

DISTRICT COUNCIL OF COOPER PEDY

**INVESTIGATION IN RESPONSE TO A REFERRAL FROM COMMISSIONER
PURSUANT TO SECTION 24(2)(b) OF *THE INDEPENDENT COMMISSIONER
AGAINST CORRUPTION ACT 2012* (ICAC ACT)**

2015/000390

DISTRICT COUNCIL OF COOBER PEDY

INTRODUCTION

1. This matter was referred to the Council for investigation by the *Independent Commissioner Against Corruption* ("the Commissioner") pursuant to section 24(2)(b) of the *Independent Commissioner Against Corruption Act 2012* ("the ICAC Act").
2. The referral followed a report that was made to the Office for Public Integrity ("the OPI") concerning the proposed road closure of an unnamed road adjoining the Croatian Welfare and Sports Club Coober Pedy Inc ("the Croatian Club"), and the Stuart Range Outback Resort ("the Resort").
3. The report to the OPI concerned a motion that was passed at a meeting of the District Council of Coober Pedy ("the Council") on 21 April 2015, which, amongst other things, required that the Council enter into a formal road closure program for the road (C63-15).
4. It was acknowledged that whilst the resolution did not constitute a final decision, those affected by the proposed road closure had not been formally consulted pursuant to sections 9 and 10 of the *Roads (Opening and Closing) Act 1991*. Copies of the relevant provisions of the Act are **Appendix A** to this Report.
5. It was further alleged that, in resolving in this manner, the Council had not followed its Public Consultation Policy which requires that a description of the matter under consideration be placed in the Coober Pedy Regional Times or the Advertiser Newspaper, inviting all interested parties to make submissions. A copy of the Council's Public Consultation Policy is **Appendix B** to this Report.
6. The report to the OPI was assessed by the Commissioner as raising a potential issue of maladministration.
7. Pursuant to section 24(2)(b) of the ICAC Act, the Commissioner referred the matter to the Council to be dealt with in accordance with the Directions and Guidance published in section 14 of the Directions and Guidelines ("the Guidelines"). Copies of the relevant sections of the Guidelines are **Appendix C** to this Report.
8. At a Special Meeting of the Council held on 23 July 2015, the Council resolved, amongst other things, that the CEO forward this matter to KellyJones Lawyers ("KJL"), with a request to investigate the matter on behalf of the Council (SC11-15). A copy of the relevant sections of these confidential Minutes of Council are **Appendix D** to this Report.
9. To facilitate the investigation process, the Council engaged KJL to undertake an "arms-length" and independent review of the evidence available, and prepare this Report for the consideration of the Council.

10. In undertaking this investigation, KJL has had regard to the Guidelines. As required by the Guidelines, this Report sets out the following:
 - (1) Identify all issues of maladministration which are to be assessed;
 - (2) Obtain all information from the witnesses who can give information relevant to the issues to be assessed;
 - (3) Obtain all documentation relevant to the issues;
 - (4) Make relevant findings in relation to the issues;
 - (5) Take appropriate action; and
 - (6) Report to the Commissioner on or before **29 September 2015**;
 - (i) the issues addressed; and
 - (ii) the findings made and the reasons for those findings; and
 - (iii) the proposed action to be taken and the reasons for that action.
11. The objective of this Report is to assist the Council in making a determination as to the appropriate action to take, based upon the relevant findings in relation to the issues.
12. We recommend that, consistent with principles of natural justice, before the Council makes a final determination, Ms Sharyn Baines, and each of the current elected members, should be provided with a copy of the draft Report and be given an opportunity to make submissions to KJL in relation to the facts as stated, the conclusions drawn and the recommendations made.
13. We confirm the Council accepted this advice, and following the natural justice process, two submissions were received, one from former Mayor Staines and one from Cr Provatidis.
14. The submissions received were considered, and amendments were made to the draft Report, culminating in this, the Final Report.

EVIDENCE TO WHICH THE INVESTIGATION HAD REGARD

15. In the investigation of this matter, KJL has:
 - 15.1. considered the letter from the ICAC setting out the basis of the report to the OPI;
 - 15.2. interviewed all available current elected members, as well as two former elected members, and the (now) former Mayor, together with the administrative staff who could provide information relevant to the issues to be addressed;

- 15.3. listened to, and considered, the relevant sections of audio recordings made of the Council meetings of 21 April 2015 and 19 May 2015; and
- 15.4. obtained a copy of various documents relevant to the issues to be assessed, including relevant extracts from the Council Agendas and Minutes and annexed these as Appendices to this Report.
16. Most interviews, were undertaken over the period of Tuesday 11 August 2015 to Thursday 13 August 2015 at Coober Pedy, save for the interview with the Works Manager, Mr Jan van der Merwe ("the Works Manager"), which was conducted in Adelaide on Monday 17 August 2015.
17. It was confirmed with all persons interviewed as part of this investigation that they were not compelled to answer questions and that any information provided, relevant to the issues to be addressed, was on a voluntary basis.
18. At that time of the scheduled interviews, the relevant make up of the Council elected member body was as follows:
- Mayor Stephen Staines;
 - Cr Michelle Provatidis (Deputy Mayor);
 - Cr Boro Rapaic;
 - Cr Bundi Pantelis;
 - Cr Albert McCormack;
 - Cr Ian Crombie;
 - Cr Paul Athanasiadis; and
 - Cr Rose Berry.
19. KJL was advised on or about 24 July 2015 that Cr Bundi Pantelis had recently returned to Cypress. An email was sent to the email address Cr Pantelis maintains on file with the Council administration, inviting him to make a written submission. No submission was received.
20. Cr Crombie had an interview time scheduled for 1pm on Wednesday 12 August 2015. Cr Crombie failed to attend the interview, and did not make contact with KJL. An email was sent to Cr Crombie inviting him to make a written submission. No submission was received.
21. The remainder of the elected member body was interviewed as part of this investigation.
22. Ms Sharyn Baines resigned from her position as an elected member. Ms Baines' resignation was Gazetted on Thursday 9 July 2015.

23. Also of note, on 27 August 2015 Mayor Staines tendered his resignation from Council in writing to the CEO, Mr Trent Rusby. A copy of this letter of resignation is **Appendix E**.
24. As of Monday 31 August 2015, Cr Provatidis is the acting Mayor.
25. At 3.00pm on Thursday 4 September 2015, at a special meeting of Council, the Council resolved to terminate the CEO's appointment, in accordance with his probation period and the *Local Government Act 1999* ("the LG Act").
26. On 5 September 2015 Cr Berry tendered her resignation from Council in writing, effective from 3.15pm on Friday 4 September 2015. A copy of former Cr Berry's resignation is **Appendix F**.
27. As a result of the Mayor's resignation, the position of Mayor and the vacancies from within the elected member body will now be filled by way of a supplementary election process held pursuant to the provisions of the *Local Government (Elections) Act 1999*.
28. The Council administration staff interviewed as part of this investigation included the Works Manager, the Finance and Administration Manager Mr Damien Clark, the CEO Mr Trent Rusby (who was appointed by the elected member body and commenced with the Council on 22 June 2014), and Executive Assistant Ms Judy Williams.
29. Mr Tony Renshaw, an experienced council CEO has been appointed as the Acting CEO of the Council.

ISSUES OF ALLEGED MALADMINISTRATION TO BE ASSESSED

30. The Council has been advised that the manner in which it has dealt with the proposed closure of the unnamed road adjoining the Croatian Club and the Resort may raise a potential issue of maladministration in public administration.
31. Relevantly, section 5 of the ICAC Act provides that "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.

32. The following resolutions of Council form the background to this matter:

The Agenda Report and Council Meeting of 17 February 2015

33. The Agenda for the Council meeting of 17 February 2015 contained a report at item 5.5.5 with the title *"Stuart Range Outback Resort Traffic Management And Safety Issues"*.

