

Investigation into allegations of collusion with property
developers at Kingston City Council

October 2021

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The Victorian Ombudsman pays respect to First Nations custodians of Country throughout Victoria. This respect is extended to their Elders past, present and emerging. We acknowledge their sovereignty was never ceded.

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament my *Investigation into allegations of collusion with property developers at Kingston City Council*.

A handwritten signature in black ink, appearing to read 'Deborah Glass', with a stylized flourish extending to the right.

Deborah Glass OBE
Ombudsman

12 October 2021

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Foreword

It sounded off alarm bells that essentially, a single senior planner has had a twenty-five year relationship with a single developer within one Zone and we've ended up with something very, very different than what the panel had in mind when it was first committed to be zoned in that way.

Local resident in interview with Ombudsman

This investigation has its origins in public concerns about the development of land within their community. This is an issue that affects many, if not all, councils and communities, where there will be bitterly divided views, often changing over time, about whether the advantages of development outweigh its disadvantages.

This report is the story of one development in south-east Melbourne, within what is now Kingston City Council. It began simply enough – a new vision for the Patterson Lakes marina area. What the community ended up with was very different from the original plan – bigger, higher, less accessible.

Planning started in 1988, and the published plan was to encourage 'a marina-based mixed-use area', to be used for boating, as well as residential, tourism, entertainment and greater public access along the riverbank. A later iteration of the plan shows a marina, restaurants, offices and residences with heights of two to four storeys, car parking and open space.

This report makes no value judgement about the reality in 2021, but it is undoubtedly different. Alongside the marina are multiple residential buildings, with two of ten storeys planned. A six-storey residential development stands where a car park was shown on the 1999 plan. The Patterson Lakes riverbank is largely inaccessible to non-residents outside business hours.

Little wonder then that some locals were suspicious, even to allege corruption by Councillors and Council staff, particularly in the aftermath of IBAC's public hearings in 2019 examining an allegedly corrupt relationship between local councillors and developers.

Witnesses told us bribes and kickbacks were 'common knowledge', 'coffee talk' around the Marina, but acknowledged they had no evidence. Two reviews commissioned by Kingston Council did not find evidence of corruption. Nor did my investigation find any deliberate impropriety beyond undeclared Christmas lunches at expensive restaurants.

But corruption is not always the explanation for changing development or over-development, depending on your perspective. Several factors contributed to what, for many in the community, was an unsatisfactory outcome.

Some of these were individual failings, some more systemic or structural.

Incompetence or negligence by the Council's senior planner or lack of rigour in decision-making; combined with such poor record-keeping, it was difficult to form a view on whether decisions were improper, non-compliant or simply deficient. The perception of conflict of interest was aggravated by the planner accepting, without declaring, the developer's hospitality.

In just one example, a planning report to Council misdescribed a five-storey building as a three-storey building. This was acknowledged to be 'a mistake that no one had picked up' – 'planning officers had relied on the report of the traffic consultant ... without having proper regard or referencing back to the plans'.

Mistakes have consequences: as a result of approvals being given on incorrect information, later approvals were given to increased height levels. In other instances, the impact on visitor parking and traffic flow and the ambiguity of height controls, were not considered in reports to Council meetings.

The consequences were all the greater because the area is a Comprehensive Development Zone. A key aspect of this form of planning control is that planning permits are not required and consent is exempt from public notice provisions. Locals raised concerns about this back in 1989 – but a Ministerial panel, acknowledging the difficulty, felt the detailed nature of the Concept Plan meant that actual development would be ‘unlikely to differ materially’.

While such development zones no doubt have a useful place in planning schemes, in the end the community appears to have had the worst of both worlds: neither the adherence to the original plan nor the chance to object.

Another aspect that will no doubt surprise many locals is that Council’s original contract with the developer – a standard provision in such contracts – allowed the developer to satisfy the open space requirement by making a monetary contribution based on the value of the land. So, land identified as public open space on the original plan was in effect sold to the original developer in 1990.

The overall impact of concessions and agreements on such matters as height controls, parking spaces and public space was gradual, uncoordinated erosion of an earlier vision. Council’s lack of strategic oversight effectively allowed the area to develop in line with the developer’s objectives rather than the original plan.

While Councillors, too, came into the frame, the evidence was of discord and dysfunctionality, rather than corruption. The philosophical and political differences within Council on development in the ‘Green Wedge’ were and remain highly contentious but should be resolved around the Council table as far as possible, in the public interest.

Once again, poor record-keeping, combined with loose application of ‘call in’ powers for when Councillors become involved in planning decisions, can give rise to perceptions of corruption.

This investigation makes no findings about the legality of Council’s decisions, some of which are subject to review by VCAT; or criticism of the developer, who will inevitably seek to maximise its return to shareholders. It falls to public officers to ensure this does not happen to the detriment of the public interest.

I am tabling this report not to expose any serious misconduct but because the community deserves answers, where possible, about what has happened in their neighbourhood and why.

The senior planner is no longer employed at the Council. Kingston Council has committed to implementing the recommendations of its two reviews, which should address the systemic issues identified in my investigation.

Whether they address the perceptions of corruption and conflict will ultimately depend on the behaviour of individuals, and on strong, ethical leadership. Development may always be a contentious issue for councils and their communities, but with transparency and good governance it should not be seen to undermine public trust. Councils everywhere would do well to take note.

Deborah Glass

Ombudsman

Report summary

Why we investigated

1. In July 2020, the Ombudsman commenced an investigation into allegations about planning processes and approvals at the Kingston City Council that had been referred from the Independent Broad-based Anti-corruption Commission ('IBAC'). It was alleged that a Senior Planner and two former Councillors at the Council had 'corrupt' and improper dealings with property developers.
2. Early evidence indicated that residents of Patterson Lakes were troubled by what they considered to be inappropriate concessions given by the Senior Planner to the developer of the Patterson Lakes Marina.
3. In addition, residents had expressed concerns to Council that the alleged planning corruption being investigated in IBAC's Operation Sandon at Casey Council could be occurring in developments in the Kingston Council.

The investigation

4. The investigation examined the history of developments in the Patterson Lakes Marina and obtained expert advice from an independent planning consultant who examined nine planning decisions made by the Council in the Marina precinct.
5. The Patterson Lakes Marina was first imagined in the late 1980s as a retail and commercial space accessible to all Patterson Lakes residents. There were several restaurants, retail and office spaces proposed in the original development concept.

6. This development proposal was formalised as a Comprehensive Development Zone ('CDZ') in 1990. This is a special type of planning zone that allows more complex developments to progress in accordance with a Comprehensive Development Plan ('CDP') incorporated in the Council's Planning Scheme.
7. A CDZ removes the usual requirements on a developer to apply for a permit for buildings and works, to advertise plans and respond to objections. Instead, the developer is required to submit development plans that are 'generally in accordance' with the CDP and the Council then decides whether to consent.
8. Witnesses said they were concerned that the Senior Planner, who had made all planning decisions in the Marina over a twenty-five-year period, had an improper relationship with the Marina developer. He was also said to have colluded with former Councillors to influence planning decisions that favoured entities investigated by Operation Sandon.
9. Extensive enquiries by the investigation did not identify evidence of collusion between the Councillors and the Senior Planner or with developers. Nor were there alarming 'red flags' of improper interactions between identified parties.
10. However, the investigation identified deficiencies in the robustness and recording of decisions made by the Senior Planner for some developments in the Marina precinct, which created the impression for some that he was deliberately making decisions that were not compliant with the CDP.

11. By failing to evidence critical analysis of his decisions and recognise connections with earlier decisions, the Senior Planner failed to properly strategically oversee the CDZ.
12. These deficiencies created, at least in some quarters, the perception that the Developer was obtaining favourable planning permissions from the Senior Planner that were not reasonably open to him to grant.
13. This also had the effect of minimising the residents' ability to object to matters such as traffic conditions and amenities; and undermining the community's trust in local government decision-making.
14. Of additional concern, the Senior Planner's failure to declare Christmas lunches with the Developer may have further contributed to the perceptions that his decision-making was improper.

Observations

15. The investigation also identified weaknesses in the relationship between Councillors and the planning department, as well as deficiencies in Council guidelines on 'call in' powers and recording meetings with developers.
16. These matters contributed to the perception that Council decision-makers were acting in the interest of political or ideological positions rather than the community's interest.

Findings

17. The allegations about improper dealings between Council officers and developers at Kingston City Council were not substantiated.
18. However, this report is critical of the decision-making of the Senior Planner and the failure by Council to give clear guidance and to respond to concerns raised by residents.
19. As Council has committed to implementing the recommendations of two probity reviews that address these issues, this report makes no formal recommendations to Council.

On the development

“If you look at photos of the Marina in 1994 and look at it now, it’s an absolute joke, it’s the slum of the future, it was intended to be a marina and every square bit of dirt has a building on it.”

Local businessman

“[The] original vision for the Patterson Lakes Marina was to be something like Port Douglas with hotels, restaurants, boats, busy with 25% open public space and commercial businesses. [Instead it’s an] almost entirely residential gated community.”

Marina resident

“If you see a building development, you always expect to see the little yellow signs showing details of how to comment, etc. In all my years there I never saw one, [the Developer] appeared to do pretty much whatever they wanted.”

Local businessman

“Loudly and clearly the community has rejected the proposal. It is not what was planned many years ago when this Comprehensive Development Plan was put into place and [the Developer] cannot have a double-dipping situation where [he] takes what’s advantageous to [him] but all the other rules that restrict what [he] does should be forgotten about, that’s not how it works.”

Councillor

“Patterson Lakes Marina is regarded by the local community as a very desirable place to live...property prices have continually increased at Patterson Lakes Marina year on year, the most recent sale of a property located in North Shore Drive, was a record of \$2,600,000.”

Lawyers for the Developer

On relationships

“It sounded off alarm bells that essentially, a single senior planner has had a twenty-five year relationship with a single developer within one Zone and we’ve ended up with something very, very different than what the panel had in mind when it was first committed to be zoned in that way.”

