



Government
of South Australia

Report
of the
Auditor-General
Supplementary Report
for the
year ended 30 June 2014

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Second Session, Fifty-Third Parliament

Audit of the Gillman site transaction:
Key shortcomings in assessing
an unsolicited proposal: December 2014

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Dear President and Speaker

**Report of the Auditor-General: Supplementary Report for the
year ended 30 June 2014: Gillman site transaction: Key shortcomings in
assessing an unsolicited proposal: December 2014**

Pursuant to the provisions of the *Public Finance and Audit Act 1987*, I herewith provide to each of you a copy of my Supplementary Report for the year ended 30 June 2014 'Gillman site transaction: Key shortcomings in assessing an unsolicited proposal: December 2014'.

In submitting this Supplementary Report I make specific reference to my Supplementary Report for the year ended 30 June 2014, 'Matters of specific audit comment: December 2014', that was tabled in Parliament on 4 December 2014.

The Supplementary Report tabled on 4 December 2014, conveyed my decision to defer delivery of my completed report on the audit review of the Gillman site transaction to each of you for tabling in Parliament, as the transaction was the subject of proceedings before the Supreme Court of South Australia and judgement was pending in that matter (*Acquista Investments Pty Ltd & Anor v Urban Renewal Authority & Ors*). Furthermore, it was conveyed that I would be in a position to deliver my report to each of you as soon as judgement was delivered in the Supreme Court proceedings.

Following the delivery of the judgement of the Supreme Court of South Australia in this matter on 24 December 2014 (publically released on 12 January 2015), this Supplementary Report communicates the results of the completed audit review.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'S O'Neill', with a horizontal line underneath.

S O'Neill
Auditor-General

**Report of the Auditor-General: Supplementary Report
for the year ended 30 June 2014: Audit of the Gillman
site transaction: Key shortcomings in assessing
an unsolicited proposal: December 2014**

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Audit of the Gillman site transaction: Key shortcomings in assessing an unsolicited proposal

1 Introduction

A significant responsibility of the Urban Renewal Authority (the URA) is to facilitate urban renewal in line with the objectives and targets contained within the 30-Year Plan for Greater Adelaide. This includes the supply of commercial and industrial land to support employment growth and economic opportunity. The URA manages approximately 4000 hectares of land across South Australia. This includes the Gillman Employment Lands Precinct (Gillman Precinct) which represents approximately 465 hectares of undeveloped land in Gillman and Dry Creek. The Gillman Precinct forms an integral part of the future employment land supply for western Adelaide in the 30-Year Plan for Greater Adelaide.¹

On 18 June 2013 the Premier received an unsolicited proposal from Adelaide Capital Partners (ACP) for the purchase and development of approximately 450 hectares of the Gillman Precinct (the Gillman site). As the relevant statutory authority and owner of the Gillman site, the Premier sought the URA's advice on ACP's unsolicited proposal to enable the Premier and the Minister for Housing and Urban Development (the Minister) to make recommendations to Cabinet, the approving authority.

On 2 December 2013 Cabinet approved an exclusive call option for ACP to acquire up to 407 hectares of the Gillman site within three options over a nine year period for up to \$122.1 million.

On 13 December 2013 the Premier and Minister for State Development, the former Chief Executive of the URA and ACP entered into the Lipson Industrial Estate Option Deed (the Option Deed).

An audit was undertaken of the Gillman site transaction. It has given focus to the processes and controls exercised by the URA over the disposal of a significant property, the Gillman site.

This Report provides details of the audit undertaken, including the audit scope, transaction overview, key audit observations and recommendations made to the URA, together with responses to those matters.

2 Audit mandate and scope

The Gillman site transaction represents a material financial transaction of the URA. The audit of the transaction was undertaken pursuant to sections 36(1)(b) and 36(1)(a)(iii) of the *Public Finance and Audit Act 1987*. The latter section specifically provides for the Auditor-General to assess the controls exercised by the URA in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities.

¹ Gillman Master Plan Final Report, June 2014.

The audit focused on the detailed processes and controls exercised by the URA over the disposal of the Gillman site, specifically:

- the suitability of the existing policy framework in assessing unsolicited proposals
- Cabinet requirements
- governance frameworks, including roles and responsibilities, risk management and probity
- the evaluation process
- sale pricing (valuation)
- recommendations and approval processes.

The audit included a detailed review of documentation and discussions with the Presiding Member and another member of the URA Board of Management (the Board), the former Chief Executive and relevant officers of the URA.

The preliminary audit findings and recommendations were forwarded to the Presiding Member and the Chief Executive of the URA in August 2014 for review and comment. Meetings were held with the Presiding Member and another member of the Board and URA management to discuss and provide comments on the preliminary audit findings and recommendations. The URA's comments were considered in finalising the audit management letter of audit observations and recommendations to the URA.

The audit management letter was forwarded to the Board's Presiding Member in October 2014. The key audit observations and the URA's responses are provided under section 6 of this Report.

3 Governance arrangements

Pursuant to the *Urban Renewal Act 1995*, the Board is responsible to the Minister for overseeing the URA's operations. The Board of Management policy (BM policy) outlines the functions of the Board, including to ensure information furnished to the Minister is accurate and comprehensive and any proper directions of the Minister are implemented.

The BM policy states that the Chief Executive provides accurate and detailed information to the Board to enable the Board to carry out its functions. Further the BM policy details certain matters for the Board's decision, including financial approvals and management decisions outside the Chief Executive's level of delegated authority.

The Gillman site transaction was above the Chief Executive's level of delegated authority. In this context, it is considered important that the Board be adequately consulted on the matter of the Gillman site transaction prior to advice being provided to the Minister.

