

CONFIDENTIAL ITEMS 2003 – JUNE 2013

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
19	20 Oct 08	Ombudsman's Report	<p><b>Reason:</b> S 90(3)(a) Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any persons (living or dead) 2. Pursuant to Section 91(7) That having considered Agenda Item 16.2, in confidence under 90(2) and 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7)(b) of the Act orders that the reports, attachments and all minutes regarding the Ombudsman's reports dated: 20 October 2008 15 December 2008 15 June 2009 be retained in confidence until the staff members are no longer employed by Council and that this order be reviewed every 12 months.</p>	Discussion, Agenda, Attachment & Minutes	Matter relates to personal affairs of an employee	<p>Be retained in confidence until the staff members are no longer employed by Council and that this order be reviewed every 12 months.</p> <p>The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.</p>	17 Jun 13	2 Sept 13	<p>Minute released</p> <p>Agenda item part released</p> <p>Att part</p> <p>Part released 17/6/13 – on web 20/6/13</p>
SUPERSEDED – Refer to Documents #73									

**CONFIDENTIAL ITEMS 2003 – JUNE 2013**

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
73	17 June 2013	Review of Confidential Orders Associated with Ombudsman's Report 20 October 2008	<p>Section 90 (3) (g) Order</p> <p>1.Pursuant to section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except, Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure &amp; Projects, Minute Secretary, Risk &amp; Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.3 Confidential Report – Review of Confidential Orders Associated with the Ombudsman's Report - 20 October 2008.</p> <p>2.Pursuant to Section 90(3)(g)</p> <p>The Council is satisfied that, pursuant to section 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information concerning matters that must be considered in confidence in order to ensure that the Council does not:</p> <p>*breach any law, order or direction of a court or tribunal constituted by law,</p> <p>*breach any duty of confidence, or</p> <p>*breach any other legal obligation or duty as a confidentiality agreement exists</p> <p>The Council is satisfied that the principle of the meeting being conducted in a place open to the public has been outweighed in the circumstances because detailed information about the confidentiality agreement cannot be released.</p>	<p>Attachment 2 to report - the Council Report – Confidential Ombudsman Report 20 October 2008 redacted paragraphs as shown relating to the confidentiality agreement remaining confidential;</p> <p>Attachment 3 to report - the Attachment 20 October 2008 – Ombudsman Report Executive Summary with redacted names of staff and complainants</p>	<p>The redacted parts of Council Report of 20 October 2008 (attachment 2) be retained in confidence for the life of the confidential agreement;</p> <p>The redacted parts of Attachment Executive Summary of Ombudsman's report – 20 October 2008 (attachment 3) be retained in confidence until the staff members are no longer employed with Council; and</p> <p>The redacted parts of Attachment</p>	<p>Release Attachment 1 to this report - minute 47.2 from 20 October 2008 regarding the Ombudsman report</p> <p>Release Attachment 2 to this report - the Council Report – Confidential Ombudsman Report 20 October 2008 with redacted paragraphs as shown relating to the confidentiality agreement remaining confidential;</p> <p>Release Attachment 3 to this report - the Attachment 20 October 2008 – Ombudsman Report Executive Summary with redacted names of staff and complainants as shown remaining</p>	17 Jun 13	2 Sept 13	<p>Att 1 released</p> <p>Att 2, 3 part Released</p> <p>17/6/13 – on web 20/6/13</p>

CONFIDENTIAL ITEMS 2003 – JUNE 2013

#	Date	Item Title	Confidential Order Details	Item being kept confidential -Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
			<p>Pursuant to Section 90(3)(a)</p> <p>The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of staff, in that details of staff performance will be discussed.</p> <p>The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because details of staff performance will be discussed.</p> <p>Section 91(7) Order</p> <p>6.Pursuant to Section 91(7)</p> <p>That having considered Agenda Item 16.3 of Confidential Report – Review of Confidential Orders associated with the Ombudsman's Report Provided to Council on 20 October 2008 in confidence under 90(2) and 3(g) &amp; 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders</p>	as shown remaining confidential.	Executive Summary of Ombudsman's report – 20 October 2008 (attachment 3) relating to the names of the complainant be retained in confidence for the life of the confidential agreement,	confidential.  and this order be reviewed every 12 months.			

Seconded Councillor Campbell and CARRIED

- 100.4** Moved Councillor Irvine that Council release without prejudice the Attachment from Fiona Stevens, Central Psychology Services dated 3 August 2009.

Seconded Councillor Westwood and CARRIED

10.10pm Councillor Hamilton entered the chamber and took her chair.

---

**100.5**      **REPORT TITLE:**      **CONFIDENTIAL REPORT – REVIEW OF  
CONFIDENTIAL ORDERS ASSOCIATED  
WITH THE OMBUDSMAN’S REPORT- 20  
OCTOBER 2008**  
**DATE OF MEETING: 17 JUNE 2013**  
**FILE NUMBER:      13/045423**

Moved Councillor Irvine that Council:

**Section 90 (3) (g) Order**

1. Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public except, Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure & Projects, Minute Secretary, Risk & Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.3 Confidential Report – Review of Confidential Orders Associated with the Ombudsman’s Report - 20 October 2008.
2. Pursuant to Section 90(3)(g)  
The Council is satisfied that, pursuant to section 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information concerning matters that must be considered in confidence in order to ensure that the Council does not:
  - \* breach any law, order or direction of a court or tribunal constituted by law,
  - \* breach any duty of confidence, or
  - \* breach any other legal obligation or duty as a confidentiality agreement exists

The Council is satisfied that the principle of the meeting being conducted in a place open to the public has been outweighed in the circumstances because detailed information about the confidentiality agreement cannot be released.

Pursuant to Section 90(3)(a)

The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation



to this Agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of staff, in that details of staff performance will be discussed.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because details of staff performance will be discussed.

Seconded Councillor Westwood and CARRIED

**100.6** Moved Councillor Irvine that Council:

3. Release Attachment 1 to this report - minute 47.2 from 20 October 2008 regarding the Ombudsman report
4. Release Attachment 2 to this report - the Council Report – Confidential Ombudsman Report 20 October 2008 with redacted paragraphs as shown relating to the confidentiality agreement remaining confidential;
5. Release Attachment 3 to this report - the Attachment 20 October 2008 – Ombudsman Report Executive Summary with redacted names of staff and complainants as shown remaining confidential.