Marina resident

“Much has been made of the four lunches between [the Director] and [the Senior Planner] between 2014 and 2018. We note that these lunches were also attended by our client’s architect ... and lasted for approximately between one to one and half hours. There was minimal or no alcohol consumed with all parties heading back to work at the conclusion.”

Lawyers for the Developer

“In 2019, Operation Sandon raised significant concerns for the Local Government sector, councillors worked to create confidence that the corruption of planning uncovered at Casey did not occur at Kingston. The concern was also compounded by the fact the key persons of interest were involved with planning matters at Kingston.”

Mayor Steve Staikos

“We often met for a coffee to discuss ideas he had, however, never at any time did any of those discussions touch on anything remotely considered a personal gain.”

Councillor John Ronke

On planning issues

“It is apparent that errors of judgement were made associated with the interpretation of the relevant planning provisions. The way judgement has been exercised is not at a standard that is acceptable, nor was the quality of advice to the Council on some planning applications.”

Interim Kingston Council CEO

“There are no detailed directions in the CDP. The very nature of the CDP provides flexibility subject to the development being generally in accordance with the CDP.”

Lawyers for the Developer

Background

The public interest complaints

20. This report examines allegations that one of Kingston City Council's senior planning manager ('Senior Planner') engaged in improper conduct when making planning decisions. It also examines allegations that two former Kingston City Councillors, Geoff Gledhill and John Ronke, colluded with planning staff and developers for personal gain.
21. On 20 December 2019, the Ombudsman received a 'referred' complaint from the Independent Broad-based Anti-corruption Commission ('IBAC') raising concerns about planning processes and approvals at Kingston City Council ('Council').
22. The complaint was principally concerned with approvals granted to the developer of the Patterson Lakes Marina, Cavendish Developments Pty Ltd ('Developer'), and an alleged improper association between the Senior Planner and the Developer's director ('Director').
23. On 23 and 24 December 2019, the IBAC referred two 'protected disclosure complaints' under the *Protected Disclosure Act 2012* (Vic) to the Ombudsman for investigation, pursuant to section 73 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic). One of these complaints was from an anonymous discloser.
24. Following legislative amendments effective from 1 January 2020, protected disclosure complaints are now known as 'public interest complaints' under the *Public Interest Disclosures Act 2012* (Vic).
25. The Ombudsman investigated the following complaints:
 - The Senior Planner knowingly approved planning applications for the Developer of the Patterson Lakes Marina, which did not comply with the Council Planning Scheme.
 - The Senior Planner failed to properly advertise planning applications involving the Developer.
 - The Senior Planner colluded with property developers and current and former Councillors to improperly issue planning permits.
 - Former Kingston Councillor John Ronke colluded with property developers to obtain personal benefits.
 - Former Kingston Councillor Geoff Gledhill colluded with other Councillors and property developers to obtain personal benefits.

Jurisdiction

26. The Ombudsman's jurisdiction to investigate public interest complaints derives from section 13(1)(d) of the *Ombudsman Act 1973* (Vic). This provides that the Ombudsman has the function to investigate public interest complaints about conduct by or in an authority or public interest disclosure entity.
27. Members of staff of a Council are an 'authority' for the purposes of the Ombudsman Act by virtue of section 2 and Schedule 1, Item 15. The Senior Planner was employed as Council's Manager City Development at the time of the alleged conduct.

28. Former Councillors Ronke and Gledhill are both a 'public interest disclosure entity', as defined at paragraph (b) of the definition of that term at section 2(1) of the Ombudsman Act.
29. This investigation was conducted under section 15C of the Ombudsman Act, which provides that the Ombudsman must investigate a public interest complaint, subject to certain exceptions. The Ombudsman investigated the initial referred complaint from IBAC pursuant to section 15B of the Ombudsman Act.

How we investigated

30. The investigation was initially placed on hold while two investigations commissioned by the Council, described below, were carried out.
31. On 23 July 2020, the Ombudsman notified the following of her intention to investigate:
 - the Minister for Local Government
 - the Chief Executive Officer ('CEO') of the Council
 - the Mayor of the Council.
32. The investigation involved:
 - Examining relevant legislation including:
 - o *Local Government Act 1989* (Vic)
 - o *Local Government Act 2020* (Vic)
 - o *Planning and Environment Act 1987* (Vic)

- Examining relevant Council policies and procedures including:
 - o Staff Code of Conduct Policies
 - o Councillor Code of Conduct Policies
 - o Planning Delegation Policies
 - o Instrument of Delegation Policies
 - o Gifts, Benefits and Hospitality Policies
- Examining planning instruments and plans including:
 - o Kingston NFPS Panel Report June 1998
 - o Schedule 1 to clause 37.02 of the Kingston Planning Scheme
 - o Whalers Cove Comprehensive Development Plan 1994
 - o Endeavour Cove Comprehensive Development Plans 1999 and 2002
 - o Kingston Planning Scheme Ordinance gazetted 22 December 1999
 - o Statutory Guidance: Using Victoria's Planning System (Department of Environment, Land, Water and Planning) 2015
 - o Planning Practice Note 60: Height and setback controls (Department of Environment, Land, Water and Planning) 2018

- Examining internal probity reports for Council including:
 - o three reports prepared by Hall & Willcox about planning decisions made in the Comprehensive Development Zone ('Hall & Willcox Reports'):
 - Stage 1 Preliminary Report dated 25 November 2019 ('first report')
 - Stage 2 Report- Interviews with Council officers/ Recommendations for next steps dated 10 January 2020 ('second report')
 - Final Report Endeavour Cove Planning Investigation dated 19 February 2020 ('final report')
 - o a report prepared by Holding Redlich dated 28 January 2021 examining Council planning applications made by parties named in IBAC's Operation Sandon ('Holding Redlich Report')
 - o a summary of the Holding Redlich Report was made public by Council on 10 May 2021
 - Summoning and reviewing:
 - o primary and ordinary returns and conflict of interest records from the Council
 - o emails between the Senior Planner, Council planning officers and Councillor Ronke
 - o planning files for developments in the Endeavour Cove Comprehensive Zone and other 'red flagged' developments
 - Obtaining planning advice from an independent planning consultant who examined nine Council planning files and provided a report detailing his assessment of decision-making compliance with the Council's Planning Scheme and associated provisions
 - Summoning and reviewing relevant bank account records
 - Obtaining relevant current and historical ASIC extracts
 - Obtaining relevant land title records
 - Issuing three confidentiality notices pursuant to the Ombudsman Act
 - Conducting a site visit of the Patterson Lakes Marina on 19 November 2020
33. Five people were interviewed under oath or affirmation:
- a local resident
 - a Councillor
 - a Marina resident
 - a local developer
 - a local businessperson
34. All witnesses made a voluntary appearance before the investigation.
35. The investigation was guided by the civil standard of proof in determining the facts of the investigation - taking into consideration the nature and seriousness of the allegations made, the quality of the evidence, and the gravity of the consequences that may result from any adverse opinion.

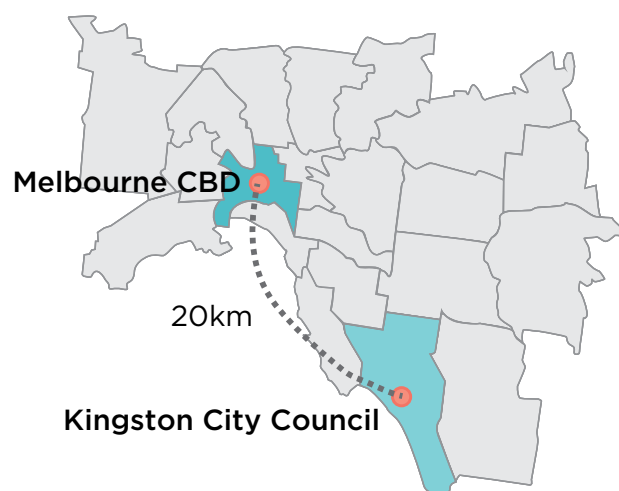
Procedural fairness

36. The investigation did not substantiate that the Senior Planner, Councillor Ronke or Councillor Gledhill engaged in improper conduct.
37. All three parties, together with the Council and the Developer's Director who was invited to comment on factual accuracy, were provided with a copy of a draft version of this report for comment prior to the investigation being finalised.
38. The findings of this report are critical of the judgement exercised by the Senior Planner and the deficient oversight by Council.
39. The Senior Planner was invited to attend an interview with Ombudsman investigators but declined. He was provided with a copy of a draft of this report; and in accordance with section 25(2) of the Ombudsman Act, was given a reasonable opportunity to respond to the material in the report. His responses are fairly set out in this report.
40. In accordance with section 25A(3) of the Ombudsman Act, any other persons who are or may be identifiable from the information in this report are not the subject of any adverse comment or opinion and:
 - the Ombudsman is satisfied that it is necessary or desirable in the public interest that the information that identifies or may identify those persons be included in this report and
 - the Ombudsman is satisfied that this will not cause unreasonable damage to those persons' reputation, safety or well-being.

The Council and integrity obligations

41. In December 1994, the former cities of Moorabbin, Mordialloc, Chelsea, Springvale and Oakleigh amalgamated to become Kingston City Council.
42. The Council spans a total land area of 91 kilometres with an estimated resident population of 162,000. It is divided into 11 wards, with each of the wards represented by a single Councillor.
43. The Senior Planner was employed by the Council in senior roles in the planning and development branch from the amalgamation in 1994 until 2020, a tenure of over 25 years. He took long service leave from 18 July 2020, after which time his employment with the Council ended.
44. John Ronke was elected as a Councillor of Kingston City Council in 1997, 2000, 2003, 2005, 2008 and 2012 serving a total of 17 years at the Council. He retired in 2016 without contesting the elections that were held in October of that year.

Figure 1: Distance Kingston City Council to the CBD



Source: Victorian Ombudsman

45. Geoff Gledhill was elected as a Councillor in November 2012. He was Mayor in 2015 and served for eight years until October 2020 when he was not re-elected.

Integrity obligations

46. At the relevant time, the Senior Planner and Councillors Ronke and Gledhill were subject to the integrity obligations under the *Local Government Act 1989* (Vic) as it then was, and associated Council policies and procedures.

