e. the loan that is the subject of the second allegation) and pressured council members to pass the motion approving the loan. It was alleged that in doing so, [the former F&A Manager] committed misconduct by breaching clauses 2.1, 2.19 and 2.10 of the Employee Code of Conduct which provide that a council member must:

- 2.1 Act honestly in the performance of official duties at all times, as required by Section 109(1) of the *Local Government Act 1999*.
- 2.9 Endeavour to provide accurate information to the Council and to the public at all times.
- 2.10 Take all reasonable steps to ensure that the information upon which employees make decisions or actions are based is factually correct and that all relevant information has been obtained and is considered.

38. On 11 August 2015 a special meeting of the council was held (**the first special meeting**).

39. [The former F&A Manager] provided a report to the council, attached to the agenda for the first special meeting which stated:

In April 2014 Coober Pedy suffered a very large disaster event. This event caused damage not only to most roads in Coober Pedy but also to the quarry where we source our aggregate for road building from.

At the time of the disaster the State Government was notified of the event and of the impending application for Disaster Recovery Funds.

Council engaged the services of Rick Gayler to help with the application and assessment process. The process we believed would be a relatively straightforward process. This is not the case, in fact we have found it quite time consuming and onerous so far.

In the last 2 months the Local Government Association in conjunction with GHD have provided a simpler process for Council's[sic] to enter[sic] damaged infrastructure.

Neville Hyatt from the LGA has provided information that now will help Council finish the application.

Council now has all information, costs, damage reports etc needed to complete the application. We will be allocating resources to this to ensure it is done as soon as possible.

In the mean time, Council has spent its own money in rectifying all damage. At this point the amount spent is as follows:

1. Road Damage - \$513,864 (between April and August 2014)
This included our staff and contractors
2. Road Betterment - \$116,067 (between June and October 2014)
This included our staff and contractors
3. Quarry Remediation - \$385,142 (between April 2014 & March 2015)
This includes Pump costs, the Old South road rebuild and Contractor costs

These payments have meant that Council has been short of cash for a period of time. In order to ensure our accounts are paid on time I propose to borrow and[sic] amount of \$1,000,000 for a period of 1 year. Also that the funds received from the Disaster Recovery Fund be applied to the loan when they are received.

Currently we have loans totalling \$4,114, 541. Of that total \$2, 500,000 is for the Electricity Supply, and \$600,000 is for the Water Supply.

I have attached a balance sheet as at the 30 June 2015 showing all Assets and Liabilities of Council as at that date.

Recommendation

That Council take out a loan with the Local Government Finance Authority (LGFA) for \$1,000,000 for the period of 1 year for the purpose of providing Working Capital for Disaster Recovery in April 2014 and that the money from the Disaster Recovery Fund be applied to this loan when it is received.

40. According to Mr Staines' response to my provisional report, the only previous mention of this 'dire situation' was in a report from former Mayor Steve Baines on 20 May 2014 which stated:

Council has applied to the government for Disaster Relief Funding following the recent heavy rains in and around Coober Pedy.

Preliminary estimates of damage are between \$1.5 million and \$2 million and it is estimated that it could take upward of twelve months to repair the damage to community infrastructure.⁵

41. The council made two resolutions at the first special meeting:

SC16-15

In accordance with section 130A of the Local Government Act (1999), that Council seeks quotes from a suitably qualified, independent organisation to commission a financial investigation in to the efficiency and economy with which the council manages its financial resources to achieve its objectives and that those quotes be presented to Council for assessment at the next Ordinary Meeting of Council.

SC17-15

That Council take out a loan with the Local Government Finance Authority (LGFA) for \$1,000,000 for the period of 1 year for the purpose of providing Working Capital for Disaster Recovery in April 2014 and that the money from the Disaster Recovery Fund be applied to this loan when it is received.

⁵ Mr Staines also stated:

[The former F&A Manager] had countless opportunities to reveal to the Elected Members the continuing deterioration of Council's financial situation. This included numerous budget meetings and budget review meetings as well as countless meetings between me and [the former F&A Manager] whilst he was acting in the capacity of CEO and I was Mayor. He chose not to do so.

Mr Staines provided examples of him raising the issue with council staff and also queried the accuracy of figures provided by [the former F&A Manager] in relation to the quarry remediation.

42. According to the report made to OPI, the council members were not previously aware of the loan application and the debenture but were told at the first special meeting that they only had 24 hours to approve the one million dollar overdraft. According to the report provided to my Office:

A number of the councillors were both surprised and concerned with the proposed loan as they had just spent hours on budget discussions for the year's budget, including undertaking public consultation and various workshops, and it was never mentioned that the Council was in financial troubles and might need to take out a large loan. The councillors were also frustrated because they had difficulty getting accurate figures for what the Council had spent on each area and whenever they were given figures they were told that the figures might not be correct. They also were not provided with copies of the outstanding invoices at the meeting.

There was also concerned[sic] about the information that they only had 24 hours to make the decision. Apparently, during the meeting [the former CEO] said to [the former F&A Manager] that he was also confused about the time limit. [The former F&A Manager] then advised that the short time frame was not because of the LGFA, as previously understood, but actually because the Council owed \$723,000 to another party [...] which it needed to pay immediately and could not pay without the loan amount. [The former CEO] was apparently confused by this information as well because, similarly to the incident with [the contractor], the State Government had provided the Council with the money to pay [the other party] and it was therefore unclear why [the other party] had not already been paid with that money.

....

The councillors also indicated during the interview that they felt pressure at the meeting to agree to the loan because they were being told that the Council was having trouble paying its bills and if the loan was not approved immediately the council would be unable to cover its running costs.

43. According to Mr Staines, he was still not comfortable with signing the debenture and in light of that he called another special council meeting which was held on 14 August 2015 (**the second special meeting**). At that meeting, the council discussed the matter further so that the council members could more fully understand the nature and circumstances of the proposed loan.
44. It appears that Council Member Paul Athanasiadis asked if council members would have been consulted if Mr Staines had been willing to sign the debenture in the first place and was told (it is not clear by whom) that council members would not have been consulted.
45. Mr Staines ultimately signed the debenture, giving effect to the council's resolution at the first special meeting.
46. On 14 August 2015 the LGFA emailed [the former F&A Manager] confirming that the loan application 'dated 5.8.15' (i.e. before the matter had been considered by the council) had been approved.⁶
47. [The former F&A Manager] responded to this allegation:
- As stated above the LGFA informed us that if we were to receive the funds by the 15th or 16th we needed the motion passed within the timeframe provided.
 - I informed them that was the LGFA cut-off date was provided to me by the LGFA if we were to receive the funds by the 15th or 16th of that month.

⁶ Email from Mr Robert Hardy to [the former F&A Manager] dated 14 August 2015.

- At that meeting we provided them with a list of all monies owed and owing, a copy of the current balance sheet, copies of existing loans with LGFA and anything else Council asked for.

48. According to [the former CEO]:

- [The former CEO] did not recall [the former F&A Manager] telling council members at the first special meeting that they only had 24 hours to approve the loan
- [The former CEO] did recall that the council was under time pressure at that period to pay unpaid accounts
- [The former CEO] was not aware of whether [the former F&A Manager] told council members or led them to believe that the 24 hour limit was stipulated by the LGFA, but was aware that the matter was raised at a point in time by an elected member
- [The former CEO] believed that council members were provided with accurate and transparent information to inform their decision.

49. [The former CEO] also stated:

I recall two elected members stating that they had not read the report in any case and that they were fundamentally opposed to taking any loan out - other Elected Members, including on this occasion the Mayor, chose to read the report, ask questions of the administration, become informed, and then cast their vote accordingly.

During the short period of time that I was CEO, I encouraged all elected members to meet and discuss with Council's administration, prior to formal meetings, any aspect of any report that they felt needed further detail to assist their individual understanding. Some Elected Members chose to do this, the majority did not.

Alleged failure by the council to apply for disaster relief

50. It was alleged that, as detailed below, [the former F&A Manager] failed to lodge an application for disaster relief funding as soon as practicable after a flood and was dishonest with the council about his failure to lodge the application. It is alleged that in doing so, [the former F&A Manager] committed misconduct by breaching clauses 2.1, 2.2 and 2.9 of the Employee Code of Conduct which provide that a council employee must:

- 2.1 Act honestly in the performance of official duties at all times, as required by Section 109(1) of the *Local Government Act 1999*.
- 2.2 Act with reasonable care and diligence in the performance of official duties, as required by Section 109(2) of the *Local Government Act 1999*.
- 2.9 Endeavour to provide accurate information to the Council and to the public at all times.

51. On 9 April 2014 a serious flood (**the flood event**) occurred in Coober Pedy. As a result of the flood event, the council paid out of its own funds for remediation of a quarry and for repair to road damage. It is alleged that those payments were used many times and over a long period as an explanation for any shortfall or cashflow issues experienced by the council.

52. It is alleged that, at the time of the flood event, and the initial repair work, some council members asked where money was coming from to pay the contractors and were told that it was covered under insurance.