Seconded Councillor Westwood and CARRIED

10.18pm Councillor Bettcher left the chamber.

10.20pm Councillor Bettcher entered the chamber and took his chair.

**100.7** Moved Councillor Westwood

**Section 91(7) Order**

6. Pursuant to Section 91(7)  
That having considered Agenda Item 16.3 Confidential Report – Review of Confidential Orders associated with the Ombudsman's Report Provided to Council on 20 October 2008 in confidence under 90(2) and 3(g) & 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that:
  - the redacted parts of Council Report of 20 October 2008 (attachment 2) be retained in confidence for the life of the confidential agreement;
  - the redacted parts of Attachment Executive Summary of Ombudsman's report – 20 October 2008 (attachment 3) be retained in confidence until the staff members are no longer employed with Council; and
  - the redacted parts of Attachment Executive Summary of Ombudsman's report – 20 October 2008 (attachment 3)

relating to the names of the complainant be retained in confidence for the life of the confidential agreement, and this order be reviewed every 12 months.

Seconded Councillor Irvine and CARRIED

---

**100.8      REPORT TITLE:      CONFIDENTIAL REPORT – REVIEW OF  
CONFIDENTIAL ORDERS ASSOCIATED  
WITH THE OMBUDSMAN’S REPORT  
PROVIDED TO COUNCIL ON 15  
DECEMBER 2008**  
**DATE OF MEETING: 17 JUNE 2013**  
**FILE NUMBER:      13/046138**

Moved Councillor Irvine that Council:

**Section 90 (3) (g) Order**

1. Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public except, Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure & Projects, Minute Secretary, Risk & Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.4 Confidential Report – Review of Confidential Orders Associated with the Ombudsman’s Report – 15 December 2008.

**Pursuant to Section 90(3)(g)**

The Council is satisfied that, pursuant to section 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information concerning matters that must be considered in confidence in order to ensure that the Council does not:

- \* breach any law, order or direction of a court or tribunal constituted by law,
- \* breach any duty of confidence, or
- \* breach any other legal obligation or duty

as a confidentiality agreement exists.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because detailed information within the confidentiality agreement cannot be released.

**Section 90(3)(a)**

**Pursuant to Section 90(3)(a)**

The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or

16.3            **REPORT TITLE:        CONFIDENTIAL REPORT – REVIEW OF  
CONFIDENTIAL ORDERS ASSOCIATED  
WITH THE OMBUDSMAN’S REPORT- 20  
OCTOBER 2008**

**DATE OF MEETING: 17 JUNE 2013**

**FILE NUMBER:        13/045423**

**Strategic Plan 2012-2017 Ref:**  
Governance and Leadership

**Purpose:**

To provide Council with a confidential minute, report and attachment related to an Ombudsman investigation in October 2008, to determine if confidential orders should remain.

**Summary – Key Issues:**

- Council conducts an annual review of confidential items however a preliminary Ombudsman investigation has prompted an earlier review of some confidential items.

**Recommendation:**

That Council:

**Section 90 (3) (g) Order**

1. Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public except, Acting Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, Minute Secretary, Risk & Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.3 Confidential Report – Review of Confidential Orders Associated with the Ombudsman’s Report - 20 October 2008.
2. **Pursuant to Section 90(3)(g)**  
The Council is satisfied that, pursuant to section 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information concerning matters that must be considered in confidence in order to ensure that the Council does not:
  - \* breach any law, order or direction of a court or tribunal constituted by law,
  - \* breach any duty of confidence, or
  - \* breach any other legal obligation or duty as a confidentiality agreement exists

The Council is satisfied that the principle of the meeting being conducted in a place open to the public has been outweighed in the circumstances because detailed information about the confidentiality agreement cannot be released.

Pursuant to Section 90(3)(a)

The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of staff, in that details of staff performance will be discussed.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because details of staff performance will be discussed.

3. Release Attachment 1 to this report - minute 47.2 from 20 October 2008 regarding the Ombudsman report
4. Release Attachment 2 to this report:
  - the Council Report – Confidential Ombudsman Report 20 October 2008 with redacted paragraphs as shown relating to the confidentiality agreement remaining confidential.
5. Release Attachment 3 to this report:
  - the Attachment 20 October 2008 – Ombudsman Report Executive Summary with redacted names of staff and complainants as shown remaining confidential.

Section 91(7) Order

7. Pursuant to Section 91(7)

That having considered Agenda Item Confidential Report – Review of Confidential Orders associated with the Ombudsman's Report Provided to Council on 20 October 2008 in confidence under 90(2) and 3(g) & 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that:

- the redacted parts of Council Report of 20 October 2008 (attachment 2) be retained in confidence for the life of the confidentiality agreement;
- the redacted parts of Attachment Executive Summary of Ombudsman's report – 20 October 2008 (attachment 3) be retained in confidence until the staff members are no longer employed with Council; and

- the redacted parts of Attachment Executive Summary of Ombudsman's report – 20 October 2008 (attachment 3) relating to the names of the complainant be retained in confidence for the life of the confidential agreement, and this order be reviewed every 12 months.

---

**Background:**

1. The Council last reviewed the confidential orders associated with these items in September 2012.
2. The Ombudsman's is conducting a preliminary investigation into the reasons for maintaining confidentiality on this item.
3. The Ombudsman's office agreed that it would be prudent to undertake a further review prior to beginning this investigation.

**Discussion:**

4. The 3 relevant documents are:
  1. The confidential Council minute 20 October 2008
  2. The Council report
  3. An attachment to the report from the Acting Ombudsman's report
5. As this matter involved a confidential agreement regarding a claim involving the Local Government Mutual Liability Scheme, the Scheme was consulted as part of this review. Any information related to the claimants and the details of the claim must remain confidential as per the confidential agreement.
6. The confidential minute of 20 October 2008 and the related report (with redacted reference to the information within the confidential agreement); are recommended for release. The redacted information relates to a confidentiality agreement and cannot be released.
7. The attachment Executive Summary of Ombudsman's Report – 20 October 2008 is recommended to be released with the redacted information related to names of staff and complainants to remain confidential as it relates to staff performance.

