

SOUTH AUSTRALIA

**AUDITOR-GENERAL'S
FINAL REPORT**

ON THE

**PORT ADELAIDE
WATERFRONT REDEVELOPMENT:
MISDIRECTION OF BID DOCUMENTS**

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28 August 2002

The Hon R R Roberts, MLC
President
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The Hon I P Lewis, MP
Speaker
House of Assembly
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Gentlemen,

**Auditor-General's Final Report on the Port Adelaide Waterfront
Redevelopment: Misdirection of Bid Documents**

Pursuant to *Public Finance and Audit Act 1987*, I herewith provide to each of you a copy of my 'Auditor-General's Final Report on the Port Adelaide Waterfront Redevelopment: Misdirection of Bid Documents'.

Yours sincerely,

K I MacPherson
AUDITOR-GENERAL

TABLE OF CONTENTS

	Page
1. Why the Audit Examination was Conducted	1
1.1 Background	1
1.2 Request for Examination to be Undertaken	1
1.3 Interim Report	2
1.4 Final Report	2
2. Scope of The Examination	2
3. The Audit Mandate	3
4. Audit Procedures and Standard of Proof	3
4.1 Conduct of Examination Undertaken	3
4.2 Procedural Fairness	3
4.3 Standard of Proof	3
5. Factual Background	4
6. Findings of the Audit	4
6.1 Recommendation Made on 24 June 2002	4
6.2 Tuesday 25 June 2002	5
6.3 Monday 1 July 2002	6
6.4 Tuesday 2 July 2002	7
6.5 Wednesday 3 July 2002	7
7. Other Matters	8
7.1 Adequacy of the Control Arrangements Regarding Commercially Sensitive Materials	8
7.2 Legal Issues	9
8. Conclusions	14
8.1 Baulderstone Hornibrook Acted in a Proper Manner	14
8.2 No Improper Benefit to any Party	14
8.3 No Compromise of Selection Process	15
8.4 No Liability to the Crown	15
8.5 Need for Review of Planning SA's Procedures	15
8.6 Other Agencies of Government	15

AUDITOR-GENERAL'S FINAL REPORT ON THE PORT ADELAIDE WATERFRONT REDEVELOPMENT PROJECT: MISDIRECTION OF BID DOCUMENTS

1. WHY THE AUDIT EXAMINATION WAS CONDUCTED

1.1 Background

On or about 4 July 2002, an incident was brought to the attention of the Treasurer relating to the selection process for the proposed Port Adelaide Waterfront Redevelopment Project (Redevelopment Project) managed by the Land Management Corporation (LMC).

It appeared that a bidder for the Redevelopment Project was delivered confidential documents that they should not have received. These documents were subsequently returned to the LMC.

A decision on the preferred bidder for the Redevelopment Project was made on 24 June 2002 by the LMC Board. The recommendation for the preferred bidder was due to be noted by Cabinet on 8 July 2002.

The incident of the delivery of confidential documents to one of the bidders occurred after the LMC Board made its decision on the preferred bidder for the Redevelopment Project but before this decision was notified to the Cabinet.

1.2 Request for Examination to be Undertaken

By letter dated 4 July 2002, the Honourable K O Foley MP (Treasurer and Minister for Industry, Investment and Trade) requested the Auditor-General to:

... give consideration to undertaking an inquiry regarding this matter [an incident regarding the misdirection of bid documents] as part of your audit responsibilities in respect of the Land Management Corporation under the Public Finance and Audit Act 1987.

Accordingly, in response to the Treasurer's request for me to undertake, as part of the audit, an inquiry into the matter regarding an incident in early July when it appears that a bidder for the Redevelopment Project was delivered confidential documents that it should not have received, I carried out an audit examination as part of my audit responsibilities in respect of the LMC and the Department of Transport and Urban Planning under section 31 of the *Public Finance and Audit Act 1987*.

1.3 Interim Report

On 19 July 2002, I presented an Interim Report to the Parliament wherein I advised:

Detailed evidence, under oath, from persons who had the control and custody of the documents at all relevant times, ie 1 July 2002 to 4 July 2002 has established that no information that could undermine the integrity of the process has come to the knowledge of a person not authorised to receive it.

