



Office of  
Local Government

**SECTION 433 OF THE LOCAL GOVERNMENT ACT 1993**

# **INVESTIGATION REPORT**

**MURRAY RIVER COUNCIL'S SUPPORT  
FOR AN ETHANOL PLANT AT MOAMA**



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## REPORT OF THE SECTION 430 INVESTIGATION INTO MURRAY RIVER COUNCIL

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## EXECUTIVE SUMMARY

This is a report of an investigation into Murray River Council's (Council) support for an ethanol plant at Moama, involving the purchase of land for in excess of \$1.2million and a loan of \$900,000 to the Proponents.

It details significant breaches of the *Local Government Act 1993* (the Act), failure to keep adequate records and mismanagement.

While Council was able to recoup monies lent to the Proponents and has not suffered a loss on the sale of the land, this cannot excuse the conduct of Council.

Both senior staff and councillors failed to exercise sound judgment in their dealings with the Proponents. Both councillors and staff have been and remain dismissive of their failures, with one former member of staff writing:

*The fact that Council was able to readily recover loan funds advanced to MRE through sale of the Gheringhap property in my view validates the processes put in place to protect the council's interests in this transaction.<sup>1</sup>*

Council's processes were, at best, ad hoc and cavalier.

Given a demonstrated history of failures by the Proponents, an absence of capital and an inability to pay their debts, no council exercising a reasonable degree of care and diligence in carrying out its functions could have provided the level of support provided to the Proponents.<sup>2</sup>

Both the councillors and senior staff failed to exercise reasonable care and diligence in their dealings with the Proponents, as required by section 439(1) of the Act.

The events outlined in this report took place over the period from 2018 to 2020. Since that time new councillors have been appointed (without the need for an election). In other circumstances, a public inquiry would have been recommended.

Regrettably, it is not the first time that a NSW council has provided extensive in-kind and/or or financial support for a proponent without carefully considering the ramifications of doing so.

This report reminds councils of the need to ensure they are not captured by a proposal for in-kind and/or or financial support to adopt appropriate measures to ensure probity,

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<sup>1</sup> Email from Council's former Director Corporate Services dated 20 July 2022

<sup>2</sup> See section 439(1) of the Act

to comply with the Act, to be open and transparent in their dealings and to ensure that any proposal justifies any support that the council may provide.

While Councils have power to grant financial assistance to others, such assistance must be for the purpose of exercising their functions. Councils should not grant financial assistance to repay debts owing by individuals or private sector entities.

It is necessary that the content of this report be considered carefully by all councils in NSW so that the failings outlined herein are not repeated.

## 1. INTRODUCTION

1. This is a report on the results of an investigation under section 430 of the *Local Government Act 1993* ('the Act') into Murray River Council (Council). It is presented to the Minister for Local Government and copied to the Council, pursuant to section 433(1) of the Act.

### 1.1 Determination to conduct an investigation

2. On 16 April 2021, the Deputy Secretary, Local Government, Planning and Policy, under delegation from the Secretary, Department of Planning, Industry and Environment determined that an investigation under section 430 be undertaken into Murray River Council. The Deputy Secretary appointed Angus Broad to conduct the investigation. (Appendix 1)

### 1.2 Terms of Reference

3. The Notice of Decision to Conduct an Investigation detailed the Terms of Reference, as follows:
  - (1) *The dealings between Murray River Council (Council) and Murray River Energy Pty Ltd (ACN 628 094 879) (MRE) and any other entities or individuals relating to a proposed ethanol plant (the Plant) at Moama (the Project) and, in particular, in regard to:*
    - a) *The dealings between Council, MRE, any other entities or individuals and the promoters of the Project;*
    - b) *The circumstances in which Council acquired land (the Land) at Moama as a site for the Plant;*
    - c) *The circumstances in which Council provided a loan to MRE;*
    - d) *The advice provided to councillors and the community regarding the Project.*
  - (2) *Whether, in its dealings relating to the Project, Council exercised appropriate probity, risk management and due diligence processes.*
  - (3) *Whether in providing money to MRE or any other entity or individual, Council breached the Local Government Act 1993, the Local Government (General) Regulation 2005 and/or Ministerial Investment Order of 12 January 2011.*
  - (4) *Whether Council adequately and properly considered the financial risks to Council when acquiring the Land and providing funds to MRE or any other entity or individual.*
  - (5) *Any other matter that warrants mention, particularly where it may impact upon the effective administration of Council, councillors and its administration.*

### 1.3 Statutory requirements relating to this investigation report

4. Section 433 of the Act provides as follows:
  - (1) *The Departmental Chief Executive must report to the Minister on the results of an investigation under this Division and must send a copy of the report to the council concerned.*

- (2) *The report may comment on any matter that, in the Departmental Chief Executive's opinion, warrants special mention and may contain such recommendations as the Departmental Chief Executive considers appropriate.*
- (3) *A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.*
- (4) *Section 14B of the Royal Commissions Act 1923 applies in relation to any report that the Minister wishes to lay before both Houses of Parliament in the same way as it applies to a report made by a commission under that Act.*

#### **1.4 Background to this investigation**

5. In the latter part of 2020 concerns were raised regarding Council's support for the Proponents of an ethanol plant at Moama. Information suggested that Council did not adopt appropriate probity, risk management and due diligence procedures in dealing with the Proponent.
6. Preliminary enquiries were undertaken, and Council's response suggested that there had been breaches of the Ministerial Investment Guideline 2011 and the purchase of land for an amount substantially in excess of its value.
7. Other evidence then available suggested that the Proponents did not have the financial resources to undertake the project.

#### **1.5 The investigative process**

8. Council was issued with a notice requiring production of documents relevant to the project.
9. As the former Deniliquin Council had previously entered into arrangements with the Proponents, a notice requiring production of documents was also issued to Edward River Council as the successor council.
10. In June 2021 the investigator attended Council and Edward River Council and reviewed the documents produced by them.
11. An Evidence Folder containing 412 pages was prepared.<sup>2</sup> A chronology was also prepared as well as a table setting out relevant particulars of the

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corporations that are referred to in this report. They are included as appendices to the report.

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<sup>2</sup> The Evidence Folder will be referred to as EF()  
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12. A further seven pages of material was added as additional material to the Evidence Folder.<sup>3</sup>
13. Interviews of the Mayor and Councillors (Clr) and Council's Director of Community and Economic Development, Mr Harvie, were undertaken at Council's offices at Moama between 16 and 18 November 2021.<sup>4</sup>
14. All witnesses other than Clrs Crowe and Gorey (who were interviewed on MSTeams) were provided with a copy of the Evidence Folder during their interviews.
15. Clr Wise declined to participate in a recorded interview and instead interview notes were taken.
16. Council's former General Manager, Mr Bilske was interviewed on 1 June 2022<sup>5</sup> on MSTeams. A copy of the Evidence Folder was provided to him prior to the interview.
17. Council's former Director Finance was not interviewed. He was advised the nature of evidence that was being sought from him and was given a copy of the relevant documents from the evidence folder. He provided a response by email. As he lives interstate, he could not be compelled to give evidence
18. Council's former Finance Manager was not interviewed. He was advised the nature of evidence that was being sought from him and a copy of the relevant documents from the evidence folder. Following discussions with him, a statement was prepared and submitted to him. While he signified acceptance of its content, he failed to provide a signed copy.
19. No person who was interviewed was issued with a notice under section 431 of the Act requiring their attendance or to give evidence. All interviews that were recorded were done so with the knowledge of and prior consent of the person. Each person interviewed was provided with a copy of the audio or the audio/visual of the interview after the conclusion of the interview.