**Community Engagement:**

Informing only	Released information is provided on Council's website
----------------	---

**Policy:**

Code of Practice – Access to Meetings and Documents

**Budget:**

N/A

**Statutory/Legal:**

This review is additional to the annual review required under the Local Government Act S91(9)

**Staff Resource Requirements:**

This will be accommodated within existing resources

**Environmental:**

N/A

**Social:**

The review of confidential information and release of any matter that is no longer required to be kept confidential is a demonstration of transparency in local government.

**Risk Assessment:**

There is a risk that information could be released that should remain confidential however by involving the Liability Scheme this has been mitigated.

**Asset Management:**

N/A

**Conclusion:**

This confidential item has been reviewed and only redacted information will remain confidential.

---

**Key Contact**

Ros McDougall, Risk & Governance Officer, Corporate Services

**Manager or Sponsor of Project**

David Peters, General Manager Corporate Services

**Attachments**

- 1 – Confidential minute 20 October 2008
- 2 – Confidential Council Report 20 October 2008 – redacted components
- 3 – Confidential Attachment from the Acting Ombudsman's Report 2008 – redacted components

DISTRICT COUNCIL OF MOUNT BARKER

Attachment 1 to Item 16.3 17 June 2013

MINUTES OF THE COUNCIL MEETING HELD ON MONDAY 20 OCTOBER 2008.

12

10. Orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential until 20 October 2009 or all of the matters relating to the need for confidentiality as outlined in the confidential agenda item have been achieved, whichever is the sooner.

Seconded Cr Irvine and CARRIED.

47.2

**REPORT TITLE:** CONFIDENTIAL - OMBUDSMAN REPORT  
**DATE OF MEETING:** 20 OCTOBER 2008  
**AUTHOR:** ANDREW STUART  
**AUTHOR'S TITLE:** CHIEF EXECUTIVE OFFICER  
**FILE NUMBER:** 32/015/052  
**ATTACHMENTS:** 1 - OMBUDSMAN REPORT - EXECUTIVE SUMMARY - CONFIDENTIAL  
**DEPARTMENT:** CHIEF EXECUTIVE'S UNIT  
**DEPARTMENT MANAGER:** ANDREW STUART

Moved Cr Irvine:

1. That pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the District Council of Mount Barker orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:
  - (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead.)
2. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, and the Minute Secretary be permitted to remain in the room.
3. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential until 20 October 2009, 9 September 2010, 5 September 2011

*6/9 "The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked."*
4. That Council note the receipt of the Ombudsman's Report dated October 2008 - *"Investigation of the actions of the District Council of Mount Barker and its officers in removing*

DISTRICT COUNCIL OF MOUNT BARKER  
MINUTES OF THE COUNCIL MEETING HELD ON MONDAY 20 OCTOBER 2008.

13

*and unlawfully disposing of a vehicle and its contents, and in later unreasonable dealings with the owner".*

5. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

Seconded Cr Gamble and CARRIED.

MEETING DECLARED CLOSED AT 8.15PM

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE

CONFIDENTIAL



District Council of Mount Barker

Council Agenda 20 October 2008

112

Attachment 2 to Item 16.3 17 June 2013

**17.2**      **REPORT TITLE:**      **CONFIDENTIAL - OMBUDSMAN REPORT**

**DATE OF MEETING:** 20 OCTOBER 2008

**AUTHOR:**              **ANDREW STUART**

**AUTHOR'S TITLE:**    **CHIEF EXECUTIVE OFFICER**

**REPRESENTORS:**    **NIL**

**FILE NUMBER:**      **32/015/052**

**ATTACHMENTS:**      **1 - OMBUDSMAN REPORT - EXECUTIVE SUMMARY - CONFIDENTIAL**

**DEPARTMENT:**      **CHIEF EXECUTIVE'S UNIT**

**DEPARTMENT MANAGER:**      **ANDREW STUART**

---

**PURPOSE**

To provide a copy of the Executive Summary of the Ombudsman's Final Report regarding the current investigation relating to the application of Section 237 of the Local Government Act 1999 and to update the Council on the actions undertaken to date.

**RECOMMENDATION**

1. That pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the District Council of Mount Barker orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:
  - (b) information the disclosure of which:
    - (i) could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting or proposing to conduct, business, or to prejudice the commercial position of the Council; and
    - (ii) would, on balance, be contrary to the public interest
2. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities, General Manager Corporate, and the Minute Secretary be permitted to remain in the room.

3. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential until 20 October 2009.
4. That Council note the receipt of the Ombudsman's Report dated October 2008 - *"Investigation of the actions of the District Council of Mount Barker and its officers in removing and unlawfully disposing of a vehicle and its contents, and in later unreasonable dealings with the owner"*.
5. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

---

#### **BACKGROUND**

In November 2007 the Ombudsman advised Council that they had received a complaint from a ratepayer in relation to the manner in which Council had fulfilled its obligations.

The claim from the ratepayer relates to the application of Section 237 of the Local Government Act 1999 – Removal of Vehicles.

The Ombudsman has acted on this complaint in accordance with the Ombudsman Act 1972 and commenced an investigation.

The Mayor received a Final Report (the Report) of the investigation from the Ombudsman, dated 7 October 2008. A copy of the Executive Summary of the Report is now forwarded to the Council. Due to the size of the Report (120 pages), the confidential nature of its content and the impending actions resulting from the recommendations of the Ombudsman, a full copy of the Report has not been provided. If any member of the Council wishes to inspect the Report, you may do so by request to the Mayor, which will be subject to undertakings regarding maintaining confidentiality of the Report until and unless it is published (in the Parliament) and the full report attracts the protection of Parliamentary Privilege.

The Ombudsman is required under the Ombudsman Act 1972 to provide a copy of the report to the Minister for Local Government.

#### **DISCUSSION**

Upon consideration of the Final Report of the Ombudsman it is considered that in general terms, the Report:

- Reflects a thorough investigation;

- Records an unacceptable failure in appropriate standards of public administration on the part of the Council's General Inspectors;
- Identifies an unacceptable lack of supervision and accountability of those General Inspectors;
- Provides recommendations for improvement in the future that are accepted by the Mayor and myself.