Local Government Act

47. All legislative provisions referred to in this report are from this Act. The *Local Government Act 2020* (Vic), which replaced the 1989 Act, was proclaimed on 6 April 2020 and was implemented in stages, with the integrity sections in force from 24 September 2020.

48. As the alleged conduct pre-dates the implementation of the 2020 Act, the conduct obligations applicable in this investigation were those in the 1989 Act (referred to as 'the Local Government Act' at varying times in this report).

Conduct obligations of Council staff

49. Section 95 of the Local Government Act sets out conduct standards for Council staff. It states that Council staff must 'act impartially' and 'act with integrity including avoiding conflicts of interest'.

50. In accordance with section 95AA, the CEO must develop and implement a code of conduct for staff.

51. The Council's Code of Conduct dated 15 October 2019 requires Council employees to 'act in a professional manner that will foster trust, respect, confidence and goodwill in the community'. Employees are expected to act with good judgement which 'requires knowledge of the regulations and legislations that affects the Council's activities'.

52. The Code of Conduct also defines 'conflicts of interest' and states all employees are responsible for identifying personal circumstances that may give rise to potential, actual or perceived conflicts of interest. An annual declaration of private interest is required of Senior Officers.

53. For the first time on 21 August 2019, a separate Council Conflict of Interest Policy was approved by Council that provided further guidance to officers who had a conflict of interest when providing advice to Council. Prior to this, the requirements of the Local Government Act and Code of Conduct applied.

54. The conflict of interest approach since 21 August 2019 includes the following steps:

- An officer should disclose the conflict of interest by recording its existence in the report itself or verbally prior to providing advice.
- The disclosure should outline the type of conflict of interest. The exact nature of the conflict of interest is only required to be disclosed if requested.
- The type of interest disclosed should be recorded in the agenda of the meeting.

55. Under the Code of Conduct, employees of the Council are also prohibited from:
- using their position to influence other Council officers to obtain a personal benefit or a benefit for someone else
 - being involved in an act or acts of bribery by providing or promising to provide a benefit.
56. Council also has 'Behavioural Guidelines' ('Guidelines') that accompany the Code of Conduct. Relevant to this investigation, the Guidelines say:
- You are required to be accountable for your personal conduct by avoiding conflicts of interest and disclosing any actual or potential conflicts of interest, including by avoiding obtaining a private benefit for yourself or someone else.
57. The Guidelines advise Council staff to speak to their Supervisor or Manager if they consider they have a conflict of interest.
58. Breaches of the Code of Conduct are dealt with by the Council's Disciplinary Policy; and in the case of fraudulent or corrupt behaviour, the Fraud and Corruption Policy.
60. It is an offence under section 76D for a Councillor to misuse their position 'to gain or attempt to gain an advantage for themselves or cause detriment to the Council'.
61. A Councillor must also not 'direct or seek to direct a member of Council staff in the exercise of a power or the performance of a duty'.
62. In addition to the Local Government Act obligations, all Councillors must make a declaration stating they will abide by the Council's Councillor Code of Conduct.
63. The Code of Conduct agreed to by Councillors Ronke and Gledhill obliged them to, amongst other things:
- avoid conflicts between their public duties as a Councillor and personal interests and obligations
 - endeavour to ensure that public resources are used prudently and solely in the public interest
 - act lawfully and in accordance with the trust placed in him or her as an elected representative.

Conduct obligations of Councillors

59. Section 76B of the Local Government Act 1989 stated:

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must -

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

64. Council advised the investigation that if a conflict of interest was disclosed to the CEO prior to a Council meeting, the nature of the conflict was not required to be disclosed in the chamber and declaring the existence of a conflict was satisfactory. On making a declaration, Councillors then excluded themselves from the decision-making process, usually by leaving the meeting before the item was discussed and the decision was made.

Council decision-making policies

65. This section summarises the key decision-making policies relevant to this investigation.

Instrument of delegation

66. Section 98(2) of the Local Government Act allows the Chief Executive Officer to delegate by an instrument of delegation any power, duty or function of their office.

67. The Council's Instrument of Delegation in place prior to the Senior Planner's departure delegated the following functions to the Senior Planner position:

- the power under the Planning and Environment Act 1987 to 'carry out studies and do things to ensure proper use of land and consult with other persons to ensure co-ordination of Planning Schemes with these persons'
- the power to 'decide that an application for a planning permit does not comply with the Act'
- the duty to 'consider the number of objectors in considering whether use or development may have significant social effect'.

Planning and Environment Act

68. Section 60 of the Planning and Environment Act sets out the matters decision-makers must consider when assessing a planning application.

69. It states:

- 60 (1) Before deciding on an application, the responsible authority must consider –
- (a) the relevant Planning Scheme; and
 - (b) the objectives of planning in Victoria; and
 - (c) all objections and other submissions which it has received, and which have not been withdrawn; and
 - (d) any decision and comments of a referral authority which it has received; and
 - (e) any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development; and
 - (f) any significant social effects and economic effects which the responsible authority considers the use or development may have.

Planning Delegation Policy and 'Call ins'

70. Reference to the 'responsible authority' in the Planning and Environment Act does not distinguish between Council officers and Councillors, and both are subject to this legislation when making decisions.

71. The Council's Planning Delegation Policy articulates which planning applications should go to Council for decision by the Councillors ('call ins') and which can be dealt with by Council officers exercising delegated powers.

72. The Council has had four versions of the Planning Delegation Policy from 2003 to the current 25 May 2020 version.

73. The 2003 version of the Policy stated:

The following town planning applications are to be brought to Council for decision:

- Applications of major significance;
- Applications which are particularly controversial in nature; and
- Applications which depart significantly from Council's policy.

74. The terms 'major significance' and 'particularly controversial' were not defined. Triggers for referring a matter to Council for decision were open to interpretation by planning officers and Councillors.

75. The 2003 Policy remained in operation until 19 September 2014. At this time, it was amended to include more specific guidance for when Council must decide the outcome of a planning application. All versions of the Policy since 2014 have stated that 'one or more Councillors can 'call in' the application by requesting this in writing to the City Development Department.

76. The current Planning Delegation Policy provides more detailed guidance to planning decision-makers, stating:

The following types of planning permit applications (where officers are recommending approval) must be decided by the Council:

- applications for five (5) or more dwellings that incorporates one or more double storey dwelling(s) to the rear of the site, with 3 or more objections
- applications of major significance
- one or more Councillor(s) 'call in' the application, by requesting this in writing (email accepted) to the City Development Department
- applications located in the Green Wedge and the cost of the development exceeds \$20,000
- any application for a planning permit seeking approval to remove ten or more trees as required by the Kingston Planning Scheme
- any application for a planning permit for the use and/or development of land, where the removal of ten or more trees forms part of the application (where not specifically required by the Kingston Planning Scheme) in [specified] circumstances.
- All other applications can be determined by the CEO, or their nominated delegate(s).
- All applications for 2-storeys in the backyard with at least one objection in the General Residential 3 Zone to be listed and provided to Councillors prior to the Planning CIS agenda.

77. The current Planning Delegation Policy does not require a Councillor to provide a reason when they 'call in' an application.

Kingston Planning Scheme

78. A key aspect of the allegations against the Senior Planner and two Councillors was that they made decisions, or encouraged Council officers to make decisions, that were contrary to the Kingston Planning Scheme.
79. This section explains what a Planning Scheme is, how it is used by Councils to guide decision-making, and how the Kingston Planning Scheme operates.

Planning Schemes in Victoria

80. Each municipality in Victoria is covered by a Planning Scheme which sets out objectives, policies and provisions on the use, development, protection and conservation of land.
81. A council draws on the Victorian Planning Provisions ('VPP'). The VPP contains a comprehensive set of planning provisions for Victoria. It ensures that consistent provisions are maintained across the state.
82. In the simplest terms, a Planning Scheme takes the VPP as a template. Into this, a council inserts the local vision and policy framework through Municipal Strategic Statements and Local Planning Policies. The council then selects the zones and overlays needed to implement these strategies and appropriate local provisions are written to support the zones and overlays.

How Planning Schemes are used

83. The council, as the responsible authority under the Planning and Environment Act, must take into account 'the relevant Planning Scheme' when deciding on a planning application.

84. Planning Schemes zone land for particular uses, for example, residential, industrial or business use. A zone will set out the land use as well as any requirements for making changes to the land.
85. A zone will set out land use controls in one of three ways:
- land uses that do not require a planning permit
 - land uses that require a planning permit
 - prohibited uses not allowed on the land in a zone because they may conflict with other uses.
86. When a planning permit is required, the applicant or developer will lodge a completed application form accompanied by a description of the proposal and a prescribed fee.
87. With many proposals, views of other agencies will be required before the council makes a decision. These agencies will be prescribed in the Planning Scheme based on the proposal, the location and other factors.
88. In some cases, the council will give notice or require notice to be given to adjoining owners and occupiers, unless it concludes that 'material detriment will not be caused to any person', or the Planning Scheme specifically provides for an exemption from the notice requirements.
89. The council will then issue a permit, a notice of decision to grant a permit or a notice to refuse to grant a permit. If they disagree, an applicant or an objector can request a review of the decision by the Victorian Civil and Administrative Tribunal ('VCAT').

90. A zone may not require a planning permit to be issued for an identified land use. The council can give 'Planning Consent' if it is satisfied that it complies with the overall objectives of the zone and specified provisions. Planning Consent does not require the council to follow the same statutory requirements a planning permit would, such as giving public notice.

How Planning Schemes are amended

91. Changes to the Planning Scheme are another means through which council officers and councillors can exercise their decision-making powers. There are many reasons why a Planning Scheme may need to be amended. Some of the more common reasons are:

- to update the scheme
- to correct mistakes
- to allow some use or development currently prohibited to take place
- to restrict use or development in a sensitive location

92. Any person can ask a council to prepare an amendment to the Planning Scheme. This can be done simultaneously by an applicant when applying for a permit. For example, by an applicant seeking to rezone land from one type of zone to another to support a development application.

93. An amendment requires the council to begin a process to change the scheme itself, which is more complicated than making a decision on a permit application in accordance with the existing planning scheme.