There is no evidence that the process has been compromised nor is there any basis on all of the available evidence to support any inference to this effect.

In my opinion, the delivery, in error, of the bid documents to the office of one of the proponents and the immediate return of those documents to a proper authority did not compromise the tender process.

1.4 Final Report

This Report sets out the procedure adopted by me and a summary of the evidence obtained in the course of the audit examination that supports the opinion outlined in my Interim Report.

2. SCOPE OF THE EXAMINATION

The scope of the audit examination undertaken is limited to:

- (a) ascertaining all relevant facts giving rise to the delivery of confidential documents to Boulderstone Hornibrook;
- (b) the subsequent return of the documents to the LMC;
- (c) making a determination as to whether the integrity of the selection process in respect of the Redevelopment Project has been compromised as a result of this incident;
- (d) forming an opinion as to whether the controls exercised by the LMC and Planning SA, an agency of the Department of Transport and Urban Planning, in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities are sufficient to provide reasonable assurance that the financial transactions of the LMC and Planning SA have been conducted properly and in accordance with law in connection with the confidentiality of the tender process concerning the Redevelopment Project.

3. THE AUDIT MANDATE

The LMC and Planning SA, which is a division of the Department of Transport and Urban Planning, being statutory authorities fall within the definition of a 'public authority'. Accordingly, the accounts of LMC and Planning SA are required to be audited by the Auditor-General.

Section 36 of the *Public Finance and Audit Act 1987* sets out the requirements on the Auditor-General for the preparation and submission of an annual report. In particular, section 36(1)(a)(iii) provides that the Auditor-General must prepare an annual report that states whether, in the Auditor-General's opinion:

*The **controls** exercised by the treasurer and **public authorities** in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities is sufficient to provide reasonable assurance that the financial transactions of the Treasurer and **public authorities** have been conducted properly and in accordance with law.*

4. AUDIT PROCEDURES AND STANDARD OF PROOF

4.1 Conduct of Examination Undertaken

Persons involved with the incident were initially ascertained on the basis of statements given by relevant persons at Baulderstone Hornibrook, LMC and Planning SA. Subsequent interviews conducted by the Crown Solicitor's Office assisted in ascertaining all relevant persons from the DX courier company involved with the delivery of the confidential documents in question.

Summonses pursuant to section 34 of the *Public Finance and Audit Act 1987* were prepared and served upon persons who had the control and custody of the documents at all relevant times, ie 1 July 2002 to 3 July 2002. Detailed oral evidence, was heard on oath from 13 different witnesses privy to the incident.

4.2 Procedural Fairness

Due regard to natural justice and procedural fairness has been given to this audit examination. The principles of procedural fairness require people whose interests will or may be adversely affected by a decision to be given the opportunity to be heard.

4.3 Standard of Proof

In this audit examination, I have applied the standard of proof on the balance of probabilities in dealing with issues and drawing conclusions.¹

¹ See Dixon J, *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362.

5. FACTUAL BACKGROUND

The LMC is a statutory authority established pursuant to the Public Corporations (Land Management Corporation) Regulations 1997. The LMC controls 51 hectares of waterfront land in Port Adelaide owned by the Government and is responsible for managing the Redevelopment Project involving the redevelopment of this waterfront land to revitalise Port Adelaide to being a major hub of activity.

In June 2001, the LMC called for registrations of interest from developers and consortia in the Redevelopment Project. From this registrations of interest process, two preferred proponents were to be selected to prepare independent development proposals for the Redevelopment Project.

In October 2001, the LMC announced the selection of the two preferred proponents being:

- (a) Newport Quays consortium comprising Multiplex, Urban Construct and C+Bus among others;
- (b) The Portlands Partnership comprising Boulderstone Hornibrook and Urban Pacific among others.

Development proposals were subsequently submitted by both proponents and assessed by a recommending committee constituted by LMC (the 'Recommending Committee').

On 24 June 2002, the LMC Board, on the recommendation by the Recommending Committee, made its decision on the preferred proponent for the Redevelopment Project, being the Newport Quays consortium.