34. The report was prepared by Mr Damien Clark, in his capacity at that time as Acting CEO ("the acting CEO").

35. The report was said to:

"provide information about Traffic Management and Safety Issues for Stuart Range Outback Resort, and the proposed solutions that are available, such as re-opening the "un-named road" via Flinders Street."

36. It is important to note that despite reference in the Agenda report to *"re-opening the un-named road"* the road was and is, a "public road" for the purposes of section 4 of the LG Act.

37. The proposal was initially presented to the Council administration by the Resort in about November 2014, and sought a co-contribution model for funding to form and seal the unnamed road. That is, the proposal was not to "re-open" the road, it already being a road, just in an unmade and unnamed state.

38. The report prepared by the acting CEO for the February 2015 Agenda advised that the works to form and seal the road had been costed by Council administration at \$93,725. It was proposed that the Resort would contribute \$64,048 to the works, and the Council would contribute the remaining \$29,678.

39. The acting CEO recommended the proposal to the Council, based on the access and safety issues identified in a report prepared by infraPlan, a report that had been submitted to the Council with the proposal in about November 2014, as well as improving tourism facilities pursuant to the Council's Strategic Plan.

40. At this juncture, it is useful to understand both the background to the Council's *"Proposed roads to re-surface, seal and kerb in 2013 – 2023 10 year plan"* ("the 10 year road plan"), as well as how the final costings for the proposed works to the unnamed road were calculated.

41. A review of the 10 year road plan indicates that the reforming and sealing of the unnamed road does not appear on that plan. A copy of the 10 year road plan is **Appendix G**.

42. It is also to be noted that evidence was received from several witnesses that the unnamed road was approximately 176 metres in length. Cr Athanasiadis, Cr McCormack and Cr Rapaic referred to the 10 year plan and submitted that the proposed costs to re-surface and reseal roads of a comparable length did not come close to the final estimated cost of \$93,726.58 for the proposed works on the unnamed road.
43. By way of example, priority 5 of the 10 year road plan, "Shaw Place", indicates that the estimated cost to resurface and reseal a road 200 meters in length was \$28,000. Other similar examples are to be found in the 10 year plan.
44. While Cr Athanasiadis did not suggest that the Council was attempting to "profit" from the proposed \$93,726.58 to form and reseal the road, it is fair to say there was a level of unease expressed by Cr Athanasiadis, Cr McCormack and Cr Rapaic regarding the veracity of the costs. Indeed Cr Provatidis and Ms Baines, raised concerns centred around whether the costs could "blow out," rather than being inflated in any sense.
45. In fact, the initial costings for the works received by Cr Athanasiadis on or about 14 January 2015 were estimated to be \$231,988.80. A copy of the spreadsheet for the initial works costed is **Appendix H** to this report.
46. Following receipt of these initial costings, Cr Athanasiadis, in his capacity as Director of the Resort, raised questions with the acting CEO and the Works Manager. A meeting was convened at which the acting CEO, the Works Manager and Cr Athanasiadis and Cr McCormack were present. The purpose of the meeting was to discuss the costings.
47. Cr McCormack is a contractor by trade and, in particular, forms, resurfaces and seals roads. He has previously been engaged by the Department of Planning, Transport and Infrastructure to lay roads, and most recently, was involved in laying roads in and around the Wallaroo Marina.
48. At the meeting in January 2015, the acting CEO and the Works Manager advised that the initial costings were based on certain assumptions that were required to be made as to the depth of the road, material to be taken out and brought in, staffing costs, and the efficiency of the Council contractor working at the Council borrow pit from which some of the materials were required to be sourced.
49. It also appears, following a review of the figures, that certain assumptions regarding a 16 day operator budget were incorrectly factored in - the figures should have been based on machinery being on site for 5 days.
50. Evidence was also provided as part of the investigation that the Council had factored in a contingency fee and the costings had initially been increased by 20%, based on commercial rates.

51. Following this meeting in January 2015, the operator budget issue was rectified, the hourly rates for Council staff were revised down, as well as the rate per tonne of the aggregates to be used for the works, resulting in a final revised costing of \$93,726.58, being the figures presented at the 17 February 2015 meeting of Council. A copy of the revised costings are **Appendix I** to this Report.
52. When the Works Manager was interviewed in relation to the costings, it was confirmed that the works required to form and reseal the unnamed road were more extensive than those required for the majority of the roads contained in the 10 year plan.
53. As part of the preparatory works to cost the proposal, the Works Manager advised that the road was pegged out and soil testing was undertaken. This testing indicated that given the make-up of the soil in the area, additional material would need to be removed from the site, further material brought in, and the road would need to be laid at 500mm.
54. Following the initial soil sampling, the Works Manager engaged a civil engineer, Mr Richard Gayler, to review the samples and results obtained. Mr Gayler confirmed 500mm of soil needed to be removed from the site, and new material would be required to be brought in, before the road could be formed and resealed. This, of course, would have a corresponding impact on the final costings. This level was later revised down to 300mm, as an absolute minimum, following the January 2015 meeting with Cr Athanasiadis.
55. Whatever misgivings Cr Athanasiadis had about the final costings, it is apparent that the figures were accepted for the purposes of the proposal. Included with the Agenda report prepared by the acting CEO for the February 2015 meeting is a letter dated 10 February 2015 from Cr Athanasiadis, in his capacity as Director of the Resort, confirming the overall costings and the proposed contributions.
56. When questioned about this, Cr Athanasiadis advised that given his position as an elected member, he did not feel he could question, or push the issue of the costings with the Council any further than he had, and he had accepted them for the purposes of the proposal to be presented to Council.
57. At the end of the Agenda report prepared for item 5.5.5 for the 17 February 2015 meeting of the Council, the acting CEO made several recommendations, namely:
 1. *That Council accept the recommendations as presented by infraPlan via Stuart Range [sic] Outback Park [sic] and re-open [sic] the un-named road via Flinders St.*
 2. *That Council accept the offer of Stuart Range Outback Park [sic] of \$64,048 contribution towards the construction of the un-named road via Flinders St, and that the construction be done in accordance to Councils direction by Stuart Range Outback Park [sic].*

3. *That Council contribute to the construction of the road via sealing with Prime coat, 16/14mm seal, 10/7mm seal in the 2014/15 budget year.*

or

That council contribute to the construction of the road via sealing with Prime coat, 16/14mm seal, 10/7mm seal in the 2015/16 budget year.

4. *That Council name this road xxxxxx in accordance with its street Naming Policy.*
58. Also attached to the Agenda report was a letter dated 3 December 2014, addressed to the then CEO, Mr Phil Cameron, from Cr Athanasiadis, in his capacity as Director of the Resort, together with a report in relation to *"Improving Access and Traffic Management"* prepared by Mr George Giannakodakis, Managing Director of infraPlan ("the infraPlan report."). Copies of the relevant sections of the Agenda report are **Appendix J** to this Report.
59. When Council came to consider Agenda item 5.5.5 at its meeting of Tuesday 17 February 2015, former Mayor Staines declared a conflict, as he had been paid to draft a letter in relation to this matter. Cr McCormack declared a conflict, as a potential contractor and Cr Athanasiadis was an apology for the meeting.
60. Deputy Mayor Provatidis took the Chair, and at 7.23pm the Minutes record that with the approval of two-thirds of the members present, the Deputy Mayor suspended the meeting procedures pursuant to regulation 20(1) of the *Local Government (Procedures at Meetings) Regulations 2013*, to facilitate informal discussion in relation to this matter.
61. The Minutes record that the Meeting resumed at 7.47 pm.
62. The Council does not electronically record Council meetings, so there was some speculation on behalf of the elected members interviewed as to the exact nature, and content, of the discussion had at that time, given the meeting had been held 6 months prior to the interviews.
63. However all interviewees that were present in the Chamber consistently recalled that the nature of the informal discussion centred around:
- whether, in fact, it could be said that there was a "traffic management and safety issue" at Yanikas Drive, as set out in the infraPlan report;
 - how it came to be that the Resort proposal was presented to Council for consideration outside of the previously endorsed 10 year road plan;
 - ratepayers and residents had already raised concerns regarding the proposed works with certain elected members;
 - how the proposal fitted with the Council's 10 year road plan; and