53. At the time of the events in relation to the loan application, Mr Staines made further enquiries and found that the flood damage was not covered by insurance but, instead,

the council had used its own funds and was expecting to recover the money it had spent from the Local Government Disaster Recovery Fund (**the Disaster Recovery Fund**).

54. As noted earlier in this report, at the first special meeting, the council passed the following motion:

SC17-15

That Council take out a loan with the Local Government Finance Authority (LGFA) for \$1,000,000 for the period of 1 year for the purpose of providing Working Capital for Disaster Recovery in April 2014 and that the money from the Disaster Recovery Fund be applied to this loan when it is received.⁷

55. Mr Staines noted that the motion passed by the council at the first special meeting was to the effect that, once received, money from the Disaster Recovery Fund would be applied to the loan. Mr Staines was concerned by the wording of the motion as he was unsure as to what the implications would be for the council if it did not receive funds from the Disaster Recovery Fund within a year. In light of that, Mr Staines obtained a copy of a document produced by the Department of Treasury and Finance entitled *Local Government Disaster Recovery Assistance Guidelines* (**the Guidelines**) which provides information about the application approval process.
56. The Guidelines relevantly state that the Council must notify the Director, State Recovery Office within 24 hours of the disaster event and must submit a preliminary assessment of damages incurred 'as soon as practical following the formal notification of the *natural disaster* event.'⁸ The Chair of the Local Government Disaster Assistance Sub-Committee must then approve in writing the council's eligibility for government assistance.⁹ Under the Guidelines, there are other formal requirements for what must be provided by the Council.
57. It appears that no formal application was made at the time and the preliminary assessment of damages was not made 'as soon as practicable'.
58. [The former CEO] and [the former F&A Manager] allegedly told Mr Staines that they had had conversations with the Local Government Association and the Disaster Recovery Fund but that nothing had been communicated in writing. [the former CEO] allegedly indicated that he would submit the application for funding by April 2015. According to information provided by the council, an application for disaster assistance funding was lodged in June 2016.
59. The report by [the former F&A Manager] attached to the agenda for the second special meeting, however, stated:

At the time of the disaster the State Government was notified of the event and of the impending application for Disaster Recovery Funds.

60. [The former F&A Manager] told my investigation:

- I never told council the flood would be covered under insurance, as roads and road infrastructure that was damaged was not part of our Council [sic] general insurance. Under our insurance were items such as buildings, vehicles [sic] plant & equipment etc.
- Yes we did take many steps to apply for disaster relief.

⁷ Minutes of the Special Council meeting held on Tuesday 11th August 2015.

⁸ Clause 3.1.1 and 3.1.2 of the Guidelines.

⁹ Clause 3.1.3 of the Guidelines.

- We notified the director of State Recovery approximately 3 days after the event. Once they were contacted and disaster was noted they pointed me to the guidelines for claiming disaster relief.
- At the time this was a very new set of guidelines and we were led to believe that only Kangaroo Island has begun the process of applying.
- In order to comply with the guideline[sic] lines were[sic] engaged an engineer, Richard Gayler to help with the process.
- We also spoke to a State Government rep, Mr Peter Siderios about the best way forward. He gave us some information needed to help us comply with the guidelines.
- The biggest issue we had was that the guidelines indicated that we should get a[sic] engineers report before performing any works. This was not practical as the works that needed to be performed so that 1/3 of the township if[sic] Coober Pedy could get to work and back each day. Therefore we took photos and video of all work provided to enable us to provide the evidence to the assessment board
- A summary of all provided was being collated and assessed by our engineer for presentation. One of the other issues we had was the fact that Peter Siderios left his position and therefore we lost our contact we were using to help guide us.
- We were also told that the betterment works needed to be done were also needing to be included in this application.
- Our engineer had a family issue in the middle of the process which meant he was unable to provide the information needed any earlier.
- At this time as well, Council was in turmoil with our then CEO resigning due to health and work related stress issues. This meant I had to become Acting CEO from the 3rd week in January 2015 until the 22nd June 2015.
- The director was notified within 2-3 days of the event occurring
- As stated above the preliminary assessment was delayed due to reasons above.
- From the meetings and discussions with Peter, we believe that the application would have fitted the guidelines.

61. Mr Staines responded to my provisional report:

My recollection is that [the former F&A Manager] did not say that the road repairs would be covered by insurance. He said that the *quarry* repairs would be covered by insurance. Some of the councillors may have been confused with regards to this detail.

Alleged general mismanagement of council finances

62. It was alleged that there has been general mismanagement of council finances on behalf of individual council employees and the council itself.
63. It has been alleged in relation to the council's finance framework, general ledger and subsidiary ledgers that:

There is emerging evidence that there is no integrity in these systems, functions and operating procedures

These remarks are supported by emerging evidence that the Council's Finance General Ledger does not balance and may not have balanced for some time

The Council's Bank Account does not balance with the Council's General Ledger and, after a period of extensive and intensive work, the Council's Bank Account still does not balance with the General Ledger

These details would, at all times, have been obvious to senior Council Staff yet have not, at any time, been advised to the elected body.

64. According to the report made to the OPI, the following examples of alleged financial mismanagement have been raised:

- at the time the loan was approved, the council was approximately \$4 million in debt
- this is despite the fact that the State Government subsidises Coober Pedy's power costs, with the council paying those costs to Energy Developments Limited (EDL)
- at the time of the loan, the council owed approximately \$700,000-\$800,000 to EDL, despite having received the State Government subsidy (EDL reported the matter to the Office of Local Government)
- apparently \$2.5 million was owed by the council for electricity supply and \$600,000 was owed by the council for water supply
- documents provided by council staff to council members and the public are inaccurate
- exorbitant amounts were spent on remediating the quarry, freight costs and work department overheads.

65. The report from [the former F&A Manager] to the council at the first special meeting stated:

In the mean time, Council has spent its own money in rectifying all damage. At this point the amount spent is as follows:

1. Road Damage - \$513,864 (between April and August 2014)

This included our staff and contractors

2. Road Betterment - \$116,067 (between June and October 2014)

This included our staff and contractors

3. Quarry Remediation - \$385,142 (between April 2014 & March 2015)

This includes Pump costs, the Old South Road rebuild and Contractor costs

These payments have meant that Council has been short of cash for a period of time. In order to ensure our accounts are paid on time I propose to borrow and[sic] amount of \$1,000,000 for a period of 1 year. Also that the funds received from the Disaster Recovery Fund be applied to the loan when they are received.

Currently we have loans totalling \$4,114,541. Of that total \$2,500,000 is for the Electricity Supply, and \$600,000 is for the Water Supply.

66. The council provided my investigation with an audit certificate showing that, as at 30 June 2015, the council had a balance outstanding on debenture loans of \$4,651, 941.27 and accrued interest of \$56,905.58.¹⁰ The council also provided my investigation with copies of various loan documents dating back to 2001.

67. The council also provided my investigation with a report for a council meeting on 18 September 2012 which stated:

Over the past 2 months since the budget was finalised and passed we have received a lot of information which has changed the way [sic] will have to deal with the cash flow of Council over the next 18 months.

There are 3 issues which will affect our cash flow in a large way.

1. Electricity Reconciliation payment for 2011/2012
2. Water for Growth project Commonwealth Government Payments

¹⁰ Audit Certificate signed by Robert Hardy, Senior Manager Financial Markets dated 2 July 2015.

3. Water for Growth project State Government Payments

1. As you are all aware we receive quarterly payments from the state government as a subsidy for Council operating the electricity supply in Coober Pedy. This is based on a budget done 3 months before the start of that financial year. These payments are not adjusted at all and 6 months after the end of the financial year Council will receive the reconciliation payment in order to balance the Electricity budget.

This financial year we expect to receive a reconciliation payment of approximately \$900 - \$1M. This effectively means that we are that amount short for a 6 month period while the audit and reconciliation process is finalised. This is on top of the approximately \$1M we have in line of credit for the delay in payment we receive because the subsidy has been cut and we rely on payment in tariffs from customers. This issue will be made worse if the fuel (Diesel) price keeps increasing, as it is. Also, based on the budget for this year we will have a reconciliation payment in the 2012/13 year at a similar level if the fuel price continues to rise.

This has therefore put pressure on our cash flow and made it harder to pay all of our accounts on time.

68. The report also noted issues arising from the State and Commonwealth funding of the Water for Growth project and proposed that the council:

..extend out[sic] \$1M line of credit to \$2.5M so that we can ensure that Council can complete its projects on time and ensure the contractors are paid when due.

69. The council passed the following motion at its meeting on 18 September 2012:

C99-12

Council authorises the Finance and Administration Manager to seek loan borrowings of \$1,500,000 in the form of a Line of Credit for the purpose of cash flow for the Water for Growth project and Electricity budget.