As part of normal practice and procedure, the LMC was to advise Cabinet of its decision. However, prior to LMC informing Cabinet of its decision, an incident arose involving the delivery and receipt of confidential documents relating to the Redevelopment Project to a member of one of the proponents, namely Boulderstone Hornibrook. It appeared that the confidential documents were documents originally issued to and held by an officer of Planning SA during the selection process.

6. FINDINGS OF THE AUDIT

On the basis of all of the evidence, I report as follows:

6.1 Recommendation Made on 24 June 2002

The recommendation of the preferred proponent for the Redevelopment Project was made by the Recommending Committee on Monday 24 June 2002. This recommendation was made to the LMC Board and subsequently endorsed at a Board meeting held on the same day.

At the end of the meeting held by the Recommending Committee but before the LMC Board meeting which was to occur immediately afterwards, Neil Savery, Executive Director of Planning SA and a member of the Recommending Committee, who was leaving the premises immediately before the commencement of the LMC Board meeting indicated to Robert (Bob) Kennedy, Project Director LMC, his intention to return documents in his custody relating to the Redevelopment Project to the LMC as a recommendation had now been made.

All other copies of the Redevelopment Project documents held by the other members of the Recommending Committee were subsequently returned to Bob Kennedy at the conclusion of the LMC Board Meeting.

6.2 Tuesday 25 June 2002

On the following day, Tuesday 25 June 2002, the Executive Director of Planning instructed his personal assistant to return all documents relating to the Redevelopment Project back to Bob Kennedy of the LMC. The relevant documents comprised:

- (a) a green folder containing:
 - an assessment of the two development proposals
 - copy of the Registration of Interest document
 - a draft recommendation of the Recommending Committee;

- (b) a blue folder containing:
 - a chronology of the process
 - responses from government agencies and Local Government
 - Legal Structure Briefing Paper prepared by Thomson Playford;

- (c) The Portlands Partnership Submission comprising:
 - steel metal cover
 - Folio 1
 - Folio 2
 - Folio 3 approach A
 - Folio 3 approach B
 - Folio 3 approach C
 - Folio 4,

with a number of handwritten post-it notes attached to the folios;

- (d) The Newport Quays Consortium Submission comprising:
 - Executive Summary
 - Proposal Document
 - Financial Proposal
 - Further Technical Information Document
 - 4 copies of Port Life Brochure
 - The Port video cassette and cover,

with a number of handwritten post-it notes attached to the documents;

- (e) The LMC Information Memorandum for Registration of Interest with attached handwritten post-it notes;
- (f) a red folder titled 'Newport Quays' for containing responses from the consortium to questions asked by the LMC;
- (g) red folder titled 'Portlands Partnership' containing responses from the partnership to questions asked by the LMC;
- (h) draft notes assessing the urban design aspects of each proposal;
- (i) an agenda for the Recommending Committee meeting of 27th May 2002.

No specific instructions as to method of delivery, urgency or confidentiality were given by the Executive Director of Planning except to the extent that he described the documents to his personal assistant as being 'extremely important'.

The documents were placed outside the Executive Director of Planning's office on Tuesday 25 June 2002. The delivery of the documents was not attended to immediately by his personal assistant.

6.3 Monday 1 July 2002

It was not until Monday 1 July 2002 that the documents were attended to for delivery to the LMC.

The documents were placed into a box and taped up by an office assistant from an office agency temporarily assisting the personal assistant of the Executive Director of Planning and brought down to the Planning SA mailroom. As no specific instructions had been given as to delivery method nor was it said that the documents were confidential, she did not object to the suggestion that the box of documents be delivered by DX. Both Planning SA and the LMC are members of the DX.

The box of documents was collected from Planning SA that afternoon by a DX courier and taken back to the DX depot at Weymouth Street. As part of regular routine and practice, items to be delivered by courier drivers rather than foot couriers are transported back to the DX depot at Mile End for sorting. The box of documents broke as the box was taken from a trolley to be placed into a van and transported to the depot at Mile End. The DX employees handling the box at the time it broke, placed all the documents held within the box into an Australia Post tub. The information on the label of the box included the DX address of the LMC. The label with the addressee and address details was taken from the broken box and placed on the documents in the tub. The sticky tape by which the label had been attached to the now broken box still had some residual adhesive effect. One part of the tape was pressed on to the documents in the tub and another part on to the side of the tub. The tub containing the documents was subsequently taken to the DX depot at Mile End for sorting.