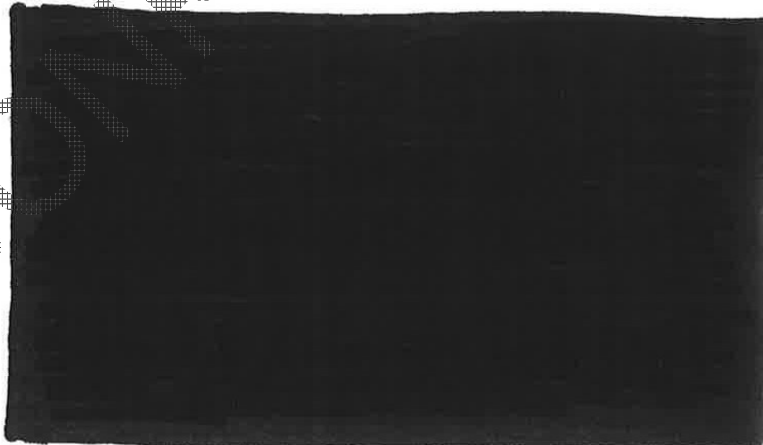
There are 4 key areas to this matter which are briefly outlined below.

#### ***Complaint***

In late 2007, a ratepayer of the Council complained to the Ombudsman regarding the sale of their vehicle by Council. The vehicle was left unclaimed on the road verge. Council's General Inspectors sought to provide an opportunity for the owner of the vehicle to remove it from its location via the placement of a towing notice on the vehicle, giving them 24 hours to remove. The vehicle was subsequently removed from the roadside and impounded by Council officers. Council officers sought to serve notice on the owner of the vehicle that Council was now in possession of the vehicle to enable them to claim the vehicle. The vehicle was subsequently left unclaimed by the owner and was then sold to a third party by Council officers. After the sale, the original owner sought to claim the vehicle however this was now not able to occur.

The Ombudsman upon investigation determined that Council officers did not follow due process in accordance with its legislative requirements relating to the Local Government Act 1999, Section 237 – Removal of Vehicles.

#### ***Insurance Claim***



#### ***Staff Issues***

As identified by the Ombudsman and by Council's own internal investigation of the events relating to this complaint, the actions of

specific Council officers have not been in accordance with their legislative requirements, delegated authority or Code of Conduct.

Some of the matters canvassed in the Report are already the subject of an internal disciplinary process with the Report raising further matters that will need to be investigated.

**General Inspectorial Section – Culture, Policies and Supervision**

The Ombudsman's investigation has identified significant cultural, personnel and process deficiencies in Council's General Inspectorial Section. There have been some concerns about this Section however the extent of the failings that are subject to the Ombudsman's investigation warrant even more concern than previously determined.

Council has engaged a consultant to assist in the development of procedures relating to all functions performed by the General Inspectorial Section. This work is in progress with a number of procedures nearing completion. Consideration is also currently being given to the implementation of a change management and continuous improvement process in this section. With the recent appointment of Mr Bill Chandler to the General Manager role responsible for this section, further reviews of systems and processes is occurring. Consideration is also being given to the appointment of a specialist in the area of change management and continuous improvement to restructure and develop this area of Council's operation.

**Ombudsman's Recommendations**

Prior to the Final Report being presented to the Mayor a number of meetings and discussions have been held with the Acting Ombudsman, Mr Ken McPherson, and members of his staff to gain a clear understanding of the Report recommendations and actions required by Council. During these discussions the Acting Ombudsman asserted the "new approach" that he is taking in discharge of the Office of the Ombudsman. These discussions have been of fundamental importance in assisting in understanding and meeting the requirements of the "new approach".

Council is required to provide comment to the Acting Ombudsman in relation to the recommendations as summarised in the Executive Summary (pages 83-86) of the Report by Friday 7 November 2008. Council's comments are to address:

- Any steps that have been taken to give effect to the recommendations
- Any proposed steps that will be taken to give effect to the recommendations
- Explanation of any inaction in relation to the recommendations made.

A further report will be provided at a future Council meeting regarding the progress of the recommendations.

### **POLICY IMPLICATIONS**

**1. Financial/budget**

Additional budget resources required to undertake the change management process in this area will be forwarded as part of a future budget review for 2008/2009.



**2. Legal**

The Local Government Act 1999 and the Ombudsman's Act 1972 are applicable.

Council is pursuing an offer by the Local Government Association (LGA) for funding and resource support – this follows discussions where the LGA has taken swift action to recognise this matter is one of the first to surface in what is anticipated to be additional matters raised in other councils which will have possible sector wide implications.

**3. Staffing/Work Plans**

Significant change management initiatives are required to be implemented in this area, therefore, additional resourcing will be required.

**4. Environmental**

Not applicable.

**5. Social**

Not applicable.

**6. Strategic Plans**

Goal 6 – Governance.

### **COMMUNITY CONSULTATION**

**1. Customer Needs Analysis**

The implementation of the change management process in this area will provide for improved service delivery.

**2. Promotion/Communications**

Not applicable.

## 4 Executive Summary

### 4.1 Overview

#### 4.1.1 Outline of facts

4.1.1.1 On Friday 20 April 2007, the District Council of Mount Barker received a telephone report that a truck had been parked for some time on a road of a town within the council district. The truck's registration had expired. Next Tuesday, 24 April, Council officers placed a towing notice on the truck. It warned that the truck was liable to be impounded after 24 hours. By the end of the following weekend, the owner had moved the truck to a different spot some way along the same road. On Monday 30 April the truck was towed to the Council's vehicle pound. The Council posted notices to the owner, warning that the vehicle would be sold after 14 days. The owner plainly did not receive the first notice. He says, and I accept, that he did not receive the second, which was posted on 16 May. On 30 May, the truck was sold by private treaty for \$200. Some tools, equipment, and stock in trade on the truck were dumped by council officers. Some personal effects and business papers in the cabin passed with the truck to the purchaser. The first the owner knew of the sale, or the disposal of his goods, was in July. He complained to the council. He got no satisfaction. He complained to me.