94. In recognition of this, the Planning and Environment Act requires a council to consider certain matters in preparing an amendment, including whether the amendment aligns with the Municipal Strategic Statement and what the public benefits are.

95. Amendments require the approval of the Minister for Planning. The Minister will appoint an independent Planning Panel to hear submissions about the Planning Scheme amendment and make recommendations or provide advice about whether the amendment should proceed.

96. The Planning Panel's report must then be considered by the council before it decides whether or not to adopt the amendment.

The Kingston Planning Scheme

97. The Kingston Planning Scheme was created via Planning Scheme Amendment NPS1 in 1999 and included the introduction of the Victorian Planning Provisions, consistent with the introduction of new format Planning Schemes for every municipality.

98. Like other Planning Schemes, the Kingston Planning Scheme includes a variety of zones and overlays. Relevant to this investigation, Kingston Planning Scheme has provision for a Comprehensive Development Zone.

99. A Comprehensive Development Zone ('CDZ') allows for detailed land use requirements to be prescribed for a particular site. A CDZ is designed to allow more complex developments in accordance with a Comprehensive Development Plan ('CDP') incorporated in the Planning Scheme. Generally, only large or complex developments would warrant the use of this zone.

100. The only CDZ in the Kingston Planning Scheme applies to the land 'on the north side of McLeod Road, Patterson Lakes, generally known as the Endeavour Cove Marina'. The requirements for land use in the CDZ are articulated in the CDP 1999 attached as Schedule 1 to Clause 37.02 of the Planning Scheme.

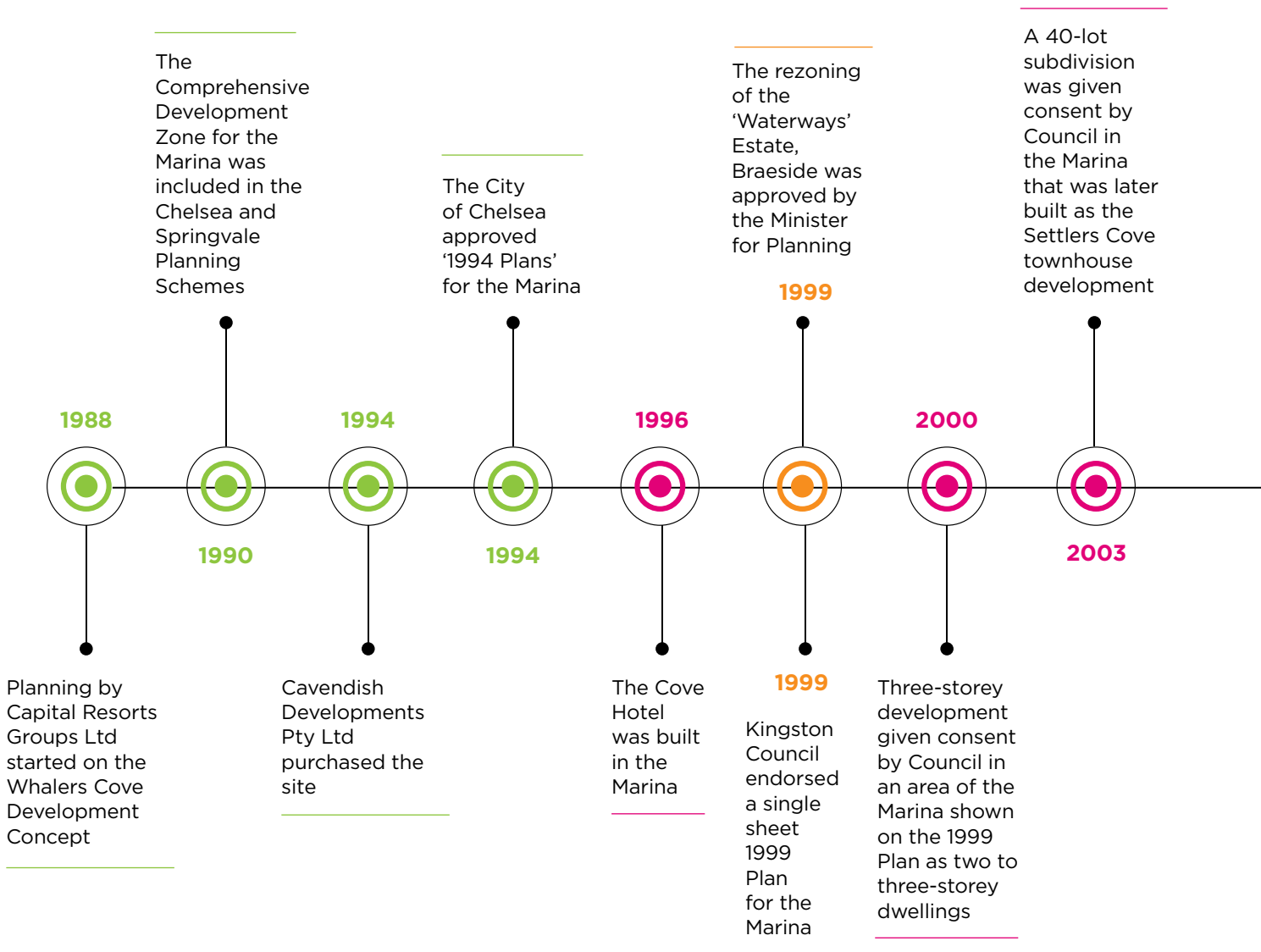
101. Both the CDZ and CDP are incorporated in the Planning Scheme, which means they must be adhered to by Council officers when making decisions about land use in the identified area. They also cannot be amended without an amendment being made to the Planning Scheme.

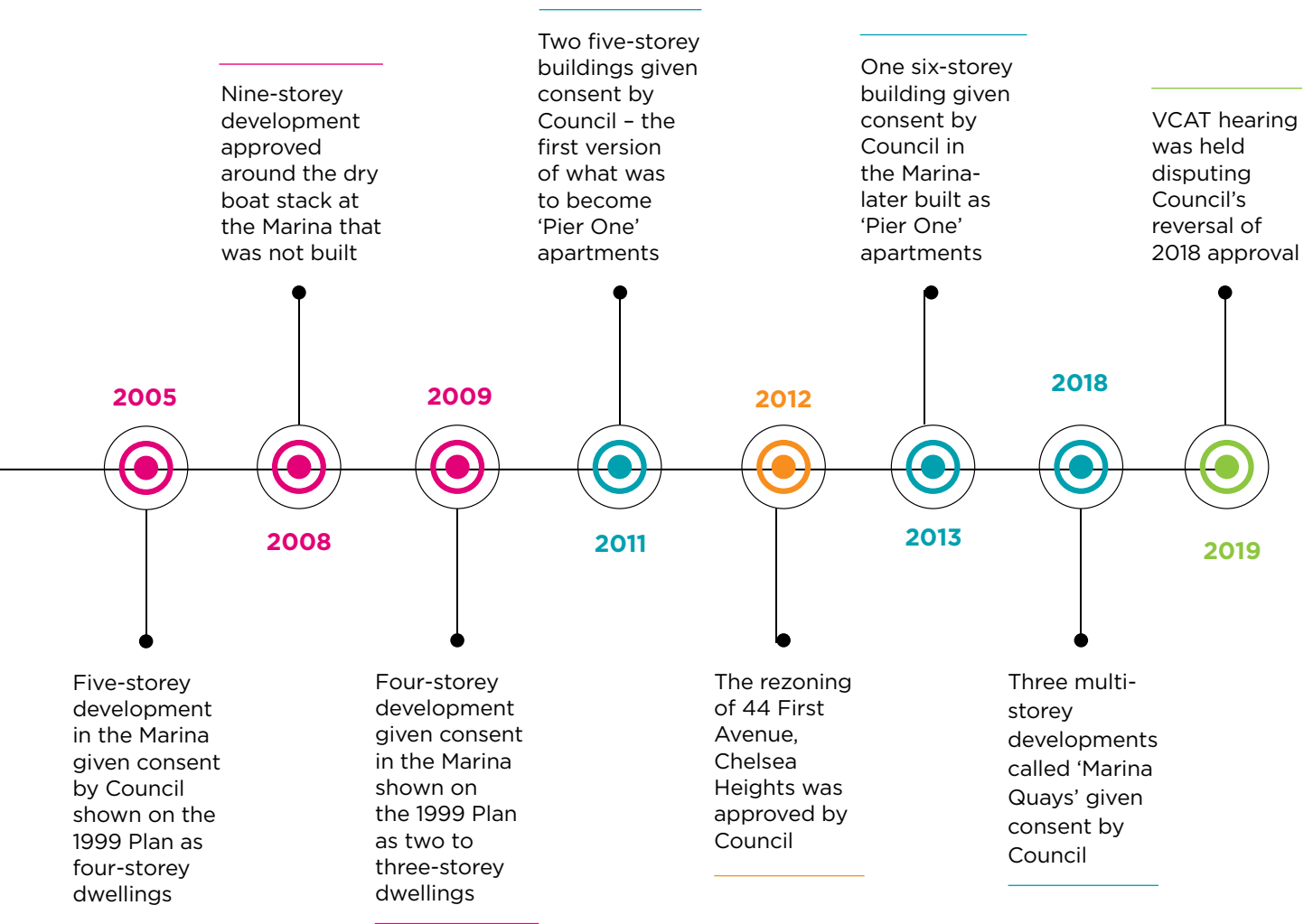
Figure 2: The Kingston Planning Scheme



Source: The Kingston Planning Scheme Source: Kingston City Council

Figure 3: Timeline of decisions considered by this investigation





The investigation

Allegations of collusion between the Senior Planner and the Developer of Patterson Lakes Marina

102. Complaints alleged that the Council's Senior Planner knowingly approved development applications inconsistent with the Planning Scheme to favour the Developer of the Patterson Lakes Marina and its Director.
103. The subject land is the Endeavour Cove Comprehensive Development Zone, which was developed over the last twenty-five years to become what is now the Patterson Lakes Marina.
104. To understand whether the Senior Planner made decisions inconsistent with relevant planning provisions to benefit the Developer, the investigation examined the history of development in the Patterson Lakes Marina.