Some time after arrival at the Mile End depot the tub of documents was sighted by a DX warehouse supervisor and at this time the label with the address details was not on or in the tub of documents and therefore the tub was placed into a 'queries freight section' to be attended to at a later time as no address for delivery could be immediately identified. It is unknown when and how the label came off the tub.

6.4 Tuesday 2 July 2002

On the morning of Tuesday 2 July 2002, a battered large size envelope enclosing a blue folder and a green folder was delivered by DX to the offices of the LMC. This envelope was addressed to Bob Kennedy and pre-marked 'Private and Confidential'.

The blue and green folders were the same two folders that were among the documents in the box collected by DX from Planning SA. The folders contained confidential information in respect of the Redevelopment Project including an assessment of the two development proposals, correspondence and financial analysis since 21 May 2002, responses from government agencies and Local Government, and a draft recommendation of the Recommending Committee.

These two folders were originally in the custody of the Executive Director of Planning and amongst the other documents in the box that was delivered out from Planning SA and placed into the Australia Post tub by the DX employees when the box broke. The documents enclosed within the folders were the documents containing information from which the decision made on the preferred proponent could be extracted or deduced.

While it is uncertain when and how these two folders were separated from the other documents and placed into the separate envelope that was delivered to the LMC at its DX address, the blue and green folders themselves, the identity of the addressee and the correct DX address of the LMC were all in the tub in the DX Waymouth Street depot.

On that same day, the DX warehouse supervisor at Mile End checked the tub of documents that he placed into the queries freight section to ascertain an address for delivery. At that time, this was to no avail. It appears that the label with the DX address and the addressee written on it had by this time been separated from the tub of documents.

6.5 Wednesday 3 July 2002

On the morning of Wednesday 3 July 2002, upon another attempt to ascertain a delivery address, the DX warehouse supervisor retrieved the address of the Portlands Partnership from the back of a submission document, which was among the documents in the tub. He directed a courier to deliver the tub of documents to this address, which was the actual offices of Boulderstone Hornibrook, a member of the Portlands Partnership consortium.

The tub of Documents was then delivered that afternoon to the offices of Baulderstone Hornibrook at approximately 4.00 p.m. Receipt of delivery was firstly taken by Fay Prideaux, Personal Assistant to Robert Boorman. Baulderstone Hornibrook senior executives Boorman, Director for Business Southern Region and Chairman of the Portlands Partnership, and Gary Blanks, Development Director for the Portlands Partnership, were both on leave at the time and were not in Adelaide.

Not knowing the source of delivery or the reason for the delivery of the documents, Prideaux proceeded to collate the documents held within the tub. The Portlands Partnership submission documents including a metal folder were on top of the pile. Prideaux was alerted to the fact that the documents were not the property of Baulderstone Hornibrook and should not have been delivered to them when she noticed a folder with the name 'Newport Quays' on the front. It was then that she immediately tried to notify Renato Calandro, Marketing Executive of Baulderstone Hornibrook, of the delivery. Suzanne Muxlow, Executive Secretary to Blanks, located Calandro for Prideaux. Muxlow did not at any stage, look through the documents in the tub.

Calandro subsequently took the tub of documents into his office and briefly inspected the contents in the presence of both Prideaux and Muxlow. He ascertained that the documents were not the property of Baulderstone Hornibrook from briefly looking at an A4 bound document containing the name 'Newport Quays'. At this stage, Calandro immediately placed the tub of documents into a securely locked due diligence room designated for the Redevelopment Project and proceeded to contact Portlands Partnership key personnel. However, he could not reach them personally.

Calandro then contacted Bob Kennedy of the LMC and advised of the misdelivery of the documents. It was arranged for the documents to be delivered back to the LMC. Calandro attended to this personally and the tub of documents was delivered to the LMC at approximately 5.35 p.m. that same day, receipt of which was taken by Carolyn Brown and Bob Kennedy. Bob Kennedy identified the documents as being those originally issued to the Executive Director of Planning SA.