70. My investigation was also provided with a debenture loan application made by [the former F&A Manager] to the Local Government Finance Association on 13 August 2012 for a loan of \$1,000,000 'to supply working capital for projects while going through Electricity Funding Changes'. That application was said to be made pursuant to a council resolution on 6 August 2012.
71. The council also confirmed that as at August 2015 \$1,141,358 was owed to the council for electricity and \$299.910 was owed for water.
72. In relation to the remediation of the quarry and work department overheads, the council responded that the two issues are linked and also responded:
 - that work department overheads have blown out by \$400,000 to \$500,000, in both the 2013-2014 and 2014-2015 financial years
 - the blow-outs are due to the '1 in 100 years event' of flood damage in April 2014
 - the council has recently lodged a disaster assistance funding with the Department for Treasury and Finance in June 2016, and will receive approximately \$1.2 million in state funding very soon.
73. In relation to the issue of freight costs, the council responded to my investigation noting that Coober Pedy is very remote and only a few companies operate in the area and that the council has business of \$16 million.

74. The council set out its freight costs for four freight companies for the last three years:

xxx	xxxxx	xxxxx	xxxxx	xxxxx
xxx	\$	\$	\$	\$
xxx	\$	\$	\$	\$
xxx	\$	\$	\$	\$
xxx	\$	\$	\$	\$

75. My investigation calculated the total spent on freight for the respective years as:

- 2013-2014: \$39,409.22
- 2014-2015: \$55,481.69
- 2015-2016: \$30,444.83.

76. [The former F&A Manager] responded to my investigation noting that the finance team constantly worked on ensuring that the bank account and general ledger balanced. [The former F&A Manager] stated:

I have to admit it was a constant struggle due to the way money just arrived in our account without any details. I am unsure of the actual time or incident that you refer to however.

77. [The former F&A Manager] also responded:

- At that time we did owe that amount [i.e. approximately \$4 million], however at that time we were receiving accounts of between \$450,000 and \$600,000 per month. I don't have the exact details of those accounts now.
- I believe to the best of my knowledge I provided accurate information to the Elected Members.
- This is hard for me to judge from here now as I do not have the details, however I[sic] we were always trying to work with the Works Department to ensure all budgeted items were kept in check.
- The reporting system we had was broken down by department and general ledger account. The finance team would check this regularly, at least weekly to ensure we were within budget. The large changes in the executive team meant that I was both distracted and unable to do the work I needed to do within the Finance area. Each quarter actual to budget reports were presented to the Council elected members for consideration.

78. [The former CEO] told my investigation that he had no personal knowledge and was not made aware of specific discrepancies between the general ledger and the council's bank account. [The former CEO] stated:

However I did make note of long term frustration by some Elected Members with respect to their being able to understand financial reporting and in response I did foreshadow to both Councils administration and their Elected Body of my intention as their new CEO for Council to undergo an independent, thorough analysis of its finances, its governance arrangements and its work force structure, and I commenced strategies in seeking Council approval in that regard well prior to my contract being terminated.

79. Mr Staines responded to my provisional report:

I am not of the opinion that some Elected Members had expressed their frustration with respect to "*their being able to understand financial reporting*". My opinion is that some Elected Members felt as though the Council's finances were being mismanaged and that the financial reporting inadequately explained how and where funds were being expended.

I do acknowledge that [the former CEO] did intend to initiate a financial review. This is evidenced by an email received by me from [the former CEO] on the 17th August 2015. It is attached as Appendix C. He had discussed this with me verbally at times in the past also.

80. The email from [the former CEO] attached a proposal for a financial review from a consultant and indicated that [the former CEO] intended to bring it to council members' attention as a supplementary to their agenda report on the same matter.

81. In relation to the issue of money owed to EDL, [the former CEO] stated:

I don't recall the exact amount of money owed at that time however Council had owed and continued to owe its energy supplier significant amounts of money - I recall that EDL were critical of Councils[sic] historical timeliness with payments - so much so that they were very careful to include strong penalty clauses within what was a developing contract and subsequent negotiations for the future supply of energy to the township.

[The former F&A Manager] indicated to me that he had previously had difficulty in receiving funds from State Government and that this was one reason as to why payments to EDL were sometimes delayed or late.

I had cause to discuss payment tardiness with EDL officers on one occasion in an attempt to better understand why problems were occurring - they (EDL) appeared to accept or understood the reasons previously provided - I assured EDL that I would be working toward improving Councils[sic] payment commitments to them.

The independent financial analysis that Council was about to implement under my guidance would have assisted this task greatly.

82. The council's then Acting Director of Finance and Administration, Mr Khuram Saleem responded to my investigation noting that:

- the council provides water and electricity services to the community which is not normally council business
- the information system which the council uses is built for a local council only but has had two additional modules (for water and electricity) which from time to time have problems
- the council has also had issues in obtaining and training staff to use the relevant software
- whenever the system provider updates software there may be problems with the general ledger (although the system provider is generally helpful to council in resolving issues)
- previous council auditors are aware of the issue
- while there have been issues with the general ledger in the past, more recently, issues are detected and fixed more quickly.

Alleged mishandling in relation to a third party fraud

83. A fraud was committed against the council during the period October 2014 to February 2015. The accounts payable clerk at the time changed the bank account of a supplier to her personal bank account (**the ex-clerk**).
84. On 27 March 2015 a supplier notified the council that an account for \$1943.38 had not been paid. Ms Veronika Hammermeister, the accounts payable clerk who replaced the ex-clerk, alerted the council's accountant, Mr Khuram Saleem, who, upon further enquiry established that the ex-clerk had made six payments in the amount of \$18,592 to her personal bank account.

85. On 29 March 2015 Mr Saleem emailed [the former F&A Manager], who was acting Chief Executive at the time:

Hi [the former F&A Manager]

Can you please see me first thing tomorrow morning?

On late Friday afternoon I went to bank to check why [the Creditor] did not received[sic] a payment of \$1943.38 on 12.12.14. Bank was unable to help but said it gone[sic] one of your employees account.

I came[sic] office and checked account and confirmed [...] that its[sic] went to her account

14/01/15 for 6,587.11

24/12/14 for 3,462.42

12/12/14 for 3,999.60

12/12/14 for 1,943.38

Di told its totally a fraud case and you have to report to police and then Westpac can help council regarding more details as there are more payment in her account too.

Online banking may be able to recover some money if we report to police.

I have tried my best to find till last year account but we have limited information

I will show you paper working[sic] in morning.

Thanks and sorry for telling you this bad news.

86. In September 2015 SAPOL took statements from Ms Hammermeister and Mr Saleem in relation to the fraud.

87. According to the report provided to OPI:

Importantly, it is to be noted that this matter occurred during the employment of 2 Chief Executive Officers and a Chief Finance Officer yet was not made known to the elected body and not referred to the SA Police.

88. A claim and settlement with the council's insurance provider has since been finalised.

89. [The former F&A Manager] responded to my investigation:

- This came to our attention once the staff member had left our employee[sic] and we started receiving calls from creditors that said they had not been paid. We believed that were[sic] paid and then we started to investigate with the bank where the money went. We were informed that it went to the third party and her daughters[sic] account.
- We informed SAPOL about the fraud and were told to provide all information we had that they would investigate. All information including audit logs etc were provided to SAPOL
- As nothing was proved, only alleged, I did not inform either Council members or [sic] insurance company.

90. Mr Saleem confirmed to my investigation his understanding that [the former F&A Manager] informed SAPOL of the matter shortly after Mr Saleem brought the matter to [the former F&A Manager's] attention. Mr Saleem provided my investigation with emails between Mr Tony Renshaw, interim Chief Executive Officer of the council at the time, and SAPOL in September 2015 which confirm that the matter had previously been reported to SAPOL but that due to some 'missed communication', SAPOL had not progressed the matter while waiting for Mr Saleem to come to the police station and

give a statement. SAPOL confirmed that the Police Incident report was raised on 28 September 2015.

91. According to SAPOL, at the time Mr Renshaw sought an update from Senior Sergeant Dawson in September 2015, Senior Sergeant Dawson spoke to Detective Peter Stirling who advised that he had had a conversation with Mr Saleem about the allegations 'some weeks earlier' whereby Detective Stirling provided Mr Saleem with some advice and was awaiting supporting information before raising a police incident report. SAPOL advised my investigation that Detective Stirling is currently on extended leave and that SAPOL was not able to confirm his version of events.

