



CORRUPTION AND CRIME COMMISSION

REPORT ON MATTERS OF SERIOUS MISCONDUCT IN THE SHIRE OF EXMOUTH

2 MAY 2017

ISBN: 978 0 9943035 1 6

© 2017 Copyright in this work is held by the Corruption and Crime Commission (“the Commission”). Division 3 of the *Copyright Act 1968* (Commonwealth) recognises that limited further use of this material can occur for the purposes of “fair dealing”, for example, study, research or criticism. Should you wish to make use of this material other than as permitted by the *Copyright Act 1968* please write to the Commission at the postal address below.

This report and further information about the Commission can be found on the Commission Website at www.ccc.wa.gov.au.

Corruption and Crime Commission

Postal Address	PO Box 7667 Cloisters Square PERTH WA 6850
Telephone	(08) 9215 4888 1800 809 000 (Toll Free for callers outside the Perth metropolitan area.)
Facsimile	(08) 9215 4884
Email	info@ccc.wa.gov.au
Office Hours	8.30 am to 5.00 pm, Monday to Friday.

Special Needs Services

If you have a speech or hearing difficulty, contact the Commission via the National Relay Service (NRS) on 133 677 for assistance or visit the NRS Website, www.relayservice.com.au. NRS is an Australia-wide telephone service available at no additional charge. The Commission Toll Free number is 1800 809 000.

If your preferred language is a language other than English, contact the Translating and Interpreting Service (TIS) for assistance. TIS provides a free, national 24 hours a day, seven days a week telephone interpreting service on 13 14 50. TIS also provides on-site interpreters for face-to-face interviews on 1300 655 082.



CORRUPTION AND CRIME COMMISSION

Mr Nigel Pratt
Clerk of the Legislative Council
Parliament House
Harvest Terrace
PERTH WA 6000

Ms Kirsten Robinson
Clerk of the Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Mr Pratt
Dear Ms Robinson

As neither House of Parliament is presently sitting, in accordance with the *Corruption, Crime and Misconduct Act 2003* s 93, the Commission hereby transmits to you a copy of its *Report on Matters of Serious Misconduct in the Shire of Exmouth*.

Yours sincerely

A handwritten signature in blue ink that reads "John McKechnie". The signature is written in a cursive style.

John McKechnie, QC
COMMISSIONER

2 May 2017

TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER ONE	
THE INVESTIGATION	3
The Commission investigation	3
The effect of "open to the public"	3
CHAPTER TWO	
WHO IS WHO	5
Who is who: Exmouth employees	5
Who is who: Exmouth Council	6
Who is who: Ningaloo Centre	6
CHAPTER THREE	
SERIOUS MISCONDUCT BY MR PRICE IN USING EXMOUTH FUNDS TO OWN ADVANTAGE	7
CEO functions, powers and duties	7
CHAPTER FOUR	
THE NINGALOO CENTRE AND AQUARIUM	11
Overview	11
The engagement of Site Architecture	11
The engagement of Firm Construction	11
The involvement of Ocean Reefs Production	12
Concerns about Ocean Reefs Production's ability	13
Execution of the contract between Exmouth and Ocean Reefs Production: An "astounding" process	16
The motives of Mr Price and Mr Forte in entering into the contract with Ocean Reefs Production	17
CHAPTER FIVE	
CREATION OF A FALSE DOCUMENT - AGENDA ITEM 11.3: 27 JULY 2016 ..	21
Meeting of the Ningaloo Centre Project Management Committee: 26 May 2016	21
Meeting of the Ningaloo Centre Project Management Committee: 13 July 2016	23
Meeting of the Exmouth Council: 27 July 2016 - Agenda item 11.3	24
CHAPTER SIX	
SERIOUS MISCONDUCT BY MR PRICE AND MR FORTE OVER HOUSING SUBSIDY	29

CHAPTER SEVEN	
SERIOUS MISCONDUCT BY MR FORTE AND MR PRICE IN ATTEMPTING TO MISLEAD THE COMMISSION.....	35
Overview	35
Background: The involvement of Advanced Aquarium Technologies	35
Mr Price's evidence to the Commission in examination on 13 October 2016 .	36
Conclusion as to Attachment 'F'	40
CHAPTER EIGHT	
COUNCIL ACQUIESCENCE AND INACTION	43
The Ningaloo Centre Project Management Committee: 26 May 2015	43
Mr Price's annual review: Council's generosity	43
Inaction after knowledge of Mr Price's misconduct	44
CHAPTER NINE	
EXMOUTH'S RESPONSE	45
The Ningaloo Centre	45
Other actions	46
CHAPTER TEN	
CONCLUSION	49
ANNEXURE ONE	
Ordinary Council meeting minutes: 27 July 2016	
ANNEXURE TWO	
Attachment 'F'	

INTRODUCTION

- [1] Mr Bill Price was appointed CEO of the Shire of Exmouth in July 2010.
- [2] By 2016, any good that he had done was overshadowed by his arrogation of power. He was a law unto himself.
- [3] Mr Price approved his own leave, sometimes not even logging it. Away from Exmouth, he misused his Exmouth corporate credit card for his own benefit.
- [4] He had agreed to rental arrangements to enable his friend and employee, Mr Andrew Forte, to reduce his income tax, a benefit not available to anyone else.
- [5] Well aware of the legal prohibition on doing so, Mr Price signed a contract for over \$1 million with a company without assets and without carrying out any due diligence, thereby exposing Exmouth to significant financial risk.
- [6] To cover up this wrongdoing, Mr Price created a false document and presented it to Council.
- [7] Meanwhile the Council, which is supposed to exercise oversight, did nothing. The President, Mr Colin 'Turk' Shales, knew about the unauthorised contract but let it slip by. The kindest thing that can be said is that this was a terrible oversight.
- [8] Knowing that the Commission was investigating possible misconduct, the Council reviewed Mr Price's performance in August 2016 and increased his annual leave provision from six weeks to eight weeks. Why this generosity was extended, is not recorded.
- [9] As part of the Commission's investigation, Mr Price gave evidence at a private examination in October 2016.
- [10] The Commission was so concerned at the admissions of wrongdoing made by Mr Price that it authorised release of the transcript to the Council. Mr Shales attended the Commission to receive it. The Council did nothing.
- [11] The Commission embarked on a series of public examinations in November 2016.
- [12] As a direct result of the examinations, the Hon. Paul Miles, Minister for Local Government and Communities, took decisive action.
- [13] Mr Price was dismissed as CEO by Council in December 2016. The Council was suspended for six months and required to undertake training.
- [14] Mr Ian Fletcher AM JP was appointed as Administrator with all the powers of Council.
- [15] Progress is being made to return Exmouth to proper governance and procedures.
- [16] This is the story of what went wrong.

CHAPTER ONE

THE INVESTIGATION

The Commission investigation

- [17] In 2016, the Commission received allegations of potential serious misconduct by a number of officers in the Shire of Exmouth (Exmouth). On 11 August 2016, Commission officers executed a search warrant on the Shire offices in Exmouth, seizing a great deal of material. The Commission also utilised other powers and obtained telephone intercept warrants and documentary material from many sources.
- [18] The Commission's investigation into possible serious misconduct was wide ranging. As is routine in investigations, some matters were pursued until it became clear that there was no possibility that the conduct involved serious misconduct. Other matters might have given rise to the possibility of minor misconduct, which is not within the Commission's jurisdiction. Some matters were returned to Exmouth for investigation and action. Therefore not every matter investigated will form part of this report.
- [19] As part of the investigation, the Commission conducted a series of private examinations. As a result of those examinations and material which had been analysed by Commission investigators and financial experts, the Commission decided to open further examinations to the public.
- [20] An aspect of the Commission's function is to provide information to public authorities about ways to prevent serious misconduct.¹ This is sometimes achieved through public examination.
- [21] An examination is not open to the public unless the Commission, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, considers that it is in the public interest to do so.² This decision must be made in respect of each examination. For that reason, the Commission has no "policy" either for or against public examinations. Sometimes a public examination may revert to a private examination and back again. Both the Council and members of the Exmouth community had a real interest in observing those proceedings.
- [22] The Commission appointed Counsel to assist in the examinations who questioned witnesses on the Commission's behalf. Witnesses who so wished were represented by Counsel of their choice.

The effect of "open to the public"

- [23] On some occasions, the Commission might facilitate the opening of an examination to the public by going directly to the area most affected. This proved logistically difficult, yet the residents of Exmouth were the persons with the deepest interest in observing the proceedings.

¹ *Corruption, Crime and Misconduct Act 2003* s 18(4).

² *Corruption, Crime and Misconduct Act 2003* s 140(2).

- [24] The Commission does not of course control the traditional media sources, and it is a matter for an editor whether and what might be disseminated through newspaper, online report or television.
- [25] So the Commission adopted a solution of live-streaming public examinations, accessible to anyone with access to a computer. Live-streaming ceased whenever the Commission took evidence in a private examination.
- [26] The inestimable advantage of public examinations in this investigation was to allow immediate remedial action to be taken. An examination does not mark the end of a Commission investigation and a report may take time to compile.
- [27] Because officers of the Department of Local Government and Communities attended the public examinations, the Minister was able to act in the interests of the Exmouth community before the Commission's final report.
- [28] On 9 December 2016, the Minister served a notice calling on the Council to show cause why it should not be suspended and undergo training.
- [29] On 13 December 2016, following advice from its solicitors, Council terminated Mr Price's employment.
- [30] The next day, the Acting CEO terminated Mr Forte's employment.
- [31] On 4 January 2017, the Minister suspended the Council for six months and appointed Mr Ian Fletcher AM JP as Commissioner to exercise the powers and discharge the duties of the Council and its President.³
- [32] When the Commission concluded its investigation, it sent a copy of a draft report to persons who may be adversely affected by it.
- [33] The Commission received responses from Mr Fletcher, Mr Price, Mr Forte, Ms McHutchison, Mr Kemp and Mr Todd. Each has been considered and adjustments made to the report in consequence.

³ *Local Government Act 1995* s 2.38(1), (2).

CHAPTER TWO WHO IS WHO

Who is who: Exmouth employees

Arthur William (Bill) Price

[34] At all material times during the investigation, Mr Price was CEO of the Shire of Exmouth, having commenced in the role on 12 July 2010.

[35] Mr Price previously served as a CEO in other local governments:

Shire of Westonia	November 2006 - June 2010
Shire of Cocos (Keeling) Islands	October 2004 - November 2006
Shire of Kulin	April 2002 - September 2004
Shire of Westonia	March 1994 - March 2002

[36] In his capacity as CEO of the Shire of Cocos (Keeling) Islands, he first met Mr Forte.

Andrew Jeffrey Forte

[37] Mr Forte was appointed Executive Manager Aviation Services for Exmouth on 28 September 2011 by Mr Price. On 1 November 2012, he was appointed by Mr Price as Exmouth's Strategic Project Officer and became the Superintendent for construction of the Ningaloo Centre.

[38] Mr Forte is also the Managing Director of Forte Airport Management (FAM),⁴ an airport consultancy and management firm which operated the airport on Cocos (Keeling) Islands from 2005 to 2009.

[39] Mr Forte struck up a friendship with Mr Price while working on Cocos (Keeling) Islands.

Keith Alan Woodward

[40] Mr Woodward was the Executive Manager Engineering Services for Exmouth and is currently Acting CEO. Mr Woodward's evidence to the Commission was precise and cogent.

Suzanne Marie O'Toole

[41] Ms O'Toole was, and is, the Executive Manager Corporate Services for Exmouth. The Commission found her evidence to be clear, credible and well documented. Her contemporaneous diary entries were very helpful.

⁴ Forte Airport Management is the business name of the company, which is operated by Emerald Oak Pty Ltd, as trustees for the Forte Family Trust. A J Forte transcript, public examination 14 November 2016, p 7.

Who is who: Exmouth Council

- [42] President: Colin (Turk) Shales
- [43] Councillor: Robert Todd (resigned on 24 November 2016)
- [44] Councillor: Suzanne McHutchison
- [45] Councillor: Graham Jones
- [46] Councillor: Michael Hood
- [47] Councillor: James Roscic

Who is who: Ningaloo Centre

- [48] The first contract to construct the Ningaloo Centre was let to Matera Construction (Matera) who engaged Site Architecture Studio (Site). Matera failed and went into administration.
- [49] Mr Paul Christopher Edwards is an Architect and a director of Site. In February 2015, Exmouth directly engaged Site to continue work on the Ningaloo Centre.
- [50] After a tender process overseen by the WA Local Government Association (WALGA) in September 2015, Firm Construction Pty Ltd (Firm) was appointed as builder in place of Matera. Mr Craig Grant managed the procurement process.
- [51] Mrs Rosalie Hawke is a director of Ocean Reefs Production Pty Ltd (ORP), a company incorporated in February 2016. It was engaged by Exmouth to install and stock an aquarium within the Ningaloo Centre. Her husband is Mr Simon Hawke.
- [52] Mr Oren La Paz is Curator of the Aquarium of WA (AQWA). He provided advice to Mr Edwards. He consulted to ORP.

CHAPTER THREE

SERIOUS MISCONDUCT BY MR PRICE IN USING EXMOUTH FUNDS TO OWN ADVANTAGE

CEO functions, powers and duties

[53] Mr Price was appointed CEO of Exmouth on 12 July 2010. He was summarily dismissed by unanimous decision of Council on 13 December 2016.

[54] The functions of the CEO are set out in the *Local Government Act 1995* (LGA).⁵ Mr Price's contract of employment provided:

10. CONDUCT

The CEO at all times shall carry out his/her duties and functions in the best interests of the Local Government, and ensure that the CEO's actions do not bring the Local Government into disrepute or cause the Local Government damage.

The CEO will comply with the code of conduct adopted by the Local Government pursuant to section 5.103 of the Act or as prescribed in Regulations under the Act.

[55] Relevant parts of the Shire of Exmouth Code of Conduct for Elected Members (Councillors) and Staff (March 2016) provide:

4. CONDUCT OF COUNCIL MEMBERS, COMMITTEE MEMBERS AND STAFF

...

4.2 Honesty and Integrity

Council Members, Committee Members and staff will:

(a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;

(b) bring to the notice of the Mayor/President any dishonesty or possible dishonesty on the part of any other member, and in the case of an employee to the Chief Executive Officer.

(c) be frank and honest in their official dealing with each other.

...

5. DEALING WITH COUNCIL PROPERTY

5.1 Use of Local Government Resources

Council Members and staff will:

⁵ *Local Government Act 1995* s 5.41.

- (a) *be scrupulously honest in their use of Local Government's resources and shall not misuse them or permit their misuse (or the appearance of misuse) by any other person or body;*

5.2 Travelling and Sustenance Expenses

Council Members, Committee Members and staff will only claim or accept travelling and sustenance expenses arising out of travel-related matters which have a direct bearing on the services, policies or business of the Local Government in accordance with Local Government policy and the provisions of the Local Government Act.