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<sup>3</sup> Appendix 2 to the Report

<sup>4</sup> The interviews were conducted by Principal Investigators Angus Broad and Bron Hewson

<sup>5</sup> Delayed due to COVID restrictions and the investigator's involvement in a public inquiry  
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20. On 25 August 2022 copy of the draft Investigations report was provided to Council, Mr Bilske and Mr Harvie for their comment and response.
21. Council, Mr Bilske and Mr Harvie each provided a response. Clr Weyrich also provided a response to the draft Investigation Report.<sup>6</sup>
22. As a consequence of matters put by Mr Bilske, a letter was sent to the Mayor, Clr Bilkey seeking his response to the matters put by Mr Bilske.<sup>7</sup> Clr Bilkey did not respond.
23. All comments received from Council, Mr Bilske and Mr Harvie have been considered in finalising this report. Where appropriate corrections have been made and the report amended to reflect issues raised by them.
24. While the investigator was aware of concerns raised by community members regarding Council's processes, no community members were interviewed in preparing this report. No views expressed by community members have influenced this report.

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<sup>6</sup> Appendix 9

<sup>7</sup> Appendix 11

## 2. RECOMMENDATIONS

25. As noted earlier, section 433(2) of the Act provides that a report on the results of an investigation undertaken pursuant to section 430 “*may contain such recommendations as the Director-General considers appropriate*”.

### 2.1 Recommendations

26. Council be required to address the steps it has taken and/or proposes to take to:

- a) Ensure it is open and transparent in responding to members of the public.
- b) Keep full and accurate records as required by the *State Records Act 1998*.

27. The following recommendations are not solely directed to Council, but to all councils in new South Wales.

- a) All councils in New South Wales should carefully consider whether to provide in-kind and/or financial support for any private infrastructure project in their council area. In doing so, councils must ensure strict compliance with the Act.
- b) Any application to provide in-kind or financial support should be done by way of a formal process.
- c) Councils should also consider relevant guidelines, including those published by the ICAC<sup>8</sup> and State Government<sup>10</sup>.
- d) Before determining to provide in kind and/or financial support for any private infrastructure project Councils should obtain an independent assessment of the project, which should include:
  - i. Preparation of a probity plan ensuring fairness, impartiality, accountability, and transparency in Council’s dealings with the proponent.

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<sup>8</sup> Including Direct Negotiations Guideline for Managing Risks.

<sup>10</sup> Including the Unsolicited Proposals guideline

- ii. Preparation of a risk management plan documenting the processes to be undertaken, due diligence considerations, and segregating responsibilities.
  - iii. A report setting out the entity's structure, the officeholders or principals of the business, the location of its principal place of business, its trading history, its experience in undertaking the same or similar projects; its senior management; its financial resources, its insurance and credit history; its history of regulatory or legal action (including adverse findings against key personnel); relevant licences, certifications and accreditations; and its media and social media profile.
- e) Councils should consider any application to provide in kind and/or financial support for any private infrastructure project in their council area in an open meeting.

### 3. RELEVANT LEGISLATIVE REQUIREMENTS

28. This section of the report details some of the statutory requirements which were considered pertinent to the terms of reference.
29. It should be noted that the report does not purport to provide a compendium of all of the applicable statutory requirements.

#### 3.1 Council's guiding principles

30. Councils are guided by principles, as provided by Chapter 3 of the Act. Section 8B(a) provides:

*Council spending should be responsible and sustainable, aligning general revenue and expenses.*

31. Sections 21 and 22 of the Act provide that a council has the functions conferred or imposed on it by or under this Act or under any other Act or law.

#### 3.2 Power to Delegate

32. Councils have wide powers to delegate functions other than those that are prohibited by the Act. Section 377 relevantly provides:

*(1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following:*

*(q) a decision under section 356 to contribute money or otherwise grant financial assistance to persons<sup>9</sup>*

#### 3.3 Role of councillors

33. Section 223 sets out the role of councillors, as the governing body of council; relevantly as follows:

*(a) to direct and control the affairs of the council in accordance with this Act,*

*(b) to provide effective civic leadership to the local community,*

*(c) to ensure as far as possible the financial sustainability of the council,*

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<sup>9</sup> While there are further provisions in s.377 they do not apply in this instance  
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*(d) to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council,*

*(l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately.*

34. Section 232(1)(b) of the Act provides that the role of each councillor is, inter alia:

*to make considered and well informed decisions as a member of the governing body*

### **3.4 Role of the Mayor**

35. Section 226 sets out the role of the Mayor, in the following terms:

*The role of the mayor is as follows--*

*(a) to be the leader of the council and a leader in the local community,*

*(b) to advance community cohesion and promote civic awareness,*

*(c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,*

*(d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,*

*(e) to preside at meetings of the council,*

*(f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,*

*(g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council,*

*(h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,*

*(i) to promote partnerships between the council and key stakeholders,*

*(j) to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,*

- (k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,*
- (l) to carry out the civic and ceremonial functions of the mayoral office,*
- (m) to represent the council on regional organisations and at intergovernmental forums at regional, State and Commonwealth level,*
- (n) in consultation with the councillors, to lead performance appraisals of the general manager,*
- (o) to exercise any other functions of the council that the council determines.*

### **3.5 Functions of the General Manager**

36. Section 335 of the Act provides that a council's general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council. Relevantly, the general manager has the following particular functions:

- i. the day-to-day management of the council*
- ii. to implement, without undue delay, lawful decisions of the council*
- iii. to exercise such of the functions of the council as are delegated by the council to the general manager*

### **3.6 Financial assistance**

37. Section 356 of the Act relevantly provides:

- (1) A council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.*
- (2) A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least 28 days' public notice of the council's proposal to pass the necessary resolution has been given.*
- (3) However, public notice is not required if--*
  - (a) the financial assistance is part of a specific program, and*

- (b) the program's details have been included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and*
- (c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and*
- (d) the program applies uniformly to all persons within the council's area or to a significant group of persons within the area.*

### **3.7 Investments**

38. Section 625 of the Act provides:

- (1) A council may invest money that is not, for the time being, required by the council for any other purpose.*
- (2) Money may be invested only in a form of investment notified by order of the Minister published in the Gazette.*
- (3) An order of the Minister notifying a form of investment for the purposes of this section must not be made without the approval of the Treasurer.*
- (4) The acquisition, in accordance with section 358, of a controlling interest in a corporation or an entity within the meaning of that section is not an investment for the purposes of this section.*

39. On 12 January 2011, the Minister published an investment order. Its effect was to prohibit investments in private organisations. It replaced an earlier investment order dated 31 July 2008.