The Patterson Lakes Marina

The Whalers Cove Development Concept

105. The development of the Patterson Lakes Marina commenced in 1988 with the developer, Capital Resorts Group Ltd ('CRG') putting forward to Council a proposal to rezone the land (21.7 ha) from four zones, being General Industrial, Residential C, Reserved Living and Special Use 5 (boat building) to a Comprehensive Development Zone ('CDZ').
106. Media reports at the time suggest that CRG anticipated what was then called Runaway Bay/Whalers Cove would cost \$50 million to develop. It was intended to include an eight-storey apartment complex, a riverside carpark and hotel/motel.
107. The Whalers Cove Marina Concept Plan, at Figure 4 shows the extent to which the Marina was first imagined as a retail and commercial space, accessible to all Patterson Lakes residents. There were several restaurants, retail and office spaces proposed in the concept.
108. CRG's proposal for the Marina was on public exhibition, had a submission process and a Ministerial Panel hearing during 1988 and 1989. In their proposal, CRG described the proposed Marina as being an 'attractive centre for leisure and tourism'.
109. The report prepared by the Ministerial Panel dated 23 August 1989 noted there were 55 submissions received from interested parties. One of the main concerns was there was no justification for the retail and office component of the proposed development and that these businesses would directly compete with existing retail.
110. The Panel disagreed, finding the planned retail businesses would be a net community benefit 'because it creates a facility, a service and an environment which does not exist elsewhere in Melbourne'.
111. There were a number of submissions from members of the public concerned about 'the nature of Comprehensive Development zoning'.

112. These submissions identified:

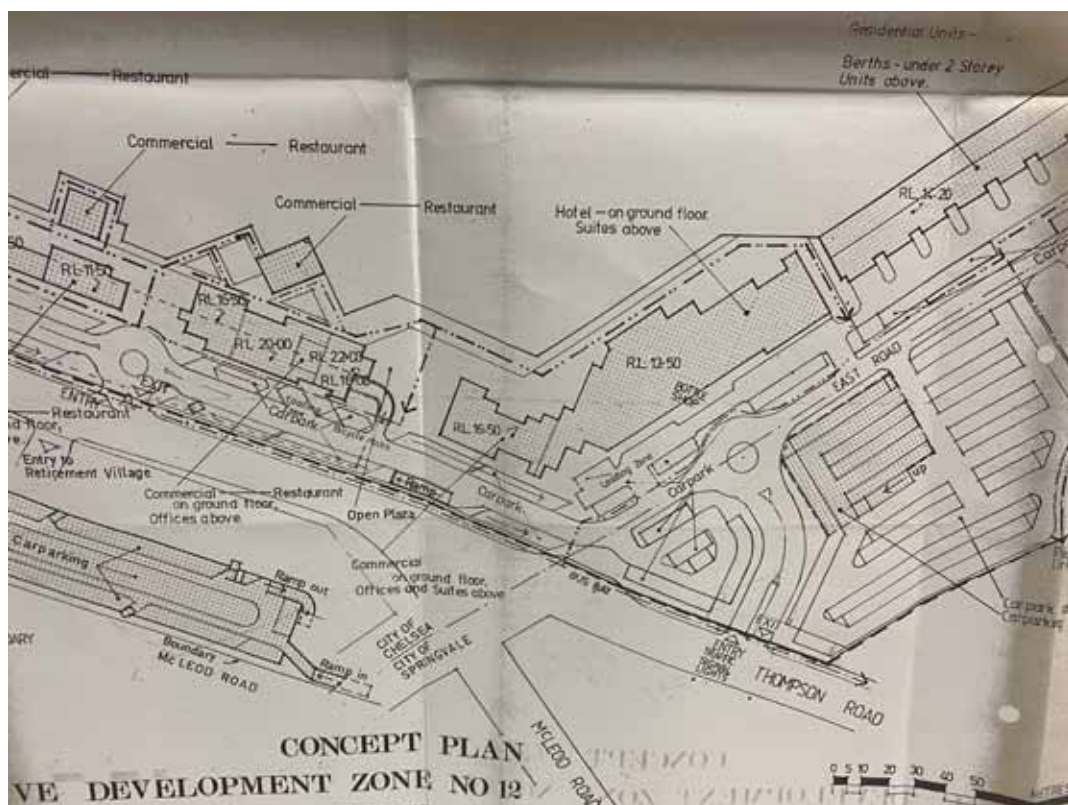
an amendment for a CDZ requires only a broad concept plan, the development and the management prescriptions which would enable the public to understand the proposal more fully are prepared only subsequent to the last stage at which the public has a direct input. Thereafter, judgemental decisions are made by the Responsible Authority.

113. The Panel recognised that while 'this difficulty can never be overcome fully ... the detailed nature of the Concept Plan means that actual development would be unlikely to differ materially from the proposals put to the Panel'.

114. On 24 January 1990, approval of the Amendment was published in the Government Gazette, resulting in the CDZ provisions being included in the Chelsea and Springvale Planning Schemes.

115. However, soon after approval, CRG began experiencing financial problems and in 1994, the Developer purchased the site.

Figure 4: Whalers Cover Marina Concept Plan

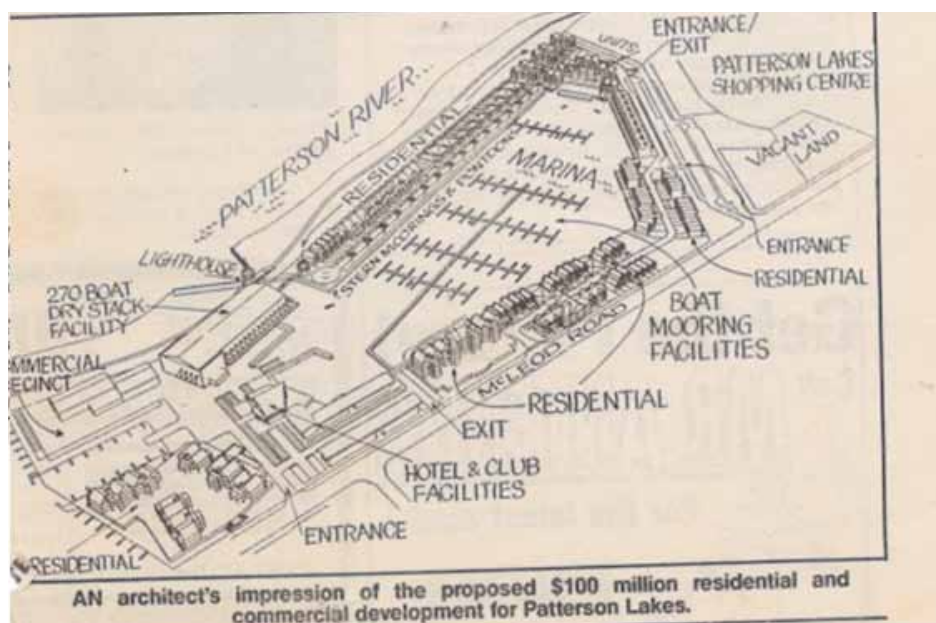


Source: Kingston City Council

The Endeavour Cove Development Concept

116. The Developer called the new development concept the Endeavour Cove. News articles from 1994 described the proposal as a '\$100-million residential and commercial precinct' that would include 119 townhouses, 124 apartments and 10 penthouses to accommodate 250 residences.
117. The Endeavour Cove Development Concept also included plans for a 'commercial centre that will include shops, offices, café, restaurant and a small hotel'.
118. In 1994, the City of Chelsea considered and adopted a report approving the new CDP Site Precinct Plan.
119. The investigation understands that the Developer commenced development on the Marina based on the 1994 Plans, with rows of terrace houses being constructed at the south-east end and east side of the land. Residential development continued on the land in following years.
120. Some planning permits for subdivision were also issued by the Council, including the 40-lot subdivision for townhouses that became the Settlers Cove area, marked on the 1994 plans as commercial precinct and car parking.
121. In 1999, the Developer proposed a new variation of the Endeavour Cove Development Concept to be incorporated into the Kingston Planning Scheme.
122. The new plan differed from the 1994 Plans, including greater residential development across the site.
123. In the early 2000s, several further residential developments were completed, including four and five storey homes on North Shore Drive. The largest building in the Marina, 'Pier One' was completed in 2018.

Figure 5: A newspaper article from 13 July 1994 depicting the Endeavour Cove development proposal for the Marina



Source: Supplied by witness

The Marina now

124. Council advised the investigation that there are 396 residences in the Marina and the number of residents about 1000. This is significantly more than the 250 residences proposed in the Endeavour Cove Development Concept in 1994.
125. At interview, a Marina resident said he understood the original vision for the Patterson Lakes Marina was 'something like Port Douglas with hotels, restaurants, boats, busy with 25% open public space and commercial businesses'. Instead, he says, it has been developed as an 'almost entirely residential gated community'.
126. In response to the draft report, lawyers for the Developer said 'the site has been developed and does contain a number of residential allotments, part of which are a gated community, but also contains a commercial marina ... a hotel ... fuel and sewerage facilities, a number of commercial enterprises ... a swim school and open public space'.
127. In 2019, VCAT described the current Marina as 'largely developed with a mix of townhouses and apartments encircling the Marina, interspersed with boat storage and marina operations'.