- [56] Shire of Exmouth Use of Corporate Credit Card (Policy 2.15) provides:

Use of Corporate Credit Card

2. Corporate credit cards are to be used only for Shire official activities and must not be used for:

- *Personal or non work related expenditure*
- *obtaining cash advances*
- *the purchase of goods or services where the cardholder may/will gain personal advantage through the transaction (e.g. special offers such as Fly Buys that benefit individuals rather than the Shire).*

- [57] The Commission investigation concentrated on events in 2016 with the exception of some discrete activities in 2014 and 2015. The Commission did not undertake a comprehensive audit of past use of Exmouth corporate credit cards.

- [58] When confronted in the course of examination, Mr Price conceded:

- Exmouth paid for one day at a Gold Coast airport conference in 2014 which should not have been billed to it. Mr Price took long service leave immediately following the conference.
- Exmouth paid the taxi fare for Mr Price and a colleague to travel for a round of golf during the conference.
- On 6 February 2016, Mr Price flew to Perth, hired a car at Exmouth's expense. Mr Price drove to Busselton for the weekend to inspect a property, and returned to Perth. This was personal business. Exmouth paid the parking fees for the car for the balance of the week though it was not used until Mr Price returned it to Perth airport. As to the car, he said "I've done the wrong thing".⁶
- Mr Price dined with two others at The Duxton Hotel on 8 February 2016, spending above the allocation. He said "It's over the top for two employees of the Shire".⁷

⁶ A W Price transcript, private examination 13 October 2016, p 48.

⁷ A W Price transcript, private examination 13 October 2016, p 49.

- Mr Price travelled to Perth from 1 to 11 March 2016. From 1 to 4 March and 8 to 9 March, Mr Price was on leave. No leave form was submitted. Mr Price agreed this time was personal leave. During that time, Mr Price took taxis billed to Exmouth and also used the Exmouth corporate credit card to pay \$128 for a meal.
- On the weekend of 14/15 May 2016, Mr Price used the Exmouth corporate credit card to pay for a hire car so he could drive to Westonia to visit his son. Mr Price admitted he should have paid for this personally.
- On 16 May 2016, despite telephoning Exmouth and claiming a day as sick leave, Mr Price went to the Perth Caravan and Camping Show in Claremont.
- On the evening of 16 May 2016, Mr Price charged food and alcohol at The Duxton Hotel restaurant to the Exmouth corporate credit card. The bill was just over \$500 and the alcohol portion was \$300.

- [59] The amounts of money involved, on one view, are comparatively minor, but must be considered in context.
- [60] The CEO sets the standards of honesty and integrity for Exmouth employees. If the CEO is rorting the system, how can Council, ratepayers or staff have any confidence in the executive?
- [61] The money used to pay the unauthorised expenses was public money raised mainly through rates imposed on landowners in Exmouth. It was not money Mr Price had earned through his efforts.
- [62] Mr Price had great freedom of action. In his long career as a CEO, he never had leave approved by anyone though he says he generally told people, including the President, that he was going on leave.
- [63] Without a process of approving the leave of a CEO, a council is financially vulnerable. Unrecorded leave can increase council's financial liability.
- [64] Mr Price corruptly took advantage of his employment for personal gain, causing Exmouth to pay for accommodation, meals, car hire and taxi fares that he knew were his responsibility. The amounts involved are immaterial.
- [65] The Commission has formed an opinion of serious misconduct in respect of Mr Price's abuse of his leave entitlements and claiming benefits to which he was not entitled.⁸

⁸ *Corruption, Crime and Misconduct Act 2003* s 4(b).

CHAPTER FOUR

THE NINGALOO CENTRE AND AQUARIUM

Overview

- [66] The Ningaloo Centre is a \$34 million project with monies contributed by the Commonwealth, Royalties for Regions, Lotteries West and Exmouth. Although Exmouth's contribution is only \$2 million, it is responsible for the construction, fit-out, recurrent costs and future maintenance.
- [67] Construction of the Ningaloo Centre has had its problems. The first builder, Matera, went into administration in March 2015 before construction was due to commence and new tenders had to be called. Firm was selected as the builder.
- [68] The centrepiece is to be an aquarium. The architects engaged in the project by Matera, and reengaged by Exmouth, Site, negotiated with Firm as to the aquarium. However, Firm did not wish to take on the construction of the aquarium for various reasons, including a lack of expertise on its part and concerns over financial risk. By direction of Mr Forte, the Strategic Project Manager of Exmouth and Superintendent for the project, ORP was awarded a contract to supply and stock the aquarium. Mr Forte had no authority to do so. Mr Price endorsed his actions. He also had no authority to do so.

The engagement of Site Architecture

- [69] Site had originally been part of a design and construct bid and was successful in winning the contract under Matera.⁹ Site worked with Matera in Exmouth refining the brief, carrying out design and documentation, until Matera went into administration.
- [70] Exmouth engaged Site in April 2015 to finalise documents for a tender. Engaging Site directly without an open tender process was contrary to local government financial regulations¹⁰ and Exmouth's own policy.

The engagement of Firm Construction

- [71] Exmouth arranged for WALGA to manage the procurement process for a new builder. Mr Craig Grant was responsible for managing the tender process on behalf of Exmouth.¹¹ The tender process was unremarkable. Firm was appointed as the builder. Among other things, it was required to engage nominated subcontractors unless the Superintendent (Mr Forte) considered there was good reason not to.

⁹ P C Edwards transcript, private examination 7 November 2016, p 3.

¹⁰ *Local Government (Functions and General) Regulations 1996* reg 11.

¹¹ C A Grant transcript, private examination 12 October 2016, p 3.

The involvement of Ocean Reefs Production

- [72] Mr Edwards explained in examination that the design for the aquarium was something that would evolve through the construction phase. There was space allocated in the building. During the Matera period, Durack TAFE were going to be taking responsibility for fit-out, stock and management of the aquarium. Matera were going to construct the aquarium. Mr Edwards contacted a consultant who in turn recommended that he speak with Mr La Paz, Curator of AQWA. Mr Edwards met with Mr La Paz on 25 January 2015. There was a conversation to enable the architects to inform themselves from their point of view and from a builders' point of view what sort of things needed to be provided. Mr La Paz was consulted about design and construction issues relating to the aquarium. Mr Edwards found Mr La Paz's advice helpful.
- [73] Mr La Paz was friendly with Mr and Mrs Hawke. Mr Hawke has tertiary qualifications in marine biology and botany. Mr and Mrs Hawke commenced an aquarium specimen collection in 1995¹² known as Ocean Reef Marine Aquariums (ORMA). Mr Hawke collected corals and fish under a local marine aquarium fishery licence.
- [74] ORMA has been involved in installing aquariums. Mrs Hawke was asked in examination what was the largest aquarium that ORMA had ever installed "We've assisted with an installation on a 35,000 litre – approximately 35,000 litre aquarium. ... at the Zorzi's [Zorzi Group] offices in Osborne Park."¹³ ORMA were not involved in constructing the shell of the Zorzi aquarium. Mr Hawke did a large percentage of the installation of the filtration and stocking the aquarium with fish. ORMA continues to maintain the aquarium.
- [75] The Zorzi installation is important because a photograph of the aquarium was incorporated in a false document prepared by Mr Price for Council on 27 July 2016 entitled 'Agenda item 11.3 Contract Ocean Reefs Production Pty Ltd'. This document is the subject of Chapter Five and is Annexure One to this report.
- [76] Mrs Hawke said that neither she nor her husband had done any jobs similar in scale to the Ningaloo Centre Aquarium, the concept for which increased over time to a capacity of 55,000 litres.
- [77] Mrs Hawke became involved in the Ningaloo Centre project around February 2016 when she and her husband had a meeting with Mr Edwards and Mr Forte at Site premises.
- [78] Mrs Hawke incorporated Ocean Reefs Production Pty Ltd on 16 February 2016 specifically for the installation of the Ningaloo Centre Aquarium. ORP has no assets. She is the sole director.

¹² R A Hawke transcript, private examination 12 October 2016, p 3.

¹³ R A Hawke transcript, private examination 12 October 2016, p 14.

- [79] Mrs Hawke believed Mr La Paz had been involved prior to February 2016. Mr Edwards testified this was so. Mr La Paz helped ORP with advice in a consulting capacity. He is yet to be paid but Mrs Hawke intends to pay him according to how much work is actually done.
- [80] Mrs Hawke started project managing from the time ORP was incorporated. At the request of Mr Edwards, Mrs Hawke prepared a quote on 9 May 2016 containing detailed costings to fit out and stock the aquarium and to install acrylic panels to form the aquarium. The costings far exceeded the \$500,000 allowance initially estimated as the provisional sum for the aquarium.
- [81] ORP entered into a written contract with Exmouth on 16 May 2016. However, as the deadline for ordering the acrylic panels was 13 May 2016, an advance payment of \$103,000 was requested from Exmouth. ORP had contracted Nippura, a Japanese company, to make and supply acrylic panels. ORP requested Exmouth advance \$103,000 for it to make an advance payment to Nippura.
- [82] Mrs Hawke took out a short term loan of \$60,000 in case it was needed but has since repaid it. No director guarantees, bank guarantees or bonds were ever requested by Mr Forte or Mr Price.
- [83] No criticism or adverse comment is intended or should be inferred in relation to ORP, or Mr and Mrs Hawke. They have acted appropriately to their commercial advantage. They are not public officers. Similarly the Commission does not make any adverse comment about the actions of Mr La Paz.
- [84] However, due diligence by Mr Price or Mr Forte would have disclosed that ORP was a company formed by Mrs Hawke expressly for the Ningaloo Centre project. It has no assets whatsoever and therefore no financial ability to honour any debt as a result of any breach of warranty. At the time of the contract, it did not have appropriate insurance cover, though this was later obtained.¹⁴

Concerns about Ocean Reefs Production's ability

- [85] It was first proposed that Firm would nominate a subcontractor for the construction of the aquarium. Firm was generally responsible for engaging subcontractors though the Superintendent (Mr Forte) could give a dispensation.
- [86] Concerns regarding the proposed engagement of ORP, specifically in relation to their cash flow and capacity to deliver on a project of this scale, had been raised separately on multiple occasions with Mr Forte by representatives of both Firm and Site.¹⁵

¹⁴ Insurances were obtained by ORP on 7 May 2016 commencing 9 May 2016 and 1 July 2016 respectively for the project.

¹⁵ Emails from P C Edwards to A J Forte, 23 March 2016, 6 April 2016 and 13 April 2016. Email from M O'Gorman to K Truscott (Site) cc A J Forte, 6 April 2016.

- [87] Firm was reluctant to engage ORP. Firm was obliged to engage a nominated subcontractor unless it showed good reason not to do so. Firm advanced reasons for not using ORP:

It should be noted that FIRM Construction have not carried out any [financial] due diligence on Ocean Reefs Production and we have not been privy to the tender process that has culminated in an award going to Ocean Reef Production. FIRM Construction has not worked with Ocean Reef Production on previous projects of a similar nature or [financial] value. Ocean Reef Production are not listed as a Nominated Sub Contractor in the contract documents.

*As such, the extent of our liability and warranty of Ocean Reefs Production's scope comes into question. I will need some clarification in regard to this.*¹⁶

- [88] Firm assumed a tender process had been undertaken. Exmouth had not done so. These reasons were sufficient for Mr Forte to decide that Firm had justified why it would not use ORP. So Mr Forte and Mr Price decided that Exmouth would contract directly with ORP. In doing so, Exmouth assumed all the financial risk of the project, including advance payment for the acrylic panels. All this for people whom they had known only slightly, and had very limited knowledge of their earlier work. If they had conducted even the most basic enquiries, Mr Price and Mr Forte would have known that ORP was effectively an empty shell with no assets.
- [89] Had Firm engaged ORP under a subcontractor arrangement as had been initially proposed, the risk would have lain with Firm - a risk which Firm had concerns accepting.¹⁷ Mr Price accepted that by contracting directly with ORP, "all the risk, all the financial risk, was on the Shire".¹⁸
- [90] Mr Price admitted to performing no financial due diligence¹⁹ on a company that had a paid up capital of only \$100²⁰ and which he knew "money would have to be paid in advance to this entity to allow it to acquire the materials to carry out the work".²¹ He did not ask whether Mr Forte had done any financial due diligence himself on this company.²²
- [91] Mr Forte similarly did not perform any financial checks on ORP and admitted that he "sign[ed] up a contract with a company where [he] did not know its worth".²³
- [92] Mr Edwards did make relevant enquiries. Mr Edwards was so concerned that ORP's "ability to deliver represents a risk" that he sought a quote from

¹⁶ Email from M O'Gorman at Firm to K Truscott at Site, 6 April 2016.

¹⁷ Email from P C Edwards to A J Forte, 23 March 2016.

¹⁸ A W Price transcript, private examination 13 October 2016, p 68.

¹⁹ A W Price transcript, public examination 11 November 2016, pp 22-23.

²⁰ ASIC Historical Company Extract for Ocean Reefs Production Pty Ltd.

²¹ A W Price transcript, public examination 11 November 2016, p 32.

²² A W Price transcript, public examination 11 November 2016, p 23.

²³ A J Forte transcript, public examination 14 November 2016, pp 49-50.

Mr Zac Gill of Advanced Aquarium Technologies (AAT), an international aquarium design, construction and manufacturing specialist based in Queensland.²⁴

- [93] Mr Edwards forwarded the information and quote provided by AAT to Mr Forte for consideration. Mr Edwards' view was that AAT had been "around for a long time" and that "this project would be at the low end of AAT's work and capability".²⁵
- [94] Conversely, the Ningaloo Centre Aquarium was perceived by Mr Edwards to be "currently at the high end for Oceanreefs (*sic*) experience to date" and that they presented a "potential risk to the Shire, Firm, and the project program". The same concerns were also expressed by Mr Mark O'Gorman of Firm.²⁶
- [95] In response to the advice from Mr Edwards, Mr Forte advised "we must continue with ORP, irrespective of this other company at this point in time".²⁷
- [96] Mr Forte gave an unconvincing explanation for proceeding with ORP in the face of concerns raised by Firm and Mr Edwards:

*We were faced with something that had to happen quite expeditiously. We'd been working with this company for nearly 12 months in terms of determining their credibility and competency. They had actually effected a lot of the design side of things to the extent that they were always there – sorry; they were advised in December by the project architect that they would be the nominated subcontractor for which half a million dollars had been placed on contract with Firm to be assigned to the nominated subcontractor. When it came to being nominated as the subcontractor in front of Firm, there were some issues between two parties in terms of whether (1) the warrant of an active operational aspect of a building construct, and the other one with the cash flow elements assigned to Firm and the QS who manages the claims to the extent that it became apparent that they had reasonable cause to not be obliged to take on a nominated subcontractor – this nominated subcontractor, and out of that committee, out of that collective, it was suggested that the shire consider a direct contract to the extent that when we go direct contract I then set about trying to establish those arrangements to which Firm and then, I must say, ORP were very willing to agree upon, so the nominated subcontractor's terms and conditions were really uplifted and just put into a separable contract and, as I say, I'd been working with these people for 12 months and we had to expedite because of the contractual ... grant agreement.*²⁸

- [97] When pressed on what he meant when he said he had been "working with this company for nearly 12 months", Mr Forte clarified he had only met

²⁴ Email from P C Edwards to Z Gill, 1 April 2016.

²⁵ Email from P C Edwards to A J Forte, 13 April 2016.

²⁶ Ibid.