### **3.8 Meetings**

40. Section 371 of the Act provides that “*a decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council*”.

41. Section 372(1) of the Act provides that “*a resolution passed by a council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with the council's code of meeting practice.*”

42. While councils may hold workshops for the purpose of conducting in-depth discussions on certain topics, formal decisions are not made at workshops.<sup>10</sup>

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### **3.9 Care and diligence**

43. Section 439(1) of the Act requires that *“every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.”*



## 4. ANALYSIS

### 4.1 Background

44. This report details the support given by Council to the Proponents of an ethanol plant at Moama. It followed an earlier failed project at Deniliquin. It considers Council's processes in purchasing land for the project and Council's loan of \$900,000 to the Proponents.
45. The project was promoted by Dongmun Greentec Pty Ltd (Dongmun)<sup>11</sup>, a company registered in Australia and having a subscribed capital of \$60,100.00. As at May 2018, its directors were Sung Ho Joo and Gregory James Finn. Each held 30,500 \$1.00 shares. Together, that entity, those persons and Murray River Energy Pty Ltd<sup>12</sup>(MRE)<sup>13</sup> are referred to as the Proponents in this report.
46. Dongmun is said to be the Australian subsidiary of Dongmun IRS, Korea, which is reported to construct anaerobic fermentation facilities.
47. Mr Joo is a Korean national residing in Korea. He has provided a range of Australian addresses on company documents. Mr Finn lives in Australia.
48. During the course of both the Deniliquin and Moama proposals, Mr Joo attended Australia on a number of occasions.
49. Previous directors of Dongmun included Mina Shin (aka Mina Kim).
50. While the terms of reference of the investigation were not directed to the actions of Deniliquin Council (nor its successor Edward River Council), there are significant parallels in the way in which both councils responded:
- Both councils were approached by the Proponents to provide support for a proposed ethanol plant.
  - Both provided in-kind support, by providing land for the respective project.
  - Both provided significant financial support.

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<sup>11</sup> EF(257)

<sup>12</sup> EF(274)

<sup>13</sup> MRE was the corporate vehicle for the project

- During the time that each council provided support for the projects, the proponents demonstrated an inability to raise funding to enable the project to proceed.
- A separate corporate vehicle was registered for each project<sup>14</sup>;
- During the time that each council provided support for the projects, the Proponent demonstrated that the particular corporate vehicle to undertake the project and Dongmun lacked the financial capacity to undertake the project.

51. Prior to the approach to Council, the Proponents had approached other councils in New South Wales and Victoria to support the establishment of an ethanol plant. Each had not proceeded.

## **4.2 Leadership**

52. The Councillors form the governing body of a council. Their role and function are set out in section 223 of the Act.

53. The governing body is led by the Mayor. Cllr Bilkey served as Mayor over the period considered in this report. Amongst other functions performed by him, was the execution of the Loan Agreement with the Proponents.

54. The General Manager and staff comprise the operational body of council. Essentially, their role is to conduct the day-to-day management of the council.

55. Amongst the functions performed by the General Manager and staff was the preparation of the agenda and the reports to be considered by the governing body at meetings.<sup>17</sup>

56. From May 2011 to its merger to become Edward River Council, Mr Bilske had been the General Manager of Deniliquin Council. He resigned from Edward River Council in November 2016.

57. He was appointed interim General Manager of Murray River Council in September 2017 and confirmed as General Manager in February 2018.

58. In May 2013, Mr Harvie had been appointed Manager Economic Development at Deniliquin Council. He resigned from Edward River Council in March 2018.

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<sup>14</sup> Deniliquin Ethanol Plant Pty Ltd EF(267) was the corporate vehicle for the Deniliquin project <sup>17</sup> S.367 of the Act

59. On 25 April 2018, Mr Harvie joined Murray River Council as Economic Development Manager. He commenced a period of leave for three months, before commencing his substantive role.
60. Both Mr Bilske and Mr Harvie had overseen Deniliquin Council's dealings with the Proponents. Both were firm supporters of the Project and, in turn, the Proponents.

### **4.3 The Proposal**

61. In early 2018 Mr Bilske was approached by the Proponents. They proposed that the ethanol plant and biodigester (the Plant) should be relocated from Deniliquin and built at Moama<sup>15</sup>.
62. Council's former General Manager, Mr Bilske advised that the approach to Council was premised on the basis that Edward River Council no longer supported the project and were about to take foreclosure action against a property owned by the Dongmun in Victoria. Further, there were savings to be had by moving the project to Moama.<sup>16</sup>
63. It appears implicit to the Project that Council would acquire the necessary land for the Plant.
64. It was said to be a \$100m project, employing in excess of 250 persons.<sup>17</sup>
65. In August 2018 Murray River Energy Pty Ltd (MRE), the vehicle for the Project, was registered.<sup>18</sup>

### **4.4 The Land**

66. On 18 May 2018 Council resolved to purchase land at Moama for the Plant. Council paid \$1,218,750 for the land (the Land).<sup>19</sup>
67. The report was prepared by Council's former General Manager, Mr Bilske.<sup>20</sup> It was brief. Relevantly, it failed to include:
- A full assessment of the of the Proponents and the Project, including evidence of the viability of the Plant,

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<sup>15</sup> There were no documents produced recording this approach

<sup>16</sup> EF(248)

<sup>17</sup> EF(1)

<sup>18</sup> EF(274)

<sup>19</sup> EF(4)

<sup>20</sup> EF(1)

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- Details of the Proponent's previous history of dealings with Deniliquin Council,
  - The steps that had been taken in selecting the site including consideration of alternative sites,
  - Consideration of alternatives to the purchase of the Land, including an option to purchase the land,
  - Reasons why the Proponents could not have acquired the Land themselves,
  - Evidence supporting the prospective purchase price, including valuation evidence,
  - An explanation for the apparent urgency in acquiring the Land.
68. The Land had been nominated by the Proponent as suitable for the Plant. It was not on the market at the time.
69. Despite the suggestion that the purchase was "*to assist in the facilitation of potential development of agricultural based industries*" and that the acquisition was to "*attract a very significant development of over \$100M*", the Land was clearly being acquired for the Project.<sup>21</sup>
70. The cost of the Land was both significant and unbudgeted.<sup>22</sup>
71. Council voted unanimously to purchase the Land.
72. Council did not obtain a valuation prior to purchasing the Land.
73. When Council did obtain a valuation in July 2020, it disclosed that the market value, excluding special value, was \$790,000. If one accepts this value at the time of purchase, Council paid a significant premium, exceeding 50% of the Land's value.<sup>23</sup>
74. In its response to the draft Investigation Report, Council emphasised that Council had to pay a premium for the Land as it was not on the market. While Council's response emphasised the suitability of the Land as industrial land. No such justification was made at the time of purchase.