4 Key transaction audit findings

ACP approached the SA Government with a proposal to purchase and develop a significant parcel of State owned land. The ACP unsolicited proposal has effectively resulted in the disposal of a material State asset, the Gillman site. This was an event of significant public interest and currently subject to Parliamentary review.²

² Select committee: Sale of State Government Owned Land at Gillman.

It is crucial that there is a policy framework to provide a transparent and consistent process for the consideration and assessment of unsolicited proposals. In the past the URA has disposed of some State owned land through an off-market transaction process (ie sale of land that has not been offered to the open market). As provided for in the relevant URA policy, strong justification is required to support an off-market sale and waive a competitive process.

Like any sale process, it is important that the objectives for considering unsolicited proposals are clearly defined prior to consideration and assessment. In doing so justification should be provided that important objectives (including value-for-money and non-financial objectives) cannot reasonably be met through an open and competitive process. In prior years I have made comment on important elements of a sale process³, which equally apply to the consideration and assessment of unsolicited proposals.

A key deficiency of the Gillman site transaction process was the absence of a dedicated policy framework for the consideration and assessment of unsolicited proposals, both at the State Government level and within the URA. It is relevant to note at this point that at the time of preparing this Report, the SA Government had issued Department of the Premier and Cabinet Circular PC038 'Unsolicited Proposals' and 'Guidelines for the Assessment of Unsolicited Proposals' dated November 2014 (SA Guideline). This policy and guidance framework is to apply to all government agencies and public authorities under the *Public Finance and Audit Act 1987*, unless specifically excluded by the State Coordinator-General.

Another important matter related to the valuation supporting the minimum acceptable price for the Gillman site. The URA adopted an independent valuation dated 2010 that was used to support a compulsory acquisition transaction. Given the significance of the Gillman site transaction and the identified risks, it is my view that the minimum acceptable price should have been supported by a current and dedicated market valuation report for the property being sold.

It should be noted that the URA had implemented some good aspects of process and control over certain important elements of the sale process. These included: a staged assessment process; obtaining Cabinet approval at key milestones; consultation with key government agencies on related industry and legal matters; and maintaining key documentation to support aspects of the assessment process, including evaluation and negotiation plans and an evaluation report.

The audit, however, identified a number of specific shortcomings in the process. The following provides detailed commentary on the transaction process and the audit outcome. The audit outcome embodies the specific nature of the shortcomings and recommendations to improve future processes, together with the URA responses.

5 Main transaction events

5.1 An unsolicited proposal

On 18 June 2013 the Premier received an unsolicited proposal from ACP for the purchase and development of the Gillman site.

³ Report of the Auditor-General, Annual Report for the year ended 30 June 2013, Part A: Audit Overview, page 7.

On 29 August 2013 ACP submitted a formal and more comprehensive proposal (initial proposal), which included a draft deed, to the Premier. The initial proposal was assessed by the URA.

On 23 September 2013 Cabinet approved recommendations to reject ACP's initial proposal and for the URA to enter direct negotiations with ACP for the purchase of up to 417.89 hectares of the Gillman site and to seek in-principle agreement incorporating 10 matters as detailed in Cabinet's approval. Further, Cabinet required that if the URA's assessment found that ACP's revised proposal was not suitable, a further submission with a revised proposal would be provided to Cabinet for consideration and direction.

On 11 October 2013 ACP submitted a revised proposal which was assessed by the URA, in consultation with the Crown Solicitor's Office, against the requirements outlined in Cabinet's approval of 23 September 2013. URA management determined that the revised proposal was not materially different to the initial proposal. In accordance with Cabinet's approval on 23 September 2013, URA management commenced evaluation of the revised proposal and direct negotiations with ACP.

5.2 Method of sale

In the absence of a State Government framework for the consideration and assessment of unsolicited proposals, the ACP unsolicited proposal(s) was assessed in accordance with the:

- URA's Real Property Marketing and Pricing policy (RPMP policy)
- Cabinet requirements approved on 23 September 2013.

The RPMP policy provides for off-market transactions as a method of sale, including an approach from a private sector party (ie an unsolicited proposal). In considering an unsolicited proposal the RPMP policy requires the URA to consider any benefit to strongly justify an off-market sale and waiver a competitive sales process.

5.3 Provision of expert advice

The URA sought expert advice as follows:

- Legal advice – representatives of the Crown Solicitor's Office were consulted, both verbally and in writing, on legal matters from the assessment of the initial proposal to the execution of contractual documentation.
- Probity advice – a probity adviser was engaged on 29 October 2013 to provide probity advice for the evaluation of the revised proposal and negotiation processes.
- Industry advice – government agencies were consulted and provided advice on industry related matters, including key industry advice from the former Department for Manufacturing, Innovation, Trade, Resources and Energy.

5.4 Establishing a minimum acceptable price

A significant risk highlighted to Cabinet was that the ACP proposal provided no opportunity for market testing demand or pricing for the land. URA management advised Cabinet, through the Minister, that this risk is generally managed through the RPMP policy. This policy provides for off-market transactions (including an unsolicited proposal), however had never been applied to a landholding of the size of the Gillman site.

The RPMP policy requires that off-market transactions must be supported by two independent and current valuations of the property being sold. The higher of the two valuations will apply as the minimum acceptable price. Further, the RPMP policy allows for an older valuation to be adopted at the discretion of the Chief Executive.

The former Chief Executive of the URA approved a minimum acceptable price that represented the higher of two independent valuations obtained as part of the compulsory acquisition of the Dean Rifle Range (DRR) land from the Adelaide City Council. The DRR land represents approximately 276 hectares of the 407 hectares included in ACP's final proposal (dated 13 November 2013). Both valuations are as at 11 February 2010, the date of the compulsory acquisition.