²⁷ Email from A J Forte to P C Edwards, 13 April 2016.

²⁸ A J Forte transcript, public examination 14 November 2016, p 66.

Mr and Mrs Hawke in December 2015 and that he "may have had two or three meetings with Mr La Paz".²⁹ Moreover, Firm's concern was not 'cash flow'. Firm, not unreasonably required its subcontractors to supply goods and services before payment. This, ORP could not do.

Execution of the contract between Exmouth and Ocean Reefs Production: An "astounding" process

- [98] Mr Forte signed the contract and thereby bound Exmouth. His authority did not extend that far, and he offered no explanation as to why he did.
- [99] Mr Price executed the contract on or about 16 May 2016. His authority did not extend to executing the contract and he has no satisfactory explanation for why he did.
- [100] Both the LGA and Exmouth's own policy limited the power of the CEO in respect of contracts. The CEO had no power to enter into a contract exceeding \$150,000. That power rested only with the Council. Mr Price was well aware of this limit to his authority.³⁰ Moreover, tenders had to be called unless the party was the sole source of supply.

Exmouth Purchasing Policy Manual 2.10

Sole Source of Supply (Monopoly Suppliers)

The procurement of goods and/or services available from only one private sector source of supply (i.e. manufacturer, supplier or agency) is permitted without the need to call competitive quotations provided that there must genuinely be only one source of supply. Every endeavour to find alternative sources must be made. Written confirmation of this must be kept on file for later audit.

- [101] Mr Grant has long experience managing procurement contracts for local governments on behalf of WALGA. Mr Grant answered a hypothetical question:

*If you had a contract for a million dollars going through the tender processes, would you routinely do a standard financial assessment?---Yes; we certainly recommend it. Sometimes a client doesn't want it, but we certainly push it, recommend it as hard as we can.*³¹

- [102] Mr Grant explained that WALGA had done a financial assessment involving the directors of Firm as part of the tender process. He had never heard of ORP.

I can tell you that the contract [for ORP] was for \$1.1 million and it was awarded in May 2016, so May of this year. What would you say if I told you that it was awarded without going to a tender?---First words would be "it's

²⁹ A J Forte transcript, public examination 14 November 2016, pp 66-67.

³⁰ *Local Government Act 1995* s 5.41; *Local Government (Functions and General) Regulations 1996* reg 11; Shire of Exmouth Purchasing Policy 2.10.

³¹ C A Grant transcript, private examination 12 October 2016, p 19.

astounding". It doesn't sound appropriate on the surface. There can be reasons why you would maybe not go to tender but from a procurement point of view that's not sounding justified.

If there were reasons why you wouldn't go to tender, would you expect those to be documented somewhere?---Absolutely.

In what sort of form?---I would expect a transaction of that size would have some sort of planning process sitting behind it and the rationale why it wouldn't go out to the public tender. I would also expect there would be some sort of approval for not going out to public tender.

Who would provide that approval?---It depends on the delegations but generally I would say it would sit with the elected members I think, the elected Council.³²

The motives of Mr Price and Mr Forte in entering into the contract with Ocean Reefs Production

- [103] It is inconceivable that Mr Price did not know these regulations and policies. He has been a CEO in local government for many years.
- [104] Mr Forte was the Strategic Project Officer and Superintendent of the Ningaloo Centre project. It is inconceivable that he was unaware of the clear legal and policy requirements that had to be undertaken before the contract to ORP could be let.
- [105] Mr Price had limited dealings with Mr and Mrs Hawke although he had met and discussed aspects of the project with them. He had never met Mr La Paz. Mr Forte was more intimately engaged in the process, being Exmouth's representative in close liaison with Site. Yet, his contact with Mr and Mrs Hawke and Mr La Paz was also limited. For example, he had never inspected any aquarium of similar size which one of the Hawkes' companies had installed. He was taken to an address in Osborne Park (Zorzi's) and shown the filtration system which Mr Hawke said he had installed, and was told Mr Hawke also had responsibility for stocking the fish. A photograph of this aquarium (which is privately owned), appeared in agenda item 11.3 later provided to the Council. If anyone suggested that one of the Hawkes' companies was responsible for the entire installation, that would be misleading. Mr Zorzi had purchased the aquarium and arranged for its installation.
- [106] ORP was incorporated on 16 February 2016, especially for the Ningaloo Centre project. That fact alone, while commercially prudent from Mr and Mrs Hawkes' point of view, should have caused any person to take a closer look at the financial ability of ORP to complete the project, and any warranties that it may give. It should have been apparent to Mr Forte that ORP had never built anything. ORP appears to have been regarded by all concerned as a vehicle by which the advice and services of Mr La Paz could be engaged on the project. A prudent project officer should have

³² C A Grant transcript, private examination 12 October 2016, p 21.

asked more questions. Mr La Paz had been informally engaged without reward by Site to provide advice about the design of an aquarium, something that Site had little experience in. He had several meetings with Site, and no doubt his advice was extremely useful. However, based on that brief contact, Mr Forte appears to have taken the decision that Mr La Paz should be further involved, albeit in a way where his involvement was not direct. Nowhere in the contract is his involvement made mandatory. Moreover, he was in full-time employment as Curator at AQWA.

- [107] On Mr La Paz's advice, a provisional sum of \$500,000 was set aside for the aquarium. A provisional sum of course is just that, and circumstances may make the actual cost greater or lesser than the provisional sum. It is significant in relation to Mr Forte, that when an indicative cost in excess of the provisional sum by some \$230,000 was obtained by Site from ORP, Mr Edwards, acting properly in the interests of his client, made enquiries for a potential alternative supplier. He found AAT without much difficulty. They appeared to be a company well capable of managing what he described as a project "at the very low end of AAT's capabilities."³³ This aspect will be detailed further in Chapter Seven.
- [108] AAT were aware of the timeline and had indicated they would have no difficulty in meeting it.
- [109] The identifiable risks involved in engaging ORP may never eventuate. That does not excuse the actions of Mr Price or Mr Forte. It will be despite those actions not because of them, if the contract is successfully completed. In fact, there have been considerable delays. The Commission was advised that on 14 November 2016, work commenced to install the acrylic panels. Mr Forte claimed that the work was on time and on schedule. This claim is surprising as the panels were supposed to have been installed months earlier. It was apparent then that the work would not be finished in time for practical completion or the intended opening of the Ningaloo Centre in April 2017. As at March 2017, Mr Fletcher, the Administrator, advised that he is not satisfied the arrangements for the aquarium stock were safe and has directed that the aquarium not be filled with sea water at this stage.
- [110] Both Mr Price and Mr Forte were at pains to stress that they were acting at all times in what they believed to be the best interests of Exmouth in a project that had become time critical.
- [111] There is no evidence to suggest that either of them was motivated by personal gain, and the Commission accepts that they were not.
- [112] Would a reasonable person in their position be regarded as acting in the best interests of Exmouth? In order to achieve one objective, the securing of an aquarium contract, they disregarded every other consideration that should have been taken into account. They breached financial controls meant to protect Exmouth; they transferred all the risk of engaging ORP from the contractor Firm to Exmouth, then lied about it to Council.

³³ Email from P C Edwards to A J Forte, 13 April 2016.

- [113] In the Commission's assessment, Mr Price and Mr Forte were reckless in their dealings with ORP. Despite all the many signals from Firm and from Mr Edwards, they conducted no due diligence whatsoever and executed a contract binding Exmouth to a liability of \$1 million to a company incorporated for the purpose with no assets.
- [114] In an attempt to absolve themselves from blame, and to remedy their reckless conduct, their solution was to persuade Council that it needed to enter into a contract with ORP. The means of persuasion was to create a false document, agenda item 11.3.

CHAPTER FIVE

CREATION OF A FALSE DOCUMENT - AGENDA ITEM 11.3: 27 JULY 2016

- [115] Mr Price was well aware that neither he nor Mr Forte had authority to enter into the contract with ORP.
- [116] On 30 May 2016, Mr Price had a conversation with Ms O'Toole which she immediately noted in her diary.³⁴ This conversation occurred shortly after a meeting of the Ningaloo Centre Project Management Committee on 26 May 2016. Neither Mr Price nor Ms O'Toole were present at that meeting.
- [117] Mr Price told her "that he had signed a contract for the construction of the aquarium and that he hadn't had Council approval."³⁵ He said that the reasons why he had entered into the contract was the builders, Firm, who were being engaged to construct the Ningaloo Centre did not want to be part of the aquarium fitout because of warranty issues and therefore Council needed to have a contract with the company direct.
- [118] Mr Price did not name the company but Ms O'Toole found out it was ORP subsequently when invoices arrived for payment. Mr Price told Ms O'Toole:
- The content of our conversation was to remain confidential. I wasn't to discuss it with anybody, the fact that he had signed the contract or who it was with. I was to remain silent. I asked whether or not I could reach out to the department and some other CEOs that I know on a personal basis and he said, "Under no circumstances are you to discuss this with anybody."*³⁶
- [119] Mr Price said he would take his chances with the audit.

Meeting of the Ningaloo Centre Project Management Committee: 26 May 2016

- [120] Council had formed the Ningaloo Centre Project Management Committee to have some oversight over the project. The Committee is not a statutory committee and it is unclear what, if any, power it had. Ms McHutchison who was a member of the Project Management Committee said it was only formed to make recommendations to Council.
- [121] The minutes of the meeting were prepared by Mr Forte.
- [122] The minutes record those present on 26 May 2016:
- President C Shales
 - Councillor S McHutchison

³⁴ S M O'Toole transcript, private examination 11 October 2016, p 21.

³⁵ S M O'Toole transcript, private examination 11 October 2016, p 20.

³⁶ S M O'Toole transcript, private examination 11 October 2016, p 21.

- Councillor R Todd
- Mr Rogé Kempe
- Mr Andrew Forte
- Also invited were Mr Michael Davis and Ms Jana Heimanis (from Freeman Ryan Design)
- Apologies from Mr Price and Ms O'Toole.

[123] The minutes record that during the meeting, Mr Forte advised the committee that:

The Shire has contracted directly with Ocean Reefs Production Pty Ltd (ORP) for the fitout of the aquarium. This includes fish stock and operating handover.

The ORP contract sum can be broken down as follows;

- *\$300k for acrylic panels;*
- *\$100k for electrical switchboard/controls and LED suspended lighting;*
- *\$150k fish stock and coral;*
- *\$300k life support systems;*
- *\$130k disbursements for personnel attending.*

The PS allocation for this work has been directed out of Firm Construction's contract and appropriated to a separable Principal engagement contract. As this is fit out and operational it was deemed necessary for the Shire to have direct oversight of the contract activities, albeit part of which partners with Firm Construction when the acrylic panels are installed.³⁷

[124] Mr Forte gave evidence that the minutes were a true reflection of what occurred. Mr Shales agreed the meeting was told of the direct contract.

[125] Mr Todd and Ms McHutchison in their responses to the draft report each deny being told that Exmouth had contracted directly with ORP.

[126] Ms McHutchison's recollection is that the committee was never told or consulted about the unauthorised contract with ORP. She did know ORP was the contractor for the supply of fish as they had the necessary licence.

[127] To her recollection, Mr Forte explained that ORP was the only contractor available to supply the thickness of acrylic panels in the required timeframe.

[128] Mr Todd in his response said that the first time he knew of the premature contract signing was at the Commission hearing in November 2016.

[129] Mr Kempe's response is silent as to his state of knowledge.

³⁷ Ningaloo Centre - Project Management Committee (PMC) Meeting Minutes, 26 May 2016 p 2.

- [130] The Commission cannot determine now precisely what was said at the Project Management Committee meeting, but notes that no-one raised any query to the minutes of the meeting when they were distributed.

Meeting of the Ningaloo Centre Project Management Committee: 13 July 2016

- [131] On 13 July 2016, the Project Management Committee held another meeting. On this occasion, Councillors McHutchison and Todd, Mr Shales, Mr Price and Mr Kempe were present. Mr Forte was absent.

- [132] Mr Price advised:

Committee, at the May 2016 meeting, recommended to accept formal quotation from ORP for the Design and installation of Aquaria within the Marine Interpretative Space.

...

Full Council resolution is required at July ordinary meeting to formally enter into a AS 4906 2002 Minor Works Contract with Ocean Reefs Production Pty Ltd (ORP) for the Design & Installation of Aquaria Works at the Ningaloo Centre for the total cost of \$1,088,260 (inc GST)

'The PMC recommended that Council engage Ocean Reefs Production Pty Ltd (ORP) enter into a AS 4906 2002 Minor Works Contract with Ocean Reefs Production Pty Ltd (ORP) for the Design & Installation of Aquaria Works at the Ningaloo Centre for the total cost of \$ 1,088,260 (inc GST)

Moved: Cr T Shales

Seconded: Cr B Todd

Carried³⁸

- [133] If a contract had already been entered into between Exmouth and ORP on 16 May 2016 and the Project Management Committee had been advised of this very fact during the previous meeting on 26 May 2016, this recommendation by Mr Price was misleading.
- [134] If Mr Forte did not tell the meeting Exmouth had contracted directly with ORP then the minutes of the meeting of 26 May 2016 which he prepared are misleading.
- [135] No one queried the difference between Mr Forte's statement that Exmouth had contracted directly with ORP and Mr Price's statement that the Project Management Committee had resolved to recommend that a contract be entered into. This was an oversight by Councillors attending the meeting and reading the minutes.
- [136] Mr Shales referred to his failure to question the authority to enter into a contract as a "terrible oversight".

³⁸ Ningaloo Centre - Project Management Committee meeting minutes, 13 July 2016.

- [137] If, as they asserted, Mr Price and Mr Forte were genuinely acting in the interests of Exmouth, the obvious question is why, on becoming aware that he had blundered, Mr Price did not simply make an admission to Council and seek retrospective authority for what he had done.
- [138] The conclusion that he was not acting in the best interests of Exmouth comes from what in fact he did next.

Meeting of the Exmouth Council: 27 July 2016 - Agenda item 11.3

- [139] At the Council meeting on 27 July 2016, Mr Price put forward the following recommendation:

*That Council formally enter into a AS 4906 2002 Minor Works Contract with Ocean Reefs Production Pty Ltd (ORP) for the Design, Installation & Fitout of the Aquarium at the Ningaloo Centre for the sum of \$1,088,260 (inc. GST).*³⁹

- [140] The agenda was accompanied by agenda item 11.3. Drafted by Mr Price, dated 19 July 2016 regarding the proposal to engage ORP, Mr Price stated that "[some of the] information came from Andrew Forte who was the Superintendent and the one liaising with Ocean Reefs Production".⁴⁰
- [141] With the assistance of Mr Forte, Mr Price acted out of self-interest to protect himself by attempting to legitimise his actions through the creation of agenda item 11.3 for the Council meeting to be held on 27 July 2016.
- [142] The practice in Exmouth was for the CEO, Mr Price, to prepare the agenda for Council meetings and to attach relevant documents for the information of Councillors. These were provided in advance of the meeting so that Councillors would be prepared to discuss the agenda items. Agenda item 11.3 sought a resolution of Council to enter into a contract with ORP.
- [143] Ms O'Toole raised agenda item 11.3 with Mr Price following the meeting to settle the agenda. Ms O'Toole advised Mr Price to get legal advice about him signing the contract prior to taking this to Council. Mr Price said that "he'd take his chances, he'd go to gaol or [Ms O'Toole] should report him to the CCC. He'll take his chances".⁴¹
- [144] Agenda item 11.3 was false in many respects. It made no mention of the fact that the contract had been executed over two months earlier. Nor was there any notification to Council that payments totalling \$206,000 had already been paid to ORP.
- [145] In examination, Mr Price agreed that he misled Council by not advising Council that firstly, "the contract had been made; secondly, that money had been paid out under it, and thirdly, that a contract was made directly between Ocean Reefs Production and the Shire of Exmouth".⁴²

³⁹ Shire of Exmouth Council Meeting Minutes, 27 July 2016.