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<sup>21</sup> Report to meeting 15 May 2018 EF(1)

<sup>22</sup> EF(1)

<sup>23</sup> EF(206)

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75. While it was suggested that the Proponents would purchase the Land from Council, no sale proceeded.<sup>24</sup>
76. Given Proponent's track record with Deniliquin Council<sup>25</sup> prior to May 2018 and its subsequent dealings with Edward River Council any expectation that that it would be in a position to purchase the Land was, at best, unlikely.
77. While Council may have portrayed an on-sale to the Proponent, its failure to resolve that the Land be classified as operational,<sup>26</sup> meant that it was unable to on-sell it until reclassified.<sup>27</sup>
78. None of the persons interviewed provided an adequate reason for Council's purchase of the Land on behalf of the Proponent.

#### **4.5 The Lease**

79. The contract for the purchase of the Land provided for a lease to Peter Quinn Rural Contracting Pty Ltd at an annual rental of \$15.00/per acre (plus GST) for a period of five years.<sup>28</sup> The gross annual rental was \$7,312 per annum.<sup>29</sup>
80. The lease contained an option exercisable by the lessee for a further five-year period. The annual rental remained the same.
81. The valuation of July 2020 provided the following assessment of the rental value of the land:<sup>30</sup>

*"In our opinion the underlying rental value for dryland farming land in this district to a well maintained, well fertilised and fenced primary production land of similar size to the subject holding circa 200 hectares would appear to be in the vicinity of \$125/ha - \$175/ha (\$50 - \$75/acre) overall."*

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<sup>24</sup> EF(239)

<sup>25</sup> Where it had been unable to complete the purchase of land that had been acquired by Deniliquin Council EF(357)

<sup>26</sup> See section 27 of the Act

<sup>27</sup> Council is undertaking the reclassification process

<sup>28</sup> EF(38)

<sup>29</sup> EF(208)

<sup>30</sup> EF(211)

82. The valuation provided a range between \$24,500 and \$36,500 and adopted an annual rental of \$25,000 plus outgoings.<sup>31</sup>

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83. The report to Council's meeting on 15 May 2018 did not refer to the lease and there appears to have been no subsequent resolution passed to enter into the lease.

84. The lease was signed by Council's former General Manager and former Director Corporate Services.

85. When interviewed, many of the councillors indicated that they had neither seen nor been aware of the lease.

#### **4.6 An Insolvent Proponent**

86. A company is insolvent when it cannot pay its debts when they fall due.<sup>32</sup>

87. Prior to the approach to the Council, the Proponents had significant dealings with Deniliquin Council.

88. Over the period from 2013 to 2016, both Mr Bilske and Mr Harvie (when staff of Deniliquin Council) had extensive dealings with the Proponents. During that period Mr Bilske had:

- Been advised by lawyers representing Mrs Shin (aka Mina Kim) that Dongmun didn't have sufficient funds to pursue its projects and that she had provided funds for the preparation of projects, the travel expenses of Mr Joo and Mr Finn and for the purchase of land in Victoria,<sup>33</sup>
- Overseen Council's failed attempt to on sell land to the Proponent and Deniliquin Council's payment of the stamp duty on the purchase when the Proponent failed to do so,<sup>34</sup>

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<sup>31</sup> EF(213)

<sup>32</sup> Osborne's Concise Law Dictionary, Butterworth's Concise Australian Law Dictionary

<sup>33</sup> Email from Kyu & Young Lawyers 6 May 2014 EF(294)

<sup>34</sup> EF( 293 & 351)

- Executed Council's loan guarantee of \$700,000 to support the costs incurred by the Proponents to provide an EIS for the project and when that Council had become liable for the debt.<sup>35</sup>

89. Similarly, both Mr Bilske and Mr Harvie had been the point of contact between the Proponents and that Council.

90. By the time the Proponent was pursuing the project with Council:

- 
- Had failed to repay an amount of \$460,000 owing to Edward River Council,
  - An application had been made to wind up Dongmun by a firm of environmental consultants,<sup>36</sup>
  - Edward River Council was pursuing the forced sale of land owned by Dongmun,<sup>37</sup>
  - A caveat had been placed over land owned by Dongmun in Victoria by a company associated with Mrs Shin.<sup>38</sup>

91. Clearly, when it approached Council, Dongmun was unable to pay its debts as they fell due.<sup>39</sup>

92. Given these circumstances it is difficult to see why Mr Bilske, in turn, Mr Harvie and the councillors gave such support for the Project.

#### **4.7 Becoming the Proponent's Financier**

93. In the period from August 2018 to October 2020 the Proponents continually represented that they were in the process of obtaining funding for the Project. Various, the representations involved a Brazilian bank, a Korean financier, a local financier and an unnamed financier.<sup>40</sup>

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<sup>35</sup> EF(299-349)

<sup>36</sup> EF(265)

<sup>37</sup> Edward River had already sold up part of the land EF(356)

<sup>38</sup> EF(110, 144 & 279)

<sup>39</sup> The corporate vehicle for that project, Deniliquin Ethanol Plant Pty Ltd, which owed the money to Edward River Council was, likewise, unable to pay its debts as they fell due

<sup>40</sup> EF(6, 7, 60, 90, 93 & 245)

94. There are aspects of the documents in the supporting information provided by the Proponents, including email addresses, that raise concerns as to the weight that can be placed on them.
95. The finance was not forthcoming.
96. In July 2018 Edward River Council had initiated action to force the sale of the remaining part of the land owned by Dongmun in Victoria.<sup>41</sup>
97. On 22 October 2018 the Proponents sought financial assistance from Council. The request referred to the potential of funding through a Brazilian bank and was couched in the following terms:<sup>42</sup>

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*If Dongmun can get a loan from your council I promise to build one ethanol plant in Moama.*

98. Council considered an initial loan of \$460,000 to be used to repay Dongmun's loan from Deniliquin Council. It was premised on the need for Dongmun to retain its land in Victoria.<sup>43</sup>
99. The report to Council anticipated additional costs, made up of \$516,000 credit funding fees and \$90,000 for the development application would be required.<sup>47</sup>
100. The report stated:<sup>44</sup>

*Murray River Energy Pty Ltd is seeking a short term loan (12-18 months) from Murray River Council to cover the above costs (viz. the loan, credit funding and application fees) to enable the project to proceed.*

101. The loan was to be secured by way of mortgage over the land owned by Dongmun in Victoria.
102. Council resolved to provide a loan of \$460,000 to repay the outstanding debt to Edward River Council.<sup>45</sup> The minutes do not record the voting on the resolution.