On arrival back to his office, Calandro again proceeded to contact the Portlands Partnership key personnel regarding the incident. He did not convey to them the contents of any of the documents. Calandro did not deduce any information from his brief inspection of the documents other than that they were not the property of Baulderstone Hornibrook. At this stage, the outcome as to the preferred proponent was still unknown to any of the two proponents for the Redevelopment Project.

7. OTHER MATTERS

7.1 Adequacy of the Control Arrangements Regarding Commercially Sensitive Materials

Questions in relation to the adequacy of control and security procedures regarding commercially sensitive materials in the office of Planning SA arose during the course of the audit examination in light of events which occurred at the office of Planning SA that were contributory to the incident involving the misdelivery of confidential documents to one of the bidders for the Redevelopment Project.

7.2 Legal Issues

(a) Legal Responsibilities of the Government

(1) *Responsibilities in Respect of Tender Process*

The decision of the Federal Court in the case *Hughes Aircraft Systems International v Airservices Australia* (1997) 146 ALR 1 highlighted the need for government agencies to have practices which ensure that the tender process is properly structured and managed to provide procedural fairness for tenderers.² In my view it is likely that the tenderers had at least a legitimate expectation that such procedural fairness would be provided.

(2) *LMC's Obligations*

By the Information Memorandum for Registration of Interest dated June 2001 (Information Memorandum) the LMC invited proponents to take part in the process of selection of tenderers who would then prepare detailed proposals.

Section 10, paragraph c of the Information Memorandum expressly states that 'Proponents' proposals will be kept confidential except as required by Parliament, Ministers of the Crown or laws such as the Freedom of Information Act.

By this means, the LMC undertook the obligation to conduct the tender process for the Redevelopment Project fairly, which included but was not limited to the obligation to keep all tender submissions confidential and to only disclose the contents of such submissions to the relevant authorised persons.

² The Court held that the processes leading to an award of a contract by a government statutory authority were governed by a preliminary contract between the tenderers and the authority, an implied term of which being that the authority would conduct its tender evaluation fairly. Thus an agency must conduct all facets of the tender process fairly, and deal fairly with the tenderers from the initial point of contact. The law has an expectation that the government and its public bodies will deal fairly including:

- (a) the requirements of procedural fairness to governmental executive decision making;
- (b) the principle that the Crown must exhibit standards as the model litigant in legal proceedings;
- (c) the public policy of protecting the reasonable expectation of those dealing with public bodies;
- (d) the public policy of ensuring that the powers possessed by a public body whether conferred by statute or by contract are exercised for the public good;
- (e) the public policy of requiring such public bodies to act as moral exemplars;
- (f) that government and its agencies should lead by example.

(3) *Planning SA's Contractual Obligations*

All members of the Recommending Committee were required to participate in the assessment process of the Redevelopment Project in strict accordance with probity and confidentiality guidelines. Accordingly, on 2 August 2001, Neil Savery, Executive Director of Planning SA, executed a confidentiality and probity undertaking in favour of the LMC (Confidentiality Undertaking) in relation to the Redevelopment Project. The Confidentiality Undertaking outlined the probity guidelines and terms of the confidentiality undertaking in respect of the Redevelopment Project.

Appendix 1 of the Confidentiality Undertaking outlines the terms of the undertaking in respect of confidential information. Clause 3 of Appendix 1 specifies the obligations of the 'Recipient' in treating confidential information provided in connection with the Redevelopment Project. Specifically, subclause 3.4 states:

- (a) *We [the Recipient] will protect the Confidential Information and keep it secure from unauthorised access, use, copying or disclosure.*
- (b) *Without limiting paragraph (a), We will use the same degree of care as We use to protect Our own confidential information or which a prudent person would use to protect Our confidential information (whichever standard is higher).'*

Subclause 3.6 of Appendix 1 states:

Before disclosing any Confidential Information to any Representative, We will:

- (a) *inform You [LMC] of the Representative's name and title;*
- (b) *ensure that the Representative is made fully aware of the confidential nature of all Confidential Information;*
- (c) *obtain the Representative's written undertaking to comply with the terms and conditions of this document;*
- (d) *obtain the Representative's written undertaking to execute a document in favour of the LMC on the same terms as this document if so requested by LMC.*

‘Representative’ is defined as ‘any person who is engaged as an employee, agent, officer, director, advisor, partner, joint venturer, contractor or subcontractor’.