⁴⁰ A W Price transcript, public examination 11 November 2016, p 19.

⁴¹ S M O'Toole transcript, private examination 11 October 2016, p 39.

⁴² A W Price transcript, public examination on 11 November 2016, p 21.

[146] Agenda item 11.3 was also misleading in the sense of representing the service being provided by ORP as "extremely unique", "that it [was] unlikely that there [was] more than one potential supplier", therefore justifying the decision not to call for a public tender. This was untrue.

[147] Mr Price conceded to Mr Percy QC who appeared on his behalf in the public examination:

Do you accept that there was no unique aspect to what ORP could provide that made it an exemption to the tender process?---I do now.⁴³

I think you put it to the Council that there had been no tender called, and you sold that to them, didn't you, on the basis that it fell within the exception of the unique tenderer exemption?---Yes, that's what I did.

Did you believe that to be true?---It was probably stretching the truth, drawing a long bow, I'll be honest.⁴⁴

[148] Mr Forte also agreed that ORP was not a unique supplier. He could hardly do otherwise in light of emails which had been sent to him by Mr Edwards, drawing his attention to another potential supplier, AAT. These are reviewed in Chapter Seven.

[149] Mr Forte agreed that there was no written record as required under the policy if a unique supplier was to be engaged. There was no written record of course, because ORP was not a unique supplier. Mr Price's attempt to pretend otherwise in the minutes to Council is nothing more, nor less, than a fraud on the Council. It was corrupt behaviour and drawn to Council's attention by the Commission on 19 October 2016.

[150] An email conversation between Mr Price and Mr Forte on 20 July 2016 provides clear evidence of the two working together on the wording of the report for the Council meeting agenda. Mr Price wrote:

I have attached extract from agenda below to show what I am trying to achieve here which I am pretty comfortable with although can see my favourite cr trying to catch me out.⁴⁵

[151] Mr Forte suggested to Mr Price:

Bill You might like the below words?

It has been recommended that Council engage Ocean Reefs Production Pty Ltd independently (under an AS 4906 2002 Minor Works Contract) with ORP providing the necessary Warranties for the project and advantageously the Principal direct access to operational systems and the involvement of an aquarist, otherwise not available until after Practical Completion.⁴⁶ (emphasis added)

⁴³ A W Price transcript, private examination 13 October 2016, p 71.

⁴⁴ A W Price transcript, public examination 11 November 2016, p 68.

⁴⁵ Email from A W Price to A J Forte, 20 July 2016.

⁴⁶ The underlined words were suggested by A J Forte for use by A W Price.

*Agenda reads OK to me. Would have to be a nasty pasty to give jip.*⁴⁷

[152] Mr Price responded:

Cheers mate will be glad when it is all rubber stamped

It would have to be the worse (sic) working environment ever experienced as I am sure they are out to trip me up

*Well I don't reckon the bastards are good enough!!*⁴⁸

[153] In a telephone call to Mr Forte intercepted by the Commission:

PRICE ... I was concerned with James you know

FORTE: Right.

PRICE: that if I don't get this right and plenty people are reading it you know

FORTE: Hmm.

PRICE: that, that it doesn't get shoved on you know to the Department of Local Government which it probably has

FORTE: Hmm.

*PRICE: but I thought no I'm gonna be making sure we're gonna be covering our bases here.*⁴⁹

[154] In his evidence to the Commission, Mr Shales said he felt "the CEO and [Councillor James Roscic] had some issues" and that he did not think they "hit it off".⁵⁰

[155] The only available inference is that the references to his "favourite cr" and to "James" in these intercepted phone calls with Mr Forte are references to Councillor Roscic. Mr Roscic was not on the Project Management Committee and had no way of knowing agenda item 11.3 was false.

[156] Mr Forte's suggested additional words were also false.

[157] Mr Price admitted in examination that he was "concerned about [the report he had submitted to Council] because [he] knew it was incorrect" and that "the issue of signing the contract on behalf of the Shire before actually getting the approval of the Council was a matter that might get referred to the Department of Local Government".⁵¹

[158] Mr Forte knew that the misleading report would be going to Council for consideration and did nothing to prevent Mr Price from including it with

⁴⁷ Email from A J Forte to A W Price, 20 July 2016.

⁴⁸ Email from A W Price to A J Forte, 20 July 2016.

⁴⁹ Telephone call between A W Price and A J Forte, 2 August 2016.

⁵⁰ C Shales transcript, public examination 15 November 2016, p 61.

⁵¹ A W Price transcript, public examination 11 November 2016, p 30.

Council papers. On the contrary, he provided Mr Price specific input including its wording. The photograph of the Zorzi aquarium in agenda item 11.3 was supplied through Mr Forte. The clear inference from its inclusion was that it represented an ORP installed aquarium, when it did not.

- [159] Instead of doing his duty and reporting truthfully what had happened, as the extract from the telephone conversation shows, Mr Forte congratulated Mr Price on lying to the Council.
- [160] The Council meeting of 27 July 2016 endorsed the proposal and recommendation to engage ORP. It is noted that Mr Shales who had been at the Project Management meeting in May was not present at the Council meeting in July. Councillor Todd and Councillor McHutchison were.
- [161] The Commission has formed an opinion of serious misconduct in respect of Mr Price and Mr Forte for corruptly preparing a false document with the intent to mislead Council over the circumstances of the execution of a contract worth more than \$1 million. Their purpose was to avoid blame for their earlier actions.
- [162] The Commission recommends that consideration be given to the prosecution of Mr Price and Mr Forte.⁵²
- [163] A recommendation made by the Commission is not a finding and is not to be taken as a finding that a person has committed or is guilty of a criminal offence.

⁵² *Criminal Code* s 83; s 85.

CHAPTER SIX

SERIOUS MISCONDUCT BY MR PRICE AND MR FORTE OVER HOUSING SUBSIDY

- [164] In order to attract applicants for senior positions and to offset high rentals, Exmouth has a housing subsidy policy which applies to eligible senior managers.⁵³
- [165] The policy is in two parts. If a manager rents premises in Exmouth, they are entitled to a cash component to partially offset rental expenditure.
- [166] If a manager already owns a residence, they are entitled to a similar sum of money, currently \$28,600 per year.
- [167] The policy is clear that if a housing subsidy is paid, it shall be treated as taxable income.
- [168] Ms O'Toole confirmed that with the exception of Mr Forte, every senior manager is treated in accordance with the policy.
- [169] Mr Price however entered into a different arrangement with Mr Forte. When queried by Ms O'Toole, he confirmed this is the way that he wanted it done.⁵⁴
- [170] Contrary to policy, Mr Forte's housing subsidy was not treated as taxable income but was paid to him monthly as a lump sum. No tax was deducted.
- [171] Mr Forte directed the money into a loan account where he may be eligible for deductions of interest paid from his income tax on an investment property.
- [172] To disguise the true nature of the arrangement, Mr Forte entered into a fictitious rental agreement nominating his wife (a joint owner) as lessor and the lessee as the Shire of Exmouth. The rental agreement for 5 Warren Way was a sham. Mr and Mrs Forte lived in the house.
- [173] By purporting to lease his own home to Exmouth he was able to collect the housing subsidy as 'rent' and offset the loan deductions owing on the premises.
- [174] The fictitious 'Fixed Tenancy Agreement' between the Fortes' and the Shire of Exmouth was for 12 months at a monthly calendar rental designed to equate with the housing subsidy. The agreement was signed by Mr and Mrs Forte on 1 October 2011 and witnessed by Mr Price on 22 December 2011.
- [175] The original agreement was replaced by another Tenancy Agreement to run from 1 October 2012 to 30 September 2013 and 1 October 2013 to

⁵³ S M O'Toole transcript, private examination 11 October 2016, p 16; Shire of Exmouth Policy Manual, October 2015, Policy No 1.26 p 42.

⁵⁴ S M O'Toole transcript, private examination 11 October 2016, p 18.

30 September 2015. According to Mr Forte, it was "not a deliberate effort of fiction. It was a ratification of an agreement in the employment agreement in my mind. ... in my mind it wasn't a fiction, it was purely to ratify the agreement in the employment agreement."⁵⁵

[176] In examination, Mr Forte said that he had owned 5 Warren Way, Exmouth for some five years⁵⁶ and that he now also owns a property with his wife and a further property in Exmouth owned by his superannuation fund.

[177] Mr Forte took responsibility for the arrangement.

*That was my decision. I thought it was necessary just to ratify the arrangement that had been put forward in our employment agreement. Now, the fact that it has been signed in a manner that I've put myself as the tenant when equally I'm an owner of the property is - you know, as I say, it's clumsy but it was more the case of just ratifying an agreement that I thought was appropriate and grabbed this standard REIWA form, so there wasn't - and as I indicated earlier, I wasn't aware of any of the policy requirements there. So if I've made a mistake in that regard, it wasn't intentional.*⁵⁷

[178] Mr and Mrs Forte lived in the house from about November 2011 on a permanent basis to the end of the tenancy. They did not spend any time living in Perth. They were the occupants of the house for the whole period.

How was it then that the shire was the tenant?---As I indicated to you, it was purely, in my mind, a necessary document to formalise the employment agreement rightfully or wrongfully.

But you would accept that this document, because of what you have just told the commissioner, really presents a bit of a fiction, doesn't it?---Well, no. It was - tried to tie it to the employment agreement time.

THE COMMISSIONER: *But the employment agreement said you were entitled to the housing subsidy, didn't it?---Yes.*

And it was to be treated as taxable income?---Yes.

So why not just receive the money as everybody else did, as part of your monthly or weekly pay, whatever it was, with the tax taken out of it? Why go into this arrangement?

---With the benefit of hindsight I suppose it's completely unnecessary but at the time I thought it was appropriate.

*That's a humble statement for it all. It wasn't to achieve anything other than to - perhaps what I thought was right to do without being fully informed on the policy positions.*⁵⁸

⁵⁵ A J Forte transcript, public examination 15 November 2016, p 7.

⁵⁶ Landgate Record of Certificate of Title shows that 5 Warren Way, Exmouth has been jointly owned by Mr and Mrs Forte since 18 April 2005.

⁵⁷ A J Forte transcript, public examination 15 November 2016, pp 4-5.

⁵⁸ A J Forte transcript, public examination 15 November 2016, p 6.

*Yeah, well, as I indicated to you obviously it's been a clumsy arrangement in that regard but not something that I was trying to do other than to ratify an agreement between ourselves.*⁵⁹

- [179] Mr Price in examination claimed to know little of the arrangement. However, he signed the agreement purporting to witness the Fortes' signatures.

Therefore would you agree it appears that in this document Miranda Forte signed as owner on 1 October 2011, her husband signed as the tenant on the same day, and then you signed as the witness to both of their signatures not in October but on 22 December 2011, ...---That's what it says, but to be honest, this document – I don't even know what the purpose of this document was anyway. I was signing on behalf of the Council, not so much as a witness, but I don't know what the purpose of – they've got a salary package. We pay as per the salary package, and I don't even know what the purpose of this housing rental agreement was for anyway.

THE COMMISSIONER: *You've signed it so you must have knowledge of it?--*
*-Yeah, I have signed it but I don't know what the purpose was of it for.*⁶⁰

- [180] For the period 7 March 2012 to 22 March 2016, Exmouth paid Mr Forte a total of \$128,372 in housing subsidy payments. No tax was deducted.

- [181] After being taken to a series of rental agreements prepared by Mr Forte and signed by his wife as lessor, Mr Price agreed:

You appreciate that by signing these rental agreements on behalf of the shire, someone reading this agreement would come to the conclusion that what is represented in it is an accurate description of the legal position defined by the agreement?---Correct.

Namely that the owners are the Fortes?---Yes.

Correct?---Yep.

*And the tenant is the shire?---Yes.*⁶¹

*So your evidence then is that by paying him this entitlement in this way over the course of these different tenancy agreements is complying with the Council policy?---Yes, because of the payment the Council has to pay is exactly what's in his contract. It's a financial commitment from the Council.*⁶²

- [182] Mr Price agreed that the Council policy requires that the Council pay the subsidy as part of taxable income. It has always been the policy of Council, something Mr Price has known from the very beginning of his employment.

What was happening here with your friend Mr Andrew Forte is it was not being paid to him in the way required, was it? ---No.

⁵⁹ A J Forte transcript, public examination 15 November 2016, p 8.

⁶⁰ A W Price transcript, public examination 11 November 2016, p 50.

⁶¹ A W Price transcript, public examination 11 November 2016, p 59.

⁶² A W Price transcript, public examination 11 November 2016, p 60.

And by not being paid to him in this way, in the way required, he was getting a tax benefit, wasn't he?---Like I said, I don't know how the tax implications work.

*If it's not being paid to him in a way in which he is taxed on it, can you not see that that is giving him a tax benefit?---I don't know how it affects his own tax, his own personal tax, I don't know.*⁶³

[183] Mr Price said he never turned his mind to the agreements.

Is it not the case, Mr Price, that you entered into this odd arrangement of signing these tenancy agreements with Mr Forte on the basis that he would get some tax benefit from it, which he was not otherwise entitled to?---No.

*Did you do that, did you go into these odd-looking tenancy agreements with him on behalf of the Shire of Exmouth because he was your friend?---No.*⁶⁴

[184] When questioned by Mr Percy QC, Mr Price indicated he did not have much knowledge of the arrangement with Mr Forte and Mr Price had taken no accounting advice in relation to it.

[185] Mr Price's evidence is at variance with that of Ms O'Toole:

Are you aware of whether he has continued since [Mr Forte's] employment with the shire to receive the housing subsidy in his salary?---Yes; however that's not paid through payroll, it's a direct credit into his account every month.

And totally separate to his receiving his salary?---Correct.

THE COMMISSIONER: *Is that normal?---No, it's not. It was under instructions from our CEO.*

...

When did he give that instruction?---Upon [Mr Forte's] commencement as exec manager of aviation services.

Who did he give that direction to?---Myself.

Did you ask him why Mr Forte was being treated differently to everyone else?--At the time we had no other employees who were living in their own properties, but I did question the tax implications and Bill – Bill said, "Don't worry about it, this is the way I want it done."

*Does the Shire pay any tax of any kind in relation to that housing subsidy for Mr Forte?---It appears on our fringe benefits tax return, but then it becomes exempt because we live in a remote location.*⁶⁵

[186] The Commission considers the explanations given by Mr Forte unconvincing. Mr Forte holds a senior management position at Exmouth and is obviously intelligent. The fictitious arrangement was to his direct

⁶³ A W Price transcript, public examination 11 November 2016, pp 61- 62.