4.1.1.2 This report arises out of the investigation of his complaint.

#### 4.1.2 Overview of conclusions

4.1.2.1 I have concluded that the complaint is fully justified. The truck should not have been towed. It should not have been sold, either for \$200 or at all. It should the load have been dumped. These actions were unlawful. They way they were done was, in addition, unreasonable at several points. It did not comply with well-settled principles of public administrative practice. In some aspects, it amounted to misconduct on the part of the officers involved.

4.1.2.2 As well, the conduct of the council officers to whom the complaints were first directed was unacceptable. It fell short of the most basic standards required of public officers. I regard their behaviour in that episode as also amounting to misconduct.

4.1.2.3 The council should fully compensate the complainant. Compensation should reflect the fact that the detriment to the complainant is aggravated by the range of administrative errors, and by the several instances of misconduct, that I have found.

4.1.2.4 More broadly, the evidence that has been obtained in the course of this investigation has exposed grave systemic defects in the administrative processes of the Council and in particular of its Regulatory Services group.

4.1.2.5 The evidence is incontrovertible that the defective performance of council officers in this case was not a one-off. It was in part a reflection of their fundamental misconceptions of their roles, responsibilities and powers.

4.1.2.6 The evidence is also incontrovertible that those misconceptions were engendered, and then allow to persist, in part because of the complete failure of the council, in breach of section 132A of the *Local Government Act 1999*, to develop and maintain any proper guidelines, operating procedures and reporting practices for its regulatory functions.

4.1.2.7 In essence, there has been long-standing systemic administrative failure in administering the power to deal with vehicles left in public places.

4.1.2.8 The consequence of that failure has been that this council has dealt unlawfully with the vehicles of a significant number of citizens over a period of years.

4.1.2.9 All this is simply unacceptable from an entity entrusted with governmental responsibilities. In my opinion, for the reasons discussed in this report, immediate remedial action is required. It should be directed to both personnel and practices. It should follow an external review.

#### **4.2 Evidence of Misconduct -Ombudsman Act 18(5)**

##### **Officer asserts a second complaint**

4.2.1.1 (3.2.5.4) In my opinion, there was no evidentiary basis for saying that there was more than one complainant, or for saying that any complainant had expressed a view that the truck was an obstruction. I do not accept [redacted] evidence on this matter. In my opinion, it was a self-serving embellishment, and it was misleading.

4.2.1.2 (3.2.5.5) In my opinion, these findings disclose evidence of misconduct by [redacted] in responding to my investigation, and I report accordingly (*Ombudsman Act 18(5)*).

##### **Posting the 14-day sale warnings**

4.2.1.3 (3.4.8.6) [redacted] persistence in claiming to rely on the returned notice, and [redacted] regarding personal service as a subject for debate, display an unjustifiable ignorance of the requirements of the legislation under which [redacted] was acting and an unreasonable willingness to persist in defending the indefensible. It is evidence of a breach of duty by [redacted] and by those whose responsibility it was to direct [redacted] and I report accordingly, in accordance with *Ombudsman Act 18(5)*.

##### **Sale under Section 237**

4.2.1.4 (3.5.8.2) In my opinion, [redacted] willingness to conclude the sale on 30 May, apart from being premature was, even on [redacted] own state of belief, unreasonable and, as regards the rights of the owner, oppressive (*Ombudsman Act 25(1)(b)*). It could only be justified by relying on the date of the notice. Given that the notice itself contained two trigger-dates, it was unreasonable and oppressive to choose the earlier of the two and it was also unreasonable having regard to [redacted] knowledge of the postal arrangements at Nairne. It was so unreasonable that I regard it as an act of misconduct within the meaning of *Ombudsman Act* section 18(5) and I so report.

4.2.1.5 (3.5.8.6) In my opinion, [redacted] conduct in selling the truck in the circumstances in which [redacted] did, particularly having regard to the limit of [redacted] authority to an estimated value \$2,000, was grossly improper and constitutes evidence of misconduct. (*Ombudsman Act 18(5)*).

##### **Dumping the contents**

4.2.1.6 (3.6.8.4) In my opinion, neither [redacted] nor [redacted] had any evidentiary basis that would have entitled them to assume that [redacted] had abandoned his property rights over the goods on the truck.

4.2.1.7 (3.6.8.5) In dumping these goods, in my opinion, [redacted] and [redacted] acted with reckless indifference to [redacted] property rights, and their conduct in so acting was grossly improper.

4.2.1.8 (3.6.8.6) In my opinion, their conduct constitutes an unlawful conversion of [redacted] property for which they are presumably liable.

4.2.1.9 (3.6.8.7) Their claims of justification for dumping the contents of the tray are so lacking in a rational basis, and so inherently implausible, as to raise doubt, in my opinion, about their genuineness. Similarly, a claim to have acted in good faith must rest on, among other things, a rational basis. It follows that I am not satisfied that they were acting in good faith. The evidence of this episode discloses serious misconduct by both of them, and I so report in accordance with *Ombudsman Act 18(5)*.

4.2.1.10 (3.6.8.8) A real question arises as to the extent of the abuse of the property rights of persons whose goods have fallen into the possession of this Council over a period of several years. By its own admission, this Council has stated that it has disregarded the property rights of those persons whose vehicles were impounded on the basis that the *Unclaimed Goods Act 1987* is not mentioned in the *Local Government Act 1999*. The seriousness of the misguided understanding that is reflected in this formal response by senior management must not be understated. Further, such practices, when institutionalised as has been the case in this council, raise an unacceptable risk of corruption in public office for which no controls have been in place. It was not until well into the course of this investigation that the council could no longer deny that it had acted unlawfully. In my opinion, this is evidence of breach of duty by those responsible for the management of this function, and I so report in accordance with *Ombudsman Act 18(5)*.

#### The July interview

4.2.1.11 (3.7.5.2) I am satisfied by the evidence, including their own evidence to me much later, that neither [REDACTED] nor [REDACTED] made any inquiry about the availability of alternative interview rooms to replace the original expired booking. In my opinion, that omission to inquire was in itself unreasonable and oppressive (*Ombudsman Act 25(1)(b)*) to such a degree that it alone is evidence of misconduct within the meaning of *Ombudsman Act 18(5)*, and I so report.