ACP's proposed price per square metre exceeded the approved minimum acceptable price of the Gillman site.

5.5 Evaluation approach

5.5.1 URA management

The consideration and assessment of the ACP proposal involved:

- a preliminary assessment of the unsolicited proposal (letter dated 18 June 2013) which required ACP to provide more information
- assessment of the initial proposal (dated 29 August 2013) which led to Cabinet approving the URA entering into direct negotiations to reach in-principle agreement incorporating 10 matters
- assessment of the revised proposal (dated 11 October 2013) leading to the negotiation on 10 key matters in accordance with Cabinet requirements approved on 23 September 2013
- a final proposal (dated 13 November 2013) presented to Cabinet on 2 December 2013.

The URA's industrial project delivery division managed the assessment of the unsolicited proposal(s). An evaluation panel was established comprising senior management officers of the URA.

The former Chief Executive of the URA approved the evaluation and negotiation plans on 1 November 2013. The evaluation panel conducted the evaluation in accordance with the evaluation plan and prepared an evaluation report.

The evaluation report dated 15 November 2013 recommended to the Chief Executive that the URA prepare and forward a Cabinet submission for approval to proceed with acceptance of the ACP proposal. The Acting Chief Executive approved the recommendation on 15 November 2013.

5.5.2 The Board

The Board gave specific consideration and responses to the recommendations on the Gillman site transaction in the period 13 to 29 November 2013. Issues were recorded in a number of out-of-session decision papers and minutes of the board meetings. The notable Board resolutions were made on 21 and 29 November 2013.

On 21 November 2013 the Board resolved to advise the Minister to reject the ACP offer and instead offer the land to the market for sale in a transparent and open manner, having regard to the key risks and issues identified by the Board. Further, the Board noted that Cabinet has the ultimate authority to approve the ACP proposal if it determines to do so having regard to whole-of-government considerations.

Following this resolution, the Minister attended the board meeting held on 25 November 2013 and requested that the Board further consider the matter and provide advice.

In response to the Minister's request, on 29 November 2013 the Board resolved to advise the Minister that:

- the Gillman site had been identified as land appropriate for industrial/commercial development to support employment and growth targets contained in the State's strategic plan and as such a resources sector services hub was an appropriate use of the land
- the ACP offer represented a good value offer based on independent valuation advice and comparable market evidence
- the URA had considered the ACP unsolicited proposal within existing policy and guided by independent probity advice.

Further the Board noted that advice on whether the ACP proposal met strategic economic development objectives and gave government sufficient confidence to proceed with accepting the offer would be provided by other government agencies and that ultimately this would be a policy decision of Cabinet.

5.6 Approvals and transaction completion

As previously mentioned, on 23 September 2013 Cabinet approved recommendations to reject ACP's initial proposal and for the URA to enter direct negotiations with ACP for the purchase of up to 417.89 hectares of the Gillman site and to seek in-principle agreement incorporating 10 matters as detailed in Cabinet's approval.

On 2 December 2013 Cabinet approved ACP's revised offer (dated 13 November 2013) and for the URA to grant an exclusive call option for ACP to acquire up to 407 hectares of the Gillman site within three options over a nine year period for up to \$122.1 million.

On 13 December 2013 the Premier and Minister for State Development, the former Chief Executive of the URA and ACP entered into the Option Deed.

On satisfying the deed conditions precedent, ACP has until 30 December 2014 to exercise its first option pursuant to the Option Deed. The first option involves the acquisition and development of approximately 150 hectares of the Gillman site.

The Appendix to this commentary provides a chronology of the key events of the transaction.

6 Detailed audit observations and recommendations and URA responses

6.1 Inadequate policy framework for unsolicited proposals

A key deficiency of the process was the absence of a dedicated policy framework for the assessment of unsolicited proposals, both at the State Government level and within the URA.

In the absence of a dedicated policy framework the URA assessed ACP's unsolicited proposal in accordance with its RPMP policy and Cabinet requirements (approved on 23 September 2013). The RPMP policy provides for off-market transactions, including an unsolicited proposal. However, the RPMP policy does not provide clear and comprehensive criteria to assess the benefits of unsolicited proposals and the justification for an off-market sale.

Further, the RPMP policy does not provide sufficient policy and procedural detail to adequately support the process for assessing unsolicited proposals. The policy does not consider key governance and probity arrangements over the assessment and approval processes, such as establishing governance and probity plans, and documenting confidentiality and communication protocols.

The absence of adequate policies and procedures increases the probity risk that proposals are not consistently and fairly assessed against an established, credible and transparent framework.

Recommendation and agency response

Audit recommended that URA management develop for Board endorsement a policy and procedural process framework for the consideration and assessment of unsolicited proposals and significant transactions.

The framework should set out processes to follow for asset sales in a form that can be directly reported on to demonstrate process compliance and allow evaluators to take into account all relevant information from those processes in making decisions.

The URA responded that given the newly released SA Guideline, the URA will not create a specific policy for the consideration and assessment of unsolicited proposals. The URA considers that its existing policy framework is sufficient for property transactions (including significant transactions) that are initiated by the URA. This policy framework will be reviewed to ensure the URA can respond effectively to any unsolicited bid that is processed in accordance with the new SA Guideline.

6.2 Inadequate attention to the Board's role and responsibilities

A review of documentary evidence revealed inadequacies in the timing of consultation and information that URA management provided to the Board regarding the Gillman site transaction. Audit considers this indicated inadequate attention to the Board's role and responsibilities for this transaction. Further commentary is provided under the following sections of this Report:

- 6.2.1 Insufficient information initially provided to the Board
- 6.2.2 Lack of timely and documented evidence of Board consultation
- 6.2.3 Board's untimely access to expert advice.