- whether the proposed costings for the works were confirmed, or could the proposed works in fact come at a greater cost to the Council.
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64. Cr Provatidis, former Cr Berry and former Cr Baines provided evidence that, as the Agenda report had been published on the Council website prior to the Council meeting, they had already received approaches from members of the community, personally, by telephone and by way of email, asking why the Council was considering forming and resealing the unnamed road, for the benefit of the Resort, in priority to other roads scheduled for works in the 10 year road plan.
65. For example, at 3.35pm that afternoon, former Cr Baines received an email from Mr Colin and Ms Julie Rowntree, residents concerned about the proposal. This email had also been sent to the acting CEO on 15 February 2015, for the attention of all elected members, and to Cr Provatidis direct. A copy of this email is **Appendix K**.
66. Cr Provatidis, former Cr Berry and former Cr Baines all expressed their concerns as to the perception that would be created if the Council endorsed the proposal, particularly in a small community, given Cr Athanasiadis' involvement with Council, and as applicant for the proposal.
67. When the Meeting resumed at 7.47 pm, the Minutes record that the Council rejected the recommendation of the acting CEO and an alternative motion was carried by the Deputy Mayor's casting vote.
68. The Minutes record that former Cr Baines moved a motion, that was seconded by Cr Crombie:
- C25-15
- That Council rejects the recommendations as presented by infraPlan via Stuart Range Outback Park [sic] and do not re-open [sic] the un-named road via Flinders St.*
69. It is to be noted that the resolution refers to "**not re-open**" the unnamed road, rather than forming and resealing the road, which was, in fact, the proposal set out in the report for Agenda item 5.5.5.
70. There was one other matter of importance to note from the Minutes of the Council meeting of 17 February 2015 and that occurred later in the meeting, during the deputations.
71. The Minutes record at item "6. Deputations", that "Mr George Russell addressed Council on the matter of the access road to the Stuart Range Caravan Park."
72. Information was received that Mr Russell is one of the owners of the Oasis Coober Pedy Tourist Park ("the Oasis Caravan Park"), one of three tourist parks in the region, including the Resort.

73. While Coober Pedy does not experience a high level of rainfall annually, when it does rain, the rainfall is sudden and of a high level.
74. In his deputation, Mr Russell spoke against the proposal to form and seal the unnamed road. He outlined the serious flooding issues experienced at the Oasis Caravan Park when it rained and that road works were required to prevent damage to his property.
75. However, the matter of the proposed works to the Resort, having already been considered and rejected by the Council, there was of course little further to be done at the meeting in this regard. A review of the Agenda items indicates that the content of Mr Russell's deputation was not known until the time that he made the deputation.
76. Nevertheless, it is noted that Mr Russell's deputation confirms the statements of Cr Provatidis, former Cr Berry and former Cr Baines that there was a level of concern in the community regarding the proposed road works. A copy of the Minutes from the meeting of Council on 17 February 2015 are **Appendix L**.

The Council Meeting of 17 March 2015

77. The Minutes of the Council meeting held on Tuesday 17 March 2015 record at item "3.1. *Confirmation of Minutes*", that following the suspension of the meeting procedures pursuant to regulation 20(1) of the *Local Government (Procedures at Meetings) Regulations 2013*, the elected members had an "*informal discussion in relation to an inaccuracy of Motion C25-15 in the Minutes.*"
78. Relevantly, motion C25-15 was:

That Council reject the recommendations as presented by infraPlan via Stuart Range Outback Park [sic] and do not re-open [sic] the un-named road via Flinders St.
79. Information was received that it had become apparent after the meeting of Council on 17 February 2015 that the status of the road had been clarified. The elected members having become aware that the unnamed road did not need to be "re-opened", it already being a "public road" for the purposes of section 4 of the LG Act.
80. Evidence was received that the error in the wording of motion C25-15 came about because the infraPlan report of 5 November 2014, submitted with the proposal, variously refers to "re-instating" the road, "re-opening" the road, as well as containing a description of an "open public road," thus confusing the issue as to the status of the road. This error was replicated in the Agenda report for item 5.5.5, and so the proposed recommendations of the acting CEO referred to the road requiring to be "re-opened."
81. Importantly, however, motion C25-15, as recorded in the Minutes of the meeting from 17 February 2015, was not incorrect, in so far as it recorded the motion that

was moved, seconded and endorsed by the Council, but rather it was the **content** of the motion that was incorrect.

82. Notwithstanding this, because of this "error," the proposed motion that the Minutes of the Council meeting of 17 February 2015 be adopted as a true and accurate record of that meeting was lost. A copy of the relevant pages of the Minutes of the March 2015 Meeting are attached as **Appendix M**.
83. The Council subsequently obtained legal advice in relation to this issue, and the Minutes of the Council meeting of 17 February 2015 were then adopted as a true and accurate record of that meeting at the Council meeting of Tuesday 21 April 2015.
84. This did, of course, leave outstanding the issue as to correcting the inaccuracy of motion C25-15, in so far as it incorrectly referred to not "re-opening" the road.

The Agenda report and Council Meeting of 21 April 2015

85. In the Agenda report for the Council meeting of 21 April 2015, it is recorded at "10. *Motions on Notice*," that on 20 March 2015 former Cr Baines proposed that the following motion on notice be included in the Agenda:
 1. *That Council resolution C25-15 made on the 17th February 2015 be rescinded.*
 2. *That Council reject the recommendations as presented by infraPlan via Stuart Range Outback Park [sic] and do not construct and seal the un-named road via Flinders St.*
 - 2.1 *That Council enter into a formal road closure program for the un-named road via Flinders St?*
86. The motion still incorrectly referred to the business name of the Resort, however little turns on that for the purposes of this Report.
87. When asked about the "?" appearing at 2.1, former Cr Baines advised this was a typographical error she had made.
88. Turning to the motion on notice itself, while the first two limbs of the proposed motion sought to give effect to what the Council was seeking to achieve by way of C25-15 at its February meeting, the third limb is very different to what had initially been considered, and attempted to be resolved by the Council.
89. Paragraph 2.1 introduced a new concept and appeared in the Agenda as a motion on notice without any context or explanation.
90. It is, of course, a very different matter to consider and reject, a proposal to commit Council funds to forming and sealing the road and a very different matter to then propose that the Council embark on a formal road closure process. A copy of the

relevant pages of the Agenda for the 21 April 2015 meeting of the Council is **Appendix N** to this Report.

91. When the Council came to consider the motions on notice at its meeting of 21 April 2015, the Minutes record that *"Mayor Steve Staines declared a conflict as he had declared an interest at the meeting on 17th February and left the meeting"* and *"Cr P Athanasiadis declared an interest and left the meeting"*. Cr McCormack, who had previously declared a conflict at the meeting of 17 February 2015, was absent.
92. Deputy Mayor Provatidis again took the Chair and read the motion on notice proposed by former Cr Baines, set out at paragraph 81 above.
93. The Minutes record that there was no informal discussion in relation to the motion on notice. This is somewhat surprising given the initial proposal, considered at the meeting of Council in February 2015, had generated much discussion.
94. It is also surprising given that the motion on notice introduced an entirely new concept, in that it proposed that the Council enter into a formal road closure program for the unnamed road.
95. When questioned about this, former Cr Baines advised she recalled Deputy Mayor Provatidis asked whether anyone wished to suspend the meeting procedures to facilitate informal discussion. Former Cr Baines' recollection was that most, if not all other elected members wished to discuss the matter, she stated:

"they all wanted to go out of session and I refused. I would not go out of session."
96. When asked why this was the case, Cr Baines stated:

"... I thought this is pointless, we have had this, we hashed it at the March meeting, at the February meeting, I don't need to keep rehashing this over and over again."
97. As previously stated, the Council does not electronically record Council meetings. However, Cr Rapaic provided evidence to this investigation that he has a practice whereby he records each meeting of the Council, with the knowledge of the elected members and the Council administration present in the Council Chamber. Cr Rapaic seeks authorisation from the Mayor at the start of each meeting before starting a recording.
98. A copy of the recordings from the Council meetings of 21 April and 19 May 2015 have been provided to KJL as part of this investigation, by Cr Athanasiadis, with the consent of Cr Rapaic.
99. After listening to the relevant section of the recording that captured the moment the Council dealt with former Cr Baines' motion on notice at its meeting of 21 April 2015, it is clear that the following matters were raised:

- 99.1. In speaking to the motion former Cr Baines advised the “?” at 2.1 to the proposed motion was a “typo”, and that the motion was to be put as a whole, and not as individual motions as Deputy Mayor Provatidis had started to do in the meeting.
- 99.2. Former Cr Baines advised that the reason she proposed 2.1 was because by that stage she had obtained “advice” from the Local Government Association (“the LGA”) which had confirmed that the way to achieve public consultation on the issue was by way of entering into a formal road closure process under the *Roads (Opening and Closing) Act 1991*.
- 99.3. Cr Rapaic spoke against the motion, and stated that the road had been in place for some 24 years, and there had been no consultation with any owners or occupiers adjacent the road regarding the proposed closure. Cr Rapaic further stated the Council needed to have a reason to close the road and queried why they would now close the road. He asked what the costs to the Council would be in closing the road, and suggested it might be quite high.
- 99.4. Cr Rapaic also raised the fact that the Council had in the past contributed to the costs of forming and resealing other private roads in the area, and provided by way of example a road servicing the Opal Inn Hotel. Cr Rapaic requested that the Council go “out of session” to discuss the matter further.
- 99.5. Deputy Mayor Provatidis asked if members wanted to go out of session. While it is not entirely clear from the recording, presumably having not achieved the consent of the required two thirds of members pursuant to the *Local Government (Procedures at Meetings) Regulation 2013*, the meeting continued. Former Cr Baines’s recollection that the majority of members wished to go out of session must have been incorrect, otherwise the Chair had incorrectly failed to suspend the meeting proceedings on this occasions.
- 99.6. Deputy Mayor Provatidis then stated that the road closure process would “only cost about \$600”. Cr Rapaic interjected to state that was incorrect.
- 99.7. Cr Pantelis asked former Cr Baines whether she had consulted with the Retailers Association before preparing the motion. Former Cr Baines advised she had not spoken to the Retailers Association, but she had been approached by residents in the area who did not want to see increased traffic on the unmade road.
100. It is unfortunate that the Council did not elect to have an informal discussion with regards to the motion on notice, particularly given it had been proposed in the absence of any legal advice or background information within which to inform the motion itself.
101. In any event, the motion was then put again, seconded by former Cr Berry, and carried by the casting vote of Deputy Mayor Provatidis. The relevant pages of the

Minutes from the 21 April 2015 meeting of the Council are **Appendix O** to this Report.

102. The other matter of importance was that the acting CEO was also present at the meeting of Council on 21 April 2015.

103. On the day prior to the meeting of the Council, that is, 20 April 2015, the acting CEO had received a letter from DMAW Lawyers, acting for Athanasiadis Nominees Pty Ltd, the corporate entity that operates the Resort. This letter outlined certain concerns regarding the proposed resolution to close of the road and set out that it seemed;

"premature for steps to be taken in commencing that process before there is an opportunity for our client and Council to consider alternative options."

104. DMAW lawyers requested that the Council defer consideration of the motion until its client and the Council, had the opportunity to explore alternatives. A copy of this letter is **Appendix P** to this Report.

105. It is equally clear that by 1.12pm on the day of the Council meeting, the acting CEO had received legal advice, from the Council's lawyers. This advice confirmed the matters set out by DMAW lawyers and recommended that the motion be deferred and, consistent with the requirements of section 6(a) of the LG Act, if the Council wished to revisit the matter at a later time, it should do so upon the basis of a full report from Council administration.

106. However, at its meeting later that day, neither the letter from DMAW Lawyers, or the Council's own legal advice, was brought to the attention of the elected members.

107. When questioned about this, the acting CEO stated that he was waiting for the meeting to go 'out of session' before tabling these documents and he was certain that the elected members would go out of session, as they had on the previous occasion when discussing the proposal raised by the Resort. The meeting not having gone out of session, he remained silent on the issue.

108. In response to a series of questions regarding this, the acting CEO accepts that he could have prepared a late memo, annexing the relevant documents, or sought leave of the Deputy Mayor to interrupt the meeting. However he stated:

"But at that point, you know, I am only the Acting and I'm not an expert in being a CEO by any stretch."

109. While former Mayor Staines was aware of the receipt of the letter from DMAW lawyers and was involved in obtaining legal advice from Council's lawyers that day, the former Mayor had, of course, declared a conflict and was not present in the Chamber when the motion was considered by the Council.

110. Another matter to note from the Agenda and Minutes of the April 2015 meeting of the Council is the reference at item 5.5.1 to the Local Government Women's Association National Conference ("LGWA National Conference.")
111. Cr Provatidis and former Cr Berry advised that they attended this event and the Agenda report prepared by former Cr Berry makes reference to:
- "I know Michelle [Provatidis] spoke with another Mayor and I was able to get some good strong connections with people I already knew, and I know Michelle did also."
112. Cr Provatidis, former Cr Berry and former Cr Baines provided evidence to this investigation to the effect that, in part, the "advice" they had received from the "LGA" in relation to this matter was in fact advice they had received from Ms Lorraine Rosenberg, Mayor of the City of Onkaparinga, and Vice President of the LGA Board, while at that conference.
113. Cr Provatidis, former Cr Berry and former Cr Baines advised that Mayor Rosenberg had recommended that in order to determine the public sentiment around the forming and sealing of the unnamed road, a public consultation process would be useful. That way, the issue would be determined in large part by the community. It was further stated that Mayor Rosenberg advised that the public consultation could be achieved through the Roads (Opening and Closing) Process 1991.
114. When interviewed for the purposes of this investigation Cr Provatidis, former Cr Berry and former Cr Baines were strongly of the view that the best way to manage the proposal put by the Resort was to enter into a public consultation process. However, none were aware that this public consultation could have been achieved by way of the Council's own Public Consultation Policy, without the need to go through a lengthy, and expensive, road closure process, as set out in the Road (Opening and Closing) Act 1991. A copy of the Council's Public Consultation Policy is Appendix B to this Report.
115. It is to be noted that for Cr Provatidis, Cr Crombie and former Cr Baines, this was a first term in Council and the elected members still, to this date, have not completed the elected member training they are required to complete within the first 12 months of their four year term, pursuant to regulation 8AA of the *Local Government (General) Regulations 2013*.

The Agenda Report and Council Meeting of 19 May 2015

116. Following the Council meeting of 21 April 2015, the acting CEO obtained legal advice with regards to the process required to be followed by Council in closing a road; as well as Council's exposure for not having followed the previous advice received, concurring with the view set out by DMAW. The acting CEO stated in his email request for advice:
- "there was no opportunity for me to even raise these issues before the motion was passed."*

117. Having received that advice, the acting CEO prepared a report for the Agenda for the Council meeting of 19 May 2015, item 5.5.4 titled *"Formal Road Closure Program for Unnamed Road Via Flinders Street."*
118. On 11 May 2015 the acting CEO also received a letter of representation from the Croatian Club, setting out that the Club was against the proposed road closure and supported the forming and sealing of the unnamed road.
119. Also received was a further letter from Cr Athanasiadis, in his capacity as Director of the Resort, dated 9 May 2015, setting out an alternative proposal. The letter proposed that in the event that the road was to be closed, the Resort would be prepared to enter into an agreement to purchase the land.
120. The acting CEO obtained additional information from the Works Manager as to the location of Council's own infrastructure in the unnamed road, which would, of course, have a cost impact for the Council should the road be closed.
121. It was estimated that the cost to the Council, in the event that the road were to be closed, would be \$17,000 - \$25,000. Such costs being made up of items including, but not limited to, survey fees, lodgement of plans, preparation and lodgement of easement documents.
122. The acting CEO also set out in the Agenda report that:
- "... from a pure Council provider of services point of view, all managers and myself would not like to see this road closed as it means either investing in work that may need to be done or spending money on surveying and planning. Managers are very pleased with the location of the current infrastructure and would not like to see it moved or inhibited in any way."*
123. The Agenda report also set out the potential exposure for the Council to litigation, in the absence of giving careful consideration to the additional information presented.
124. Unfortunately what the report did not do, however, is include a recommendation to the Council, stating instead that:
- "As I stated earlier there is a motion on notice to rescind the motion from the start of the report. In light of this I have not added in a recommendation to this report."*
125. The acting CEO's reference to the motion on notice for the May 2015 meeting of the Council, is a reference to the motion proposed by Cr Rapaic, appearing at page 69 of the Agenda:
- "That Council resolution C63-15 made on the 21st of April 2015 be rescinded."*
126. Copies of the relevant pages of the Agenda report for item 5.5.4 are **Appendix Q** to this Report.