4.2.1.12 (3.7.5.4) The conduct of [REDACTED] and [REDACTED] in exploiting the situation of [REDACTED] vulnerability was, in my opinion, unconscionable and therefore unreasonable and oppressive (*Ombudsman Act 25(1)(b)*). In acting as they did, [REDACTED] and [REDACTED] failed in several respects to act in accordance with the Council's Code of Conduct for its employees or with settled standards of public administration - both of which are referred to in the introduction to this report. Further, given the particular circumstances, their conduct was, in my opinion, intimidatory, and indifferent to the rights of a distressed young mother whose family's interests had been the subject of unlawful action by Council officers. In my opinion, the evidence on this episode constitutes further evidence of misconduct by them both, and I so report in accordance with *Ombudsman Act 18(5)*.

4.2.1.13 (3.7.6.7) Taking into account everything that has been said on behalf of the officers, and in particular the potential for understandable inaccuracy arising from the passage of time, I regard their misleading account of the unavailability of an alternative room in which to conduct the interview as evidence of an act of misconduct, and I so report (*Ombudsman Act 18(5)*).



#### **4.3 Administrative defects opinions - Ombudsman Act 25(1)**

##### **Impounding the truck**

4.3.1.1 (3.3.8.1) [REDACTED] was acting under a mistake of law (*Ombudsman Act 25(1)(f)*) in thinking that the fact that the vehicle was unregistered, and still in the same street, enlivened [REDACTED] power to impound.

4.3.1.2 (3.3.8.2) The removal was consequently contrary to law (*Ombudsman Act 25(1)(a)*).

4.3.1.3 (3.3.8.3) [REDACTED] was exercising the statutory power to remove the property of a member of the community. In my opinion, [REDACTED] had a public law duty under section 237 of the *Local Government Act 1999* to exercise [REDACTED] powers only after having informed [REDACTED] that it was reasonable to do so in the circumstances that then applied and that the applicable statutory criteria had been met. In my opinion, [REDACTED] did not do so. To this extent [REDACTED] action was unreasonable (*Ombudsman Act 25(1)(b)*).

4.3.1.4 (3.3.8.4) In my opinion, there was a reasonable response by the owner to the apparent requirements of the defective towing notice. The fact of the truck having been shifted was reasonably capable of being seen as attempted compliance with the notice. Regardless of what anyone may have thought the law permitted, it was, in my opinion, unreasonable to proceed to impound without further inquiry. (*Ombudsman Act 25(1)(b)*).

4.3.1.5 (3.3.8.5) In my opinion, the subsequent impounding of [REDACTED] truck was unlawful for another reason. (*Ombudsman Act 25(1)(a)*). The simple fact of its removal displaced any previous presumption that it had been "left on a public road" within the meaning of section 237 of the *Local Government Act*. As well, there was no evidence that [REDACTED] had been in its new position for the minimum 24-hour period required to trigger the powers under section 237.

4.3.1.6 (3.3.8.6) Apart from the non-existence of the threshold requirements of section 237, the impounding was also made unlawful by unreasonableness, and by the taking into account of irrelevant considerations or the fundamental misapplication of relevant considerations in the following ways:

1. It was unreasonable not to contemplate that the movement might lead them easily to the owner.
2. To impound on the basis of the truck being apparently out of registration, to the exclusion of all other potentially relevant considerations, was unreasonable and wrong: it either applied a consideration that was strictly irrelevant to the exercise of the power, or it elevated that consideration to such a degree that it fatally flawed the exercise of the power. (*Ombudsman Act 25(1)(d)*).
3. Once notice had been given of [REDACTED] what the owner had to do to avoid impoundment, it was unreasonable to proceed to impound on another basis of which the owner had had no notice. (*Ombudsman Act 25(1)(b)*).

##### **Posting the 14-day sale warnings**

4.3.1.7 (3.4.8.1) In my opinion, the posting of the notices dated 1 May 2007 and 15 May 2007 was unlawful (*Ombudsman Act 25(1)(a)*). As I am satisfied that they were not actually received, there was no actual service either. The result is that the notices were void and of no lawful effect. In these circumstances, in my opinion, the council had no lawful authority to sell the vehicle.

4.3.1.8 (3.4.8.2) Even if service by post had been a lawful alternative, [REDACTED] claim to be able to rely on the notice of 1 May 2007 when this notice was returned to the Council unclaimed is simply nonsensical. If it had been lawful to serve by post, there would also have been a legal presumption the notice had been received in the ordinary course of the post within a day or two. But even if that presumption had been available, it would have been displaced by the return of the letter.

4.3.1.9 (3.4.8.3) The attempted service by post was done in accordance with what had become an established practice within the Council. However that practice developed, the best that can be said for it is that it was contrary to law (*Ombudsman Act 25(1)(a)*). The fact that it was maintained as a standing practice contrary to law is evidence of a breach of duty by officers of the council, and I report accordingly. (*Ombudsman Act 18(5)*).

4.3.1.10 (3.4.8.4) Even allowing that this was the established practice, the circumstances of this case were such as to demand a critical reconsideration of the established practice by the officers involved, for these reasons:

- the truck was, as the officers themselves recognised, out of the normal run of the sorts of vehicles which tended to attract the use of their powers;
- after it had been towed, there was an immediate approach to the council on behalf of the owner, and someone at the council (whose identity has not been disclosed) was able to tell the owner's household by telephone what had happened to the truck;
- proper administration would have kept a record of this telephone contact, and of its being passed on to the officer handling the case;
- at the very latest, the officer in charge of the case knew before producing the second sale letter on May 15 that a person of the same name as the last registered owner lived in the house from outside which the truck was removed, and to which it had been shifted after being first tagged with a towing notice.

4.3.1.11 (3.4.8.5) In the face of all this, the failure to take any of the opportunities to seek direct contact with [REDACTED] was, in my opinion, unreasonable (*Ombudsman Act 25(1)(b)*).

**Sale under section 237**

4.3.1.12 (3.5.8.1) In my opinion, even if the attempted service by post of the notice dated 15 May 2007 had been either lawful or effective, the sale concluded on 30 May would have been unlawful by reason of being premature. (*Ombudsman Act 25(1)(a)*). (As I have already concluded, it was unlawful for other reasons anyway.)