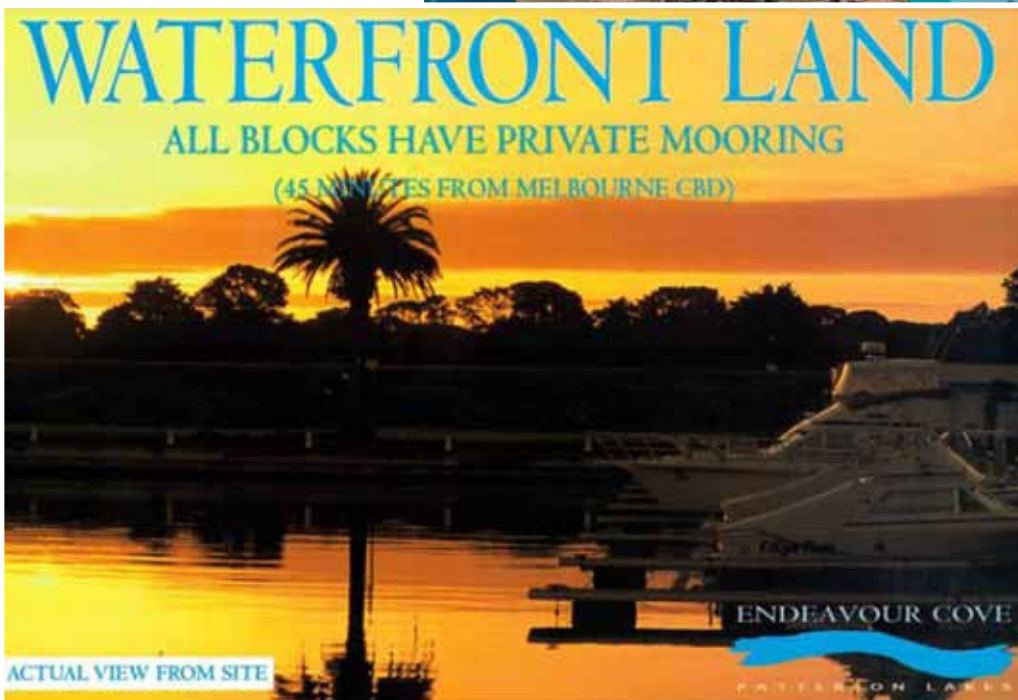
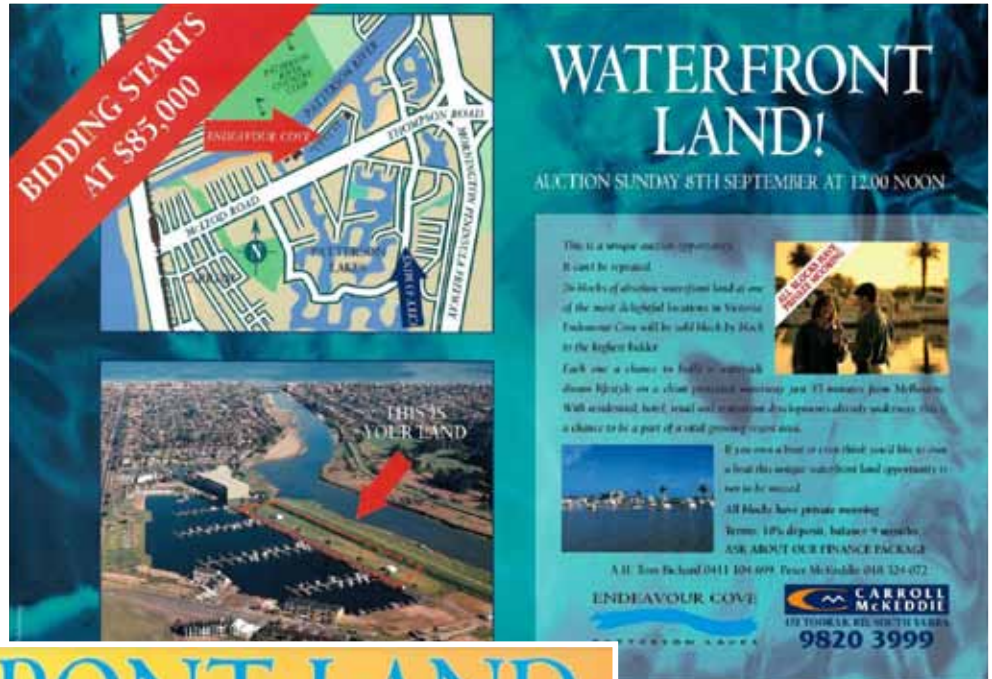
How a development changed

The Patterson Lakes Marina development at a glance

Original vision

The initial plan for the marina development described it as an attractive centre for leisure and tourism.

One resident described it as 'something like Port Douglas' with hotels, restaurants, boats, 25 per cent public open space and commercial businesses.



A newspaper article from 1994 described Endeavour Cove as 'a small commercial centre' that 'will include shops, offices, café, restaurants and a small hotel'.

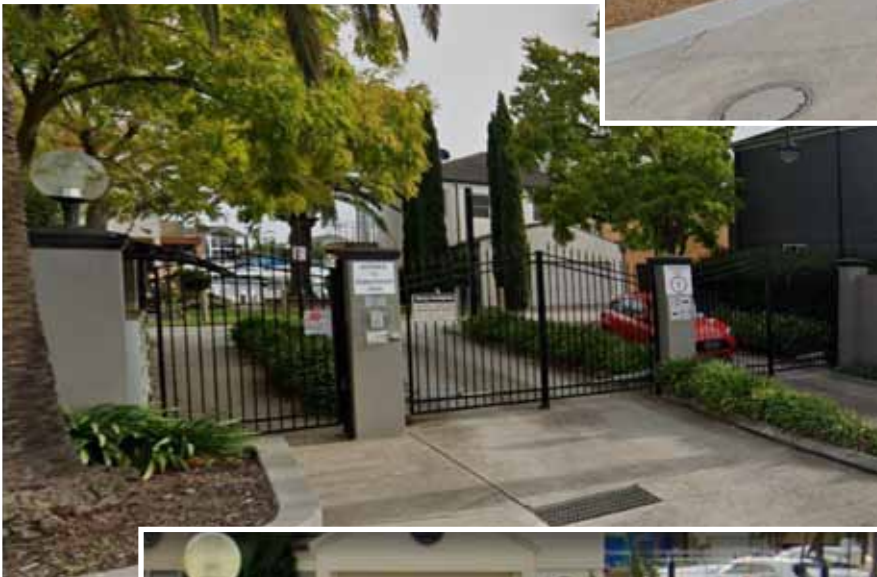
In 1994, about 250 residences were added to the plan, which still included public open space and waterfront access.

Promotional material for the now-named Endeavour Cove development showed a yellow sunset, boats and blocks with private moorings. Another described the land sale as 'a unique opportunity and one that would never be repeated'.

What was approved

The development changed over the years, from the original vision in the 1990s to 2018. More buildings and higher buildings were approved by the council.

- 1999 (three-storey development)
- 2003 (a 40-lot subdivision)
- 2005 (five storeys development)
- 2009 (four-storey development)
- 2011 (two five-storey buildings)
- 2012 (a rezoning)
- 2013 (a six-storey building)
- 2018 (three multi-storey developments).



In 2019, VCAT described the final marina as largely developed with a mix of townhouses and apartments encircling the marina. One resident said it had been developed ‘almost entirely as a residential gated community.’

Figure 6: How a development changed
Source: Victorian Ombudsman

The Comprehensive Development Plan

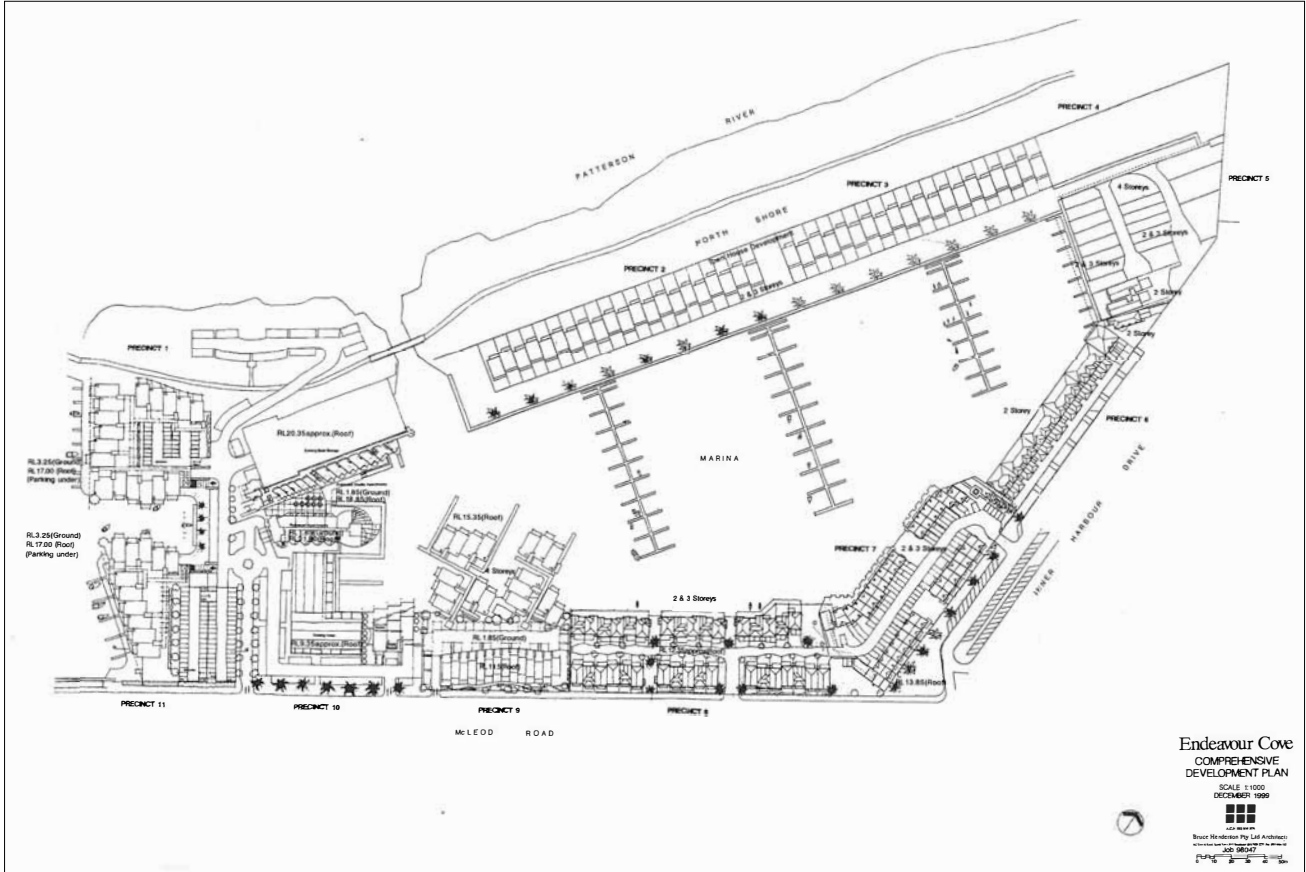
128. When the Kingston Planning Scheme was created in 1999, the CDZ for the land 'on the north side of McLeod Road, Patterson Lakes, generally known as the Endeavour Cove Marina' was incorporated into the Planning Scheme. The Scheme references the Endeavour Cove Comprehensive Development Plan ('1999 CDP') as an Incorporated Document (clause 72.04).
129. The investigation also identified a further CDP signed by the Senior Planner on 19 February 2002. The status and standing of the 2002 CDP is unclear. The 2002 CDP is not considered to have the status of an incorporated document, because an updated incorporated CDP would have required a Planning Scheme amendment - and there is no evidence of this action having been taken.
130. As the 1999 CDP is the most recent version of the CDP incorporated into the Planning Scheme, the investigation is satisfied that it is the instrument that informed the decisions made by the Council in the Endeavour Cove Comprehensive Zone that are the subject of the allegations.