6.2.1 *Insufficient information initially provided to the Board*

On 13 November 2013 URA management emailed Decision Paper 1⁴ to the board members requesting the Board approve forwarding for the Minister's consideration a Cabinet submission to facilitate the off-market sale transaction. The Board considered the detail of the Gillman site transaction through four out-of-session decision papers. The number of decision papers reflected the insufficient information initially provided to the Board. Further, the recommendations the Board was asked to consider changed significantly in each paper.

The first paper subject to Board resolution was that of 20 November 2013 (Decision Paper 3)⁵ which included recommendations to:

- advise the Minister to reject the ACP proposal
- advise the Minister to offer the Gillman site to the market for sale in a transparent and open manner
- note that the Minister would advise Cabinet of the Board's recommendations to the Minister having regard to the key risks identified by the Board
- note that Cabinet had the ultimate authority to approve the ACP proposal if it determined to do so having regard to whole-of-government considerations.

Following the Board's discussion with the Minister and the Board's further consideration on 25 November 2013, the final paper of 28 November 2013 (Decision Paper 4)⁶ was prepared at the request of the Board. The Board requested that the paper provide options regarding the sale of the Gilman site for its consideration, so that it could advise the Minister on options to recommend to the Cabinet for consideration. Instead the paper limited the Board's recommendations to noting Cabinet's policy decision and addressing specific matters regarding the ACP proposal. This paper also acknowledged matters that the URA could not advise on as they were outside of the URA's regulated roles, responsibilities and expertise.

Audit considers that the changing nature and content of the papers demonstrated management's lack of clarity of the Board's role and responsibilities for the Gillman site transaction.

Recommendation and agency response

Audit recommended that a policy framework for unsolicited proposals and significant transactions include guidance on the role, responsibilities and decision-making powers of Cabinet, the responsible Minister, the Board and the Chief Executive of the URA commensurate with the nature, including the complexity and materiality of the unsolicited proposal or transaction.

⁴ Out-of-session decision paper titled 'Proposed Purchase of Renewal SA Land at Gillman' dated 13 November 2013.

⁵ Out-of-session decision paper titled 'Proposed Purchase of Renewal SA Land at Gillman' dated 20 November 2013.

⁶ Out-of-session decision paper titled 'Proposed Purchase of Renewal SA Land at Gillman for an Oil and Gas Industry Hub' dated 28 November 2013.

Further, Audit recommended that a governance plan be developed for unsolicited proposals that establishes a governance structure that clearly defines the role and responsibilities of all parties involved. It is important that the governance plan be endorsed and communicated to relevant parties at the commencement of an assessment process.

The URA acknowledged that the organisational structure of the URA, where the Board and Chief Executive both report separately to the Minister, can lead to circumstances where the division of responsibility is not clearly defined.

The URA will review the BM policy to provide greater clarity of roles between the Chief Executive and the Board to ensure that both parties effectively and efficiently carry out their respective functions to discharge their respective obligations. Specific consideration will also be given to providing greater clarity of the decision-making role that the Minister or Cabinet may adopt in relation to URA assets, and the subsequent role that the Board should undertake in those circumstances.

6.2.2 *Lack of timely and documented evidence of Board consultation*

Between 26 August 2013 and 28 October 2013, URA management had reviewed the initial proposal and provided advice to Cabinet, through the Minister, without consulting the Board. More specifically, the documentary evidence during this period suggests the Board was not provided with the opportunity to consider management's assessment of the initial proposal (including justification to waive a competitive process), associated risks, and endorsement of recommendations made to Cabinet through the Minister.

With regard to the Gillman site transaction Audit considers it was prudent that the Board be consulted and endorsement sought prior to submitting the 23 September 2013 draft Cabinet submission to the Minister.

The former Chief Executive indicated to Audit that:

- details of ACP's initial proposal were verbally communicated to the Board at the meetings of 26 August 2013 and 30 September 2013. The Board was also advised that it was considered unlikely that the initial proposal would proceed
- the Board was also updated on Cabinet's decision to reject the initial proposal and approval for the URA to enter into direct negotiations with ACP regarding the Gillman site
- there was no further discussion regarding the ACP proposal or questions asked by the Board at the board meetings prior to November 2013
- the minutes of board meeting proceedings provide accurate notes only of items that are discussed by the Board.

Untimely consultation increases the risk of the Board being prevented from carrying out its statutory functions and potentially gives rise to the risk of management undermining the governance responsibility and authority of the Board.

Recommendation and agency response

Audit recommended that, in line with the BM policy, URA management:

- consult with the Board on significant matters on a timely basis and prior to providing advice on these matters to the Minister, with the reporting requirements being incorporated in an approved governance plan
- improve the completeness of minutes of board meeting proceedings by documenting all items raised and discussed to provide an appropriate management trail of advice provided to the Board to support any subsequent discussions and decisions made by the Board.

The URA responded that the audit recommendations will be considered in reviewing the BM policy.

6.2.3 Board's untimely access to expert advice

The URA received a range of expert advice in assessing the ACP proposal. The Board's out-of-session decision papers and Cabinet submissions of 23 September 2013 and 2 December 2013 referred to expert advice. However, documentary evidence suggests that the Board did not directly receive all key expert advice prior to resolving to accept the recommendations in Decision Paper 4.⁷ Specifically, the 9 December 2013 board meeting minutes record the Board again requesting a copy of the written advice received from the Crown Solicitor's Office for the Gillman proposal. A copy of the Crown Solicitor's advice was emailed to the board members on 17 December 2013.

Governing bodies are entitled to rely on management's advice in the normal course of business. In the case of complex transactions Audit's view is that governing bodies should directly consider critical advice in making an informed decision.