127. Following finalisation of the Agenda report, the acting CEO arranged for the Agenda to be sent to the elected members on 14 May 2015.
128. However, the acting CEO had also received a follow up letter from DMAW layers dated 28 April 2015, concerned, amongst other things, that there was "*no apparent justifiable basis*" for the course of action taken by the Council, and seeking an assurance that no further steps would be taken to close the road until such time as a new proposal could be presented by the Resort, as well as a submission from the Coober Pedy Miners Association, dated 8 May 2015. The Miners Association requested that the unnamed road be maintained and graded, for utilisation by the public who attended the Gem Trade Show, held annually at the Croatian Club, an event that attracts several thousand visitors each year.
129. The acting CEO had inadvertently left these two documents out of the Agenda report for item. 5.5.4, and so he prepared a "Memo" to the elected members dated 15 May 2015, attaching the additional information. A copy of the Memo and attachments is **Appendix R** to this Report.
130. Turning to the Minutes of the Council meeting held on Tuesday 19 May 2015, when it came to considering item 5.5.4, it is recorded that Cr Athanasiadis declared a conflict and left the meeting. However, on this occasion, the former Mayor did not declare a conflict, and remained in the Chamber.
131. Pursuant to regulation 15 of the of the *Local Government (Procedures at Meetings) Regulations 2013*, the former Mayor gave a personal explanation, stating that, based on his experience and knowledge of the road closure process, the benefit to the Council in his remaining in the Chamber to discuss and determine this matter outweighed the benefit he had received by way of the \$220 payment for preparing a letter in relation to the matter.
132. It is noted that the former Mayor had obtained legal advice from the Council's lawyers for the purposes of participating in the matter at the 21 April 2015 meeting. The advice received was that, given the former Mayor's previous declaration at the February 2015 meeting and the close relationship between the former Mayor and Cr Athanasiadis, the provision at clause 3.13 of the Code of Conduct for Council members, which seeks to remove bias (including **perceived bias**) from the decision making process, was sufficient to require the former Mayor to make a personal explanation and to leave the meeting, and not participate in the Agenda item.
133. The legal advice received was equally applicable to both meetings of the Council. However, while the former Mayor did declare a conflict for the purpose of the 21 April 2015, he failed to do so for the 19 May 2015 meeting.
134. When questioned as to why he did not declare an interest at the May 2015 meeting, the former Mayor advised he was concerned the situation that the Council had found itself in, with regards to the proposal to close the road, had largely come about because of the inexperience of the Deputy Mayor, Cr Provatidis. He therefore

wanted to remain in the Chamber when the matter was discussed and decided, in order to facilitate the process, and ensure that the elected members had properly considered everything contained in the Agenda report prepared by the acting CEO.

135. In the end, nothing turned on the failure of the former Mayor to declare a conflict, Cr Rapaic's motion on notice having been lost two votes in the affirmative, to four votes in the negative.
136. As to the meeting, the Minutes record that at 7.38pm, the former Mayor, with the approval of two-thirds of the members present, suspended the meeting procedures pursuant to regulation 20(1) of the *Local Government (Procedures at Meetings) Regulations 2013*, for a period sufficient to facilitate informal discussion in relation to this matter.
137. Having now listening to the relevant section of the recording that captured the moment Council dealt with item 5.5.4, together with the motion on notice at its May 2015 meeting, both during informal discussion and when the motion was put, it is clear that the following matters were raised:
 - 137.1. the acting CEO provided details of similar circumstances whereby the Council had entered into an agreement with a private land owner to contribute towards roadworks. In 1993, agreement was reached with the owners of the Lookout Cave who contributed \$18,000 towards sealing a road and the Council contributed \$12,000. The works were completed in the 1995/96 financial year;
 - 137.2. the acting CEO outlined the costs to the Council, should it wish to pursue the road closure process. These costs would include, but not be limited to, the survey costs, advertisement costs, preparation and registration of easements and lodgement with the Lands Titles Office. It was estimated that the costs for Council could be \$32,000 - \$45,000;
 - 137.3. Cr Provatidis requested additional information with regards to the confirmed costs to form and seal the unnamed road and stated that the costs currently presented to the Council were under-estimated. No information as to why Cr Provatidis felt this was the case was outlined;
 - 137.4. former Cr Baines advised that she had contacted Cr Athanasiadis and the former Mayor, in an attempt convene an informal meeting so that the details of this matter could be properly considered¹. Her attempts to schedule this were unsuccessful. Former Cr Baines asked if the motion were to be

¹ While the former Mayor disputes former Cr Baines had attempted to contact him to arrange a meeting, Cr Athanasiadis confirms former Cr Baines did make contact with him, however due to scheduling issues, a meeting could not be convened at this time.

rescinded, would this mean that proposed works to the unnamed road would go to the end of the Council's 10 year road plan;

- 137.5. former Cr Baines was concerned with how quickly this proposal had come to the Council and the speed with which the works were required to be done, she described it as "hasty." Former Cr Baines confirmed that as an elected member, she was not going to agree to expend Council funds on the unnamed road, before the other roads that appeared on the Council's 10 year road plan;
- 137.6. Cr Rapaic disputed that the Council was "rushing" the road at all, and stated that the road had been in place for 26 years, and the Council had never spent anything on it. In Cr Rapaic's opinion, if someone wanted to spend \$26,000 of their own money on works to the roads, to contribute to building it, then he considered the Council should also contribute towards maintenance of the road;
- 137.7. Cr Baines response to this was, *"let him pay for the whole lot then."*;
- 137.8. Cr Rapaic questioned when anyone else had ever been required to do that before; and
- 137.9. Cr Baines queried why the Council should pay 30% towards an upgrade of the road, and asked why it would utilise funds on something like that when there were other programs that could benefit from the additional funding.
138. The meeting was then interrupted. The evidence received as part of this investigation is that the President of the Croatian Club had walked around the back of the elected members' chairs, and had approached the former Mayor, who was presiding over the meeting and was having a discussion with the former Mayor. The discussion ceased and the President of the Croatian Club returned to the public gallery.
139. The former Mayor then proposed that the Council could continue to discuss the matter, or the motion could be rescinded, as proposed by Cr Rapaic, and the Council could then confirm that it rejected the initial proposal received from the Resort, and go from there.
140. Cr Baines' reply was *"I'm not going to rescind the motion"* to which Cr Provatidis replied *"let's just go back in session."*
141. The former Mayor, with the approval of two-thirds of the members present, went back 'in session', and encouraged the elected members to make sure they had read everything contained in the Agenda report prepared by the acting CEO, including the legal advice from DMAW lawyers and the Council's lawyers, before making a decision in the best interests of the Council.