The 1999 CDP

131. The 1999 CDP, illustrated in Figure 7, is the single sheet planning map of the precinct identifying the areas to be used for residential, commercial and mixed-uses as well as areas designated for public access and car park provisions.
132. The CDP is roughly divided into precincts that have different height restrictions noted on them, some noted in storeys and others in RL (Relative Level) as noted in Figure 8 (a magnified section of the CDP).

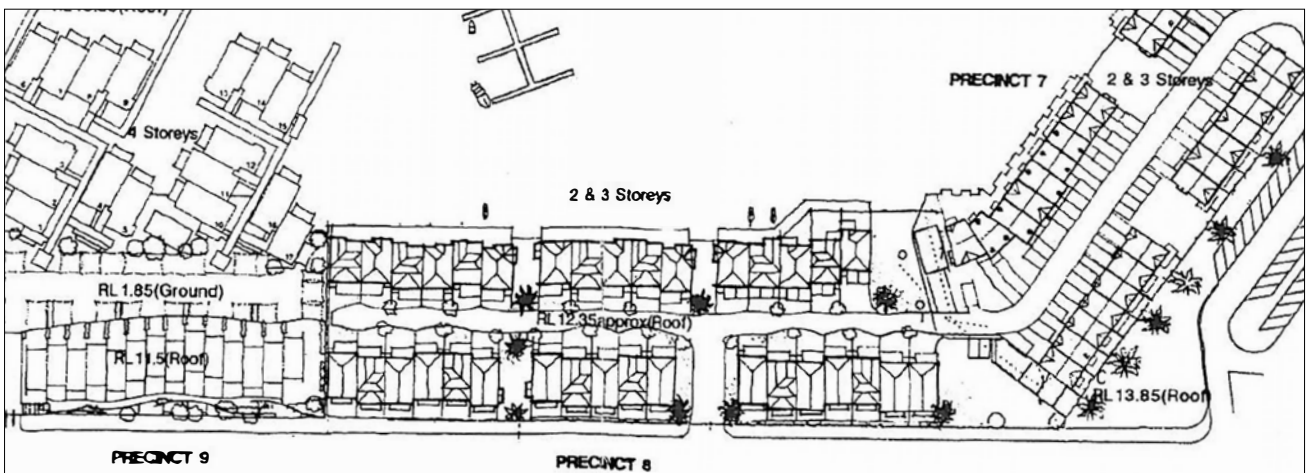
133. In addition to the notations made on the plans, Council planning officers are required to take into account Schedule 1 to Clause 37.02 of the Kingston Planning Scheme ('Schedule 1') when making decisions on the CDP.
134. Schedule 1 details the purpose of the CDP; the uses that can be made of land in the CDP; and the conditions that trigger the need for a permit.
135. Schedule 1 lists the purposes of the CDP as, in part:
- To encourage the development of land south of the Patterson River and north of McLeod Road, Patterson Lakes as a marina-based mixed-use area.
 - To assist the coordinated development of the land for marina facilities, boat storage, boat servicing and residential, tourism, office, entertainment, retailing and associated uses.
 - To provide greater public access for pedestrians and cyclists, to and along the Patterson Riverbank.
 - To ensure the land is developed in an orderly manner.
 - To encourage a high standard of urban design.
136. One of the unusual aspects of these planning controls is that no planning permit is required for any type of development or buildings and works.
137. Instead, Schedule 1 requires the developer to submit 'development plans' that are 'generally in accordance' with the 1999 CDP.
138. Some of the requirements a development plan must comply with include the height provisions marked on the plans for each precinct. Schedule 1 states that 'A building or works must not exceed the height above the Australian Height Datum ('AHD') for any particular area as shown on [the 1999 CDP]'.

Figure 7: The 1999 CDP



Source: Kingston Planning Scheme

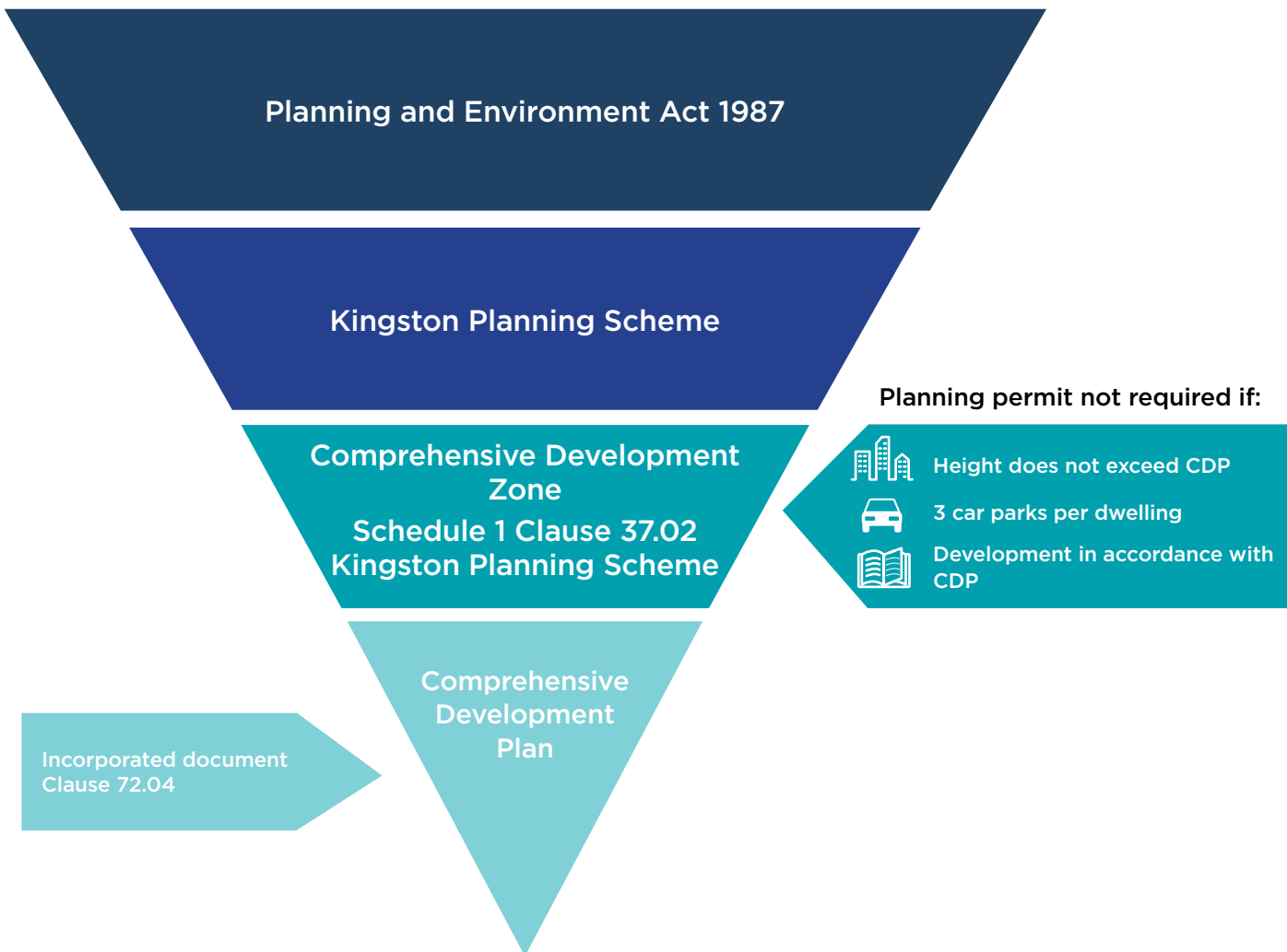
Figure 8: A section of the CDP showing height restrictions



Source: Kingston Planning Scheme

139. There are no AHD references on the 1999 CDP. As noted, the heights are referred to as storeys or Relative Levels ('RLs'). According to advice provided by Russell Kennedy lawyers on 8 May 2014 and in the Hall & Willcox Final Report, while the 1999 CDP refers to another datum description (RLs) 'the height controls roughly match AHD levels'. This means that when a development proposal identifies the height of a building in AHD, this number must not exceed the RL number noted on the 1999 CDP.
140. A planning permit is not required for many of the uses envisaged within the precinct, including dwelling uses. However, this is conditional on the provision of a specified number of car parking spaces for the dwelling (two covered spaces and one visitor space per dwelling). If this car parking condition is not met, then the use and car parking reduction require a planning permit. This permit would follow the standard advertising and consultation processes.
141. The legislative and policy framework required for decisions made about development proposals in the CDZ is illustrated in Figure 9.
142. Of the planning controls, Hall & Willcox said:
- It is not uncommon for a CDZ schedule to exempt specific uses from a building and works permit requirement, however it is unusual to provide a blanket exemption for all buildings and works. It means that for all residential use proposals that meet the parking provision, there is no permit trigger, and the developer just needs to submit a set of development plans for endorsement that generally accords with the CDP. This means that a development plan submitted for a proposal does not need to be exactly the same as the CDP. There is some flexibility and discretion to be applied.
143. The question of whether the Senior Planner improperly exercised this discretion when making decisions that benefited the Developer is the central point of contention in the allegations made about him.