Failure to lodge a Business Activity Statement

92. According to the report provided to OPI:
 - the council did not lodge a Business Activity Statement (**BAS**) for a period of four months from 1 July 2013 and was in default with the Australian Tax Office (**ATO**)
 - Mr Renshaw had to negotiate special arrangements for the settlement of outstanding debts and to remedy the default
 - the total of unpaid tax was \$1.08m
 - to date the council has repaid \$487,000.
93. The council became aware of the issue through the ATO calling the council.
94. The reporter provided my investigation with a copy of a statement from the ATO dated 26 September 2015 requiring payment of \$474,122.80 immediately with the total payable. The reporter did not provide my investigation with any documentation to support the allegation that the total amount of unpaid tax was \$1.08m, and on that basis my investigator sought further information from current council staff.
95. According to the council, the ATO statement for the year ending 30 June 2016 shows that the council currently owes \$146,000 in total.
96. The council also confirmed that the council failed to lodge a BAS for six months between December 2014 and May 2015.
97. The council did not have a record of other non-lodgement (for example, in 2013).
98. According to Mr Saleem, it was Mr Saleem's responsibility to lodge the BAS once it was approved by [the former F&A Manager]. Mr Saleem told my investigation that he believed that [the former F&A Manager] did not approve lodgment of the BAS as there 'were some issues with the system'.
99. [The former F&A Manager] confirmed to my investigation that he was ultimately responsible for lodgement of BAS's. [The former F&A Manager] stated:

It was my belief that some of the BAS statements were lodged late due to some AUSKey issues, but ultimately they were lodged.
100. The matter was not made known to elected members.
101. [The former CEO] responded to my investigation that from his recollection it was [the former F&A Manager's] responsibility to lodge BAS's on behalf of the council although 'he may have sub delegated to his finance officer'.
102. When asked whether the council failed to lodge BAS's for any of the months that [the former CEO] was Chief Executive Officer, [the former CEO] responded:

Not to my knowledge however if there were this would have been identified as part of the proposed body of work on the financial management of the Council and by the annual financial audit.

Local business debt

103. According to the reporter, a local 'business' was allowed to accrue a debt of \$108,000 with the council which has subsequently required legal action and special negotiations to secure payment with an agreed repayment plan of \$5,000 per month.
104. The council confirmed to my investigation that [the business] accrued a debt of \$108,000 for supply of water to 48 properties.
105. My investigation was provided with emails which indicate that the matter was raised with [the former F&A Manager] at least as far back as 2011.
106. On 27 May 2011 Ms Markeeta Jeffreys, Electricity and Water Officer for the council, emailed [the former F&A Manager]:

FYI [the business] is a fair bit behind in paying their bills and any others that are paid by [xxxxxxxxxx]. I have sent yellow notices but haven't gone as far as the red d/c letter. See below some of the accounts:

➤ [xxxxxxxxxxxxxxxx]	\$11,150.50
➤ [xxxxxxxxxxxxxxxx]	\$15,561.57
➤ [xxxxxxxxxxxxxxxx]	\$4,617.79
➤ [xxxxxxxxxxxxxxxx]	\$1,777.88
➤ [xxxxxxx]	\$3,512.67
Total	\$36,620.41

As you can see it adds up!

107. On 14 October 2011 Ms Jeffreys emailed [the former F&A Manager] attaching an overview of [the business's] accounts, noting that:
 - [the business] owed the council a total of \$61,863.66 with arrears of \$53,217.55
 - [the business'] biggest outstanding account was for water totaling \$21,056.22 with arrears of \$17,461.30.
108. My investigation has been provided with copies of the following correspondence to [the business] seeking to enforce payment of the debt:
 - on 21 August 2013 the council sent a letter seeking urgent payment of \$41,006.24 by 28 August 2013
 - on 21 November 2013 the council sent a letter seeking urgent payment of \$48,977.68 by 28 November 2013
 - on 24 July 2012 the council sent a letter seeking urgent payment of \$43,839.84 by 31 July 2012
 - on 21 November 2012 the council sent a letter seeking urgent payment of \$56,601.25 by 28 November 2012
 - on 21 December 2012 the council sent a letter seeking urgent payment of \$62,460.53 by 2 January 2013
 - on 10 February 2014 the council sent a letter titled 'Final Notice' which referred to a debt of \$70,356.12 and which stated:

Due to the fact that you failed to contact the office in regards to the letter dated 29th January 2014, the Council has no option but to **disconnect** your service at 10:00am **Tuesday 29th April 2014**

To avoid disconnection to the above allotment, you are now required to make a **minimum** payment of **\$2000.00** by no later than 10:00am **Monday 28th April 2014** and a **minimum** fortnightly payment of \$1200.00 thereafter, ongoing until all debts are cleared.

- on 30 June 2014 the council sent a letter titled 'Legal Action' referring to a debt of \$82,313.52 and which stated:

Due to the fact that you have failed to make no[sic] payments since the **04th October 2013** the District Council of Coober Pedy now requires the outstanding amount to be paid in full by no later than **Tuesday 15th July 2014**.

Failure to do so will result in the debt being handed over to our collection agency. All recovery costs incurred by the District Council of Coober Pedy will be applied to your electricity and water accounts.

109. On 24 July 2014 the matter was referred to Great Southern Management, a debt collector, to recover that debt and it was a year before the council received funds from [the business] under instruction of the Court. The first payment was received on 31 August 2015.

110. The matter was not made known to elected members.

111. [The former F&A Manager] told my investigation:

- This debt was very complex and ultimately quite political. The history is as follows:
 - [the business] land is owned by [.....]
 - [the business] had a long term peppercorn lease
 - [the business] had one meter with us (a large meter)
 - [the business] had many sub services that fed off of that large meter. There[sic] services went to [.....], Sobering up centre, administration office, houses and more
 - [the business] were sent an account each month from DCCP. They then had to recoup funds from there[sic] other services [.....].
 - When there was a large leak within their property [the business] was obliged to pay for it. However being a small organisation they could not afford to pay these large accounts. They would then negotiate over a period of time with the [xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx] to get this account paid to DCCP.
 - I had many meetings with [the business CEO] about trying to resolve this issue.
 - I was told that because there was a [xxxx] service on the other side of this service, DCCP council not[sic] disconnect the water meter and turn off or restrict the water.
- All debts were administered an[sic] managed in line with either the local government act, Electricity Code or the Water Code.

Employee entitlements

112. It was alleged that a council employee (**the employee**) received 12 months remuneration on the basis of sick leave without any proper entitlement. It was alleged that 'there are no established arrangements in place for the employee to receive the overpayments'.

113. It was alleged that there are a number of other employees who have received annual leave and sick leave without any entitlements or established arrangements. I sought clarification from the reporter as to all relevant employees. Both the reporter and council staff were only able to provide details in relation to the one employee.

114. On 23 March 2016 the council's lawyers wrote to the employee stating:

We write to you to draw your immediate attention to the matter of an overpayment of salary payments made by the Council to you, during the period in which you were on long-term sick leave.

We understand that you commenced sick leave on 3 June 2016. A review of the Council's records indicate that you have not provided a sick certificate.

Between 3 June 2014 and 22 September 2015 you were paid the total amount of \$95,760.15 as ordinary salary payments. This money was paid to you in the usual manner of salary payments.

As at the commencement of your sick leave on 3 June 2014 your leave entitlements were as follows:

- 2.87 days sick leave
- 4 days annual leave
- 42 days long service leave.

Further, during the period for which you were on long-term sick leave, you accrued 20 days sick leave, 44 days annual leave and 13 days of long service leave.

On the basis that you exhausted all available leave during the relevant period of absence, you were overpaid the amount of \$84,509.76. The Council now requires this amount to be repaid.

The Council has no record of these payments being authorised, and indeed, such payments would not have been authorised. Consequently, the continued payments made to you after all leave entitlements had been exhausted were made in error.

In accordance with the principles outlined in *David Securities Pty Ltd v Commonwealth Bank of Australia* [1992] HCA 48, overpayment due to error on the part of the Council is legally recoverable, including, if necessary, through Court processes.

We advise that unless the amount of \$84,509.76 is paid in full by Monday 14 March [sic] 2016, the Council intends to commence Court proceedings to recover the full amount.

If you are unable to make payment of the outstanding amount in full within the abovementioned period, you may contact me to discuss alternative payment arrangements which will, of course, need to be to the satisfaction of the Council.

115. The council confirmed that [the former F&A Manager] was responsible for approving sick leave at the relevant time. The council provided my investigation with a spreadsheet showing the employee's leave entitlements. The spreadsheet shows that total overpaid sick leave was \$86,569.38.

116. The council provided emails from Ms Emily Natt, Payroll Officer which indicate that [the former F&A Manager] was aware that there was sick leave owing to the council.

117. On 25 February 2015 Ms Natt emailed [the former F&A Manager]:

Following up [the employee's] super claim -

He was sent correspondence from Statewide; they requested a written response from him to continue with the claim. [The employee] didn't respond and the claim was stopped. This was the 13/11/2014

Currently there is 770.27 hours of sick leave owing to Council.

118. On 18 March 2015 Ms Natt emailed [the former F&A Manager] including:

Lastly, am I to put [the employee] down as sick leave again this fortnight?

119. [The former F&A Manager] responded to my investigation:

- Each manager would receive a leave request and approve/disapprove based on the leave entitlements that employee had.
- [The employee's] case was a little different, he was diagnosed with cancer and Council was trying to support him and his wife as much as we could. We allowed [the employee] to go into deficit with his sick leave with the understanding that once the insurance claim was received it would pay Council back.
- This arrangement had happened with one other employee who had a car accident and we allowed his leave to be overdrawn for a period of time and then Council received the insurance money once [sic] settlement.