Recommendation and agency response

Audit recommended that a policy framework for unsolicited proposals and significant transactions include a requirement that management directly provide to the Board all significant expert opinion and advice on a timely basis to allow for adequate consideration and analysis or to request additional information before a final decision is made.

The URA responded that the audit recommendation will be considered in reviewing the BM policy. The URA noted its role in the assessment of future unsolicited proposals has changed under the new SA Guideline. URA management will provide guidance to the Board to ensure that the URA's role in relation to future unsolicited proposals is understood and that the Board is given an opportunity to request specific advice on its role.

6.3 Inappropriate board practices for a significant transaction

The BM policy provides information on board proceedings including voting procedures. Specifically, a decision of the Board is valid despite it not being voted on at a meeting (subject to certain conditions).

⁷ Out-of-session decision paper titled 'Proposed Purchase of Renewal SA Land at Gillman for an Oil and Gas Industry Hub' dated 28 November 2013.

Decision Paper 1 emailed to board members on 13 November 2013 required board members to consider the content of the paper and respond to the recommendations (ie cast a vote) within two days. The minutes of the 28 October 2013 board meeting did not indicate that an out-of-session decision paper would be circulated for resolution.

Decision Paper 1 proposed a board recommendation to approve ‘forwarding for the Minister’s consideration, a Cabinet submission to facilitate the off-market sale to ACP for 407 hectares of Renewal SA-owned land at Gillman/Dry Creek for future industrial development’.

Through email, board members individually expressed a number of concerns with the contents of Decision Paper 1 and the timeframe provided for a decision to be made. Decision Paper 1 was later withdrawn.

In essence, URA management had requested board members to cast a vote on a significant transaction:

- prior to the evaluation panel signing off the evaluation report (signed on 15 November 2013)
- prior to receiving the probity adviser’s report (dated 27 November 2013)
- where board members had not had an opportunity to discuss the matter collectively as a Board
- prior to providing comprehensive information supporting the transaction and assessment process in order for the Board to make an informed decision. For example, copies of the ACP proposal, probity adviser’s report, evaluation panel’s report, legal advice, financial analysis and response to key risks identified.

In response to the board members concerns, a teleconference was convened on 14 November 2013 to discuss Decision Paper 1. On the morning of the teleconference all board members were emailed a copy of the ACP proposal (which included the unsolicited proposal dated 18 June 2013 and the initial proposal dated 29 August 2013) and background information on ACP. While the BM policy states that a teleconference between board members constitutes a proper meeting of the Board (subject to certain conditions), URA management advised Audit that this teleconference did not constitute a board meeting and not all board members participated. As such, discussions held during the teleconference were not minuted.

Subsequent to the teleconference, Decision Paper 2⁸ was emailed to board members which provided additional information, including response to key issues raised by the board members and the financial analysis of the ACP proposal. The recommendation provided in Decision Paper 2 was for the Board to note the nature of the ACP proposal to government and that the Cabinet submission being drafted by the URA would note the key risks and issues identified by the Board.

Decision Paper 2 was withdrawn and replaced with Decision Paper 3 (dated 20 November 2013) which requested the Board approve a recommendation to the Minister that the State Government reject the ACP proposal and offer the Gillman site to the market for sale in a transparent and open manner. On 21 November 2013, a majority of board members, via email, approved this recommendation. The outcomes of Decision Papers 1 to 3 were recorded in the minutes of the 25 November 2013 board meeting.

⁸ Out-of-session decision paper titled ‘Proposed Purchase of Renewal SA Land at Gillman’ dated 14 November 2013.

In the absence of a formal board meeting, there is a lack of documented evidence to support board discussion that demonstrates that a matter has been well considered by all board members and provides an appropriate and transparent management trail of the Board's decision-making process.

Given the nature of the Gillman site transaction, it is Audit's view that any resolutions made should have been based on discussions held at a formal meeting of the Board that are accurately reflected in the minutes (which are tabled and accepted at the next board meeting). Further, Audit discourages the use of out-of-session decision papers as a mechanism to support board resolutions on significant transactions, such as the Gillman site transaction.

Recommendation and agency response

Audit recommended that the Board review its policy to provide further guidance on the use of out-of-session decision papers and convening special meetings of the Board to discuss and make resolutions on significant transactions. In the event of holding teleconferences, the Board should agree whether it constitutes a proper meeting and, if so, record minutes as relevant.

The URA responded that the audit recommendation will be considered in reviewing the BM policy. The use of special meetings for complex transactions will be particularly considered in cases where the out-of-session paper has been withdrawn and the Board has sought clarification on the matters raised.

6.4 Inadequate disclosure of a conflict of interest

The BM policy requires that board members must disclose in writing to the Board full and accurate details of a potential or actual conflict of interest. The Board determines how the potential or actual conflict of interest should be handled in each instance.

A review of documentation indicated that a board member verbally declared a conflict of interest regarding the ACP proposal to the Board's Presiding Member. The Presiding Member informed other board members participating in the teleconference held on 14 November 2013, of the conflict of interest. It was not evident that the disclosure was made to the Board in writing with full and accurate details of the conflict of interest. Further, it was not evident how the Board handled the conflict of interest.

Documentation indicates that on 13 November 2013 the board member received Decision Paper 1. This paper outlines the details of the ACP proposal and outcome of the URA's assessment with the recommendation to provide the Minister a Cabinet submission to facilitate the off-market sale of the Gillman site. The board member provided management a response to Decision Paper 1 on the same day.

On 14 November 2013, prior to the teleconference, the board member received a copy of ACP's unsolicited and initial proposals. The board member did not participate in the teleconference discussion and did not receive any further papers regarding the Gillman site transaction after 14 November 2013. The member resigned from the Board on 2 December 2013.

