

Ms [REDACTED]
General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Via email: [REDACTED]@shoalhaven.nsw.gov.au

Dear Ms [REDACTED]

Thank you for the updates provided by your predecessor, Mr [REDACTED], on Council's internal and external investigations into the management of the resource recovery facility project with Bioelektra Australia Pty Ltd (Bioelektra). I also want to acknowledge Council's responses to the requests from the Office of Local Government (OLG) for information concerning its agreement with Bioelektra.

For completeness, I would first like to summarise the correspondence and other communication that has taken place between Council and OLG on the matter, then provide a brief summary of the key findings arising from the investigations into the project and finally outline OLG's position having regard to all the above.

Summary of Correspondence

Upon becoming aware of reports in the media that Bioelektra had gone into voluntary administration, OLG wrote to Council on 17 May 2023 with specific questions concerning the project, and again on 2 June 2023 asking for additional information.

Council responded to these questions by written reply on 9 June 2023 and 30 June 2023 respectively. Council subsequently provided updates on the investigations being conducted on the following dates: 7 July; 11 August; 4 September; 20 September; 29 September; 6 October; and 27 October 2023. Further brief updates were provided by Council's Director - City Services by way of email on 3 November and 24 November 2023.

On 21 September 2023 [REDACTED], Deputy Secretary of OLG met with the former CEO, Mr [REDACTED] and several of Council's executives to better understand the issues that had been uncovered as a result of Bioelektra's collapse and the steps Council was taking to remedy these.

[REDACTED]

[REDACTED]

[REDACTED]

Key Findings of Investigations

A number of issues were identified [REDACTED]

The key findings were:

- A delivery phase bank guarantee of \$2 million from Bioelektra required under the terms of the contract was never provided to Council.
- A second milestone payment of \$1 million was paid to Bioelektra by Council in October 2022; however, the specific conditions under the contract necessary for this payment were not met.
- An independent certifier (IC) was required to be appointed to assess milestone payments – the appointment of an IC appears not to have been compliant with the contract and the appointed IC does not appear to have been involved in any assessment of the two milestone payment claims.

Council has advised as a result of these findings, a number of changes were being made to improve its management of projects. These included:

- Creating a new position to develop a project management framework for both Council managed projects and those managed by third parties on behalf of Council.
- Instituting a project management office (PMO) to mitigate risks for Council in respect of all phases of a project's management from pre-procurement to delivery. The PMO will report directly to Council's executive management team.
- Removing all project management responsibility from the Waste Management Unit.
- Reviewing the engagement of Independent Certifiers as part of Council's project management and developing policies around this.
- Reviewing Council's financial and asset management policies in respect of funding decisions and risk management practices.
- Conducting a review of Council's risk management policy around its procurement processes.

OLG's Position

Council has undertaken what appears to be a comprehensive internal investigation, [REDACTED] focusing on the administration of the project agreement with Bioelektra.

Other actions taken include:

- Commissioning an independent assessment of the project work done which estimated the value of this to be in the range of \$2.2 to \$2.8 million;
- terminating the contract with Bioelektra on 14 August 2023 and notifying the liquidator that this had occurred;
- reassigning staff responsibilities in respect of project management; and
- creating a specialised unit to oversee project management with the objective of ensuring that the shortfalls that occurred with Bioelektra are not repeated.

[REDACTED]

Given the work that has been done by Council to understand what occurred and its declared commitment to enact improvements based on what has been learnt, OLG does not intend to conduct its own investigation under section 430 of the *Local Government Act 1993*.

OLG would however like to continue receiving regular updates from Council concerning progress with its reorganisation of project management. Furthermore, if additional information comes to hand questioning Council's management of the Resource Recovery project or other project works, then OLG will review whether a separate investigation is required.

Council has also indicated that, in the interests of full disclosure and transparency, it wishes to release to the public the submissions it has made to OLG on the Bioelektra matter. This is a decision for Council and Council should seek independent legal advice if needed.

If you have any questions on the above please contact [REDACTED] Manager Performance on (02) [REDACTED] or by email at [REDACTED]@olg.nsw.gov.au.

Yours sincerely

[REDACTED]
Local Government