120. My investigation sought copies of any council policies regarding leave entitlements and was informed that there is no policy and that the issue of leave is for the relevant manager's discretion. The council also responded that in the absence of any policy, the relevant award would apply.

Alleged non-compliance with the Local Government Act, including auditing requirements

121. It was alleged that there has been long term, systemic non-compliance with the Local Government Act, especially concerning financial control, internal audit and internal controls. It was alleged that there is no evidence that the council's external, independent auditor (**the auditor**) met confidentially with the elected body at the conclusion of each year's audit or that the auditor's management letter was received and considered by the elected body.
122. According to information provided by the council, it is mostly the responsibility of the Chief Finance Officer or Chief Executive Officer to bring the auditor's letter for each year to the attention of the council.
123. The council provided my investigation with a copy of the council's audited financial statements for the 2012-13, 2013-14 and 2014-15 financial years and the Balance Date audit management letters addressed to the Mayor of the Council for those years.
124. The council provided my investigation with the terms of reference for the council's audit committee (**the audit committee**) for the 2014/2018 municipal term of office. The minimum reporting requirements of the audit committee are to report to the council after every meeting if advice or recommendations are made, and for the audit committee Presiding Member to report annually to the council.
125. The council also provided my investigation with minutes of the council's Audit Committee Meeting (**ACM**) held on 18 December 2013 the ACM resolved:

That the Presiding member be authorised to sign the Auditor Independence statement certifying that to the knowledge of the Audit Committee the Auditor has maintained independence for the 2012/13 financial year.

and:

that in accordance with S162(4)[sic]¹¹ of the LG Act 1999, the Audit Committee advise that it has reviewed the draft annual financial statements of the Council for the financial year ended 30 June 2013 and is satisfied that they present fairly the state of affairs of the Council.

¹¹ I assume that this was meant to refer to section 126(4) of the Local Government Act.

That the Audit Committee advise Council's Auditor, Ian McDonald, that it has reviewed the annual financial statements of the Council for the financial year ended 30 June 2013 and is satisfied that they present fairly the state of affairs of Council.

126. [The former F&A Manager] responded to my investigation, noting:

- [The former F&A Manager] did not believe that the elected body met with the auditor for the years 2013, 2014, 2015
- the auditor's letters for those years were presented to the audit committee and then the minutes to the Elected Members
- [The former F&A Manager] believed that the auditor's letter was required to be considered by the Elected Members.

[The former F&A Manager] also stated:

With all the discussions with our Auditor I was unaware that he was to meet with the elected members, that was my oversight.

127. [The former CEO] responded:

I cannot comment on 2013,2014 however it was proposed that the Elected Body were to meet the incoming auditor during 2015 - due to legislative requirements during 2015 Council were required to change its auditor and I recollect that a report was put to Council in securing a preferred auditor.

128. When asked as to whether the auditor's letter was received and considered by the elected body in the years 2013, 2014 and 2015, [the former CEO] responded:

Would likely have formed a part of the report to Council during 2015 - I cannot comment with regard to 2013 and 2014.

129. Mr Staines responded to my provisional report:

The issue, in my opinion, is not that the auditor didn't meet with the elected body. It is that the audit committee of the council rarely met if ever. I think that this resulted in a serious lack of oversight of [the former F&A Manager's] activities. The former Mayor (Mr Steve Baines) was the Chairperson of the audit committee which, in itself, is unorthodox. Best practice shows that the Chair of the audit committee is independent of the Council.

On the 25 August 2016, the Coober Pedy Regional Times reported the following statement by Mr Alex Morgan during a public meeting of Council:

Former Councillor Mr Alex Morgan said that in the four years that he was on Council (2006-2010) there was not one meeting of the audit committee. He said that every time he brought it up at council meetings he was told by the administration that they would organise a meeting but no meeting ever occurred.

Work Health and Safety and Risk Management

130. Under the heading 'Work Health and Safety and Risk Management', the reporter alleged that the 'structure and framework is so defective as to render an independent audit ineffective'.

131. The reporter did not provide any further information to my investigation about that allegation.

Relevant law/policies

132. Section 5(3) of the ICAC Act provides:

(3) *Misconduct in public administration* means—

- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- (b) other misconduct of a public officer while acting in his or her capacity as a public officer.

133. 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.

134. Section 38 of the Local Government Act provides:

38—The common seal

- (1) The common seal of a council must not be affixed to a document except to give effect to a resolution of the council.
- (2) The affixation of the common seal must be attested by the principal member of the council and the chief executive officer.
- (3) An apparently genuine document purporting to bear the common seal of a council and the signatures of the principal member of the council and the chief executive officer attesting the affixation of the seal will, in the absence of proof to the contrary, be taken to have been duly executed by the council.

135. Section 109 (2) of the Local Government Act provides that:

An employee of a council must at all times act with reasonable care and diligence in the performance of official duties.

136. Section 129 of the Local Government Act provides:

129—Conduct of audit

- (1) The auditor of a council must undertake an audit of—
 - (a) the council's financial statements within a reasonable time after the statements are referred to the auditor for the audit (and, in any event, unless there is good reason for a longer period, within 2 months after the referral); and
 - (b) the controls exercised by the council during the relevant financial year in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities.

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- (2) An audit must be carried out in accordance with standards prescribed by the regulations.
 - (3) The auditor must provide to the council—
 - (a) an audit opinion with respect to the financial statements; and
 - (b) an audit opinion as to whether the controls audited under subsection (1)(b) are sufficient to provide reasonable assurance that the financial transactions of the council have been conducted properly and in accordance with law.
 - (4) The auditor must also provide to the council written advice on particular matters arising from an audit.
 - (5) The auditor must specifically identify in the advice under subsection (4) any irregularity in the council's accounting practices or the management of the council's financial affairs identified by the auditor during the course of an audit.
 - (5a) The auditor will provide the opinions under subsection (3) and the advice under subsection (4)—
 - (a) to the principal member of the council (who must ensure that copies of the documents are provided to the chief executive officer, and that copies are provided to the other members of council for their consideration at the relevant meeting under subsection (5b) or subsection (5c)); and
 - (b) to the council's audit committee.
 - (5b) Unless subsection (5c) applies, the opinions and advice must be placed on the agenda for consideration—
 - (a) unless paragraph (b) applies—at the next ordinary meeting of the council;
 - (b) if the agenda for the next ordinary meeting of the council has already been sent to members of the council at the time that the opinions and advice are provided to the principal member of the council—at the ordinary meeting of the council next following the meeting for which the agenda has already been sent, subject to the qualification that this paragraph will not apply if the principal member of the council determines, after consultation with the chief executive officer, that the opinions and advice should be considered at the next meeting of the council as a late item on the agenda.
 - (5c) The opinions and advice may be the subject of a special meeting of the council called in accordance with the requirements of this Act (and held before the ordinary meeting of the council that would otherwise apply under subsection (5b)).
 - (5d) The opinions under subsection (3) may be kept confidential until they are received at the relevant meeting of the council held under subsection (5b) or subsection (5c).
 - (5e) The advice under subsection (4) may be kept confidential until it is received at the relevant meeting of the council held under subsection (5b) or subsection (5c) or, if the council so resolves at that meeting, until a later date specified by the council (being not later than 60 days after the date of the meeting).
 - (6) The auditor must report to the Minister—
 - (a) a failure by the council or the chief executive officer to rectify within a reasonable time or in a reasonable manner an irregularity identified by the auditor; or
 - (b) a breach of this or another Act that comes to the attention of the auditor; or
 - (c) evidence that, in the opinion of the auditor, indicates or suggests a serious financial irregularity; or
 - (d) an irregular or unauthorised act or omission, of a substantial nature, relating to the receipt, expenditure or investment of money, the acquisition or disposal of property, or the incurring of liabilities; or
 - (e) the reasons for any adverse audit opinion and any recommendations given to the council by the auditor as a result of that opinion; or

- (f) if an audit opinion is provided subject to qualifications or limitations—the reasons for the provision of the opinion on the qualified or limited basis; or
 - (g) any other matter that, in the opinion of the auditor, ought to be reported to the Minister; or
 - (h) any other matter of a kind prescribed by the regulations.
- (7) An auditor is not required to report under this section on a minor irregularity or breach.
- (9) The opinions under subsection (3), provided to a council under this section, must accompany the financial statements of the council.

137. Clause 2.2 of the Code of Conduct for Council Employees provides that a council employee must:

Act with reasonable care and diligence in the performance of official duties, as required by s109(2) of the *Local Government Act 1999*.

138. Clause 2.2 of the Code of Conduct for Council Employees provides that a council employee must:

Comply with all relevant Council policies, codes and resolutions of which they have been made aware, relevant to their particular role.