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<sup>41</sup> EF(73)

<sup>42</sup> EF(6)

<sup>43</sup> The need to preserve the land was not adequately explained (EF73) <sup>47</sup> EF(74)

<sup>44</sup> EF(74)

<sup>45</sup> EF(77)



103. Council also resolved to consider entering into extending the loan, passing the following resolution:<sup>46</sup>

*The additional funds are for the purpose of establishing a line of credit to complete a development application and to construct an ethanol plant and biodigester at Moama NSW 2731.*

104. Not only did Council pay the \$460,000 debt to Edward River Council, it also paid the legal fees owed by the Proponents.<sup>47</sup>

105. On 14 January 2019 Council received an email from Mr Finn as follows: <sup>48</sup>

*“Mr Joo requires \$100,000 to pay commission for funding ...”.*

106. The email did not indicate who the money was to be paid to, nor was there a supporting documentation. The email indicated that the loan could be repaid

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when a caveat on Dongmun’s land in Victoria was removed and funding of \$300,000 was made available. The email emphasised that the payment was urgent.

107. An earlier email sent on the same day had attached a letter of intent from Truben Investment and advised that a commission was payable to Mr Park. Relevantly, the letter of intent was neither binding nor did it make provision for payment of any commission.<sup>49</sup>

108. Council appears to have received an email that was sent to Mr Finn containing details of the personal banking details of the intended recipient. It is almost illegible. Relevantly it sought payment to the personal account of Ji Chan Joo. It appears below:<sup>50</sup>

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<sup>46</sup> EF(77)

<sup>47</sup> EF(79)

<sup>48</sup> EF(93)

<sup>49</sup> EF(90)

<sup>50</sup> EF(94)

12/5/2018

Mail - Greg Finn - Outlook

**David : account number**

craft man <windy1256@gmail.com>

Wed 5/12/2018 11:36 AM

**To:** Greg Finn <gregjfinn@hotmail.com>

Hello sir.

This is David. My father tell me to send

my account number to you.

Here is my account and bsb number

account number : 1090 7027

bsb : 063512

name : Ji Chan Joo

My best wishes to you in 2019 and hope

you always stay healthy and happy.

Kind regards

David

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109. At 10:20 am on 15 January 2019, Mr Bilske received a further email from Mr Finn making a formal request by MRE to pay a commission to Seung Ri Corporation Ltd and Truben Investment.<sup>51</sup>
110. At 10:42 am on 15 January 2019, Mr Bilske issued instructions to Council's former Director Finance to "*make an urgent eft to satisfy this request*".<sup>52</sup>
111. As acknowledged by Council's former Director Corporate Services, the additional funds now being authorised had not been approved by the councillors.<sup>53</sup>

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<sup>51</sup> EF(96)

<sup>52</sup> EF(96)

<sup>53</sup> EF(95)

112. Despite concerns raised by those responsible for making the payment, the \$100,000 was paid on 15 January 2015.<sup>54</sup>
113. When interviewed, councillors advised were neither aware of nor had authorised this payment.
114. In his response to the draft Investigation Report, Mr Bilske stated:
- All payments had been discussed and received Mayoral authorisation in between Council meetings. This is identified in the evidence file at page 95 in relation to the \$100,000 payment. The failure was that this was not then confirmed at the following Council meeting. The full context and detail of all levels of the financing were discussed at Councillor briefing sessions before confirmation at Council meetings. It is noted that some Councillors failed to attend some briefing sessions, therefore may not have been fully aware of the full context of the decisions.*
115. A letter was sent to the Mayor, Clr Bilkey seeking his response to this statement. A further email was sent to Clr Bilkey seeking an indication whether he would provide a response.<sup>55</sup> Clr Bilkey did not respond.
116. It is necessary to deal with two aspects of Mr Bilske's response. Firstly, section 226 of the Act does not give power to the Mayor to authorise such payments. Secondly, section 377(q) of the Act prohibits delegation of a decision under section 356 to contribute money or otherwise grant financial assistance to persons.
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117. On 1 April 2019 Council was requested to make an advance payment of \$20,000 to bring investors to Australia.<sup>56</sup> On 2 April 2019 Council's former General Manager, Mr Bilske authorised the payment.<sup>57</sup> Payment was made on 2 April 2019.<sup>58</sup>
118. The comments regarding the earlier payment of \$100,000 apply equally to this payment.

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<sup>54</sup> EF(102)

<sup>55</sup> Appendix 11

<sup>56</sup> EF(160)

<sup>57</sup> EF(160)

<sup>58</sup> EF(167)

119. Council's staff, who processed the payment, raised concerns about the identity of the payee and ABN status.<sup>59</sup>
120. On 1 May 2019 Council's then Director Corporate Services provided the ABNs of Deniliquin Ethanol Plant Pty Ltd and Murray River Energy Company Pty Ltd.<sup>60</sup> The reference to Murray River Energy Company Pty Ltd was incorrect. Council was dealing with an entirely different company, MRE. Importantly, MRE did not have an ABN at the time.<sup>61</sup>
121. When requesting the payment of \$100,000 on 14 January 2019, Mr Finn had referred to a caveat on Dongmun's land in Victoria.<sup>62</sup>
122. On 30 January 2019, Mr Finn sent an email advising that an agreement had been reached with Mrs Shin (IRS & DGMT Pty Ltd) and would now lift the caveat on Dongmun's land in Victoria. It attached a letter from Mrs Shin's lawyers advising a payment of \$263,109.05.<sup>63</sup>
123. On 26 March 2019 Council resolved to increase the loan to the Proponents from \$460,000 to \$900,000. It appears that Council's former General Manager, Mr Bilske provided a verbal report to the meeting. The resolution, which was carried by the majority of councillors, did not alter the purposes that the additional funds could be applied to.<sup>64</sup>
124. Pursuant to its resolution, Council obtained a valuation of Dongmun's land in Victoria.<sup>65</sup> It was valued at \$1.175m.<sup>66</sup> The lending ratio exceeded 75%.
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125. The valuation also disclosed the existence of two caveats on the title.<sup>67</sup> The caveats had been lodged by Mrs Shin (IRS & DGMT Pty Ltd) and PNP Projects Pty Ltd.<sup>68</sup>

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<sup>59</sup> EF(99)

<sup>60</sup> EF(100)

<sup>61</sup> MRE did not obtain an ABN until 1 July 2019

<sup>62</sup> EF(93)

<sup>63</sup> EF(108)

<sup>64</sup> EF(158) also note EF(112)

<sup>65</sup> EF(114)

<sup>66</sup> EF(117)

<sup>67</sup> EF(144)

<sup>68</sup> EF(285)