⁶⁴ A W Price transcript, public examination 11 November 2016, p 62.

⁶⁵ S M O'Toole transcript, private examination 11 October 2016, p 18.

benefit, potentially giving him untaxed income as well as tax deductions of interest paid.

- [187] Similarly unconvincing was Mr Price's explanation of ignorance as to the nature of the arrangement. When his attention was drawn to it by Ms O'Toole, he confirmed that he wanted the arrangement to continue. It applied to no other person.
- [188] Mr Price purported to witness the Fortes' signatures on the agreement. By the act of adding his signature to the fictitious lease, his attention was drawn to it. His plea of ignorance is not credible.
- [189] Mr Price likewise cannot plead ignorance of the housing policy. As CEO, he was responsible for all the policies of Council.
- [190] The Commission has formed an opinion of serious misconduct in respect of Mr Price in facilitating a fictitious rental agreement for the benefit of Mr Forte. In the Commission's opinion, Mr Price has corruptly used his position as CEO in order to give a material benefit to Mr Forte, one not available to anyone else.
- [191] The Commission has formed an opinion of serious misconduct in respect of Mr Forte's actions. In the Commission's opinion, Mr Forte improperly misused the housing subsidy allowance for his own personal benefit. He acted dishonestly. As a senior manager, he gained a significant financial advantage.
- [192] In his response, Mr Forte says the first time he became aware of the housing subsidy policy was when it was provided by the Commission at examination. He did not recall having seen Exmouth Policy 1.26 or hearing it explained to him and disagrees with any suggestion that his actions were intended to defeat that policy.
- [193] The Commission does not alter its opinion. The fictitious rental agreements can have had only one purpose, to circumvent Exmouth Policy 1.26. The result was a financial benefit for Mr Forte.

CHAPTER SEVEN

SERIOUS MISCONDUCT BY MR FORTE AND MR PRICE IN ATTEMPTING TO MISLEAD THE COMMISSION

Overview

[194] Mr Price was summonsed and gave evidence before the Commission in a private examination on 13 October 2016. In the course of that examination, he read from a document which had been prepared about a week before by Mr Forte.

[195] The document purported to give an account of the Ningaloo Centre Aquarium. There were a number of attachments including Attachment 'F'. Attachment 'F' was seriously misleading because Mr Forte had edited it to omit references to another possible aquarium supplier, AAT.

Background: The involvement of Advanced Aquarium Technologies

[196] To understand the deception in Attachment 'F', it is necessary to recount some more history of the aquarium.

[197] The costings prepared for the Ningaloo Centre allocated \$500,000 as a provisional sum against construction of an aquarium. This sum had been allocated when Matera were to be the builders. Mr Edwards had made enquiries to determine the appropriate provision and was assisted in this endeavour by consulting with Mr La Paz.

[198] Around the same time, Mr Edwards did a quick Google search and came across AAT, a company he described as "in the eastern states, very big nationally."⁶⁶ AAT's website indicates expertise in large aquaria, including installations in Dubai.

[199] Mr Edwards explained the difference between AAT and ORP was that given AAT's expertise, this would be a very small project for them, whereas Mr La Paz and Mr Hawke were a little bit different "a bit more sort of touchy feely, if you like..."⁶⁷

[200] ORP submitted its initial quote on 23 March 2016. Mr Edwards explained what he did then:

When I saw that it was 700-odd thousand I thought we're now, you know, well and truly over and above and that's when I thought, well, because we're not within the provisional sum, we need to explore some other avenues here. Although we do have it within the contingency, I just want a check price. I want to know, you know, what is being allowed for. Is industry rates – you know, maybe there's a bit of a Perth factor. With the specialisation of the Ningaloo Reef and the corals and the filtration it might be slightly different or something. So we then resurrected the discussions we had a year and a half,

⁶⁶ P C Edwards transcript, private examination 7 November 2016, p 12.

⁶⁷ P C Edwards transcript, private examination 7 November 2016, p 22.

two years prior with AAT and said, "Can you provide us with some information?"⁶⁸

[201] There followed a series of emails between Mr Edwards and AAT. These were copied to Mr Forte. In effect, AAT were prepared to tender for the installation of the aquarium and were cognisant of both the time and financial constraints.

[202] In the final email of 13 April 2016, Mr Forte advised Mr Edwards:

"Hi Paul, I will digest. The other matter of importance with ORA (sic) that I wish to fully appreciate is the elemental equipment items by function and type that they propose. Albeit listed I want to drill down further (eg cooling and heating, operating manuals). The system as described by AAT will help in this regard. My position is we must first continue with ORA, irrespective of this other company at this point of time.

So if the meeting can be arranged please with Simon for Friday. Thanks."⁶⁹

[203] The effect of the email chain was to make Mr Forte aware that there was at least one other potential supplier in Australia who were prepared to give a quotation for the work. From that point, Mr Forte knew that he could not claim "sole supplier" status for ORP.

Mr Price's evidence to the Commission in examination on 13 October 2016

[204] In a private examination, Mr Price asked to read a document verbatim. He explained that the document was provided by Mr Forte "last week" because "I asked about a month ago after the raid, reading between the lines of the documentation taken, that I asked for – because I believe there's two issues they're not happy about with the Ningaloo Centre, one is the aquarium ..."⁷⁰

[205] Counsel assisting, Ms Nelson then asked Mr Price:

Do I take it that the content of what's in that document was not known to you before Mr Forte drew it up?---No. I was very aware along the way but all of this is a sequence of events which I'm happy to submit if that's what you would like ...⁷¹

[206] Mr Price read the document verbatim as he had requested and referred to the attachments. Attachment 'F' was an email string about an alternative proposal by AAT and its rejection.

[207] After Mr Price had completed his evidence, the Commission forensically examined the document produced by Mr Price to the Commission including Attachment 'F' and compared it with the original emails. It was obvious that

⁶⁸ P C Edwards transcript, private examination 7 November 2016, p 27.

⁶⁹ Email from A J Forte to P C Edwards, 13 April 2016.

⁷⁰ A W Price transcript, private examination 13 October 2016, p 65.

⁷¹ A W Price transcript, private examination 13 October 2016, p 65.

materially significant information concerning AAT had been deleted from the emails which formed part of Attachment 'F'.

[208] Mr Forte was examined on 14 November 2016. He was shown a marked-up copy of Attachment 'F' highlighting the deletions. That copy is Annexure Two to this report.

[209] Mr Forte gave a range of responses to the Commission concerning the deletion. "Well, I certainly didn't do the edit. I don't know how it's occurred."⁷² Counsel assisting, Mr Power, then asked:

... if you didn't take them out and Mr Price had nothing to do with this document, are you suggesting they just dropped out by themselves?---I'm afraid so, and I'd have to go back and have a look on my computer and to see exactly how this might have arisen, because there was no deliberate effort on my part to do a cut and change as so alluded.⁷³

[210] Mr Forte then advanced a second explanation:

Mr Forte, the reason why they have dropped out is because you edited them out, didn't you?---But not deliberately.

So you now agree that you edited them out, do you?---It was a collection of background information that I thought was adequate for the purposes of briefing.

...

I just did not include them because it didn't come to my mind to add them in.

Did you edit them out? You can't say you did not include them. They're part of the document. It's a positive action to take them out. Did you take that positive action?---As the author and the compiler, yes.⁷⁴

[211] Mr Forte and Mr Price discussed the document by telephone on 6 October 2016, a week before Mr Price was to give evidence.

FORTE: Yeah, your, your little dissertation, I'm, I'm finding quite a few attachments in the history and er, I have come across er minutes that Owen took for April

PRICE: Yeah.

FORTE: uhm this year meeting whereby they requested the Shire to take on the risk side of this uhm

PRICE: Okay.

FORTE: novated contract.

PRICE: Beautiful. That's all I need.

⁷² A J Forte transcript, private examination 14 November 2016, p 76.

⁷³ A J Forte transcript, private examination 14 November 2016, pp 76-77.

⁷⁴ A J Forte transcript, private examination 14 November 2016, pp 80-81.

FORTE: so that

PRICE: Yeah.⁷⁵

[212] Mr Forte agreed that he prepared the document with Attachment 'F' so that Mr Price would be able to give a truthful and accurate account of the events relating to the Ningaloo Centre project and the aquarium.

[213] During examination, Mr Forte generally agreed that much of the deleted material would be important information for someone looking for an accurate and truthful account. Mr Forte agreed with Counsel "In fact someone not seeing those bits that had dropped out might think that there was no alternative supplier at all. Would you agree with that?---Yes."⁷⁶

[214] In a telephone conversation, Mr Forte indicated that he and Mr Price could edit the document after Mr Price had had a chance to read it. Mr Price did not suggest any edits but said it was completely accurate. The conversation continued:

PRICE: Yeah but sorry, I uhm, look it, it's going to be good enough mate, you know. It's just to give me, uhm, you know, er, well, some bloody

FORTE: Ammunition.

PRICE: ammunition against them and just - - -⁷⁷

[215] Mr Forte could not explain why he used the word "ammunition". In his response to the Commission, he regretted its use.

[216] Mr Forte insisted that he had no idea that the modified document might be provided to someone; it was purely to give Mr Price some more information for his benefit.

[217] The Commission rejects this response. It strains credulity. The execution of the search warrant by the Commission on 11 August 2016 was public knowledge and known to Mr Forte. The substantial likelihood is that he knew the document would be used by Mr Price as "ammunition" against allegations that may be made against him by the Commission. This is made clear by a further extract from a telephone conversation:

PRICE: Well at this stage unless they make me hand it over. I don't know but, I don't know what

FORTE: Well, I'm making it such

PRICE: they can and can't do.

FORTE: that you could actually

⁷⁵ A J Forte transcript, private examination 14 November 2016, p 81.

⁷⁶ A J Forte transcript, private examination 14 November 2016, p 80.

⁷⁷ A J Forte transcript, private examination 14 November 2016, p 84.

PRICE: Mm.

FORTE: if you wanted to hand it over.

PRICE: Yeah.⁷⁸

- [218] Mr Forte finally conceded that he prepared the document and Attachment 'F' knowing it was a possibility that it could be handed over to the Commission. He conceded that by editing out important information within Attachment 'F', he gave an untruthful version of events. He denied an intention to mislead the Commission.

And to allow that to be put in a position where it could be handed over, to use your words, to the commission, that was in effect saying that Mr Price could hand something to this commission which would be untruthful and misleading, wasn't it?---Well, that's certainly not what was set out to do.

Well, how can that not be what it was set out to do when you did the edits, you provided it to him, knowing that it could be handed over to this commission?---Well, as I said, there was no deliberate misleading on my part. I endeavoured to give a summary view that I thought was appropriate.

But, Mr Forte, it was exactly that, wasn't it? It was deliberate misleading by you because you and you alone did the edits that gave the wrong impression in Attachment 'F', knowing that document could be handed over to this commission?---No. I refute that.⁷⁹

- [219] In due course, Mr Forte was examined by his Counsel, Mr Dundas:

Why did you edit Attachment 'F'?---As I said before with regard to – I'd said they're not to be considered at this point of time, the AAT position. So in my mind they were not – it was not a realistic consideration; I had not engaged with them in any manner or form and I'd said to Paul that we weren't going to go down that path. So it was not – in terms of the engagement of ORP it was the history relating to, you know, the dealings we'd had with ORP/ORMA leading up to that and how we'd got into the issue with perhaps it was better that they have a separable contract and so I articulated that story but I had basically a firewall in my mind that they were never a realistic option for reasons of, you know, the funding time and they'd been dismissed within a day of an email being sent to us that no, we're not going down that path, we're going to see what we can do here and get a deal. So in terms of scripting something there, to my mind it wasn't there and so no, this is the story.

Is that because you were including what you thought was relevant to your decision-making process?---Yeah, absolutely; absolutely, that's right.

Did you have any intention to mislead anyone in creating the document?---Definitely not; no, I was – no, I was being as – yeah, just the details as they were. So, I mean, there was a snapshot of a bit there but that was just to give a little bit of information, from recollection it was to do with the contractual arrangements that we could enter with Firm.⁸⁰

⁷⁸ A J Forte transcript, private examination 14 November 2016, p 87.

⁷⁹ A J Forte transcript, public examination 14 November 2016, p 89.

⁸⁰ A J Forte transcript, public examination 15 November 2016, pp 28-29.

- [220] In his response, Mr Forte said that he prepared the summary document in a single word format relatively quickly in the afternoon of about 27 October 2016 and tried to condense a large volume of material. Mr Forte further responded 'I usually have a good memory for these sorts of things, but even now, I cannot specifically recall physically removing parts of the email chain that comprised Attachment 'F' ...'⁸¹
- [221] As he is unable to recall the removal of material parts of Attachment 'F' which made it misleading, Mr Forte hypothesises that he did so to:
- (a) *limit the volume of materials that Mr Price had to read and digest; and*
 - (b) *give Mr Price a snapshot of what I considered to be relevant and important information, at least what was relevant and important to me.*⁸²
- [222] Mr Forte does not accept that the document had been deliberately edited and was seriously misleading.
- [223] Mr Forte concludes 'I certainly had no intention of misleading Mr Price or the Commission when I created the document.'⁸³

Conclusion as to Attachment 'F'

- [224] The Commission has considered all the evidence including Mr Forte's response.
- [225] Mr Forte prepared the document at the request of Mr Price. Mr Price communicated to Mr Forte the reason for creating the document - to rebut any suggestions by the Commission that ORP was not properly engaged.
- [226] In the Commission's assessment, Attachment 'F' was prepared by Mr Forte with the knowledge that it might be tendered to the Commission in order to give Mr Price "ammunition" against potential allegations of serious misconduct against him in respect of the Ningaloo Centre project and aquarium contract.
- [227] Mr Forte deliberately prepared Attachment 'F' to remove almost all references to AAT so that a reader would conclude there was no other potential supplier for the aquarium. ORP had to be regarded as a unique supplier to ensure no public tender process for the aquarium contract was required. His actions were deliberate in that script was removed from an existing record.
- [228] Mr Price requested to read the document aloud and did so. He referred to its attachments during his evidence. Mr Price has strongly submitted that he did not deliberately set out to deceive the Commission when he read from Attachment 'F' during his examination on 13 October 2016. This is a disingenuous submission.

⁸¹ Letter from A J Forte to Commissioner, 13 April 2017, para 9.

⁸² Letter from A J Forte to Commissioner, 13 April 2017, para 12.

⁸³ Letter from A J Forte to Commissioner, 13 April 2017, para 25.