Whether the council (including the former F&A Manager) committed an act of maladministration in public administration in public administration by failing to pay contractors for work and using grant money for another purpose

139. It is clear from the evidence before my investigation that the contractors were not paid on time in breach of the funding agreement. I am satisfied that, as admitted by [the former F&A Manager], the state funding was used 'to pay for other accounts of Council'.
140. In my view, the fact that the council used State Government funds for a purpose other than which they were provided, resulted in an irregular and unauthorised use of public money for the purposes of section 5(4)(a)(i) of the ICAC Act.
141. I consider that the irregular and unauthorised use of the public money resulted from a practice of the council, being the practice of not having separate accounts for incoming grant funding or otherwise appropriately tracking the grant expenditure. While I have no evidence as to when this practice was first implemented, I note [the former F&A Manager's] submission that it pre-dated his employment in the role. That said, I also note that in response to my provisional report, Mr Staines queried whether this practice pre-dated [the former F&A Manager's] employment with the council and provided copies of agenda items for three council meetings which suggest that accounts were being closed during [the former F&A Manager's] time at the council.¹² Ultimately, I accept that the practice of keeping a single account was the responsibility of the council per se, rather than [the former F&A Manager] as an individual.
142. That said, I also consider that [the former F&A Manager's] conduct in failing to ensure that the grant money was appropriately applied for the purpose of the grant resulted in an irregular and unauthorised use of public money for the purposes of section 5(4)(a)(i) of the ICAC Act.
143. I consider that [the former F&A Manager's] conduct constituted mismanagement in or in relation to the performance of his official functions. I am also satisfied that the mismanagement was 'substantial' for the purposes of section 5(4)(a)(ii) of the ICAC

¹² See agendas for council meetings on 20 May 2014, 17 June 2014 and 15 July 2014.

Act. In my view, the misapplication of state funds is a serious matter with the potential to undermine the public's confidence that government money is being appropriately applied.

144. I accept that [the former CEO] was not responsible for the late payment and took steps to ensure that [the former F&A Manager] addressed the situation as soon as possible.

Opinion

145. In light of the above, I consider that:

- the council's practice of not having separate accounts for incoming grant funding and mechanisms for tracking grant expenditure constituted maladministration in public administration for the purposes of section 5(4)(a)(i) of the ICAC Act
- [the former F&A Manager's] conduct in failing to ensure that the grant money was appropriately applied for the purpose of the grant constituted maladministration in public administration for the purposes of section 5(4)(a)(i) of the ICAC Act
- [the former F&A Manager's] conduct in failing to ensure that the grant money was appropriately applied for the purpose of the grant constituted maladministration in public administration for the purposes of section 5(4)(a)(ii) of the ICAC Act.

146. I recommend that the council:

1. review its practice of receiving all funds into one account
2. devise a written policy in relation to handling of grant funding, in particular, to ensure that grant funding is appropriately applied to the purposes of the grant.

147. As [the former F&A Manager] is no longer employed by the council, I do not intend to make any recommendations concerning [the former F&A Manager] in relation to this issue.

Whether the former F&A Manager of the council committed misconduct in public administration by requesting the ex-Mayor to affix the council's common seal to a debenture

148. [The former F&A Manager] has acknowledged that he and [the former CEO] (upon [the former F&A Manager's] instruction) asked Mr Staines to affix the common seal and sign the debenture, and that such conduct was inappropriate.
149. It is clear that, if Mr Staines had affixed the common seal, such an act would have been contrary to section 38 of the Local Government Act which provides that the common seal must not be affixed except to give effect to a resolution of the council. I also consider that such conduct would have resulted in an irregular and unauthorised use of public money constituting maladministration. I simply note that it is fortunate, and to Mr Staine's credit, that Mr Staines saw fit to query [the former F&A Manager] and [the former CEO's] proposal.
150. I am satisfied that by seeking Mr Staines to affix the common seal, and effectively agree to a significant financial commitment, being a loan for \$1 million, without a resolution of the council, [the former F&A Manager] failed to act with reasonable care and diligence as required by section 109(2) of the Local Government Act.
151. Given the length of his employment at the council, [the former F&A Manager] should have reasonably been aware that, at the very least, the common seal can only be used in prescribed circumstances before approaching Mr Staines. In light of that, I have some difficulty accepting [the former F&A Manager's] assertion (supported by [the former CEO]) that he was 'mistaken' as to how the common seal should be used.

152. Further, as a Finance and Administration Manager, [the former F&A Manager] ought reasonably have averted to whether or not such a significant financial commitment should have been the subject of a council resolution.
153. On that basis, I consider that [the former F&A Manager] breached clause 2.2 of the Employee Code of Conduct. A failure to comply with Part 2 of the Employee Code of Conduct (including clause 2.2) can constitute grounds for disciplinary action.
154. I accept that [the former CEO] was essentially guided by [the former F&A Manager] in approaching Mr Staines and that he relied on information provided by [the former F&A Manager]. That said, I also note Mr Staine's assertion that both [the former F&A Manager] and [the former CEO] were quite insistent that he affix the common seal.
155. I am not aware of any relevant council policies or codes that [the former F&A Manager] may have breached for the purposes of clause 2.7 of the Employee Code of Conduct.
156. For the reasons discussed above, I consider, however, that [the former F&A Manager] breached clause 2.2 of the Employee Code of Conduct.

Opinion

157. In light of the above, I consider that:
 - [the former F&A Manager's] failure to act with reasonable care and diligence in requesting Mr Staines to affix the council's common seal to the debenture in the absence of a council resolution constituted a breach of clause 2.2 of the Employee Code of Conduct
 - on that basis, [the former F&A Manager's] conduct constituted misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
158. Given that [the former F&A Manager] is not currently employed by the council, I do not intend to make any recommendations in relation to this issue.

Whether the former F&A Manager of the council committed misconduct in public administration by providing misinformation and improperly pressuring council members to approve a proposed loan

159. [The former F&A Manager's] written report to the council at the first special meeting **(the report)** relevantly referred to expenditure of various council funds in rectifying the flood damage and stated:

These payments have meant that Council has been short of cash for a period of time. In order to ensure our accounts are paid on time I propose to borrow and [sic] amount of \$1,000,000 for a period of 1 year.

160. I consider that, while the report was not as clear or detailed as it should have been, it did not contain any particular misinformation.
161. The question remains as to whether or not [the former F&A Manager] said anything in the first special meeting itself that constituted misinformation or improper pressure.
162. The minutes of the meeting do not provide any information in that regard, and my investigation has not been able to source a recording of the meeting.
163. My investigation interviewed by telephone Mr Staines, Cr Athanasiadis, Cr Rapaic and Cr McCormack about their recollection of the meeting.

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164. Cr Athanasiadis could not recall whether there was any discussion about a 24 hour limit arising from the LGFA's cut off dates but considers that the council was led to believe that the council would go into administration and this was effectively 'sprung' on the council.
165. Mr Staines told my investigation that he had some difficulty recalling what exactly was said at the meeting but he considered that the council was led to believe that if it did not approve the loan application, the council would be in dire financial straits and would not be able to pay its bills (although could not specifically remember any reference to administration). Mr Staines could not specifically recall whether anything was said about any 24 hour limit arising from the LGFA's cut off dates, although Mr Staines noted that he attended a dinner with LGFA officers the week before and nothing was mentioned about the matter.
166. While Cr Rapaic could not recall the details of what was said at the meeting, he believed that the council was told that they 'had no time', had to get the money straight away and that they 'had to do it by tomorrow'. According to Cr Rapaic, the way that [the former F&A Manager] and [the former CEO] explained the matter led him to believe that they 'knew it all' and while Cr Rapaic did not want to vote in favour of the loan, he considered that the council was led to believe that there would be penalties if they did not agree to it by the next day. Cr Rapaic could not specifically recall any discussion about the LGFA.
167. Cr McCormack could not clearly recall the discussion at the meeting but considered that the council was told that it 'had no option' and that they had two days, or possibly 24 hours to approve the loan.
168. Understandably, given the time that has passed, the council members were not able to provide specific details as to what was said by whom at the meeting.
169. I accept that it is likely that [the former F&A Manager] informed the elected members of the LGFA's cut off dates for receiving funds and that this may have made council members feel pressured to approve the loan.
170. I also accept that [the former F&A Manager] may not have been upfront in explaining the reason for the urgency but that he ultimately explained that the loan was for the purposes of repaying a third party debt.
171. While I have reservations about [the former F&A Manager's] provision of information to council members at the first special meeting, in the absence of clear evidence of what transpired at that meeting, I am unable to be satisfied that there is sufficient evidence, on the *Briginshaw* standard, that [the former F&A Manager] acted dishonestly, contrary to clause 2.1 of the Employee Code of Conduct, or that he provided inaccurate information, contrary to clause 2.9 of the Employee Code of Conduct. As clause 2.10 of the Employee Code of Conduct relates to decisions of employees, and there is no suggestion that [the former F&A Manager] failed to accurately inform himself, I do not consider that clause 2.10 applies.
172. Nor do I consider there to be sufficient evidence that [the former F&A Manager's] conduct at the first special meeting constituted 'other misconduct' for the purposes of section 5(3)(b) of the ICAC Act.