4.3.1.13 (3.5.8.2) In my opinion, [REDACTED] willingness to conclude the sale on 30 May, apart from being premature, was, even on his own state of belief, unreasonable and, as regards the rights of the owner, oppressive (*Ombudsman Act 25(1)(b)*). It could only be justified by relying on the date of the notice. Given that the notice itself contained two trigger-dates, it was unreasonable and oppressive to choose the earlier of the two, and it was also unreasonable having regard to [REDACTED] knowledge of the postal arrangements at Nairne. (See also Section 18(5) evidence, above.)

4.3.1.14 (3.5.8.3) In my opinion, the practice of selling all impounded vehicles for \$200 without further inquiry is unlawful (*Ombudsman Act 25(1)(a)*) and inherently unreasonable (*Ombudsman Act 25(1)(c)*). Having regard to the probable range of values of this particular vehicle, its sale for \$200, while in accordance with that practice, was on its own account unreasonable (*Ombudsman Act 25(1)(b)*).

4.3.1.15 (3.5.8.4) In not making any inquiry as to the value of the truck, in my opinion, [REDACTED] made two mistakes of law, one as to the requirements of section 237, and one as to what was required of [REDACTED] to ensure that [REDACTED] was within his delegation. (*Ombudsman Act 25(1)(f)*). In selling for \$200, [REDACTED] acted in accordance with a practice that was unreasonable (*Ombudsman Act 25(1)(c)*). Having regard to the clear circumstances of the case, not questioning the practice was itself unreasonable (*Ombudsman Act 25(1)(b)*).

4.3.1.16 (3.5.8.5) In my opinion, the practice of selling impounded vehicles to first comers, without any public and transparent process, was wrong. (*Ombudsman Act 25(1)(f)*).

#### **The contents of the truck**

4.3.1.17 [REDACTED] did not protect the privacy of [REDACTED] personal business and other private papers that were in the cabin of the truck. In passing this material to [REDACTED], in my opinion, [REDACTED] acted improperly. [REDACTED] conduct was wrong. (*Ombudsman Act 25(1)(g)*).

4.3.1.18 There is no evidence that [REDACTED] had 'relinquished' [REDACTED] property to the Council as suggested by [REDACTED]. [REDACTED] had a period of 3 months to claim [REDACTED] goods before the Council had any lawful authority to dispose of them. As a matter of law, having regard to its purported value, the Council was required to have a court order to sell [REDACTED] property.

4.3.1.19 The goods that were on the tray of the vehicle and the goods that were in the cabin of the vehicle had to be dealt with in accordance with the *Unclaimed Goods Act 1987*.

#### **The July Interview**

4.3.1.20 (3.7.5.1) In my opinion, it was improper for [REDACTED] and [REDACTED] to treat [REDACTED] as they did on the morning of 18 July 2007. Their conduct of the interview was unreasonable and oppressive (*Ombudsman Act 25 (1)(b)*).

4.3.1.21 (3.7.5.2) I am satisfied by the evidence, including their own evidence to me much later, that neither [REDACTED] nor [REDACTED] made any inquiry about the availability of alternative interview rooms to replace the original expired booking. In my opinion, that omission to inquire was in itself unreasonable and oppressive (*Ombudsman Act 25 (1)(b)*) to such a degree that it alone is evidence of misconduct within the meaning of *Ombudsman Act 18(5)*, and I so report.

4.3.1.22 (3.7.5.3) In my opinion, the inference is open, and I find, that [REDACTED] and [REDACTED] took advantage of [REDACTED] late arrival on the morning of 18 July 2007 to interview her outside of the council building. In my opinion, the response to the issues concerning which she sought information from the two council officers was dismissive and unhelpful. At no time did either [REDACTED] or [REDACTED] advise [REDACTED] of her right to have the matters that she was raising referred to the Council for its consideration. These actions were unreasonable and oppressive. *Ombudsman Act 25(1)(b)*.

### **4.4 Other major findings**

#### **Sale under section 237**

4.4.1.1 (1.1.1.1) In my opinion, the absence of a system for ensuring that these General Inspectors were fully informed of the scope of their delegations, and for ensuring that their actions came within them, ignores the recommendations made to achieve best practice the delegation model prepared by the LGA and is an instance of maladministration.

### **The July interview**

4.4.1.2 (3.7.5.5) In my opinion, the highly unsatisfactory conduct of the interview with [REDACTED] on 18 July was in part a symptom of a lack of proper procedures for ensuring accountability for administrative processes, for internal review of decisions, and for ensuring that citizens have access to relevant information, in particular information as to their rights of review.

### **General matters**

4.4.1.3 (3.6.3.3) In my opinion, [REDACTED] has failed in his responsibilities to ensure the proper administration of the matters for which [REDACTED] is managerially responsible within the council. [REDACTED] responses to questions from my investigators, in my opinion, raises serious questions as to understanding of [REDACTED] responsibilities as a public officer.

4.4.1.4 (3.6.3.4) In evidence to this investigation, [REDACTED] has demonstrated a serious misunderstanding of fundamental elements of the regulatory responsibilities of a public authority. This in turn raises serious concerns regarding the council's capacity to provide reasonable assurance to the Mt Barker community that matters for which [REDACTED] has administrative responsibility within the council are being dealt with effectively, properly, lawfully and reasonably.

4.4.1.5 (3.6.3.5) In my opinion, this represents a serious managerial failure within this important area of the council.

4.4.1.6 (3.8.10.7) In my opinion, section 237 of the *Local Government Act 1999* ought to be reviewed and, if it is still thought necessary to retain the general power it gives, it should be rewritten to conform with the general principles of statutory forced sales that exist in other Acts.

## **4.5 Recommendations**

### **Section 237 towing notices**

4.5.1.1 (3.2.6.1) In my opinion, the Regulations under the *Local Government Act 1999* should prescribe the form and content of the towing notice. This would ensure uniformity of administrative approach across all council jurisdictions.