- [229] Mr Forte and Mr Price discussed the formulation of Attachment 'F' as Mr Forte prepared it. Mr Forte gave Mr Price an opportunity to edit the document before he appeared before the Commission. Mr Price presented Attachment 'F' to the Commission and at the time said he was aware of the detail contained in it 'along the way'. One of the details he volunteered in evidence was that Site had had discussions with an alternative potential aquarium builder in the eastern states.⁸⁴ Having regard to his close communications with Mr Forte concerning the Ningaloo Centre and in particular the aquarium, it is inconceivable that he did not know of AAT's interest in the venture. He shares responsibility with Mr Forte for putting before the Commission Attachment 'F' that was designed to deceive. It was he who asked to read the document and who referred to the attachments.
- [230] However Mr Price told the Commission AAT was discounted at the time due to the logistics of engaging a supplier who was not local. References to AAT in the document given to the Commission by Mr Price were selectively edited. Once the full version had been obtained after forensic analysis it is apparent that Mr Price's evidence as to the reason for rejecting AAT as an aquarium provider was false.
- [231] The Commission has formed an opinion of serious misconduct in respect of Mr Price and Mr Forte. As senior officers of Exmouth, they were under a duty to give truthful evidence to the Commission concerning Exmouth's affairs and did not do so. As in the case of agenda item 11.3, they were prepared to fabricate a document to support their position.
- [232] The Commission also recommends that consideration be given to the prosecution of Mr Price and Mr Forte.⁸⁵
- [233] This recommendation is not a finding and is not taken to be a finding that a person has committed or is guilty of a criminal offence.⁸⁶

⁸⁴ A W Price transcript, private examination 13 October 2016, p 63.

⁸⁵ *Corruption, Crime and Misconduct Act 2003* s 168; s 170.

⁸⁶ *Corruption, Crime and Misconduct Act 2003* s 43.

CHAPTER EIGHT

COUNCIL ACQUIESCENCE AND INACTION

The Ningaloo Centre Project Management Committee: 26 May 2016

- [234] Mr Shales acknowledged in his evidence to the Commission that he knew Exmouth had contracted with ORP. He described his inaction as "a terrible oversight".
- [235] Councillors Todd and McHutchison were both at the Project Management Committee Meeting on 26 May 2016. They subsequently received minutes of that meeting and endorsed Resolution 04-0716 for Exmouth to enter into a contract with ORP at the Council meeting on 27 July 2016.
- [236] They each deny that at the time they moved Resolution 04-0716, they were aware that Exmouth had already contracted with ORP.
- [237] On the state of the evidence, the Commission cannot conclude on the balance of probabilities that Mr Todd or Ms McHutchison also knew the contract with ORP had been executed by Mr Price.
- [238] Mr Kempe was also present at the May 2016 meeting and, as a senior manager, ought to have known that local government regulations and Exmouth policy did not permit Mr Price or Mr Forte to enter into any contract exceeding \$150,000.
- [239] However, the evidence is silent as to Mr Kempe's knowledge of the true state of affairs apart from his receipt of the minutes. The Commission does not infer that he did know.

Mr Price's annual review: Council's generosity

- [240] A council is required to conduct an annual performance review of a CEO.
- [241] A CEO is required to have Key Performance Indicators (KPI) set after discussion with council. One of Mr Price's suggested KPI's for 2016-17 was "Defend the CCC Investigation."⁸⁷
- [242] On 11 August 2016, the Commission executed a search warrant on Exmouth offices and notified Council it was investigating allegations of possible serious misconduct.
- [243] Council carried out a performance review of Mr Price on 22 August 2016. The minutes do not record the discussion which took place. However, by unanimous agreement, Council resolved to vary Mr Price's contract of employment to increase Mr Price's annual leave entitlement from six weeks to eight weeks. The reason for this generous increase is not recorded in any Council document. The only record is a Payroll Adjustment Form detailing a change to existing employee's information. 'An additional 2 weeks leave calculated annually and effective from 1 July 2016'. It is signed

⁸⁷ CEO Performance Review 2015/16 (conducted Monday 22 August 2016).

by Mr Price on 24 July 2016 nearly a month before the Council approved it. Approval for the adjustment was given by Mr Shales who signed the form.

- [244] This gift of two weeks extra leave was made by Council knowing that the Commission had commenced an investigation. Council had no way of knowing the outcome or whether Mr Price might be implicated in any wrongdoing. Council didn't even know that Mr Price failed to claim leave on occasions but just took time off.

Inaction after knowledge of Mr Price's misconduct

- [245] On 19 October 2016, Mr Shales attended the Commission and received a briefing and a transcript of Mr Price's private examination detailing many admissions of misconduct including deceiving Council. Mr Shales was granted permission to disclose the transcript to Council, and did so. Even armed with the evidence of Mr Price, Council took no action at all. Council did not consult with Exmouth lawyers though this course was recommended.
- [246] There was no need to wait for the conclusion of the Commission's investigation and report when Council had Mr Price's evidence and admissions given to the Commission under oath.
- [247] It was not until the Hon. Minister for Local Government and Communities took action that Council, who is required to perform an oversight role, appears to have asserted itself over its CEO.
- [248] Mr Fletcher has recommended that the Minister order a panel enquiry into the Council.
- [249] In light of the stunning indifference to the ratepayers of Exmouth in increasing Mr Price's leave entitlements and Council's failure to act promptly and appropriately to discipline Mr Price, the Commission supports this recommendation.
- [250] The Commission has formed no opinion of serious misconduct in respect of the Council. Neither the Commission nor the Public Sector Commission have jurisdiction with respect to allegations of other misconduct by Councillors.

CHAPTER NINE

EXMOUTH'S RESPONSE

[251] Under the guidance of Mr Fletcher, Exmouth appears to be making substantial efforts to return to good governance. Mr Fletcher was invited to include in his response to the draft report what has been done since Council was suspended and the CEO's employment terminated.

[252] Mr Fletcher considers that the contents of the draft report are an accurate reflection of what has been happening at Exmouth. Much has also been corroborated through other sources, namely:

- *the External Auditor's report for the 15/16 financial year which included a management letter that made reference to the CCC investigation and incorrect procurement practices;*
- *an independent Probity Audit that was undertaken by the DLGC immediately after I commenced as Commissioner; and*
- *the completion of the Annual Compliance Return which was lodged with DLGC on 31 March.*⁸⁸

The Ningaloo Centre

[253] A number of actions have been taken:

- *engagement of an independent superintendent to represent the shire's interests;*
- *addressing major deficiencies in the procurement of major contracts and reviewing cost blowouts in areas such as the aquarium and landscaping;*
- *reviewing tenancy agreements to ensure that the shire would receive fair market rental where appropriate to ensure the ongoing sustainability of the centre;*
- *engaging the WA Museum and the National ANZAC Centre to assist in the development of a business and activation plan for the centre as this was non-existent;*
- *working closely with the Department of Regional Development to ensure total transparency of the funding from the Royalties for Regions Program which is the principal funding source, being \$19.8m. for capital works.*
 - *This included obtaining three independent audits:*
 - ✧ *can the project be completed within existing budget;*
 - ✧ *oversight of procurement process and where necessary an independent expert opinion on whether value for money was obtained;*

⁸⁸ Letter from Commissioner Fletcher to Commissioner McKechnie, 10 April 2017, p 2.

- ✧ *ongoing overall financial sustainability of the centre, particularly as it would apply to the aquarium and outdoor landscaped areas;*
- *meeting with WA Treasury Corporation to discuss the shire's application for a \$1m loan as a contribution to the centre; and*
- *meeting with the Western Australian Auditor General to discuss issues associated with the centre.*⁸⁹

Other actions

[254] A number of other actions have been taken:

- *the development of a new Integrated Strategic Plan and associated financial and business plans as required under the Local Government Act 1995. The existing plans are redundant...;*
- *the creation of the Exmouth Community Strategic Reference Group to ensure greater transparency and accountability to the Exmouth community;*
- *worked with the acting CEO on a major operational and organisation review to better reflect the necessary governance as well as the effective operations of the shire;*
- *a major independent review of the shire's aviation services - both the RPT air services and the heliport...;*
- *a complete review of all shire policies to ensure that they are correct. A new policy has been the introduction of an alcohol free workplace which is standard practice in most work places these days particularly with resource companies...;*
- *a review of local laws will also be undertaken as there are some that are in breach of other legislation such as the federal anti-competition laws;*
- *an independent re-examination of the proposed new town planning scheme TPS4 by the WA Departments of Planning and Commerce...;*
- *the recruitment of a new CEO...*⁹⁰

[255] Mr Fletcher commented:

*A lot of work still needs to be done to rebuild the trust as well as to restore confidence with government and business in Perth. It must be demonstrated to everyone that Exmouth is reopen for business with a new, transparent and open culture.*⁹¹

[256] In a letter to Ms Jennifer Matthews, Director General, Department of Local Government and Communities, Mr Fletcher wrote:

⁸⁹ Letter from Commissioner Fletcher to Commissioner McKechnie, 10 April 2017, p 2.

⁹⁰ Letter from Commissioner Fletcher to Commissioner McKechnie, 10 April 2017, p 3.

⁹¹ Letter from Commissioner Fletcher to Commissioner McKechnie, 10 April 2017, p 4.

- *the Probity Audit undertaken by your department has resulted in all the recommendations being put in place;*
- *disciplinary action is being taken against five senior staff as a result of the [Corruption and Crime] Commission (CCC) inquiry into the shire...⁹²*

[257] On 20 April 2017, Exmouth announced the appointment of a new CEO, Mr Cameron Woods.

⁹² Letter from Commissioner Fletcher to Ms Jennifer Matthews, Director General, DLGC, 17 March 2017, p 1.

CHAPTER TEN

CONCLUSION

- [258] Mr Price's actions in enriching himself at Exmouth's expense illustrate again⁹³ weakness in controls over CEOs. It must be acknowledged there is limited ability for a council, even when conscientiously carrying out an annual performance review, to properly supervise a CEO who disregards the policies and procedures and who deliberately lies to council.
- [259] It is also unrealistic to expect that those who owe their continued employment to a CEO will always raise their concerns.
- [260] Previous reports by the Commission, and this report, demonstrate that there remain structural weaknesses in local government. The Commission's 'Report on the Review of the Capacity of Local Government in the Pilbara to Prevent Identify and Deal with Misconduct (16 April 2013)' and 'Report on Misconduct Risk in Local Government Procurement (4 February 2015)' are especially relevant.
- [261] A council governs the local government's affairs and is responsible for the performance of their functions.⁹⁴ It is required to appoint a CEO⁹⁵ whose administrative functions are extensive.⁹⁶
- [262] When weaknesses in government are exploited, the rate payers are the poorer for it.
- [263] There continues to be confusion as to the extent to which a councillor can make enquiries of administrative staff because of the limitation imposed by the *Local Government (Rules of Conduct) Regulations 2007* reg 9 which prohibits a council member from undertaking tasks that contribute to administrative matters without authorisation by the Council or CEO. The difficulties in this bifurcation of responsibilities are exacerbated when a council is dominated by individuals or the force of the CEO's personality.
- [264] Especially in smaller communities such as Exmouth, friendship can distort responsibility. Mr Shales' friendship with Mr Price was made manifest in evidence before the Commission.
- [265] Serious misconduct flourishes when there is inadequate governance, whether due to friendship, ignorance or some other reason.
- [266] Serious misconduct flourished in Exmouth.

⁹³ Report on a Matter of Governance at the Shire of Dowerin - 10 October 2016, Report on Misconduct Risks in Local Government - 4 February 2014, Report on the Investigation of Alleged Public Sector Misconduct by a Local Government Employee in relation to the Purchase of Management Systems Software - 19 December 2013.

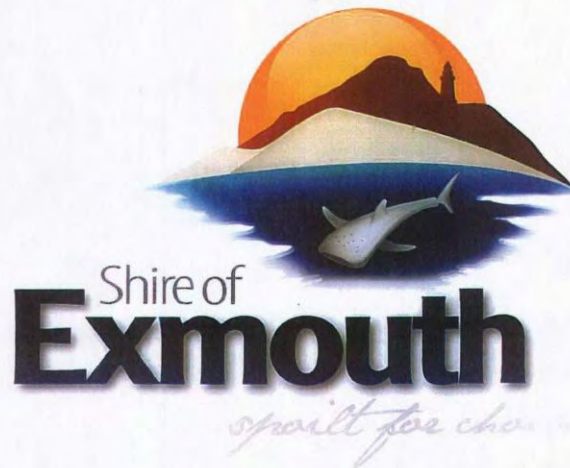
⁹⁴ *Local Government Act 1995* s 2.7.

⁹⁵ *Local Government Act 1995* s 5.36.

⁹⁶ *Local Government Act 1995* s 5.41.

ANNEXURE ONE

Ordinary Council meeting minutes: 27 July 2016



Ordinary Council Meeting
Minutes
27 July 2016

CONFIRMATION OF MINUTES

These minutes were confirmed by the Council on 27 July 2016 as a true and accurate record of the Ordinary Council Meeting held on 29 June 2016.

.....

Cr (Turk) Shales
Shire President

01722-2015-0620



All attachment items referred to in these minutes are available for public perusal at the Shire Office

ORDINARY COUNCIL MEETING MINTUES

Our Vision

To support and develop a vibrant, welcoming community that embraces its past, values its present and plans for a sustainable future

Our Purpose

To responsibly provide governance for the whole community in the best interest of current and future generations

Our Strategic Objectives

- o To provide sustainable management of the organisation
- o To consistently apply the principles of Good Governance
 - o To communicate effectively
 - o To promote socioeconomic development
 - o To value our environment and heritage

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Deputy Shire President declared the meeting open at 5.05pm. He welcomed the extensive gallery for the meeting and stated that it was a shame that it needed to be a contentious issue for community to show interest in Council affairs.

2. RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

Councillor M Hood
Councillor R (Bob) Todd
Councillor S McHutchison
Councillor J Roscic
Mr B Price
Mrs S O'Toole
Mr Roge Kempe
Mrs J Kox
Mr R Manning
Mr R Mhasho
Mr K Woodward
Mrs M Head

Deputy Shire President

Chief Executive Officer
Executive Manager Corporate Services
Executive Manager Community Engagement
Executive Manager Aviation Services
Executive Manager Health & Building
Executive Manager Town Planning
Executive Manager Engineering Services
Minute Clerk

11.3 CONTRACT – OCEAN REEFS PRODUCTIONS PTY LTD

File Reference:	ED.PJ.1
Responsible Officer:	Chief Executive Officer
Date of Report:	19 July 2016
Applicant/Proponent:	Ocean Reefs Productions Pty Ltd
Disclosure of Interest:	Nil
Attachment(s):	1. ORP Final Fee Proposal (Confidential) 2. ORP Company Profile

PURPOSE

That Council formally enter into a AS 4906 2002 Minor Works Contract with Ocean Reefs Productions Pty Ltd (ORP) for the Design, Installation & Fitout of the Aquarium at the Ningaloo Centre for the sum of \$ 1,088,260.00 (inc GST).

BACKGROUND

The Ningaloo Centre includes the installation of an Aquarium as part of the Marine interpretive experience.

Site Architecture and Council Officers have been working for several months with a design specialist from AQWA, in liaison with a recommended Aquarium contractor ORP, for the final design of a fully operational Aquarium including the Aqua tank fit out, operational systems, livestock supply and future training of a local aquarist.

ORP have provided the Council with the final Fee Proposal for the full scope of Works involving the Aquarium installation for consideration. This contract was originally captured under the Tender awarded to FIRM Construction as a provisional sum allowance, but after further consideration FIRM have advised that due to the specialist nature of the project, they are uncomfortable with the future warranting of the products and specialist workmanship.