142. The former Mayor then asked Cr Rapaic if he wanted to bring his motion on notice forward, to which Cr Rapaic agreed.
143. With leave of the Council, former Mayor Staines then brought Cr Rapaic's motion on notice forward, to be dealt with at item 5.5.4, "*Formal Road Closure Program for Unnamed Road Via Flinders Street.*"
144. The following motion on notice was read out:
- C80-15
- That Council resolution C63-15 made on the 21st April 2015 be rescinded.*
145. Cr Rapaic was invited to speak to his motion, to which he confirmed that, in his opinion, the matter should not have reached this point. That when Cr Baines moved the motion in April 2015, she had no traffic engineering reports, no information regarding the road closure process and no costings for the action. In his opinion, the costs to the Council to close the road would be the same, if not exceed, what the Council was being requested to contribute as part of the original proposal to form and seal the unnamed road.
146. Cr Rapaic further stated it was one thing to not want to contribute to making the road and another to actively seek to close the road.
147. Cr Pantelis seconded the motion and in speaking to it stated that the Council had spent enough money arguing about this matter and it was ridiculous that it would look to close a road that was used, especially when someone was looking to spend their own money on upgrading it. He suggested that the Council engage its own traffic engineers to investigate the safety issues raised by infraPlan and then make an informed decision from there. The Council should not, however, be looking to close a road.
148. In speaking against the motion, former Cr Baines said from the word go she made it clear that she did not want to close the road, she had no issue with sealing the road, however she did have an issue with the Council spending money on the proposal. The road could be resealed, but not at the Council's cost. If the proprietor wanted to now purchase the land and go ahead with the works, they were free to do so; however she was not going to rescind the motion without another proposal to consider (our underline).
149. The former Mayor then repeated what he had said earlier, in that it was open for the Council to rescind the motion and move forward from there.
150. Cr Provatidis, in speaking against the motion, raised the fact that Cr Athanasiadis, in his capacity as Director of the Resort, had prepared a letter that had been included with the Agenda report for item 5.5.4, to the effect that the Resort was prepared to purchase the land if the road was to be closed.

151. Cr Rapaic sought leave of the meeting to make a comment about that. Cr Rapaic stated that the proposal to purchase the land had only been raised because the Council was going down the track of closing the road. The Council should not be looking to sell Council property. If that land were to be sold to the Resort, there would be nothing stopping the Resort from building along the road, directly in front of the Croatian Club. The Croatian Club would never consent to the sale of the land in those circumstances. Cr Rapaic also reminded the elected members about the stobie poles in the road and asked the acting CEO what the cost would be to move those.
152. The acting CEO advised that while he did not have the confirmed cost for that work, he did know that the poles supported high voltage power lines cost \$3,000 each and it would likely cost thousands to move them. The acting CEO also reminded the elected members that the Council currently had water infrastructure under the road, and was proposing to shortly lay sewage pipes.
153. The motion was read again, seconded by Cr Pantelis and was lost.
154. Cr Rapaic called for a division and the former Mayor declared the vote set aside.
155. The members voting on the motion in the affirmative were Cr Rapaic and Cr Pantelis, and in the negative Cr Crombie, former Cr Berry, former Cr Baines and Cr Provatidis.
156. The motion was declared lost and Cr Athanasiadis returned to the meeting for a short time, but then exited again when it became clear that Cr Provatidis was intending to raise a motion without notice regarding the "noting" of certain matters if the land was to be sold.
157. After a short discussion between the former Mayor and Cr Provatidis as to whether the proposed motion was ultra vires, it was agreed that the matter could be included as a motion on notice for the next meeting.
158. A copy of the relevant pages of the Minutes of the Council meeting of 19 May 2015 is **Appendix S**.
159. It is to be noted that the discussion outlined above, as well as for the meeting of the Council of 21 April 2015, obtained from the recording made by Cr Rapaic, is entirely consistent with the evidence provided by the elected members who were interviewed in relation to the issues, subject of this investigation.

Complaint to the Ombudsman and report to the OPI

160. The former Mayor reported to this investigation that following the Council meeting of 19 May 2015, he emailed the SA Ombudsman ("the Ombudsman") on 21 May 2015, requesting a review of various Council resolutions in relation to this matter.

161. By way of letter dated 23 July 2015, the Ombudsman advised the former Mayor of the outcome of his investigation.
162. The Ombudsman, after considering the information provided by the former Mayor, was of the opinion that:
- "the council has not acted in a way that is unlawful, unreasonable or wrong within the meaning of the Ombudsman Act. Accordingly, I do not consider that further investigation of your report or the anonymous complaint is necessary or justifiable."*
163. The Ombudsman further confirmed that:
- "there is a public interest in the disclosure of my decisions under the Ombudsman Act. Therefore, once I have closed the file, I authorise disclosure of this letter by you as you see fit."*
164. The Ombudsman having closed his file on 7 August 2015, the former Mayor provided a copy of this letter to the investigation. A copy is attached as **Appendix T**.
165. The handwritten notes on the first page of the letter from the Ombudsman are the former Mayor's notes as to a telephone conversation he had with the Ombudsman's office, correcting certain information appearing at paragraph 8, namely, that the legal advice was received prior to the compilation of the Agenda report for the 21 April 2015.
166. The former Mayor has advised this should have read, "the legal advice was not received prior to the compilation of the Agenda report, but was received prior to the meeting itself."
167. The other issue of note with regards to the Ombudsman's letter is reference to a second, "*anonymous complaint*."
168. In the absence of any additional information, it can only be speculated that reference to the "*anonymous complaint*" received by the Ombudsman is reference to the complaint Cr Athanasiadis advised this investigation he made to the Ombudsman.
169. It is also unclear whether the Ombudsman reported the receipt of these two complaints to the OPI and if in fact the Ombudsman's complaints have been cross referenced to the report that was made direct to the OPI.
170. As at 4 September 2015, the former Mayor had not disclosed this letter to the elected member body, he did however provide a copy for the purposes of this investigation.
171. On 27 August 2015 the former Mayor tendered his resignation in writing to the CEO, Mr Trent Rusby. A copy of this letter of resignation is Appendix E.

172. As to the reports made to the OPI regarding these matters, Mr Stephen Baines, husband of former Cr Baines, advised this investigation that:

"I have been in Local Government 17 years and I was so concerned at the process after that meeting [17 February 2015] that I actually put in an ICAC report."

"I was so concerned that Councillor Athanasiadis may have used influence as a councillor to receive personal benefit that a normal person would not legally expect to receive."

173. Given the confidentiality provisions in section 54 of the ICAC Act 2012, and as it was unclear whether the report made by Mr Baines was, in fact, the report the subject of this investigation, no questions were asked of Mr Baines in relation to the nature of his report. Mr Baines did, however, volunteer that *"I have heard nothing further"* in relation to this report.
174. Mr Baines is the immediate past Mayor of the Council, and served on the previous term of Council with Cr Athanasiadis, Cr Staines, Cr Rapaic and former Cr Berry.
175. With regards to the complaint made direct to the OPI, the Council has requested on two occasions a copy of the report received in relation to this investigation, particularly in light of the fact that it seems two reports have been made to the Ombudsman and there may have been more than one report made to the OPI.
176. By way of letter dated 2 September 2015, Mr Fraser Stroud, Manager of the OPI, advised that the reporting party elected not to have their personal details provided to another agency, accordingly, no documentation which would identify the reporting party would be provided to the Council.
177. This seems at odds with the provisions of the ICAC Act. As set out above, this matter was referred to the Council for investigation by the Commissioner pursuant to section 24(2)(b) of the ICAC Act.
178. Council, by acceding to the referral of the matter, has, in fact, been compromised in undertaking the investigation, as the OPI will not disclose any documentation which would identify the reporting party.
179. Of course, had the Commissioner retained the matter, then the full details of the report would be known for the purposes of the investigation.
180. In any event, notwithstanding that the Council has been unable to inform itself of the nature and content of the original complaint made to the OPI, the relevant findings in this matter are set out below:

RELEVANT FINDINGS

181. This matter was referred to the Council for investigation by the Commissioner.
182. The referral followed a report that was made to the OPI concerning the proposed road closure of the unnamed road adjoining the Croatian Club and the Resort.
183. The Council was advised that the report to the OPI concerned the motion passed during a meeting of the Council on 21 April 2015, which, amongst other things, required that the Council enter into a formal road closure program for the road (C63-15).
184. It was alleged that while the resolution did not constitute a final decision, those affected by the proposed road closure had not been formally consulted pursuant to section 9 and 10 of the *Roads (Opening and Closing) Act 1991*.
185. It was further alleged, that in passing the motion, the Council had not followed its Public Consultation Policy which requires that a description of the matter under consideration be placed in the Coober Pedy Regional Times or the Advertiser Newspaper, inviting all interested parties to make submissions.
186. The report was assessed by the Commissioner as raising a potential issue of maladministration.
187. The definition of "maladministration" in section 5 of the ICAC Act has been set out above. That definition provides that "maladministration" in public administration includes "*conduct resulting from impropriety, incompetence or negligence*".
188. The evidence indicates that there is a history in relation to this matter, originating in November 2014 when the proposal from the Resort was first raised with the Council administration, culminating in the motion passed during the 21 April 2015 meeting of the Council and the failed rescission motion of 19 May 2015.
189. The concern of the Commissioner and hence the focus of this investigation, is necessarily limited, therefore, to whether the motion, in so far as it required the Council enter into a formal road closure program for the road, raised a potential issue of maladministration.
190. The resolution requiring the Council to enter into a formal road closure process (C63-15) was passed, without any informal discussion on the matter, in the absence of any independent traffic engineering advice and without first engaging with persons who might be affected by the closure, in particular, the Resort and the Croatian Club.
191. To commence a formal process with potential significant detriment to at least Cr Athanasiadis (in his personal capacity), and the Resort, without having previously engaged with him, or the Resort, on the road closure issue is a denial of procedural fairness and contrary to principles of good public administration.

192. Likewise, there were a number of other parties that would also be impacted by the proposed road closure, including the Croatian Club, the Coober Pedy Miners Association and residents on Flinders Street, who were also denied procedural fairness in this matter.
193. Former Cr Baines' motion on notice for the Meeting of the Council on 21 April 2015 ought to have been deferred, by formal motion and revisited upon the basis of a full report from the administration, including an assessment of the views of parties that would potentially be affected by the proposal.
194. While a full public consultation process was not necessarily required in the circumstances, at the very least those parties that would be immediately impacted were, in our opinion, required to be consulted.
195. It is clear that Cr Provatidis, former Cr Berry and former Cr Baines did not want to commit Council funds to forming and sealing a road, outside of the scope of the Council's 10 year plan. Unfortunately, Cr Crombie did not attend his interview, so it cannot be determined on what basis he considered the matter. However, it is noted that Cr Crombie voted against the proposal to form and seal the road and against the rescission motion at the meeting of 19 May 2015. Cr Crombie was an apology when the Council considered the motion that, amongst other things, proposed to commence the road closure process in April 2015.
196. It is clear that there is evidence that supports the contention that members of the community were opposed to the proposal and had, in fact, raised this with the acting CEO and the elected members.
197. The concerns of the community are, of course, relevant considerations to be taken into account when considering any proposal regarding the expenditure of Council funds, in acting as a representative, informed and responsible decision-maker in the interests of the community, as required by section 6 of the LG Act.
198. However, in so far as former Cr Baines, former Cr Berry and Cr Provatidis were of the opinion that endorsing the proposal to form and seal the unnamed road would "send the wrong message" to the community and would, in effect, send a message that the Council was "looking after its own", those are **irrelevant considerations**. In acting as a representative, informed and responsible decision-maker in the interests of the community, such matters are not relevant to the proposed decision.
199. Aside from being an elected member, Cr Athanasiadis is a ratepayer, resident, and business owner in the area.
200. In his personal capacity, Cr Athanasiadis is entitled to submit whatever proposal he may wish to the Council administration for consideration, as would any other ratepayer, resident or business owner.

201. The Council administration considered the proposal and made an assessment that it was meritorious from both a traffic safety perspective, as well as supporting the goals set out in the Coober Pedy Strategic Plan that, amongst other things, includes goals that "*optimise the tourism potential of Coober Pedy*". Based on this assessment, together with the costings, it was not unreasonable for the Council administration to make a determination that the proposal ought to be presented to the elected body for consideration.
202. While it is acknowledged that the Council has a 10 year road plan, the plan **cannot** act to restrain the Council from considering proposals on their merits, and from effectively carrying out its functions that include, amongst other things, providing infrastructure for the community and for development within its area.
203. The 10 year road plan, in effect, represents a "policy" position of the Council with regards to staged road works. It cannot, however, be the only criterion upon which the Council will consider proposals that relate to roadworks. There will always be works required outside of the 10 year plan, whether these opportunities arise because of unexpected damage, unexpected development, or unexpected opportunity.
204. To refuse to consider the proposal to form and seal the unnamed road on its merits, just because the works did not appear on the 10 year road plan, together with the status and/or role of the applicant, was unreasonable, unjust, and a denial of procedural fairness in the circumstances.
205. Whilst there has been some speculation that "personality" conflicts may have played a part in the manner in which the Resort proposal and, ultimately, the proposed road closure, were dealt with by the Council, the evidence does not establish the manner in which motion C63-15 was dealt with by the Council was personally motivated, to the detriment of Cr Athanasiadis.
206. Rather, we accept the evidence of Cr Provatidis, former Cr Berry and former Cr Baines that they wanted to achieve public consultation on the Resort proposal. However, their attempts to do so were misguided and wrong at law.
207. While a road closure process under the *Roads (Opening and Closing) Act 1991* does involve public consultation, it also sets the Council upon a course whereby certain undertakings must be entered into before that consultation can be commenced.
208. Section 9 of the *Road (Opening and Closing) Act 1991* requires that a preliminary plan and statement must be lodged with the Surveyor-General first and only then, pursuant to section 10, will public notice be given. Of course, preparing the plan and the statement comes at substantial cost to the Council, including surveyor's fees, amongst other things.

209. Even then, under the *Road (Opening and Closing) Act 1991*, the public consultation would be about **the road closure process**, and not whether Council funds should be committed to forming and resealing the unnamed road (which in any event is the road sought to be closed by the process).
210. Public consultation regarding a proposal that would result in the expenditure of Council funds, is not an unreasonable objective. However, the most efficient and cost effective option in these circumstances, is by way of the Council's Public Consultation Policy that specifically provides for steps to be taken *"in all instances where the District Council of Coober Pedy elects to seek public consultation."*
211. Cr Provatidis, former Cr Berry and former Cr Baines stated that they made attempts to seek advice from the acting CEO, and in the absence of what they consider any appropriate direction from Council administration, they sought assistance and advice from other avenues, including members of the board of the LGA.
212. While we make no criticism of Mayor Rosenberg who was attempting to assist Cr Provatidis and former Cr Berry, she could not have known her casual "advice" would be relied upon to the extent it was. It was improper and negligent for Cr Provatidis, former Cr Berry and former Cr Baines to rely on "advice", given in the context of a break during a conference, in the absence of knowledge of the full background to this matter.
213. Unfortunately, Cr Provatidis, former Cr Baines and Cr Crombie were newly elected members, this being their first term in Council after having been elected at the November 2014 Local Government elections.
214. Indeed, Cr Provatidis confirmed during the 21 April 2015 meeting of the Council:
- "By the way, I've only been on Council for 6 months, and I have no idea even how to talk in a meeting, I still haven't done any training."*
215. This issue is, of course, compounded when Cr Provatidis, in her role as Deputy Mayor, was required to Chair the meetings of Council of 17 February 2015 and 21 April 2015 when Council considered the Resort's proposal, former Mayor Staines having declared a conflict and departed the Chamber. Indeed, hers was the casting vote on both occasions given the votes cast on the numbers in the Chamber at the time.
216. When Cr Provatidis, former Cr Berry and former Cr Baines were questioned why, if they wanted a public consultation process, did not opt to undertake public consultation pursuant to Council's Public Consultation Policy, they were either not aware of the existence of the Policy, or it clearly had not occurred to them. Rather, all unquestioningly followed the "advice" they stated they had received from the "LGA", that being to undertake a road closure process.