Opinion

173. In light of the above, I consider that [the former F&A Manager's] conduct at the first special meeting did not constitute misconduct in public administration for the purposes of section 5(3)(a) or (b) of the ICAC Act.

Whether the former F&A Manager of the council committed misconduct and maladministration in public administration by failing to submit an application for disaster relief

174. It is clear that the application for disaster assistance funding was only submitted in June 2016, over two years after the flood event. It is also clear that [the former F&A Manager] failed to submit that application during his employment with the council.
175. I accept that [the former F&A Manager] notified the Director of State Recovery not long after the flood event, although no formal written notification was made. I also accept that [the former F&A Manager] took steps to provide State Recovery with the information necessary to progress the application (in particular, by engaging Mr Richard Gayler to undertake an engineering assessment). I do not consider, therefore, that the Agenda for the 11 August 2015 was misleading in stating:

At the time of the disaster the State Government was notified of the event and of the impending application for Disaster Recovery Funds.

176. The reporter did not provide any documentation to support his allegation that the elected body was advised that the application had been lodged, when it had not.
177. Given that [the former CEO] was employed by the council over a year after the flood event, and for a period of only three months, I do not consider that [the former CEO] was responsible for the overall delay in submitting the application.
178. While I have noted [the former F&A Manager's] explanation for the delay, on balance, I consider that [the former F&A Manager's] failure to submit the application constituted mismanagement.
179. I have carefully considered whether that mismanagement was 'substantial mismanagement in or in relation to his official functions' for the purposes of section 5(4)(a)(ii) of the ICAC Act.
180. On balance, my view is that the mismanagement was substantial. In reaching that view, I am conscious of the significant period of delay (over two years). I also do not consider that a preliminary assessment of damages was submitted 'as soon as practical following the formal notification of the *natural disaster* event' as required by the Guidelines. I am also mindful of the fact that [the former F&A Manager's] failure to seek funds from the Disaster Recovery Fund meant that the council had to use its own funds for repair work, leaving it unable to meet its other financial commitments and having to apply for a loan for \$1 million. That said, I accept that the council organised the repair works using its own funds on the basis that the situation was considered urgent.
181. I also consider that by failing to submit the application within a reasonable time, [the former F&A Manager] failed to act with reasonable care and diligence for the purposes of clause 2.2 of the Employee Code of Conduct.
182. I do not consider that there is any evidence before me, on the *Briginshaw* standard, that [the former F&A Manager] deliberately misled the council. On that basis, I do not consider that [the former F&A Manager] breached clause 2.1 or 2.9 of the Employee Code of Conduct.

Opinion

183. In light of the above, I consider that:

- by failing to submit the application for disaster relief, [the former F&A Manager] committed maladministration in public administration for the purposes of section 5(4)(a)(ii) of the ICAC Act
- by failing to act with reasonable care and diligence, [the former F&A Manager] committed misconduct for the purposes of section 5(3)(a) of the ICAC Act.

184. Given that [the former F&A Manager] is not currently employed by the council, I do not intend to make any recommendations in relation to this issue.

Whether the council (including individual officers) committed maladministration in public administration by mismanaging council finances

185. I address below whether there was maladministration as defined in section 5(4)(a)(i) of the ICAC on behalf of the council or [the former F&A Manager] in relation to the discrete issues raised before turning to whether or not [the former F&A Manager] committed maladministration for the purposes of section 5(4)(a)(ii) of the ICAC Act.

General ledger

186. Having considered the information provided by Mr Saleem, I am satisfied that the issue in relation to balancing of the general ledger was due to software issues and that the council has taken steps to rectify those issues.

187. I do not consider that there is any evidence before me to show that [the former F&A Manager] was in anyway responsible for those issues or that those issues constitute maladministration for the purposes of section 5(4) of the ICAC Act.

Debt owed by the council

188. I am satisfied that, as set out in [the former F&A Manager's] report of 11 August 2015, the council was approximately \$4 million in debt and that the bulk of that debt was for electricity and water supply. I am also satisfied that around that time \$1,141,358 was owed to the council for electricity and \$299,910 was owed for water.

189. I do not consider that the fact that the council was in significant debt constituted an irregular and unauthorised use of public money or substantial mismanagement of public resources for the purposes of section 5(4)(a)(i) of the ICAC Act, whether on behalf of [the former F&A Manager] or the council itself. I simply note that had my investigation been able to confirm that those debts increased significantly as a result of non-payment (for example by incurring liability to pay penalties or interest), I may have reached a different view.

Works department blow-out and quarry remediation

190. I accept that the works department blow outs were triggered by the flood event and that there was some urgency that resulted in the council carrying out those works itself. I note that the council has only recently lodged an application for disaster assistance funding that I assume will go some way to covering those costs.

191. While it is clear that the situation could have been managed more efficiently, I do not consider that there is any evidence before me of irregular and unauthorised use of public money or substantial mismanagement of resources for the purposes of section

5(4)(a)(i) of the ICAC Act, whether on behalf of [the former F&A Manager] or the council itself.

Freight costs

192. I accept that, given its remote location, the council may incur higher freight costs than other councils. I also note that freight costs spiked in the 2014-2015 financial year, following the flood event.

193. I do not consider that there is any evidence before my investigation of an irregular and unauthorised use of public money or substantial mismanagement of public resources for the purposes of section 5(4)(a)(i) of the ICAC Act, whether on behalf of [the former F&A Manager] or the council itself in relation to freight costs.

Section 5(4)(a)(ii) of the ICAC Act - [the former F&A Manager]

194. I consider that the fact that the council accrued a significant debt to EDL despite the State Government's subsidisation of Coober Pedy's power costs while [the former F&A Manager] was Finance and Administration Manager of the council constituted mismanagement in or in relation to the performance of [the former F&A Manager's] official functions. It was [the former F&A Manager's] responsibility to ensure that the council's debts were paid, and in my view the failure to pay those debts and to allow them to accrue to such a significant extent over a period of time constituted substantial mismanagement.

Opinion

195. In light of the above, I consider that:

- there was no practice, policy or procedure of the council that resulted in an irregular and unauthorised use of public money or substantial mismanagement of public resources by the council for the purposes of section 5(4)(a)(i) of the ICAC Act
- [the former F&A Manager's] conduct did not result in an irregular and unauthorised use of public money or substantial mismanagement of public resources by the council for the purposes of section 5(4)(a)(i) of the ICAC Act
- [the former F&A Manager's] conduct in allowing the council to accrue a debt of approximately \$4 million for power despite State Government subsidies constituted substantial mismanagement in the performance of [the former F&A Manager's] official functions for the purposes of section 5(4)(a)(ii) of the ICAC Act.

196. Given that [the former F&A Manager] is not currently employed by the council, I do not intend to make any recommendations in relation to this issue.

Whether the former F&A Manager of the council committed maladministration in relation to a fraud committed against the council by a third party

197. I note that [the former F&A Manager] was Acting Chief Executive Officer at the time that this matter was brought to his attention by Mr Saleem at the end of March 2015. [The former F&A Manager] was Acting Chief Executive Officer from January 2015 to June 2015. There is nothing to suggest that [the former F&A Manager] was in any way responsible for the fraud occurring. Instead my investigation has focused on whether [the former F&A Manager] appropriately dealt with the matter once it came to his attention.

198. While it appears that the matter was not immediately raised with SAPOL, I have not been able to establish with any certainty the precise date at which the matter was first informally raised. I accept that due to some miscommunication, there was a delay in SAPOL progressing the matter. I note in that regard that the police incident report was only raised on 28 September 2015 and the signed statements taken by SAPOL on that date.¹³
199. In the absence of clear evidence as to precisely when the matter was first raised with SAPOL, and by whom, I do not consider that there is sufficient evidence to make a finding that [the former F&A Manager] committed maladministration by failing to report the fraud to SAPOL in a timely manner.
200. [The former F&A Manager] has acknowledged that he did not inform either council members or the insurance company of the fraud. According to [the former F&A Manager], his basis for not doing so was that the matter was alleged only and nothing had been proved.
201. While I also query the appropriateness of [the former F&A Manager's] decision not to report the matter to the elected members, in my view it was [the former F&A Manager's] failure to report the matter to the insurance company that constituted mismanagement. I am not satisfied, however, that that failure constituted substantial mismanagement in or in relation to his official functions for the purposes of section 5(4)(a)(ii) of the ICAC Act.

Opinion

202. In light of the above, I consider that [the former F&A Manager] did not commit maladministration in public administration for the purposes of section 5(4)(a)(ii) of the ICAC Act in relation to the third party fraud.