The former Chief Executive advised that the nature of the conflict of interest was not disclosed and therefore unknown to management. Given this, it is unclear whether the declaration of the conflict should have occurred earlier given that the former Chief Executive had provided a verbal report to the Board on the Gillman site transaction on three separate occasions prior to 13 November 2013.

Recommendation and agency response

Audit recommended that, in accordance with the BM policy, individual board members disclose in writing any potential or actual conflict of interest and provide the disclosure to the Board for its consideration at the earliest reasonable time. The Board's consideration of and action to address the conflict of interest should be fully and accurately documented in the board minutes. Such documentation is critical as evidence of its timely and proper management to ensure the integrity and conduct of the Board and the transaction process is not compromised.

The URA responded that the BM policy will be amended to ensure that a review of potential or actual conflicts of interest are identified and addressed at the start of each board meeting.

6.5 Inadequate documentation to support rationale and approval to use older valuations

The evaluation criteria outlined in the evaluation plan provides for the minimum acceptable price (per square metre) for the land. Prior to approving the evaluation plan (and thus the minimum acceptable price), there is no documentary evidence that the former Chief Executive of the URA had approved the use of the older valuations based on an assessment of the criteria outlined in the RPMP policy. Such documentary evidence is critical given that the RPMP policy has never been applied to a landholding of the size of the Gillman site and to support the conclusion that the ACP proposal represents value for money, given the lack of market testing.

In the absence of documentary evidence to support an assessment against the policy criteria, Audit sought clarification from the former Chief Executive on using the older independent valuations to determine whether the ACP proposal was value for money.

The former Chief Executive advised that the older independent valuations were appropriate as they provide a detailed financial analysis and there had been no movement of value since 2010, the date of the valuations. Further, the valuation, for financial reporting purposes as at 30 June 2013, provides a range of values for the allotments comprising the Gillman site which is consistent with the value of the former DRR area. While this valuation was more recent, URA management considered this valuation inferior to the older valuations which were based on significant financial modelling.

Subsequent to Audit's enquiry, management sought and received written confirmation from the independent valuer that any valuation conducted subsequent to 2010 would not have resulted in an increased valuation amount. Audit's view is that such written confirmation should have been sought and considered at the time of assessing the use of the older valuations in accordance with the RPMP policy.

Recommendation and agency response

Audit recommended that URA management ensure compliance with the RPMP policy for all property sales. Written approvals, supported by documented rationale, should be obtained at the appropriate stages of the assessment process.

The URA responded that policies, including the RPMP policy, will be reviewed to ensure there is guidance on the minimum level of documentation that will be required to clearly demonstrate that all necessary approvals have been obtained at the appropriate time.

6.6 Lack of a current valuation

As previously mentioned, a significant risk highlighted to Cabinet was that the ACP proposal provided no opportunity for market testing demand or pricing of land. This increases the perception risk of a lack of probity and the Government not receiving the appropriate value for the land.

Given the significance of the Gillman site transaction and the identified risks, Audit considers it is fundamental that the minimum accepted price be supported by a current and dedicated market valuation report for the property being sold. This is consistent with the URA's past practice for off-market sale transactions.

While the RPMP policy allows an older valuation to be adopted at the discretion of the Chief Executive based on considering the policy criteria, Audit considers it inappropriate to adopt an older valuation for the sale of significant parcels of land, including the Gillman site transaction, and in considering unsolicited proposals.

The absence of a current market valuation increases the risk that the minimum acceptable price does not represent the current market value of the land, and the identified risks of perception and probity are not minimised.

Recommendation and agency response

Audit recommended that for significant transactions, such as the Gillman site transaction, the URA obtain a current independent valuation representing the property being sold.

The URA accepts the premise of the audit recommendation that for unsolicited proposals and significant transactions it is preferable to have a current valuation report covering the entirety of land to be disposed. Despite this, the URA considers that there might be circumstances where the use of existing valuation reports could be warranted. The URA reiterated that the valuations of the former DRR were appropriate in assessing the ACP proposal as the reports contained a detailed analysis and there had been little to no movement in the market since the 2010 valuation.

6.7 Risk management

Audit noted the following limitations in the review of the documented risk assessment:

- It did not cover each stage of the consideration and assessment process of the unsolicited proposal. For example, the following risks were not included: conditions precedent not met; the land not rezoned to industrial use; not market testing demand or pricing for the land; non-availability of future affordable employment land; the competency and capacity of the proponent to deliver the proposal; perception risk of the lack of transparency and preferential treatment.
- It had not been updated to reflect the outcome of actions taken. It is unclear whether the particular risk has been adequately addressed by the proposed action. For example, whether certain conditions had been negotiated and included in the Option Deed to address specific identified risks.

- The receipt and rejection of other unsolicited offers was assessed as a high probity risk. It is unclear how this specific risk has been addressed. Audit noted that a probity plan was not developed. Given the high level of probity risk associated with the process, a probity plan would be an essential mechanism to manage these risks.
- The relationship between the URA and the Property Council of Australia and its association with the Chief Executive of ACP was not identified for risk assessment. The board paper dated 17 December 2013 indicates that the Property Council has worked closely with the URA regarding the Gillman site. Further, at the time of the Gillman site transaction the Chief Executive of ACP was a member of the Property Council's Industrial Committee.

Recommendation and agency response

Audit recommended that URA management ensures the risk assessment covers all stages of the process and is developed at the time of undertaking a preliminary assessment of the unsolicited proposal. The documented risk management plan should be updated as new risks are identified during the process and risk treatments implemented. The effectiveness of the risk treatments should be regularly reviewed.