126. In April 2019 Council signed the Loan Agreement.<sup>69</sup> It made provision for payment of \$263,000 to be used solely for the purposes of removing the two caveats.
127. The Mayor, Clr Bilkey and the then General Manager, Mr Bilske signed the loan agreement on behalf of Council.
128. When interviewed, councillors advised that they had not been aware of the payment to remove the caveats. The same could not be said for Clr Bilkey, who acknowledged that he had signed the loan agreement.<sup>70</sup>
129. On 7 May 2019 Council transferred \$760,000 to its lawyers as part of its loan to the Proponents.<sup>71</sup>
130. In addition to this payment, Council paid the Proponent's outstanding legal costs as well as its own legal costs. The borrower would usually be responsible for such payments.<sup>72</sup>
131. Ultimately, only \$17,000 remained available from the advance.
132. Importantly, resolution 4 passed at Council's meeting on 27 November 2018 had not been observed. Council had paid \$263,000 to remove the caveat lodged by Mrs Shin (IRS & DGMT Pty Ltd), \$120,000 without invoices or receipts, an additional \$15,000 to pay Deniliquin Council's legal costs and had absorbed its own legal costs exceeding \$5,000.00 without having resolved to do so.
133. Ultimately, Council paid \$899,498.80. No money remained for the credit funding fees of \$516,000, or the development application fees of \$90,000.
134. Council had become the Proponents' banker and, in doing so, it failed to act prudently and failed exercise a reasonable degree of care and diligence in carrying out its functions.
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135. On 21 September 2020 Mr Harvie sent an email to Mr Joo and Mr Finn as follows:<sup>73</sup>

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<sup>69</sup> EF(169)

<sup>70</sup> Interview with Clr Bilkey 16 November 2021

<sup>71</sup> EF(190)

<sup>72</sup> EF(82 & 191)

<sup>73</sup> EF(246)

*Just following up to see if you have any update on timeframe of funding including repayment of loan. We have a council meeting tomorrow and the finance department have asked me to follow up on payment of interest associated with the loan agreement. Council will request an update from me in relation to the matter.*

136. It followed from an earlier internal email that advised Council did not have a contactable email address for MRE to send invoices. By that stage Council had resolved to undertake an internal audit of Council's support for the Project.<sup>74</sup>
137. In an email sent on 27 October 2020, Mr Finn made further representations regarding funding for the Project and repayment of the loan.<sup>75</sup> Funding was not forthcoming, and the loan remained unpaid.
138. In 2021, Council sold the Victorian land to recover the loan.

#### **4.8 A Loan or an Investment?**

139. Section 356 of the Act permits councils, pursuant to a resolution, to contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.
140. However, councils must give at least 28 days' public notice of the council's proposal to pass the necessary resolution has been given, where the proposed recipient who acts for private gain.<sup>76</sup>
141. On 17 November 2018, Council resolved to provide a "*loan agreement with Murray River Energy*" for the initial \$460,000. Council also resolved to consider entering into a further loan with MRE.<sup>77</sup>
142. Public notice of the intent to pass the resolution had not been given.
143. While the report to the meeting on 17 November 2018 referred to "*Legislative Implications*", it failed to refer to section 356 of the Act.<sup>78</sup>
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144. Conversely, Council's resolution of 26 March 2019, which increased the loan to \$900,000, referred to it as an "*investment*".<sup>79</sup>

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<sup>74</sup> EF(247)

<sup>75</sup> EF(245)

<sup>76</sup> There are other exceptions that are not relevant

<sup>77</sup> EF(77)

<sup>78</sup> EF(75)

<sup>79</sup> EF(158)

145. Section 625 of the Act provides that a “*council may invest money that is not, for the time being, required by the council for any other purpose.*” Further, money may be invested only in a form of investment notified by order of the Minister published in the Gazette.
146. On 11 February 2011, the Minister published a further investment order. It replaced the Ministerial Order of 31 July 2008. Its effect was to prohibit investments in private entities like MRE.<sup>80</sup>
147. The report to Council’s meeting on 25 August 2020 contained the following statement:<sup>81</sup>
- “A loan such as the one Council has entered into is deemed to be an investment and is covered by the Minister for Local Government’s Investment Order dated 31 July 2008 which authorises investments in land but subject to them being secured by a first mortgage over land with a Loan to Value (LVR) ratio of no greater than 60%. The LVR in this case is 76.6%.”*
148. In his letter to OLG of 6 January 2021, Council’s former General Manager, Mr Bilske referred to the breach of the 2008 Investment Order on the basis that the loan to MRE was “*a temporary assistance package*”.<sup>82</sup>
149. If, as Mr Bilske suggests, the loan was “*a temporary assistance package*”, Council failed to comply with section 356 of the Act by giving the required 28 days’ public notice of the proposal, both when it made the original loan of \$460,000 and, subsequently when it increased to loan to \$900,000.
150. It is difficult to see how a loan for a period of two years is properly described as “*a temporary assistance package*”.
151. As an “*investment*”, it was prohibited by the Ministerial Investment Order of 2011.

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<sup>80</sup> EF(360)

<sup>81</sup> EF(242)

<sup>82</sup> EF(252)

## 4.9 Transparency

152. Section 3 of the *Government Information (Public Access) Act 2009* (GIPA) provides:

*(1) In order to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective, the object of this Act is to open government information to the public by:*

*(a) authorising and encouraging the proactive public release of government information by agencies, and*

*(b) giving members of the public an enforceable right to access government information, and*

*(c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.*

153. While it is accepted that there is need for some matters to be treated as confidential in Council's dealings, the Act does not set out the circumstances in which information may be regarded as confidential. Confidentiality is only dealt with in sections 664 and 10A of the Act. Section 664 makes it an offence to disclose confidential information and prescribe the circumstances where a council may close its meetings to members of the public in order to consider confidential matters.

154. In about May 2020 local residents raised concerns about the project.

155. On 25 May 2020 Council's former General Manager, Mr Bilske wrote to one of the residents responding to ten questions. In doing so, he referred to section 10A(2) of the Act, advising:<sup>83</sup>

*"I have answered each question individually and as comprehensively as possible taking into account the commercial and confidential nature of the matter."*

156. In responding, Mr Bilske failed to disclose the purchase price or the existence of the lease back. His responses to the other questions were evasive and lacked detail.

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<sup>83</sup> EF(193)



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157. On 29 June 2020, Mr Harvie sent an email to one of the residents reinforcing the reasons for not disclosing information, stating:<sup>84</sup>
- “I completely reject your statement that the project has been surrounded in secrecy.”* and:
- “The proponents are entitled to have the matter treated as “commercial in confidence” to protect their intellectual property...”*
158. On 28 July 2020, Council entered into a Memorandum of Understanding (the MOU)<sup>85</sup>. It had been prepared by Mr Harvie, who drew the document from another Memorandum of Understanding Council had entered into.<sup>86</sup>
159. When interviewed, many of the councillors indicated that they had neither seen nor been aware of the MOU.
160. There was no resolution of Council to enter into the MOU.
161. The MOU recited that MRE *“manufactures and installs bio-digester plants in Australia and other countries around the world”*.<sup>87</sup> It did not.
162. MRE was a vehicle for the proposal at Moama, it had not been able to secure funding for the project nor had its application for State Significant Development consent progressed past the first stage.
163. A further recital indicated that Council and MRE had agreed that MRE would undertake agricultural research and crop trials on the Land – referred to as the *“Project Opportunity”*.<sup>88</sup>
164. The MOU provided:<sup>89</sup>
- Each party must at all times, keep information concerning or arising out of this Agreement, the Project Opportunity, and the other party strictly confidential and may not disclose it to any person.*
165. While the MOU referred to and defined *“Intellectual Property”*<sup>90</sup> none of the intellectual property was relevant to MRE undertaking crop trials and

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<sup>84</sup> EF(204)

<sup>85</sup> EF(231)

<sup>86</sup> Interview with Mr Harvie 17 November 2021

<sup>87</sup> EF(233)

<sup>88</sup> EF(233)

<sup>89</sup> EF(234)

<sup>90</sup> EF(233)

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agricultural research. Further, there was no provision in the MOU for sharing the results of the crop trials and research with Council.