Appendix 2 of the Confidentiality Undertaking outlines the probity guidelines in respect of the Redevelopment Project. In respect of confidential information, clause 2.1.8 of Appendix 2 states that ‘Individuals must not disclose confidential information to any member of an organisation or to any other person who is not authorised to receive such information’.

In accordance with the confidentiality and probity guidelines as outlined under the terms of the Confidentiality Undertaking, the Executive Director of Planning was required to take care to keep any documents and information received at Recommending Committee meetings or otherwise in connection with the Redevelopment Project in strict confidence and secured at all times.

On the basis of all of the evidence, I am of the opinion that the Executive Director of Planning did not properly discharge his duty of care to maintain the confidentiality of the documents in connection with the Redevelopment Project nor was there in the Planning SA office an awareness of the sensitivity of these documents that would have allowed this lapse to be picked up and remedied before the documents passed from the custody of Planning SA.

The breach was, however, unintentional and, on the evidence, on this occasion, did not compromise the tender process. However, the Executive Director of Planning’s decision to return the documents to the LMC should have been followed with appropriate instructions and precautionary delivery measures so as to safeguard the confidentiality of the documents in accordance with his obligations under the Confidentiality Undertaking.

I am of the opinion that an office culture with proper awareness of confidentiality and procedures to protect confidential information³ might well have in these circumstances:

- (a) considered the issue of whether the documents, known to be important, were also confidential;

³ The UK Department of Trade and Industry has published guidelines developed by a group of leading UK companies and organisations, Protecting Business Information; I (Understanding the Risks) and; II (Keeping it Confidential) (DTI guidelines). The DTI guidelines give guidance on a common approach to appropriate marking and protection of confidential information in industry and commerce. They also contain practical methods for protecting information against both hostile threats and accidents providing a sound basis for protecting a company’s information and a framework for the secure exchange of confidential information between organisations.

- (b) having ascertained that the documents were, or possibly were, confidential, taken some or all of the following steps:
- prepared a covering letter enclosing an itemised list of the documents being returned;
 - marked each of the letter and the list 'private and confidential';
 - ensured that the packaging was suitable for protecting the confidentiality of the documents and, in particular, was strong enough for the weight of documents;
 - marked the package 'private and confidential' on its address label;
 - have caused the delivery of the documents to be effected (and its receipt recorded) by a member of staff personally; or
 - hired a courier whose pick up and delivery of the parcel was recorded by the despatcher and the receiver.⁴

The Executive Director of Planning informed me in writing on 22 August 2002 that as result of this incident he instituted a review of procedures within Planning SA for the handling of confidential material. He further indicated that action taken included some of the measures commented on above and would be expanded to include any additional measures that have arisen from the review process.

(4) *Liability of the Crown*

On the basis of all of the evidence, I am of the view that it is unlikely that there is any legal liability or risk of the Crown being liable in respect of the occurrence of the incident. Although, in my opinion, there has been a technical breach of the duty for the government to maintain confidentiality of all material in connection with the Redevelopment Project, no substantive damage flowed from this breach.

⁴ The DTI guidelines emphasise the importance of protecting confidential information and states that the first step should be to consider the following measures:

1. *After recognising the risks and awareness amongst staff you should classify your information in terms of the damage that disclosure would cause to your organisation. Then mark the information with the classification, so as to communicate the sensitivity clearly to all recipients.*
2. *Apply protection measures to the information, which are appropriate to the classification marking. Be consistent, wherever the information goes.*

(b) **Legal Responsibilities of Tender Parties**

(1) *Development Proposals Property of the LMC*

Both Newport Quays consortium and the Portlands Partnership (each a 'Tender Party') entered into a consultancy agreement on the same terms and conditions in respect of the Redevelopment Project with the LMC (Consultancy Agreement).

Pursuant to clause 10 of the Consultancy Agreement, title to all intellectual property in or in relation to all 'Contract Material' created by a Tender Party vests in the LMC.

