

OFFICIAL



OmbudsmanSA

Summary Statement of Investigations Published pursuant to section 26 of the *Ombudsman Act 1972*

In 2022, the Ombudsman received a report about the Clare and Gilbert Valleys Council (**the council**) and its lease of the Clare Caravan Park to Discovery Holiday Parks Pty Ltd (**Discovery**) in January 2022.

The report alleged the council had engaged in maladministration in public administration through a 'highly flawed and irregular' negotiation of the lease, and that the council had failed to meet its obligations under the *Local Government Act 1999* prior to entering the lease with Discovery. The reporters sought for the lease to be 'declared invalid' and 'contrary to the financial interests of the Council'.

The investigation reviewed extensive documentation in relation to the council's negotiations with Discovery dating back to early 2020. This included internal and external emails, legal advice, valuation reports, draft lease agreements, reports to council, council meeting agendas, minutes and recordings. The investigation also considered the Local Government Act, the Local Government Regulations, and council's policies including its 'Public Consultation Policy', 'Risk Management Framework' and the Community Land Management Plan (**CLMP**) relevant to the Clare Caravan Park.

Evidence obtained by the investigation identified a range of issues which in the Ombudsman's view, amounted to administrative error. This included:

- the council did not undertake a valuation of market rent
- the council did not obtain commercial advice about the terms of the lease, including whether the council could negotiate more than \$370,000 per annum for lease of the caravan park
- council administration received legal advice that the rent value was a commercial decision to be made by the council, but did not seek a specific decision from the council about this issue
- council administration received legal advice that the increase in land size could affect the rent charged by the council in the new lease, but did not present this to the council for consideration and/or decision
- the council did not undertake a public consultation process prior to the Chief Executive Officer and (now former) Mayor signing a new lease with Discovery
- the council failed to review its CLMP relevant to Clare Caravan Park for 18 years.

The Ombudsman considered these issues to be unacceptable. The administrative errors risked binding the council to a lengthy lease that was not in the council's or ratepayers' best interest. They also meant the council risked breaching its obligations under the Local Government Act to conduct public consultation. While this was rectified by the council, it should not have occurred.

While the Ombudsman considered the actions of the elected council and council administration amounted to administrative error and demonstrated a lack of due diligence, the Ombudsman was not satisfied these failures amounted to maladministration in public administration.

A finding that the council's failures resulted in substantial mismanagement of public resources would have required a finding based largely on speculation.

OFFICIAL

The Ombudsman noted that the council did not have a policy or procedure to guide the council's negotiations process, in part because of the unique nature of community land leases. The Ombudsman considered section 48 of the Local Government Act to be helpful in articulating reasonable expectations of a council in its management of large projects which requires that the council:

- acts with due care, diligence and foresight
- identifies and manages risks associated with a project
- makes informed decisions
- is accountable for the use of council and other public resources.

The Ombudsman considered that it would be reasonable to have the same general expectations of the council in relation to its management of community land and for this reason recommended that the council develop guidelines around significant contracts including substantial leases so that the issues identified in the investigation are mitigated in the future. The council developed a policy to this effect, which satisfied the Ombudsman's recommendation.