166. Council did not produce any correspondence giving rise to the MOU, nor documents relating to its execution.

167. The MOU was not operative, it provided:<sup>91</sup>

*The parties will work together with a view to entering into an agreement with each other for the Project Opportunity as soon as practicable following the evaluation of the Project Opportunity and the parties determining that they do mutually wish to proceed with the Project Opportunity.*

168. Despite the apparent grandeur of the MOU, Council was merely being asked to provide a licence so that MRE could use part of the Land to undertake agricultural research and crop trials.

169. There could be no commercial confidentiality in that process. It could not provide a basis to withhold information under GIPA.

170. Two days later, Mr Harvie sent an email to the Executive Leadership Team in the following terms:<sup>92</sup>

*“Good Morning Team*

*I have discussed the fact that the neighbours to the above property have a copy of our commercial lease with the previous owner. Unfortunately, in NSW, if a lease is registered it is available to anyone who undertakes a property search on that parcel of land.*

*It may be the protagonists have obtained the information by fair means.”*

171. There was no commercial confidence in any of Council's dealings with the Proponents.

#### **4.10 Record Keeping**

172. Section 12 of the *State Records Act 1998* requires that each public office must make and keep full and accurate records of the activities of that office.

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<sup>91</sup> EF(234)

<sup>92</sup> EF(237)

173. A comprehensive notice requiring production of documents was served on Council. The notice required production of reports (whether to meetings or

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otherwise), briefings, records, memoranda, emails passing to and from Council, files notes and other records.

174. The documents produced by Council were then inspected.

175. A review of the records suggested that a significant body of information was missing, in particular there was a lack of file notes, records of telephone conversations and emails passing between senior staff and the Proponents.

176. By way of example, there was no correspondence or other records relating to the initial request for the MOU, its preparation, being sent to the Proponents, its execution on behalf of Council nor receipt of the signed copy from the Proponents.

177. By way of further example, there were no records regarding the search for the Land and particularly the initial contact with the Proponents (including any conversations with them), contact with real estate agents, negotiations with the owner and other enquiries undertaken by Council, including:

- documents regarding the purchase or search for and/or review of alternative properties,
- any request for the Proponents to purchase the Land on their behalf,
- any documents supporting the suggestion that the Proponents would on-purchase the land,
- any correspondence with the vendor's agent.

178. While Council's former General Manager, Mr Bilske advised that he kept an electronic diary, it was not produced.

179. In responding to the draft Investigation Report, Mr Bilske provided the following explanation for the lack of records:

*While all files were left at Murray River Council as active files in the Chief Executive Officer office these may have been destroyed as part of the cleanup for arrival of the incoming occupant of the position.*

180. In responding to the draft Investigation Report, Mr Harvie provided the following response:

*Council did give careful consideration to the project. Mr Bilske and Mr Harvie had access to volumes of information provided by the company as part of its state significant development application to construct an ethanol plant and biodigester at Deniliquin.*

181. None of these documents were produced.
182. The foregoing does not explain the significant body of information that was missing.

#### **4.11 Probity**

183. Despite both Mr Bilske and Mr Harvie having had significant dealings the Proponents, as far as Council was concerned, it was an unsolicited proposal requiring careful consideration by Council.

184. The ICAC's guidelines for direct negotiations contains the following statement:  
*"the following "probity principles" should govern decisions about direct negotiations:<sup>93</sup>*

- *fairness*
- *impartiality*
- *accountability*
- *transparency*
- *value for money."*

185. The guidelines emphasise the need to document the process, perform due diligence, manage conflicts of interest and segregate duties. In relation to probity they emphasise that basic due diligence checks involve making enquiries about an entity's:<sup>94</sup>

- structure, ownership, location and trading history
- requisite experience
- senior management
- finances, insurance and credit history
- history of regulatory or legal action, including

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<sup>93</sup> EF(377)

<sup>94</sup> EF(379)

- adverse findings against key personnel

- 
- relevant licences, certifications and accreditations
  - supply chain
  - media and social media profile.

186. When asked, Mr Bilske advised that no consideration had been given to the guidelines.

187. While Council did obtain a valuation of Dongmun's land in Victoria, there was no evidence that this approach had been taken nor that it had been considered.

188. Without fully assessing the Project, Council spent over \$1.2m buying land for the Project.<sup>95</sup>

189. Council entered into a long-term lease of the Land, to a company associated with the vendor. The rental was significantly below market value.

190. No resolution was passed by Council to enter into the lease, nor were councillors informed that it had formed part of the negotiations in purchasing the Land.

191. On 27 November 2018 Council considered providing a loan to MRE. MRE had been registered in August that year. It was a shell company with an issued capital of \$100.00.<sup>96</sup>

192. On 26 March 2019, Council agreed to increase the loan to \$900,000.

193. It appears that the matter did not form part of the business papers for the meeting. The Code of Meeting Practice then applicable, provided:

*"The council must not consider business at a meeting of the council:*

*(a) unless a councillor has given notice of the business, as required by clause 3.10, and*

*(b) unless notice of the business has been sent to the councillors in accordance with clause 3.7 in the case of an ordinary meeting or clause 3.9 in the case of an extraordinary meeting called in an emergency.*

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<sup>95</sup> EF(5)

<sup>96</sup> EF(274)

10.3 Despite clause 10.1, business may be considered at a meeting of the council even though due notice of the business has not been given to the councillors if:

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(a) a motion is passed to have the business considered at the meeting, and

(b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.”

194. The minutes of the meeting do not record that a motion was passed in accordance with clause 10.3 of the Code of Meeting Practice.<sup>97</sup>

195. The guarantors of the loan were Dongmun, Mr Finn and Mr Joo. Dongmun had an issued capital of \$60,100.00.<sup>98</sup>

196. In responding to the preliminary enquiries, Mr Bilske referred to previous dealings both he and Mr Harvie had had with the Proponents while at Deniliquin and Edward River Councils, and wrote:<sup>99</sup>

*The Director Corporate Services of Murray River Council also undertook due diligence in conducting company searches and investigations into its directors especially its Australian connections as preparatory work in establishment of the loan documentation and conditions.*

197. The documents produced by Council did not contain evidence of any probity checks undertaken by Council. In particular, there were no:

- Company searches of MRE, Dongmun or Deniliquin Ethanol Plant Pty Ltd.
- Personal financial assessments of either Mr Finn or Mr Joo.
- Assessment of the financial capacity of Dongmun IRS to undertake the project.