The URA responded that in light of the new SA Guideline it is unlikely that the URA will be the lead agency responsible for the assessment of future unsolicited proposals. In relation to risk assessments more generally, the URA has initiated a review of its risk management policy and risk assessments for individual programs.

6.8 Information provided to Cabinet

6.8.1 Incomplete disclosure of Board consultation process

The Cabinet submission dated 2 December 2013 refers to the Board's recommendation (made out-of-session on 29 November 2013) to advise the Government that the ACP offer represented a good value offer, based on independent valuation advice and comparable market evidence.

The Department of Treasury and Finance's costing comment (dated 27 November 2013) attached to the Cabinet submission indicates the URA is providing Cabinet a submission with two options. One option was consistent with the Board's resolution to reject the ACP offer and instead offer the Gillman site to the market for sale in a transparent and open manner. This reflects the Board's resolution made on 21 November 2013.

Following this resolution, the Minister attended the 25 November 2013 board meeting and requested that the Board further consider the matter and provide advice. In response to the Minister's request, on 29 November 2013 the Board approved that advice be provided to the Minister including that the ACP offer represented a good value offer based on independent valuation advice and comparable market evidence.

Audit's review of the board meeting minutes revealed that the status of the resolution made on 21 November 2013 was unclear. The former Chief Executive advised that the Board resolution made on 21 November 2013 was superseded by the Board resolution made on 29 November 2013.

However on 21 August 2014 the Presiding Member, Ms Pike, and board member, Ms Fulcher, advised Audit that the resolution made on 21 November 2013 stood. Specifically, the Board resolved to recommend to the Minister that the ACP proposal be rejected and that the Gillman site be offered to the market for sale in a transparent and open manner. The Presiding Member indicated that this advice was due to the key risks identified by the Board regarding probity and perception risks. The Board also resolved to note that the Minister would advise Cabinet of the Board's advice to the Minister. It was the Board's expectation that Cabinet would be made aware that the Board had resolved to advise the Minister to reject ACP's offer and offer the land to the market for sale in regard to the key risks identified by the Board. This advice was not included in the submission of 2 December 2013 presented to Cabinet.

Consistent with Department of the Premier and Cabinet Circular PC019 'Preparing Cabinet Submissions' the submissions are to provide a summary of the consultation process including any concerns raised or objections. The Board's consultation process was not accurately disclosed in the Cabinet submission to reflect the objections of the Board and all the advice provided to the Minister to then be considered by Cabinet, the approving authority.

Recommendation and agency response

Audit recommended that in drafting Cabinet submissions, URA management ensure full disclosure of the outcome of the Board consultation process. For significant advice provided to the Minister, the Presiding Member of the Board together with the Chief Executive should sign the minute to the Minister outlining the Board's advice.

The URA acknowledges that its organisational structure can lead to circumstances where the division of responsibility is not clearly defined. The URA will review the BM policy to provide greater clarity of roles between the Chief Executive and the Board, including consideration of the co-signing of minutes to the Minister.

6.8.2 *Incomplete information on risks*

The URA received written advice regarding the ACP proposal in September and November 2013. On both occasions the advice raised potential issues of a perceived lack of transparency and a perceived implication of preferential treatment and associated risks.

While the advice regarding the potential issues and risks was included in the Cabinet submission approved on 23 September 2013, it was not reflected in the Cabinet submission of 2 December 2013 albeit the matter remained relevant and important to the overall decision making process.

As previously mentioned, the receipt and rejection of other unsolicited offers was assessed as a high probity risk. However, it is unclear how this specific risk has been addressed.

Recommendation and agency response

Audit recommended that URA management ensure Cabinet is fully informed of relevant risks (including legal risks) and the action taken to manage these risks.

The URA noted the audit recommendation.

6.8.3 Misleading disclosures

The Cabinet submission of 2 December 2013 states that the revised ACP proposal had been considered by the Board which resolved to advise the Government that the ACP offer represented a good value offer, based on independent valuation advice and comparable market evidence.

Audit considers that the following specific disclosures made to Cabinet may be misleading in the absence of contextual information.

6.8.3.1 Comparable market evidence

The Board's Decision Paper 4 indicated there was no direct comparable sales evidence for an equivalent sized parcel to the Gillman site. The sales evidence provided relates to land parcels between 50-87 hectares sold in 2007 and 2010.

The Cabinet submission did not provide contextual information regarding comparable sales evidence. In the absence of this information, Audit considers that the wording in the Cabinet submission may be misleading in that a reader may reasonably conclude that the ACP proposal had been compared to sales evidence of land size equivalent to the Gillman site when in fact it had not.

6.8.3.2 Revised ACP proposal

The Cabinet submission refers to the revised ACP proposal as that documented in the 13 November 2013 draft of the Option Deed which was attached to the Cabinet submission.

Documentary evidence indicates that the Board only received copies of ACP's unsolicited and initial proposals dated 18 June 2013 and 29 August 2013 respectively, which is prior to URA management's assessment and negotiation process. Audit considers that the wording in the Cabinet submission is misleading in that a reader may reasonably conclude that the Board had considered the revised ACP proposal as provided to Cabinet.

URA management indicated that the Board considered relevant elements of the revised ACP proposal, including the price ACP was prepared to pay for the land. It was not intended to imply that the Board had reviewed the revised ACP proposal or independent valuation information in its entirety.

Recommendation and agency response

Audit recommended that URA management ensure documents presented to decision makers contain sufficient information to provide an accurate and complete representation of advice provided.

The URA responded that its policy framework on the preparation of board papers and Cabinet submissions requires these documents to be independently reviewed by the relevant Executive Director. This provision was adhered to for the documents prepared for the Gillman site transaction. The URA will review the mechanism for reviewing key decision-making documents.