4.5.1.2 (3.2.6.2) The prescribed notice should correct the flaws I have identified in the notice used by the Mount Barker Council. It should:

1. Record the date and time.
2. Identify the vehicle.
3. Provide for identifying the vehicle's location as precisely as circumstances permit.
4. State that there is reason to believe that the vehicle has been left there.
5. Warn that if the vehicle is not moved within 24 hours of the date and time of the notice, it may be impounded under section 237, *Local Government Act 1999*.
6. Warn that release must be sought, and costs will have to be paid. Warn that, if this is not done, section 237 permits a sale.
7. Include a statement that it is an offence under the *Motor Vehicles Act 1959* to cause an unregistered motor vehicle to be standing on a road as defined in that Act, and an offence against section 236, *Local Government Act 1999*, to abandon a vehicle in a public place.

8. Identify the authorised officer who issues the notice, and provide a telephone contact.

4.5.1.3 (3.2.6.3) [REDACTED] should be directed not to embellish and exaggerate a factual situation where there is no evidence to support the matters being stated by [REDACTED], whether in dealing with [REDACTED] ordinary duties or answering an Ombudsman's investigation.

4.5.1.4 (3.2.6.4) A standard operating procedure should be developed for the exercise of these powers and it should, among many other things, require that the officer who places the towing notice should normally be responsible for any later decision on towing.<sup>66</sup>

#### **Impounding the truck**

4.5.1.5 (3.3.9.1) Having regard to the issues that have been identified in the course of this investigation, it is, in my opinion, imperative that this Council take immediate steps to introduce proper controls and supervision of the regulatory activities of the General Inspectors.

4.5.1.6 (3.3.9.2) The application of, and compliance with, the controls should be a mandated audit requirement, and should include a regular compliance report to be presented to the Council and to be publicly available.

#### **Posting the 14-day sale warnings**

4.5.1.7 (3.4.9.1) Council should immediately implement a system to record reliably and accurately all contacts with members of the public concerning the exercise or purported exercise of powers under Section 237, *Local Government Act 1999*, to deal with vehicles.

4.5.1.8 (3.4.9.2) Council staff should be instructed to comply with all applicable statutory requirements.

4.5.1.9 (3.4.9.3) The form of the 14-day sale warning notice that is used by council for the purpose of section 237 should be re-drafted to be consistent with the statutory requirements. The inconsistencies have been set out in 3.4.3.5.

#### **The contents of the truck**

4.5.1.10 (3.6.9.1) I recommend that, in view of [REDACTED] understanding of [REDACTED] authority and the lawfulness of [REDACTED] conduct being, in my opinion, seriously in error, he be directed to comply with all lawful obligations.

4.5.1.11 (3.6.9.2) I recommend that, in view of [REDACTED] understanding of [REDACTED] authority and the lawfulness of [REDACTED] conduct being, in my opinion, seriously in error, he be directed to comply with all lawful obligations.

#### **Sale under section 237**

4.5.1.12 (3.5.5.1) The new procedures for sale should, as contemplated in the recent council document, be based on calls for tenders, and they should specify a minimum period between the public notice and the close of tenders sufficient to ensure that the process is actually, and not just formally, open.

4.5.1.13 (3.5.5.2) Final acceptance of a tender should include a review of all processes up to that point, and should be conducted by a panel of three people none of whom have been direct participants in the processes leading to and including impoundment.

4.5.1.14 (3.5.5.3) Delegations should be reviewed to align with the new processes.

<sup>66</sup> Council has provided a standard operating procedure as contained in Appendix 12

4.5.1.15 (3.5.9.1) The Mount Barker Council should comprehensively review its administration of these matters and produce standard operating procedures.<sup>67</sup>

4.5.1.16 (3.5.9.2) It would be proper to include in standard written procedures a requirement that the sale process not be begun until at least 21 days after proper notice has been given of the 14-day period. I endorse this aspect of the procedure document.

4.5.1.17 (3.5.9.3) The standard procedure for sale should include some guidelines about the level of effort that should be applied to establishing potential value of a vehicle, on the basis that the greater the apparent possible value, the more stringent the processes for council satisfying itself that it is acting properly and lawfully. At the bottom of the scale, for some vehicles, very little is required.

4.5.1.18 (1.1) Council should review its delegation procedures against the model recommended by the LGA and introduce procedures to achieve best practice. In particular each delegate should be provided with a separate instrument of delegation detailing his or her delegated powers.

#### **General matters**

4.5.1.19 (3.8.12.1) I recommend that council should review its delegation procedures against the model recommended by the LGA and introduce procedures to achieve best practice. In particular each delegate should be provided with a separate instrument of delegation detailing his or her delegated powers.

4.5.1.20 (3.8.12.2) I recommend that, in view of the pattern of gross deficiency revealed by my investigation of this complaint, Council, through the newly appointed General Manager, Strategy, Development and Communities, reviews the council's compliance with section 132A of the *Local Government Act 1999* and to develop suitable guidelines and control measures for:

1. the work of authorised officers
2. the whole of the regulatory services functions of council; and
3. to the extent necessary, the council's operations generally.

4.5.1.21 (3.8.12.3) I recommend that the newly appointed General Manager, Strategy, Development and Communities undertakes a review of all positions in the Regulatory Services group of council. I further recommend that this review include reconsideration of workload distribution, responsibilities, classification levels, and criteria of suitability for appointment.

4.5.1.22 (3.8.12.4) I recommend that the Council ensure that there is in place a proper control environment that will provide reasonable assurance that the operations of the Council are conducted properly and lawfully.

4.5.1.23 (3.8.12.5) I recommend that the Council review and formally endorse the control environment that is to be implemented

4.5.1.24 (3.8.12.6) I recommend that the new control environment include a requirement for quarterly reporting to council on all the performance indicators and compliance records provided by the new systems.

4.5.1.25 (3.8.12.7) I recommend that section 237 of the *Local Government Act 1999* be reviewed and, if it is still thought necessary to retain the general power it gives, it should be

<sup>67</sup> Council has provided a standard operating procedure as contained in Appendix 12

re-written to conform with the general principles of statutory forced sales that exist in other Acts.

4.5.1.26 (3.8.12.8) I recommend that a standard operating procedure about impoundment of vehicles take into account the comments I have made at paragraphs 3.8.10.9 and 3.8.10.10 of this report.

4.5.1.27 (3.6.9.3) I recommend that [REDACTED] and all General Inspectors be directed that no public officer in the discharge of public responsibilities has any authority to destroy legal documents, and that any conduct of that kind will be regarded as reprehensible and will not be tolerated.

Confidential