'Contract Material' includes material brought or required to be brought into existence as part of the purpose of performing the Services (preparation of a development proposal in respect of the Redevelopment Project) (but not otherwise) including (without limitation) documents, equipment, information, and data stored by any means.

The documents inadvertently received by Baulderstone Hornibrook on 3 Wednesday 2002 included a copy of both submissions submitted by the two Tender Parties. Accordingly, the submissions, although originally produced by the Tender Parties, are the property of the LMC.

(2) *Documents Received by Baulderstone Hornibrook Classified as 'Confidential Information'*

The documents inadvertently received by Baulderstone Hornibrook on Wednesday 3 July 2002 were originally supplied to the Executive Director of Planning by the LMC during the course of the tender process for the purposes of evaluation and subject to the terms and conditions of the Confidentiality Undertaking.

Clause 1 of Appendix 1 of the Confidentiality Undertaking defines 'Confidential Information' to mean:

... all information (including data) disclosed to the Recipient [Planning SA] or a Representative by or on behalf of LMC for or in connection with the Project or the Project Process ...

Accordingly, the documents that were misdelivered to Baulderstone were indeed the property of the LMC and confidential information.

(3) *Obligations of Baulderstone Hornibrook in Respect of the 'Confidential Information' Received*

In my opinion, having regard to the registrations of interest process, the Information Memorandum, and the Consultancy Agreement, there was an obligation on Baulderstone Hornibrook on receipt of documents it identified as confidential in the context of the tender process to promptly return the confidential information and not make any copies of such information nor use or disclose any contents of any of the confidential information in any way.

In my opinion, on the basis of the evidence obtained under oath, the employees of Baulderstone Hornibrook acted in a manner that was entirely proper and consistent with their obligations at law in respect of the misdelivered documents received by Baulderstone Hornibrook, which were confidential information owned by the LMC.

8. CONCLUSIONS

8.1 Baulderstone Hornibrook Acted in a Proper Manner

On the basis of all of the evidence, I am satisfied that:

- (a) the relevant documents came into the possession of Baulderstone Hornibrook in a manner which was entirely accidental and in no way sought by or as a result of actions by that company or its officers or employees;
- (b) the relevant staff members of Baulderstone Hornibrook acted in a proper manner in scanning the documents only to the extent necessary for identification purposes and subsequently taking immediate action to have the documents returned to the LMC;
- (c) the documents were placed under lock and key for the balance of the time in which they were in the possession of Baulderstone Hornibrook until delivery to the LMC;
- (d) no information that ought not to have been disclosed to them came into the actual knowledge of any person associated with Baulderstone Hornibrook.

8.2 No Improper Benefit to any Party

On the basis of all of the evidence, I am of the opinion that there has been no improper benefit to any party as a result of the occurrence of the misdelivery of confidential documents to Baulderstone Hornibrook.

8.3 No Compromise of Selection Process

Whilst it remains unclear how the documents were separated in a way which effected separate delivery to LMC of the envelope enclosing the two folders in the circumstances stated above, on the basis of all the evidence and in the absence of evidence to the contrary, I am of the opinion, that no disclosure of information has occurred which would compromise the integrity if the bid process in respect of the Redevelopment Project.

8.4 No Liability to the Crown

On the basis of all of the evidence available, I am of the opinion that no substantive damage arose from the technical breach of the process contract in respect of the Redevelopment Project which imposed on the Government the duty to maintain the confidentiality of all materials and information.

8.5 Need for Review of Planning SA's Procedures

The events of the subject of this audit examination, although they have not led in fact to any compromise of the process, have revealed a weakness in the procedures to protect confidentiality in the office of Planning SA. In my opinion, the Executive Director of Planning did not sufficiently instruct his staff to take steps to ensure the confidentiality of the documents in the process of their despatch to the LMC. Nor was there in Planning SA a consciousness amongst the office staff of proper procedures to ascertain the need for confidentiality and if needed to protect the confidentiality of documents which are prima facie important. The Executive Director Planning SA has informed me in writing that procedures for protecting confidential material within Planning SA have been reviewed and appropriate measures implemented.

8.6 Other Agencies of Government

With the view to ensuring the prevention of a similar event within other agencies of government it is considered appropriate at this time that all agencies review their policies and procedures in respect of the handling of confidential and sensitive material.