6.9 Probity adviser

On 29 October 2013 a probity adviser was engaged to provide probity advice in dealing with the Gillman site transaction. The consultancy agreement outlined the scope of services required by the probity adviser, including to review and confirm compliance with any applicable URA and/or government policies. The probity adviser's report does not identify the applicable policies nor provide confirmation as to whether the process was compliant with these policies. The consultant has not reported on the full scope of services as outlined in the agreed terms and conditions of engagement, increasing the risk of the URA not being appraised of relevant matters of a probity nature to be addressed in an appropriate and timely manner.

Further, given the high level of probity risk associated with the transaction and process, it is Audit's view that a probity adviser should be engaged early in the process, ie prior to commencing the consultation and assessment process.

Recommendation and agency response

Audit recommended that URA management ensure the probity adviser's report and actual services provided covers the full scope of contracted services.

Further, Audit recommended that a policy framework for unsolicited proposals and significant transactions include guidelines on the use and timely engagement of expert advice, including probity advisers.

The URA noted the audit recommendation and that the URA is unlikely to be responsible for the assessment of future unsolicited proposals under the new SA Guideline.

7 Concluding comment

A private sector entity approached the SA Government with a proposal to purchase and develop a significant parcel of State owned land, the Gillman site. The ACP unsolicited proposal has in effect resulted in the disposal of a significant State asset.

The URA, the relevant statutory authority and owner of the Gillman site, assessed the unsolicited proposal(s) and provided advice to enable the Premier and the Minister to make recommendations to Cabinet, the approving authority.

A key deficiency of the Gillman site transaction process was the absence of a dedicated policy framework for the consideration and assessment of unsolicited proposals, both at the State Government level and within the URA.

In the absence of a State Government framework, the URA assessed the unsolicited proposal in accordance with its existing policy on off-market transactions and Cabinet requirements. The URA had implemented some good aspects of process and control over the assessment process. There were, however, in my opinion a number of specific shortcomings in the process. These included the lack of a current valuation of the property being sold to support the minimum acceptable price and the inadequate attention to the Board's role and responsibilities regarding the Gillman site transaction.

Findings arising from the audit review were raised formally with the URA with responses received from the Presiding Member of the Board and the Chief Executive of the URA for addressing the matters raised.

Appendix

Gillman site transaction: chronology of key events

18 Jun 13	The Premier receives ACP's unsolicited proposal
5 Jul 13	The URA responds to the Minister on ACP's unsolicited proposal
6-26 Aug 13	The URA meets with ACP representatives to discuss the unsolicited proposal
26 Aug 13	URA Board is advised of the unsolicited proposal. This is to be subject to Cabinet consideration
29 Aug 13	The Premier receives ACP's initial proposal
23 Sep 13	Cabinet considers ACP's initial proposal and approves to reject ACP's initial proposal and for the URA to enter direct negotiations with ACP and seek in-principle agreement incorporating 10 matters
2 and 11 Oct 13	URA management discusses Cabinet's considerations with ACP
11 Oct 13	The Premier receives ACP's revised proposal
28 Oct 13	URA Board is advised management is working with ACP on the proposal and will go to Cabinet shortly
29 Oct 13	Probity adviser engaged
13 Nov 13	URA Board is emailed an out-of-session decision paper titled 'Proposed Purchase of Renewal SA Land at Gillman' (Decision Paper 1 – withdrawn)
14 Nov 13	URA Board is emailed an out-of-session decision paper titled 'Proposed Purchase of Renewal SA Land at Gillman' (Decision Paper 2 – withdrawn)
	URA Board is emailed ACP's unsolicited proposal (dated 18 June 2013) and initial proposal (dated 29 August 2013)
	Teleconference held by some board members and URA management to discuss ACP's unsolicited proposal
15 Nov 13	Recommendation report is signed by the Evaluation Panel and approved by the Acting Chief Executive of the URA
20 Nov 13	URA Board is emailed an out-of-session decision paper titled 'Proposed Purchase of Renewal SA Land at Gillman' (Decision Paper 3)
21 Nov 13	Based on Decision Paper 3, the URA Board resolves to recommend to the Minister that the SA Government reject the ACP proposal and offer the Gillman site to the market for sale in a transparent and open manner
25 Nov 13	URA board meeting held and attended by the Minister. The Minister requests that the Board further consider the matter and provide advice to enable Cabinet to determine its response to the ACP offer
27 Nov 13	Probity adviser report

28 Nov 13	URA Board is emailed an out-of-session decision paper titled 'Proposed Purchase of Renewal SA Land at Gillman for an Oil and Gas Industry Hub' (Decision Paper 4)
29 Nov 13	Based on Decision Paper 4, the URA Board resolves to recommend to advise the Minister on three specific matters
2 Dec 13	<p>Cabinet approves:</p> <ul style="list-style-type: none"> • ACP's offer as provided in the revised draft deed (dated 13 November 2013), project objectives and concept plan • an exclusive call option for ACP to acquire up to 407 hectares of future industrial land within three options over a nine year period <p>Board members Mr Terlet and Mr Maras resign</p>
9 Dec 13	URA board meeting held and board members request information on Cabinet's deliberations, copy of written advice received from the Crown Solicitor's Office regarding the Gillman proposal, any potential draft media releases and communication strategy
13 Dec 13	The Premier and Minister for State Development, the former Chief Executive of the URA and ACP enter into the Lipson Industrial Estate Option Deed
17 Dec 13	URA Board is emailed an information paper on the form of the agreement, role clarification and engagement strategy, and copies of Crown Law advice
18 Dec 13	The Premier announces the Gillman site transaction