198. The foregoing is emphasised as:

- Council had received an unsolicited proposal.
- Earlier proposals by Dongmun had failed to come to fruition.

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<sup>97</sup> EF(158)

<sup>98</sup> EF(257)

<sup>99</sup> EF(250)

- Dongmun had failed to repay its debt to Edward River Council and was facing the forced sale of its land in Victoria.

- 
- The capitalised value of Dongmun was insignificant, especially when compared to the magnitude of the Project.
  - The Proponents had been unable to secure funding for the Project.
  - The Proponents had been unable to provide a mere \$20,000 to bring potential investors to Australia.
  - The Proponents had been unable to proceed with similar proposals in both NSW and Victoria.
  - Council had expended over \$1.2m acquiring land for the Project and where,
  - Council was proposing to make a significant loan to the Proponents.

199. Collaterally, the documents produced by Council did not contain evidence of any valuation evidence being obtained to support the price paid the Land.<sup>100</sup>

200. Council transferred \$100,000 to a private account without seeing any documentation to support the payment.<sup>101</sup>

201. On 27 November 2018 Council adopted an Investment Policy.<sup>102</sup> It contained the following statement:

*Prudent Person*

*The investment portfolio and associated decisions regarding investments are to be made/managed with the care diligence and skill that a prudent person would exercise. As trustees of public monies, officers are to manage Council's investment portfolio to safeguard the portfolio in accordance with the spirit of the Investment Policy, and not for speculative purposes.*

202. There was no evidence that Council had, whether in lending funds to the Proponents nor in purchasing the Land, adhered to the policy.

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<sup>100</sup> While Council did obtain two valuations of the Land, the first valuation was not obtained until two years after the purchase of the land EF(206)

<sup>101</sup> EF(94)

<sup>102</sup> EF(63)

203. Perhaps most importantly, there was no evidence to support the viability of the Project.
204. In responding to the draft Investigation Report, both Mr Bilske and Mr Harvie referred a review undertaken by Jacob Australia Pty Ltd (Jacob) as constituting

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“due diligence”. It was not, the review that undertaken by Jacob was a technical evaluation.<sup>103</sup>

## **5. FINDINGS**

### **Part 4.3**

205. Council failed to adequately consider whether it should provide support to the Proponents.
206. There was no adequate reason for Council to have provided the level of support to the Proponents.

### **Part 4.4**

207. Council failed to adequately consider whether it should purchase land for the Proposal.
208. Council failed to consider alternatives to the purchase of the Land.
209. Council failed to obtain a valuation of the Land at the time of purchase.
210. Council paid a substantial a significant premium for the land, exceeding 50% of the land's value.
211. Despite suggestions to the contrary, the Land was solely acquired for the Proposal.

### **Part 4.5**

212. The lease was entered into without the knowledge of councillors and without a resolution to do so.
213. The annual rental was substantially below market value.

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<sup>103</sup> Appendix 10 - Deniliquin Ethanol Project Teaser Memorandum August 2018  
Investigation Into Murray River Council November 2022 40



## **Part 4.6**

214. In all probability, Dongmun and Deniliquin Ethanol Plant Pty Ltd were insolvent at the time when Council considered the Proposal, made the initial loan of \$460,000 and when Council provided the additional loan funds.
215. Council should not have lent money to the Proponents.

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## **Part 4.7**

216. Council became the Proponent's financier.
217. There was no adequate reason to lend money to enable the Proponents to repay the debt owing to Edward River Council.
218. There was no adequate reason to lend the additional money to the Proponents.
219. There was no adequate reason to lend money to enable the Proponents to repay the debt to Mrs Shin (IRS & DGMT Pty Ltd).
220. Council should not have paid \$100,000 to the Proponents in the circumstances that it did.
221. The payment of \$100,000 had not been authorised.
222. The governing body was neither aware of nor had authorised the payment of \$100,000.
223. The payment of \$20,000 had not been authorised.
224. The governing body was neither aware of nor had authorised the payment of \$263,000 to Mrs Shin (IRS & DGMT Pty Ltd).
225. Former senior staff who authorised the payments failed to give effect to Council's resolution of 27 November 2018.

## **Part 4.8**

226. To the extent that the payments of \$100,000, \$20,000, \$460,000, \$263,000 and the other payments made by Council (totalling \$900,000) should properly regarded as constituting one or more loans, Council failed to comply with the provisions of section 356 of the Act.
227. To the extent that the payments should be regarded as an investment, they breached the Ministerial Investment Guideline.

#### **Part 4.9**

- 228. Council failed to be open and transparent about its dealings with the Proponents.
- 229. Council failed to be open and transparent in responding to members of the public.
- 230. It is concerning that Council entered into the MOU, which contained confidentiality provisions, at a time when local residents were raising concerns about Council's support for the project.
- 231. There was no reason for the MOU to contain confidentiality provisions.
- 232. Councillors were not aware of the MOU.
- 233. There was no resolution of Council to enter into the MOU.
- 234. There was no commercial confidence in any of Council's dealings with the Proponents.

#### **Part 4.10**

- 235. Council failed to keep full and accurate records of its dealings with the Project.

#### **Part 4.11**

- 236. Council should have treated the Proposal as an unsolicited proposal requiring careful consideration.
- 237. Neither Council nor senior staff gave careful consideration to the Project.
- 238. Council's probity processes were manifestly inadequate.
- 239. There was no evidence that Council had carried out any probity checks.
- 240. There was a body of extrinsic evidence available that the Proponents were unable to undertake a project of the enormity of the Project.
- 241. Having adopted its Investment Policy at the meeting when it resolved to make the loan of \$460,000, Council failed to ensure that it applied the same care and diligence required by that policy.
- 242. Council transferred \$100,000 to a private account without seeing any documentation to support the payment.
- 243. Both councillors and some members of Council's senior staff failed to exercise a reasonable degree of care and diligence in carrying out their functions.

## **6. SUBMISSION OF THE REPORT TO THE MINISTER**

I hereby make this report to the Minister for Local Government, the Hon Wendy Tuckerman MP, pursuant to my obligation to report on the results of the investigation.

A handwritten signature in black ink, appearing to read 'Ally Dench', with a long horizontal line extending to the right.

**Ally Dench**  
**Executive Director, Local Government**

Dated this Tuesday          29 November of 2022

## 1 APPENDICES

1	Authorisation and Terms of Reference
2	Chronology
3	Evidence Folder
4	Spreadsheet of associated companies
5	Additional material to Evidence Folder
6	Responses to draft Investigation Report from: Clr Weyrich Council's current General Manager Mr John Harvie Mr Des Bilske
7	Deniliquin Ethanol Project Teaser Memorandum – August 2018
8	Correspondence with Clr Bilkey