Whether the former F&A Manager committed maladministration in public administration by failing to lodge a Business Activity Statement

203. I am satisfied that it was [the former F&A Manager's] responsibility to lodge BAS statements and that those statements were not lodged for the following months:
- December 2014
 - January 2015
 - February 2015
 - March 2015
 - April 2015
 - May 2015.
204. It is possible that there were other statements not lodged, but I have not been provided with any evidence in that regard.
205. While the council's debt to the ATO would have been incurred regardless of whether the BAS's were lodged on time, I note that the council would have incurred penalties and interest. I note that, according to the ATO statement dated 26 September 2015, for example, the council incurred a penalty of \$1740.00 for failure to lodge a BAS on time for the period ending 30 April 2015.
206. I have noted [the former F&A Manager's] assertion that there were issues with the AUSKey system (which was confirmed by Mr Saleem).

¹³ Statement of Ms Veronika Hammermeister dated 28 September 2015; Statement of Mr Khuram Saleem dated 28 September 2015.

207. That said, in all of the circumstances I consider that [the former F&A Manager's] failure to lodge a BAS for a period of six months in contravention of legislative requirements, thereby incurring penalties and interest, constituted substantial mismanagement in or in relation to the performance of his official functions as Finance and Administration Manager.

Opinion

208. In light of the above, I consider that by failing to lodge the BAS's [the former F&A Manager] committed maladministration in public administration for the purposes of section 5(4)(a)(ii) of the ICAC Act.
209. Given that [the former F&A Manager] is not currently employed by the council, I do not intend to make any recommendations in relation to this issue.

Whether the council (including the former F&A Manager) committed maladministration in public administration by allowing a debt owed by a local corporation to accrue without taking appropriate action

210. I am satisfied that [the business] accrued a debt of \$108,000 for supply of water and that this matter came to [the former F&A Manager's] attention as early as 2011.
211. I am also satisfied that debt recovery action in relation to [the business'] debt only commenced in July 2014.
212. I have noted [the former F&A Manager's] explanation that the council was conscious of [the business'] financial difficulties caused by the leak, and that disconnecting the water meter was not appropriate in the circumstances.
213. I do not consider that this was a situation in which [the former F&A Manager] took no action to recover the debt. In that regard, I note the correspondence from the council between 2013 and 2014. I also have no reason to doubt that [the former F&A Manager] met with [the business CEO] in an attempt to resolve the issue.
214. That said, there is no evidence of any action being taken by the council in relation to the debt between 2011 and 2013. It should also have been apparent to [the former F&A Manager] that the various letters of demand sent between 2013 and 2014 were not an effective means of debt recovery. In my view, the matter should have been escalated to legal action sooner.
215. I consider that, taking into account the significant period in which no action or ineffective action was taken, and the size of the debt, [the former F&A Manager's] conduct resulted in a substantial mismanagement of public resources that the council clearly could have used for other purposes.
216. I do not consider that there is any evidence that [the former F&A Manager] was acting in accordance with a practice, policy or procedure of the council.

Opinion

217. In light of the above, I consider that:
- [the former F&A Manager's] failure to take appropriate and timely action to recover the debt owed to the council by [the business] resulted in a substantial mismanagement of public resources.
 - the council did not commit maladministration for the purposes of section 5(4)(a)(i) of the ICAC Act.

218. Given that [the former F&A Manager] is not currently employed by the council, I do not intend to make any recommendations in relation to this issue.

Whether the council (including the former F&A Manager) committed maladministration in public administration by remunerating employees for leave to which they were not entitled

219. On the basis of the information before my investigation, I am satisfied that:

- the council paid the employee for leave to which they were not entitled
- the overpayment was in the amount of \$86,569.38
- [the former F&A Manager] was responsible for approving the employee's leave
- [the former F&A Manager] allowed the employee to accrue the overpaid sick leave on the basis that it would be paid back once an insurance claim was determined
- [the former F&A Manager] was aware that, as of February 2015, there were at least 770.27 hours of sick leave owing to Council and took no further action
- the council had taken such an approach previously in relation to an unnamed employee who had been in a car accident.

220. I consider that by allowing the overpayment, [the former F&A Manager's] conduct resulted in an irregular and unauthorised use of public money for the purposes of section 5(4)(a)(i) of the ICAC Act. I further note with concern that the overpayment was for a significant amount and subsequently led to further expenditure of council resources in recovering the debt.

221. I have also considered whether the conduct could be said to be a 'practice, policy or procedure' of a public authority. While I note with concern [the former F&A Manager's] assertion that a similar arrangement had taken place on an earlier occasion, on balance, I consider that the overpayment resulted from [the former F&A Manager's] misconduct as an individual rather than a 'practice, policy or procedure' of the council per se.

Opinion

222. In light of the above, I consider that:

- [the former F&A Manager's] conduct in allowing the overpayment to occur constituted maladministration in public administration for the purposes of section 5(4)(a)(i) of the ICAC Act
- the council did not commit maladministration for the purposes of section 5(4)(a)(i) of the ICAC Act.

223. Given that [the former F&A Manager] is not currently employed by the council, I do not intend to make any recommendations in relation to his conduct.

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

3. Develop a policy in relation to approval of employee leave entitlements.

Whether the council (including the former F&A Manager) committed maladministration in public administration by systemic non-compliance with the *Local Government Act 1999* including audit requirements

225. I am satisfied, as acknowledged by [the former F&A Manager], that the auditor did not meet with the elected body as a whole for the years 2013, 2014, 2015.

226. I note that [the former F&A Manager] has acknowledged that any failure to meet was his oversight.
227. Mr Staines responded to my provisional report on this matter noting that in his opinion the real issue was the failure of the audit committee to meet regularly, rather than whether it met with the council.
228. The allegation is, however, that the elected body did not meet with the auditor. I accept that the auditor's letter went to the council's audit committee, with the minutes later being presented to the elected body.
229. While it may be good practice to do so, I am not aware of any requirement in the Local Government Act or other legislation that an auditor must meet with the elected body.
230. On that basis, I do not consider that [the former F&A Manager's] failure to organise such a meeting constituted substantial mismanagement in or in relation to the performance of official functions for the purposes of section 5(4) of the ICAC Act.
231. I was not provided with any other evidence of systemic non-compliance with the Local Government Act.

Opinion

232. In light of the above, I consider that neither [the former F&A Manager] nor the council committed maladministration in public administration by failing to organise a meeting between the auditor and elected members.

Whether the council (including the former F&A Manager) committed maladministration in public administration by general mismanagement in relation to work health and safety and risk management

233. Despite my investigator's request, the reporter never provided any further detail as to what was meant by this allegation. In those circumstances, the council could not provide a meaningful response.

Opinion

234. Given the vague and unsubstantiated nature of the allegation, I have determined not to take any further action in relation to this issue.

Conclusion

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

- the council committed maladministration in public administration by failing to pay contractors for work, in particular by not having separate accounts for incoming grant funding and mechanisms for tracking grant expenditure
- [the former F&A Manager] committed maladministration in public administration by failing to pay contractors, in particular by not ensuring that grant money was applied for the purpose of the grant
- [the former F&A Manager] committed misconduct in public administration by failing to act with reasonable care and diligence in requesting Mr Staines to affix the council's common seal to the debenture in the absence of a council resolution, contrary to clause 2.2 of the Employee Code of Conduct

- [the former F&A Manager] did not commit misconduct in public administration by providing misinformation and improperly pressuring council members to approve a proposed loan
- [the former F&A Manager] committed maladministration in public administration and misconduct in public administration (in particular by breaching clause 2.2 of the Employee Code of Conduct) by failing to submit an application for disaster relief in a timely manner
- [the former F&A Manager] committed maladministration in public administration in relation to mismanagement of the council's finances in relation to the EDL debt
- [the former F&A Manager] did not commit maladministration in public administration in relation to the handling of a third party fraud
- [the former F&A Manager] committed maladministration in public administration by failing to lodge BAS's
- [the former F&A Manager] committed maladministration in public administration by failing to take appropriate action in relation to the debt owed by the [the business]
- [the former F&A Manager] committed maladministration in public administration by remunerating an employee for leave to which he was not entitled
- The council did not commit maladministration in public administration by remunerating an employee for leave to which he was not entitled
- neither [the former F&A Manager] nor the council committed maladministration in public administration by systemic non-compliance with the *Local Government Act 1999* including audit requirements
- the allegation in relation to work health and safety and risk management is not substantiated and I do not consider further investigation of that issue to be warranted.

Summary and Recommendations

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

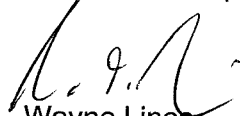
1. review its practice of receiving all funds into one account
2. devise a written policy in relation to handling of grant funding, in particular, to ensure that grant funding is appropriately applied to the purposes of the grant.
3. devise a written policy in relation to approval of employee leave entitlements.

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by **1 September 2017** on what steps have been taken to give effect to my recommendations above; and, if no such steps have been taken, the reason(s) for the inaction.

I intend to report the above breaches to the Principal Member of the council as required by section 18(5) of the *Ombudsman Act 1972*.

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

I also intend to provide a copy of my report to the Auditor-General.


Wayne Lines
SA OMBUDSMAN

15 May 2017