217. Of concern is the fact that the elected members have still not undertaken the elected member training as required pursuant to regulation 8AA of the *Local Government (General) Regulations 2013*.
218. Further complicating matters, the acting CEO was inexperienced and, while we find that he made a genuine attempt to do the best he could in the circumstances, there were a number of failings that contributed to the manner in which the Resort proposal was ultimately dealt with by the Council.
219. The acting CEO failed to bring to the attention of the elected members, urgent, highly relevant information at its meeting of 21 April 2015, including the letter from DMAW lawyers dated 20 April 2015 and the legal advice received from Council's lawyers on 21 April 2015, prior to the elected members considering motion C63-15.
220. While the acting CEO attempted to retrieve the situation somewhat, in the Agenda report prepared for item 5.5.4 for the 19 May 2015 meeting, alerting the elected members to the legal implications of motion C63-15, he failed to set out a recommendation, the elected members being left with the motion on notice from Cr Rapaic which proposed to rescind motion C63-15 altogether.
221. The acting CEO should have recommended in the Agenda report for item 5.5.4 that Council resolve to rescind only 2.1 from resolution C63-15, thereby placing the Council in the position of not supporting the proposal to form and seal the road by way of the co-contribution model proposed, but not embarking on a road closure process. A recommendation of this nature may have received better traction in the meeting of May 2015 than the motion on notice proposed by Cr Rapaic.
222. Unfortunately, the motion on notice raised by Cr Rapaic proposed to rescind C63-15 in its entirety. There are inherent difficulties with this. Had the recession motion passed, whilst the road closure process would no longer be a "live" issue, the motion would revert back to that from 17 February 2015 (C25-15), the motion that inadvertently referred to "opening" the road. This could, however, have been remedied by a further motion to give effect to the Council's position on the proposal, a suggestion made by the former Mayor at the meeting of the Council on 19 May 2015.
223. While resolution C63-15 does not, of course, constitute a final decision on the status of the road, it is the first step in an unnecessary process, if indeed the intention all along was in fact to undertake a public consultation process.
224. There is no justifiable basis at law for embarking on this course, particularly in circumstances where;
- 224.1. Cr Athanasiadis and the Resort had indicated a willingness to work with the Council on alternative options;

- 224.2. there was no independent traffic engineering advice to contradict the safety issues raised by infraPlan;
 - 224.3. there was no consideration of the Council's Policy relating to the disposal of land and other assets adopted pursuant to section 49 of the LG Act; and
 - 224.4. the proposal to close the road was in fact detrimental to the interests of Council; and
 - 224.5. the proposal to embark on a road closure process in the circumstances was in direct contradiction to the advice Council had received from its own lawyers.
225. All of this information was available to the Council at its meeting of 19 May 2015, it having been set out in an Agenda report for item 5.5.4. The Council could have retrieved the situation at that meeting. However, it is clear that the motion on notice proposed by Cr Rapaic was lost and no alternative motion was proposed.

CONCLUSIONS

226. On the basis of the report received by the OPI, as outlined to the Council by the Commissioner and the evidence available to us in this investigation, **we find** that there was no evidence of malice or specific intent involved in proposing and passing resolution C63-15 at its meeting of 21 April 2015. However, in setting Council on a course to undertake a road closure process at that meeting, the Council **did** commit maladministration in public administration within the meaning of section 5(4) of the ICAC Act.
227. We find that this error can be largely attributed to the inexperience of certain elected members and the acting CEO.
228. This conclusion has been reached on the following basis:
- 228.1. the principles of administrative law that apply to all public authority decision makers, particularly where a proposed decision will impact the rights and interests of a third party or parties;
 - 228.2. while resolution C63-15 did not constitute a final decision, those affected by the proposed road closure had not been formally consulted pursuant to sections 9 and 10 of the *Roads (Opening and Closing) Act 1991*;
 - 228.3. in these circumstances the Resort, the Croatian Club, the Coober Pedy Miners Association and owners/occupiers of residential premises on Flinders Street were all impacted by the resolution of the Council to embark on a road closure process of the unnamed road. In our opinion, these parties, at the very least, were required to be consulted with before the resolution was made;

- 228.4. likewise, there was also no justifiable basis to enter into a lengthy and expensive road closure process. Rather than attempting to deal with the issue of public consultation at the 21 April 2015 meeting, the Council should have merely amended the motion from the February 2015 meeting, so that it accurately reflected the intention of the Council not to commit Council funds to form and seal the unnamed road;
- 228.5. the proposal to commit the Council to a formal road closure process, in the absence of any information from Council administration, expert reports or legal advice was ill-informed and negligent; and
- 228.6. section 6(a) of the LG Act places an obligation upon the Council to make decisions on a representative, informed and responsible basis. In our opinion, this obligation **could not** be satisfied in circumstances where resolution C63-15 was carried, in the absence of any further, relevant information.

RECOMMENDATIONS

229. Where an investigation has determined that a breach of the ICAC Act has occurred, the breach must be the subject of a Report, setting out the action taken and the reasons for that action.
230. It is then, of course, a matter for the Council to consider what (remedial) action, if any, it wishes to take.
231. Having now concluded that in the passing of resolution C63-15, and setting the Council on a course to undertake a road closure process such that the Council **did** commit maladministration in public administration (within the meaning of section 5(4) of the ICAC Act), to now remedy the error, it is recommended that the Council:
- 231.1. resolve to rescind paragraph 2.1 of resolution C63-15;
- 231.2. resolve that the priorities, as set out in the 10 year road plan be reviewed;
- 231.3. resolve that the costings in the 10 year plan be reviewed;
- 231.4. resolve that once reviewed, the 10 year road plan be the subject of public consultation, pursuant to the Council's Public Consultation Policy, before finalisation;
- 231.5. note in the resolution that the 10 year road plan provides the Council with guidance only with regards to proposed roadworks; and
- 231.6. note in the resolution that the Council is required to consider any proposal for road works, outside of the 10 year road plan, on its merits;

232. Further, it is recommended that the elected members undertake training, as required by regulation 8AA of the *Local Government (General) Regulations 2013* **as a matter of urgency** and, in any event, before mid November 2015.
233. While it is noted that regulation 12(4) of the *Local Government (Procedures at Meetings) Regulations 2013* provides that if a motion to revoke or amend a resolution is lost, a motion **to the same effect** cannot be brought until after the expiration of 12 months or until after the next general election, (whichever is the sooner), the proposed recommendation at 228.1 above is not a "motion to the same effect" as that proposed by Cr Rapaic, which was to rescind C63-15 in its entirety and so may be dealt with by the Council.
234. Moving forward then, in the absence of any further proposal that the Resort might want to submit, the Council, having already resolved not to contribute to the forming and sealing of the unnamed road (assuming that the above Recommendations are endorsed by the Council), it would seem redundant to now embark on a public consultation process regarding the expenditure of Council funds on these works,
235. For the avoidance of doubt, it is also to be noted that the unnamed road was and is, a "road" for the purposes of the LG Act and it is open for any member of the public to drive along, and use, that road.
236. This Report concludes the investigation of the report to the OPI by KJL.
237. The Council is now required to provide a copy of the final Report to the Commissioner by **29 September 2015**, together with an explanation as to the action taken (as recommended at paragraph 231 and 232 above), or if no action is to be taken, the reasons why.

KELLEDYJONES LAWYERS



MICHAEL KELLEDY
Direct Line: 08 8113 7103
Mobile: 0417 653 417
Email:
mkelledy@kelledyjones.com.au

KELLEDYJONES LAWYERS



TRACY RIDDLE
Direct Line: 08 8113 7106
Mobile: 0431 867 523
Email: triddle@kelledyjones.com.au

APPENDICES