It has been recommended that Council engage Ocean Reefs Productions Pty Ltd independently (under an AS 4906 2002 Minor Works Contract) with ORP providing the necessary Warranties for the project and advantageously the Principal will have direct access to operational systems and the involvement of an aquarist, otherwise not available until after Practical Completion.

Aquarium installations and services of this scale are extremely unique with a limited number of locally registered companies being available. ORP, a Perth based company, have been recommended and are considered specialists in aquarium design, but more importantly already have the



necessary aquarium specimen collection licenses, as regulated by the Department of Fisheries, enabling the taking of live corals and fish species from the North West/Exmouth Gulf region.

To this end it is considered that there is no requirement for the calling of an additional tender for this work, based on the following clause contained within *Division 2 – Tenders for Providing Goods & Services section of the Local Government (Functions & General) Regulations 1996*

S11 (2)(f) the local government has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier.

COMMENT

The Ningaloo Centre Project Steering Committee met on Wednesday 13 July 2016 to consider the proposal provided by ORP and resolved to recommend that the Council engage ORP to proceed with the Design, Installation & Fitout of the Aquarium at the Ningaloo Centre.

CONSULTATION

Ningaloo Centre Project Steering Committee
Site Architecture
Oren LaPaz -AQWA

STATUTORY ENVIRONMENT

Division 2 – Tenders for Providing Goods & Services section of the Local Government (Functions & General) Regulations 1996
AS 4906 2002 Minor Works Contract

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The commitment to Ocean Reefs Productions Pty Ltd for the Design, Installation & Fitout of the Aquarium of the Ningaloo Centre fits within the budgetary constraints of the Ningaloo Centre project in Councils 2015/16 & 2016/17 budgets.

STRATEGIC IMPLICATIONS

This item is relevant to the Councils approved Strategic Community Plan 2011-2021 and Corporate Business Plan 2016-2020.

- | | | |
|--------------|-----|--|
| Economic: | 1 | <u>To be a diverse and innovative economy with a range of local employment opportunities.</u> |
| | 1.1 | To increase the number of local businesses, industries and services that will provide a range of employment opportunities for the people of Exmouth. |
| | 1.2 | Planned and balanced economic growth. |
| | 1.3 | Diverse tourism opportunities. |
| | 1.5 | Maintain and improve Shire infrastructure. |
| Environment: | 2 | <u>To have a balanced respect for our environment and heritage, both natural and built.</u> |
| | 2.1 | To maintain and improve access and connectivity to our natural assets. |

- 2.2 *Our pristine natural environment and biodiversity will be understood, maintained and protected.*
 - 2.3 *To have a town and community that takes pride in its world heritage status.*
 - 2.4 *To be a leader in eco-friendly initiatives and innovations.*
 - 2.5 *To make Exmouth an attractive town that is a comfortable and welcoming place to live and visit, and reflects the lifestyle values and unique natural environment.*
- Social:
- 3 To be a dynamic, passionate and safe community valuing natural and cultural heritage.
 - 3.1 *Retain a safe community environment.*
 - 3.2 *Excellent lifestyle, recreational and cultural facilities.*
 - 3.3 *An inclusive, responsible and cohesive community.*
 - 3.4 *A community that is well informed and educated about our natural, cultural and built environment.*
 - 3.5 *Maintain and increase participation levels in local community organisations and clubs.*
 - 3.6 *Expand education and training facilities and opportunities.*
 - 3.7 *Residents and visitors have access to appropriate services and facilities to enhance their health and wellbeing.*
- Civic Leadership:
- 4 To work together as custodians of now and the future.
 - 4.1 *To be a collaborative community with the capacity to manage the current and future direction of Exmouth.*
 - 4.2 *A local government that is respected, professional, trustworthy and accountable.*
 - 4.3 *To be strong advocates representing the region's interests.*

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

ITEM 11.3

That Council formally enter into a AS 4906 2002 Minor Works Contract with Ocean Reefs Productions Pty Ltd for the Design, Installation & Fitout of the Aquarium at the Ningaloo Centre for the sum of \$ 1,088,260.00 (inc GST).

COUNCIL RESOLUTION

ITEM 11.3

Res No: 04-0716

MOVED: Cr McHutchison

SECONDED: Cr Todd

That Council formally enter into a AS 4906 2002 Minor Works Contract with Ocean Reefs Productions Pty Ltd for the Design, Installation & Fitout of the Aquarium at the Ningaloo Centre for the sum of \$ 1,088,260.00 (inc GST).

CARRIED 4/0

ANNEXURE TWO

Attachment 'F'

Marked in **blue** - material deleted but important

Marked in **yellow** - material deleted

Marked in **pink** - material deleted but might indicate that the document has been edited

RE: 160413 Aquarium Contractor alternative proposal

Item ID: 185098
Subject: RE: 160413 Aquarium Contractor alternative proposal
From: Andrew Forte </O=EXMOUTH/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDL T)/CN=RECIPIENTS/CN=AEC02612614140C6B61F5B02FE267386-ANDREW FORTE>
Paul Edwards <pedwards@sitearchitecture.com.au>
To: 13 April 2016 6:54:51 PM AWST
Sent: 13 April 2016 6:54:00 PM AWST
Received: image003.jpg, image004.jpg, image006.jpg, image008.gif, image001.png, image005.jpg, image007.jpg, image009.jpg, image010.png
Attachments:

13 April 2016 6:54:51 PM AWST
13 April 2016 6:54:51 PM AWST
Primary Date: 425 KB (436,061 bytes)
Family Date: 185289
Size:
Direct Parent ID: 01722-2015-0464
01722-2015-0464.ad1/\\.\PHYSICALDRIVE1:Partition1[476937MB]:NewVolume [NTFS]/[root]/01722-2015-0464/SPO-MailBox.pst/TopofPersonalFolders/Inbox/Contract04-2015/Consultants/Aquaria
Source:
Location:

19 April 2016 10:51:30 AM AWST
13 April 2016 6:54:12 PM AWST

File Last Modified: message/rfc822
File Created: English
0c39876b32097075293aa2b04994dce1
0610471ef6a1760021df0f254b5aa810
MIME Type:
Language:
MD5 Hash:
Message Hash:



RE: 160413 Aquarium Contractor alternative proposal

From: Andrew Forte </O=EXMOUTH/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AEC02612614140C6861F5802FE26738
6-ANDREW FORTE>
To: Paul Edwards <pedwards@sitearchitecture.com.au>
Sent: 13 April 2016 6:54:51 PM AWST
Received: 13 April 2016 6:54:00 PM AWST
Attachments: image003.jpg, image004.jpg, image006.jpg, image008.gif, image001.png, image005.jpg, image007.jpg, image009.jpg, image010.png

Hi Paul,

I will digest. The other matter of importance with ORA that I wish to fully appreciate is the elemental equipment items by function and type that they propose. Albeit listed I want to drill down further (eg cooling and heating, operating manuals). The system as described by AAT will help in this regard.

My position is we must first continue with ORA, irrespective of this other company at this point of time.

So if the meeting can be arranged please with Simon for Friday.

THanks

Andrew Forte

Strategic Project Officer & Superintendent
Ningaloo Centre Project

Phone: 0409 298 148

Email: spo@exmouth.wa.gov.au

Address: PO Box 21, 22 Maidstone Crescent, Exmouth WA 6707

Web: www.exmouth.wa.gov.au



From: Paul Edwards [mailto:pedwards@sitearchitecture.com.au]

Sent: Wednesday, 13 April 2016 6:36 PM

To: Andrew Forte <spo@exmouth.wa.gov.au>

Subject: 160413 Aquarium Contractor alternative proposal

Hi Andrew,

Please find below an email string of discussions we have been having with AAT as an alternative Aquarium Contractor, as discussed with yourself earlier this week, for the Shire's information and record. I have inputted the red responses based on a lengthy phone conversation with Zac on Monday evening. His direct responses are in *red italics*.

We provide this information to the Shire for consideration of an alternative provider for the supply and installation of the Aquarium. AAT have been around for a long time and this project would be at the low end of AAT's work and capability (see attached brochures).

The project is currently at the high end for Oceanreefs experience / capability and given the current history and delays experienced to date with receipt of information and details, we would like to express our concern that Oceanreefs present a potential risk to the Shire, FIRM and the project program. A risk which was also expressed by Mark O Gorman in a discussion between ourselves at the conclusion of the meeting last Thursday with Oceanreefs.

Given the importance of this element within the building, we felt it necessary to receive an alternative contractor who could present a much lower risk to the Shire, FIRM and the project timeline. The result in this case with AAT has also presented a significant cost benefit which cannot be dismissed.

Although we are in receipt of the SHIRE's email approval to accept Oceanreefs quotation, we are still waiting for Oceanreefs to supply satisfactory details of security in line with the head contractors contractual terms before we can formally issue an SD to FIRM. therefore the Shire have no current obligation.

We leave this information with you Andrew and await your further communication in regard to how the Shire wish to proceed.

Regards

Paul Edwards

Architect Director

Site Architecture Studio

T (08) 9226 5661

D (08) 6500 5991

M 0424 245 142

A Level 3, 56 William Street, Perth WA 6000

E pedwards@sitearchitecture.com.au

W www.sitearchitecture.com.au



Electronic data that may be attached to this email is issued for information purposes only. The architect / sender can not be held responsible for the accuracy of the information contained in attachments and it is the responsibility of the recipient to ensure the accuracy of the information contained herein is to be relied upon.

From: Paul Edwards [<mailto:pedwards@sitearchitecture.com.au>]

Sent: 11 April 2016 12:30

To: Zac Gill <zac@advanced-aquariums.com>

Cc: Ikuo Tani <Tani@advanced-aquariums.com>; John Langmead <john@advanced-aquariums.com>; Kevin Truscott <ktruscott@sitearchitecture.com.au>

Subject: 160411EXMAQUA Tank Display - REPLY Comments

Hi Zac,

Your initial pricing is within budget. For us to be in a position to table with the client (and enable them to make a satisfactory comparison), can you please advise/ provide details for the following:

- 1 ATT standard terms and conditions of engagement. (i.e. any upfront costs or deposits, etc) We propose to nominate the Aquarium supply and install sub-contractor to the head Contractor who is bound by the conditions of an AS2124 Building Contract with the client. The aquarium installer would fall under these conditions as per the main contractor. AAT are directly engaged by the client / user but have been project managed by the nominated head contractor. They did a direct engagement by Lend lease for the Royal Children's Hospital. Usually a 30% deposit upfront and periodic payments backed up by supply / completion of manufactured items in AAT factory. 4-6 week install and commission would be the balance of payment. Under a contract with the main contractor, AAT sign an agreement as a 'guaranteed water quality provider' to remove the technical / specialist nature of their scope from the details of any contract with Contractors / Clients. Nature of and form of any security was not discussed but can be. Given that this project is at the very low end of AAT's capabilities and current work, then their ability to provide this is
- 2 All Guarantees / warranty information on the install and from the manufacturer on the equipment, etc. standard Australian 12 month warranties are applicable. Germany sourced Acrylic (Evonik

industries who pioneered plexiglass technology) provides a 30 year warranty. Any third party warranties (i.e. for the pipework / ducting) are passed on from the AAT's supplier to and in the name of the client.

- 3 LCC – ex China (we have a proposal for ex Germany equipment). Provide a commentary on the difference / risk for our client in this regard. AAT have their own plant / factory producing AAT equipment based in China where they manufacture commercial aquarium plant equipment to supply the global market. They are not a hobbyist supplier.
- 4 The inclusion of an RO system (1000lt / day) and an air compressor at the platform at the top of the tank (for diver), Allow for approx. additional \$10k.
- 5 Approx. freight costs estimate for acrylic and LSS, to site. Estimate of approx. additional \$50k (1x 40' container
- 6 Stocking – fish and coral says excluded but will be locally sourced from the Ningaloo reef. What suitable \$ allowance should be made - \$50k, \$100k ? Allow approximately \$50k depending on availability and time of year, subject to availability of local licensed diver.
7. Lighting – Provisional Sum seems 'light on' as we have received a quote for around 10 times this amount. Can't comment on other's quote other than it does appear excessive. Fittings are around \$300 -500 each and anticipate around 2-3 deep lights and 2-3 spot / highlight fittings + cabling, brackets, installation etc. so \$3,000 –4000 would be a suitable allowance.
8. Program – what are some rough key milestone dates required for the February hand over? Does this include fully stocked and ready for 'public viewing'? this is possible but time is of the essence in getting the acrylic ordered. AAT have a number of other large commissions which may result in less staff available to service this project. Should the Shire be seriously considering their company, then they would provide a more detailed program and be able to more realistically forecast resource commitment.

AAT will utilise SITE's REVIT 3D CAD model for all of their plant and equipment design and documentation.

The Shire plan on having an aquarium manager / operator on staff by end of June this year so they will be available to supervise the install and commissioning and training. What would AAT be able to offer as initial and ongoing support for this person? Are there any remote Considering the distance from the site, what do AAT provide in terms of back up / support given that it could take several days for an AAT technician to get to site in an emergency situation. the contractor the Shire are currently talking to are based in Perth. All system is computer controlled and alarmed for reporting faults. AAAT allow for an initial soak with freshwater and check and will train up the aquarium manager to take it over from there. Supervising the operator taking the aquarium through the nitrogen cycle before stocking (sthis may take up to 8 weeks so is more economical for the operator to do this and reports can be reviewed and recommendations / input made by AAT in Queensland). The operator can also provide AAT with water quality reports and advise / support the operator. A comprehensive Operation and Maintenance manual will be provided and they can allow for technical / phone support, if required.

The saving for the smaller acrylic width (3m) does not appear to be significant at this stage for consideration. Consider also the freight times and modification times required which costs handling would need to be considered also - *For the acrylic panel (main window) we have an estimated production time of about 10-12 weeks and then 6-8 weeks shipping out to Australia. If you settle on the 3 m wide panel then this comes straight to site. If it needs to be the 3.2m wide panel then it is shipped to AAT on East Coast and we have 5-6 weeks production and then additional 3-4 weeks.*

The above may be answered in your more detailed costs / quote however a formal quote will take a few more days to prepare (?) As you can appreciate time is of the essence so it may be quicker for a written response to the above which will greatly assist us in furthering discussion with the client and seek their support to request a formal quotation from AAT. Based on the above, \$323,907 + \$150,000

for the above allowances including a contingency = \$473,907. If the SHIRE allow \$500 - 550k + GST then this should easily cover the scope sought.

Any queries, please contact me as per below details. Thanks and

Regards

Paul Edwards

Architect Director

Site Architecture Studio

T (08) 9226 5661

D (08) 6500 5991

M 0424 245 142

A Level 3, 56 William Street, Perth WA 6000

E pedwards@sitearchitecture.com.au

W www.sitearchitecture.com.au



Electronic data that may be attached to this email is issued for information purposes only. The architect / sender can not be held responsible for the accuracy of the information contained in attachments and it is the responsibility of the recipient to ensure the accuracy of the information contained herein is to be relied upon.

From: Zac Gill [<mailto:zac@advanced-aquariums.com>]

Sent: Monday, 11 April 2016 7:09 AM

To: Kevin Truscott <ktruscott@sitearchitecture.com.au>; Paul Edwards <pedwards@sitearchitecture.com.au>

Cc: Ikuo Tani <Tani@advanced-aquariums.com>; John Langmead <john@advanced-aquariums.com>

Subject: RE: 160401 EXM AQUA Tank Display - REPLY Comments

Hi Kevin and Paul,

If our initial pricing is within budget we can move onto a more detailed exploration of design and costs (to provide a formal quotation). For the purposes of speed I have included several items below which currently are PC sums- these are the access platforms and lighting. For the rockwork I have assumed coral boulder material supply by a local supplier and that MT are building the supporting FRP shelves and then installing the coral boulders. Likewise I have assumed that the fish stocks are supplied locally and have excluded a price for this. Finally we have assumed that our scope of work is installation of LSS within the plant room so the MC would run any pipework below grade between the tanks and the plantrooms. This provides clarity around who has responsibility for coming through the building envelope.

For commissioning I have allowed for the a commissioning period immediately following installation and then assumed the client will be providing a staff member to oversee the nitrogen cycle and introduction of the stock. Our operator training would take place at the same time as the commissioning so this assumes that the client has the appropriate staff in place prior.

Alternatively we can return to site at a later date at additional cost.

Waterproofing	\$	16,500
Acrylic	\$	127,500
Acrylic Installation		
LSS	\$	110,000
Rockwork Installation	\$	19,950
On-site Sundries	\$	22,857

Lights	\$ 3,000	PC Sum	LED with Wifi Control
FRP Platform	\$ 5,000	PC Sum	Engineering by project engineer
TOTAL	\$ 323,907		

Excludes Cranage, Lifting on-site

Excludes Freight (LSS from AAT China, Acrylic from AAT Australia). Note here that this at 3.2 m wide is an oversized panel.

Value Engineering of Acrylic Panel to reduce it to a 3 m width

Acrylic \$ 13,104

There will also be additional freight savings as we can ship directly to site rather than to East Coast Australia and then to WA.

Note that the main acrylic window is currently sizes at 150mm thick so we are assuming that the rebates are able to accommodate. We can achieve the Feb 2017 opening however the main acrylic panel will be the critical path item.

Regards,

Zac Gill

Business Development Manager



Global Office locations:

Australia +61 7 5476 5300

China +86 20 3001 0736

HongKong +852 3352 0085

CONFIDENTIALITY NOTICE AND DISCLAIMER: The information in this transmission may be confidential and/or protected by legal professional privilege, and is intended only for the person or persons to whom it is addressed. If you are not such a person, you are warned that any disclosure, copying or dissemination of the information is unauthorised. If you have received the transmission in error, please immediately contact this office by telephone, fax or email, to inform us of the error and to enable arrangements to be made for the destruction of the transmission, or its return. The recipient should check this email and any attachments for the presence of viruses. AAT accepts no liability for any damage caused by any virus transmitted by this email, or for any unauthorised use of the information contained in this transmission

From: Kevin Truscott [<mailto:ktruscott@sitearchitecture.com.au>]

Sent: 07 April 2016 10:58

To: Zac Gill <zac@advanced-aquariums.com>; Paul Edwards <pedwards@sitearchitecture.com.au>

Cc: Ikuo Tani <Tani@advanced-aquariums.com>

Subject: RE: I60401 EXM AQUA Tank Display - REPLY Comments

Hi Zac

We are currently chasing a ball park figure for the aquarium and to supply coral/fish from the Ningaloo region. It is approx. 50,000 litres in volume.

I have responded in red below to your queries.

If you need any additional information please do not hesitate to contact me.

Regards

Kevin Truscott

Project Architect

Site Architecture Studio

T (08) 9226 5661

D (08) 6500 5994

A Level 3, 56 William Street, Perth WA 6000

E ktruscott@sitearchitecture.com.au

W www.sitearchitecture.com.au



Electronic data that may be attached to this email is issued for information purposes only. The architect /sender can not be held responsible for the accuracy of the information contained in attachments and it is the responsibility of the recipient to ensure the accuracy of the information contained herein is to be relied upon.

From: Zac Gill [<mailto:zac@advanced-aquariums.com>]

Sent: Thursday, 7 April 2016 6:28 AM

To: Paul Edwards

Cc: Ikuo Tani; Kevin Truscott

Subject: RE: 160401 EXM AQUA Tank Display - REPLY Comments

Hi Paul,

We can certainly provide a price for the project if the opportunity is still genuinely available for AAT to undertake the work. Just to confirm the following:

- Aquarium tank and plantroom would be available by June 2016 (assuming that 2015 is a typo). Yes June 2016
- Location of 3 x 22kL tank located as they are external to the aquarium plantroom? Yes tanks are located outside the plant room. Located in a garden bed across a road, with access to the room via a covered trench
- Do you have an existing Process and Instrumentation Diagram (P&ID) that confirms turnover, gross vs nett volume of tank, salt water management and waste management etc? We have a basic layout of the plant room equipment see attached
- Do the 3 x 22KL require waterproofing? No they are waterproof already
- What is the area of the aquarium tank requiring waterproofing (assuming that this is easy to calculate as it is modelled in 3D)? 66m2
- Will only the aquarium filtration equipment occupy the technical space or is there plant in there not shown on the diagrams? The plant room is for the aquarium, the only shared equipment is the water softener for the building and RO filter shared with the facility next door
- Is the water level at RL Level at 11.420? Top of aquarium water is approx. that level
- Is there a specification for the Life Support Equipment? Nothing specific
- What is the view opening of the higher but smaller porthole window? Two larger porthole openings are 1183 and 1200mm. The 2 larger openings are 1200mm the smaller one is 790mm
- You state that opening is in 1 year when is the practical completion for the General Contractor targeted at? The builder is targeting Feb 2017 – The aquarium would need to be finished and stocked at approximately the same time
- Will our contract be direct with the client or with the GC? The intent is for you to be a nominated subcontractor to the Builder.
- Is the building modelled in 3D Revit? Yes

Regards,

Zac Gill

Business Development Manager



Global Office Locations:

Australia +61 7 5476 5300
China +86 20 3901 0736
Hong Kong +852 3352 9085

CONFIDENTIALITY NOTICE AND DISCLAIMER: The information in this transmission may be confidential and/or professional privilege, and is intended only for the person or persons to whom it is addressed. If you are not such warned that any disclosure, copying or dissemination of the information is unauthorised. If you have received the tra please immediately contact this office by telephone, fax or email, to inform us of the error and to enable arrangements destruction of the transmission, or its return. The recipient should check this email and any attachments for the present accepts no liability for any damage caused by any virus transmitted by this email, or for any unauthorised use of the info in this transmission.

From: Paul Edwards [mailto:pedwards@sitearchitecture.com.au]

Sent: 01 April 2016 18:17

To: Zac Gill <zac@advanced-aquariums.com>

Cc: Ikuo Tani <Tani@advanced-aquariums.com>; Kevin Truscott <ktruscott@sitearchitecture.com.au>

Subject: 160401 EXMAQUA Tank Display - REPLY Comments

Hi Zac,

We have previously been in contact in regard to an aquarium for a project in WA 9as per below email string). The aquarium design has changes significantly and the main building works are in construction and due to open to the public in April 2017.

We are in advanced discussions with a local (Perth based) aquarium contractor and have a just received their quote, scope and program. They are a smaller operator and their ability to deliver presents a risk to our client. We believe it would be prudent to provide an alternative to our client for their consideration although we are running out of time if we are to open in 1 year with a fully operating 50kltr aquarium!

Are AAT able to provide us with a quote (or at least an order of cost / budget figure) for providing supply and install of the aquarium works, including but not limited to:

- Sealing / water proofing of the base aquarium construction (concrete which is provided by the Builder) as shown in the attached dwgs,
- 4 no acrylic panels (3 circles and 1 rectangular main window),

- Full Life support system. (3 no 22001tr salt and waste storage tanks are supplied and installed by the builder externally, pipework from the tanks to the plant room will be by the aquarium installer),
- Structure and fish /sea life to replicate the Ningaloo Reef. Live coral preferred (not artificial).
- Commissioning and maintenance for a standard period,
- Training for Client nominated personnel to manage and maintain the aquarium during set up, commissioning and after hand over.
- Indicative contractual arrangement / engagement terms and conditions, including any deposits, etc.
- Anything else?

The concrete shell for the aquarium structure will be completed by 31 May 2015 so the aquarium contractor would have access from mid / late June 2015.
It would be ideal to have a proposal as soon as possible.

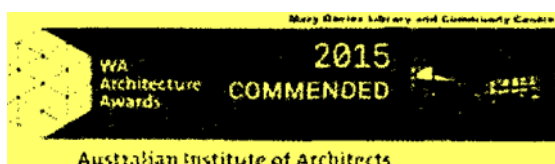
Much appreciated. Please contact me with any queries,

Regards

Paul Edwards

Architect Director

Site Architecture Studio
T (08) 9226 5661
D (08) 6500 5991
M 0424 245 142
A Level 3, 56 William Street, Perth WA 6000
E pedwards@sitearchitecture.com.au
W www.sitearchitecture.com.au



Electronic data that may be attached to this email is issued for information purposes only. The architect / sender can not be held responsible for the accuracy of the information contained in attachments and it is the responsibility of the recipient to ensure the accuracy of the information contained herein is to be relied upon.

From: Zac Gill [<mailto:zac@advanced-aquariums.com>]

Sent: Wednesday, 17 December 2014 12:49 PM

To: Bradley Melvin <bmelvin@sitearchitecture.com.au>

Cc: Paul Edwards <pedwards@sitearchitecture.com.au>; Ikuo Tani <Tani@advanced-aquariums.com>

Subject: RE: 141217 EXMAQUA Tank Display - REPLY Comments

Hi Bradley,

For a tank of this size constructing the tank out of acrylic completely will be horribly expensive and fraught with difficulty. When you have this much water pressure present you need to use a heat activated bonding agent which effectively requires an oversized oven to be built and each join completed one at a time. The joins are glued, the heat treated and then polished so it is very labour intensive. For a tank of this size the best way to deliver it is to build a reinforced concrete tank structure leaving window openings for the acrylic to be embedded into.

You are right about the floor panel and entrapment of air. It will have to be considered how this is best removed. We need to create a surface that allows the bubbles to rise to the surface.

Regards,

Zac Gill
Business Development Manager

AAT
ADVANCED
AQUARIUM
TECHNOLOGIES



Mobile: +61 (0) 481 33 36 36 (Australia)
Phone: +61 7 5476 5300
Fax: +61 7 5453 4311
Web: www.advanced-aquariums.com

CONFIDENTIALITY NOTICE AND DISCLAIMER: The information in this transmission may be confidential and/or protected by legal professional privilege, and is intended only for the person or persons to whom it is addressed. If you are not such a person, you are warned that any disclosure, copying or dissemination of the information is unauthorised. If you have received the transmission in error, please immediately contact this Office by telephone, fax or email, to inform us of the error and to enable arrangements to be made for the destruction of the transmission, or its return. The recipient should check this email and any attachments for the presence of viruses. AAT accepts no liability for any damage caused by any virus transmitted by this email, or for any unauthorised use of the information contained in this transmission.

From: Bradley Melvin [<mailto:bmelvin@sitearchitecture.com.au>]
Sent: 17 December 2014 13:54
To: Zac Gill
Cc: Paul Edwards; Ikuo Tani
Subject: 141217 EXMAQUA Tank Display - REPLY Comments

Hi Zac,

Thanks for getting back to us. In response to your below queries and attached mark-up please refer to the below comment:

Panel 1 - will be a viewing landing (feature) providing a visual break/threshold within the circulation path. This will need to incorporate floor loading.

Panel 2 - This will be the main viewing panel form and should be a drawing point upon entry of the Marine display (refer A2.00 plan) creating a wow affect and leading attraction to the overall space - the bigger the better. The L-shape layout has been designed with consideration to the feature landing i.e avoiding air bubbles to the u/side of landing to maintain visibility.

Panel 3 - will be a side viewing panel to the extent of the landing - providing a visual break/threshold within the circulation path.

Panel 4 - is not a viewing panel, the axonometric shows the extent of the tank below. We have assumed the whole tank would be constructed out of acrylic and the non-viewing panels/base would either be transparent/tinted and covered with marine cosmetics i.e rock formations, coral, sand etc.

We hope this assists your understanding of the extent and if you have any further queries or recommendations please don't hesitate to contact us.

Regards

Bradley Melvin
M.Arch, BA EnvDes & Dip.BDes

Site Architecture Studio
T (08) 9226 5661
F (08) 9226 5662
E bmelvin@sitearchitecture.com.au
W www.sitearchitecture.com.au



Electronic data that may be attached to this email is issued for information purposes only. The architect / sender can not be held responsible for the accuracy of the information contained in attachment and it is the responsibility of the recipient to ensure the accuracy of the information contained herein is to be relied upon.

From: Zac Gill [mailto:zac@advanced-aquariums.com]
Sent: Wednesday, 17 December 2014 11:17 AM
To: Bradley Melvin
Cc: Paul Edwards; Ikuo Tani
Subject: RE: 141212 EXM AQUA Tank Display

Hi Bradley and Paul,

Sorry but I am little confused by the perspective and drawings and can't see exactly how many acrylic viewing surfaces you intend to have and also the water level in the tank.

From our interpretation you have the acrylic floor section (P1), a large front panel that is to be cut into an L shape (P2), and then there is a further vertical panel looking into the tank from the additional circulation area (P3). In Axonometric 01 there also appears to be a panel (P4) looking into the Mech Services Void but I am just assuming this is not the case as Axonometric 02 does not show this?

Regards,



CONFIDENTIALITY NOTICE AND DISCLAIMER: The information in this transmission may be confidential and/or protected by legal professional privilege, and is intended only for the person or persons to whom it is addressed. If you are not such a person, you are warned that any disclosure, copying or dissemination of the information is unauthorised. If you have received the transmission in error, please immediately contact this Office by telephone, fax or email, to inform us of the error and to enable arrangements to be made for the destruction of the transmission, or its return. The recipient should check this email and any attachments for the presence of viruses. AAT accepts no liability for any damage caused by any virus transmitted by this email, or for any unauthorised use of the information contained in this transmission.

From: Bradley Melvin [mailto:bmelvin@sitearchitecture.com.au]
Sent: 12 December 2014 13:06
To: Zac Gill
Cc: Paul Edwards
Subject: 141212 EXM AQUA Tank Display Hi Zac,

RE: Ningaloo Centre, Exmouth – AQUA Tank Display

As discussed with Paul Edwards, refer to the attached sketch indicating the proposed AQUA display for the above project. I have also attached the overall ground floor plan to assist you in understanding where tank fits within the overall project.

If you have any problems opening the files or have any queries please contact us.

Regards

Bradley Melvin
M.Arch, BA.EnvDes & Dip.BDes

Site Architecture Studio
T (08) 9226 5661
F (08) 9226 5662
E bmelvin@sitearchitecture.com.au
W www.sitearchitecture.com.au



Electronic data that may be attached to this email is issued for information purposes only. The architect / sender can not be held responsible for the accuracy of the information contained in attachment and it is the responsibility of the recipient to ensure the accuracy of the information contained herein is to be relied upon.

No virus found in this message. Checked by AVG - www.avg.com

Version: 2015.0.6189 / Virus Database: 4545/11969 - Release Date: 04/05/16