Figure 9: Legislative and policy framework for planning decisions made in the Patterson Lakes Marina Precinct



Source: Victorian Ombudsman

The Senior Planner at Council



The Senior Planner

Employed at Council for 25 years and responsible for all planning decisions – involving the marina development.

The Senior Planner acknowledged a ‘cordial relationship’ with the Developer and/or Director and said he might meet ‘once or twice a year or more if they had things going on.’

Email records showed the Senior Planner had an annual Christmas lunch with the Developer from 2014 to 2018 – and during that time had worked on one of the Developer’s planning files.

In 2020, the Senior Planner admitted having lunch with the Developer’s Director and architect.



The investigation

The investigation found a ‘concerning lack of judgement’ by the Senior Planner in failing to properly record meetings with the Developer and declare the lunches.

The investigation found a lack of supporting material explaining the basis for the Senior Planner’s decisions.

The investigation found that the Senior Planner’s errors of judgement showed a dereliction in his responsibilities which justified the termination of his employment at the council.

The investigation found the Senior Planner failed to strategically oversee the decisions made in the CDZ over time.



The Council

The Senior Planner’s contract was not renewed when it ended in May 2020.

His lawyers said he was advised that his contract would not be renewed because he could not take his team ‘towards exceptional’ or keep up with the frenetic pace of the organisation. They said the decision was not related to the council investigation.

The Council said it was very disappointing that the Ombudsman’s investigation had found further occasions when the Senior Planner met with the Director socially.

Figure 10: The Senior Planner
Source: Victorian Ombudsman

The relationship between the Senior Planner and the Developer

144. From 2018 onwards, some residents and concerned third parties formed the view that the Senior Planner had intentionally provided non-compliant Planning Consents and approvals to the Developer in the Marina precinct.
145. Witnesses said that the Senior Planner had an improper relationship with the Developer and was being influenced by bribes or kickbacks to make his decisions.
146. A Marina resident told the investigation that he and other residents became suspicious about the relationship between the Senior Planner and the Developer when preparing for the VCAT matter in 2019. He said:
- It sounded off alarm bells that essentially, a single senior planner has had a twenty-five year relationship with a single developer within one Zone and we've ended up with something very, very different than what the panel had in mind when it was first committed to be zoned in that way.
147. Another local resident said the Senior Planner and the Developer's Director looked 'quite chummy' at a Community Meeting in January 2019. He also said the Senior Planner 'continually obstructed the process' when he requested information about KP2018/459.
148. Several witnesses also said they emailed and called the Senior Planner and other senior officers with concerns about the CDZ for up to a year before receiving responses, and that the responses, when received, were deficient.
149. A Councillor described a meeting they had with the Senior Planner when the Director called the Senior Planner's mobile, then sent a text that said, 'Call me back, urgent'. The Councillor said they thought this indicated an overly familiar relationship. The Councillor also described a community meeting held in February 2019 in which they formed the view that the Senior Planner 'spoke on behalf of' the Developer with respect to the car parking reduction application, which they said was 'unusual'.
150. In response to the draft report, lawyers for the Developer rejected the suggestion that the Senior Planner spoke on behalf of the Developer:
- he provided a short summary about the CDZ and its operation. [The Director] and his traffic engineer spoke to the merits of the permit application and answered questions from local residents.
151. In their second report, Hall & Willcox note they asked the Senior Planner about his relationship with the Developer. He is recorded as saying he might meet with them 'once or twice a year and maybe more if they had things going on'. He acknowledged a 'cordial relationship' but said that 'it was always challenging in getting them to do anything'.
152. He reportedly clarified this comment later in his meeting with the CEO in which he said it was a reference to the Developer 'being reluctant to update the CDP'. The investigation notes that updating the CDP, which would require a planning scheme amendment, would have been a decision for the Council and the Minister for Planning to make, not the Developer. The Developer would be an interested stakeholder in the amendment consideration process, but not responsible for initiating or financing it.

153. The investigation's searches showed that between 2013-20:

- The Director left phone messages for the Senior Planner two or three times a year at most via his work number.
- The Director emailed the Senior Planner regularly when a development was being considered by the Council, to request an update or to follow up on documents and the like. The tone of these emails was professional and brief.
- The Senior Planner and the Director had an annual 'Christmas lunch' most years from 2014 to 2018 at restaurants. Outlook calendar invites indicate the venues for these lunches were 'Rockpool' and 'Bacash' restaurants.
- It appeared that the Senior Planner and the Director corresponded with each other using work emails, rather than personal email accounts.
- The Senior Planner appeared to rarely use his work email for personal reasons, except for some personal administration.
- The Senior Planner also corresponded with the Developer's architect by email. All appeared professional in tone and nature.

154. In his meeting with the former Council CEO in February 2020, the Senior Planner admitted to having lunch with the Director and architect. He told the CEO 'it was about 5 years or so ago and the location was potentially the Cove Hotel'. He also told the CEO he 'wasn't sure' if he was dealing with any application for the Developer, on those lunch occasions.

155. These statements do not correspond with the frequency and location of meetings reflected in email records, which show at least four 'Christmas lunch' meetings. The investigation did not sight evidence that the Senior Planner paid for his own meals on these occasions or whether they were paid for by the Director. Planning file KP645/13 records the Senior Planner as working actively on the Pier One development from 2013 to 2015, the period of time in which he admits he met with the Director for lunch.

156. In response to the draft report, lawyers for the Developer and Director stated:

Much has been made of the four lunches between [the Director] and [the Senior Planner] between 2014 and 2018. We note that these lunches were also attended by our client's architect ... and lasted for approximately between one to one and half hours. There was minimal or no alcohol consumed with all parties heading back to work at the conclusion. The lunches were in the nature of a professional meeting.

157. The Senior Planner does not appear to have recorded these meetings on the planning files reviewed, nor did he declare a conflict of interest. When the CEO asked him whether he had declared the lunches he had with the Director, he said 'probably not'.

158. The investigation did not identify other evidence suggestive of an improper relationship between the Senior Planner and the Director or Developer.

159. However, the Senior Planner's conduct shows a concerning lack of judgement in failing to properly record meetings with the Developer and declare his conflict of interest in lunching with the Director. Further, the Senior Planner does not appear to have been truthful when describing to the CEO how often he met with the Director.

160. Council has advised the investigation that while senior officers are required to make an annual declaration of their Ordinary Returns, conflicts of interest are not recorded in the same manner. Instead, senior officers and Councillors are expected to declare and manage conflicts of interest as they arise. The way in which the Council manages conflicts of interest is discussed further below.

Investigation of collusion, bribes or kickbacks

161. Extensive enquiries, including using the Ombudsman's coercive powers, were made to assess whether the Senior Planner received kickbacks or bribes in exchange for favourable treatment of planning applications made by the Developer, as alleged. (The Ombudsman's powers do not extend to covert surveillance methods.)

162. The investigation reviewed:

- Information provided in the initial complaints and by witnesses interviewed
- Bank account statements obtained under summons
- Relevant emails between parties obtained under summons
- Publicly available records.

Information provided to the investigation

163. Several witnesses alleged an improper relationship between the Director and the Senior Planner. They said the basis of their views were conversations they had overheard or that had formed part of the 'coffee talk' around the Marina. They acknowledged they did not have any evidence to support their suspicions that the Senior Planner had been offered or received any bribes or kickbacks from the Developer.

164. Further investigative steps, including reviewing email exchanges and bank records, provided no evidence to support the witnesses' views.

Bank accounts, emails, open source intelligence

165. The parties' banks statements spanning seven years did not contain transactions that appeared to be associated with improper payments.

166. Council planning emails around decision-making in the Patterson Lakes precinct did not reveal evidence of financial or other incentives having been offered or provided.

167. Extensive open source searches also did not identify links between the Senior Planner and the Director or Developer.

The relationship between the Senior Planner and other planning staff

168. It was also alleged that the Senior Planner attempted to improperly influence planning staff to make decisions favourable to the Developer and other developers. This allegation forms part of the anonymous disclosure. The investigation was limited in seeking further details about this alleged conduct.

169. The investigation noted that a Team Leader who reported to the Senior Planner at the time told Hall & Willcox that the Senior Planner had 'referred the KP2018/459 application to him, and said that plans had already been approved, and asked for a Band 5 planner to assess it'.

170. The investigation understands that a Band 5 planner is a planning officer with up to four years' experience. The Team Leader's comment appeared to imply the Senior Planner asked for a less experienced planner to deal with the development application, so he could influence the planning officer to come to a particular outcome.

171. The Senior Planner refuted this suggestion in his meeting with the CEO, where he reportedly said, 'he did not hand select a planner to deal with the application'.

172. However, the planning files for KP2018/459 show that both Planning Officer A, who completed the early assessment of the application and Planning Officer B, who authored the report for Council, were recent graduates when they completed this work.

173. Email searches showed:

- The planning officers were allocated the file to work on by their Team Leader, not the Senior Planner directly.
- There were very few interactions between the planning officers and the Senior Planner about the impugned decisions.
- The emails where the Senior Planner did interact with planning staff about Council reports did not suggest pressure or influence being applied by the Senior Planner.
- There were also examples of the Director contacting the Senior Planner for an update on a decision and the Senior Planner referring them to the planning officer working on the file directly, rather than getting involved. This suggested he was not involving himself unduly in the Developer's matters.
- When news of the Senior Planner's retirement from the Council was announced on 30 April 2020 (his last day was in July 2020), he received numerous messages of appreciation and support from planning officers who reported to him. While positive relationships with some staff do not negate the possibility of improper influence in his relationships, it forms part of the evidentiary picture of how he was regarded internally.

174. The investigation found no evidence suggestive of the Senior Planner improperly influencing planning staff to make decisions that were favourable to the Developer.

Poor decision-making by Senior Planner regarding the CDP

175. The investigation did not find evidence that the Senior Planner gave the Developer favourable treatment in exchange for bribes or kickbacks. However, the investigation identified several deficiencies in the Senior Planner's recording and reasoning of his decisions for some developments in the Marina precinct. This likely created the impression that he was deliberately making decisions that were not compliant with the CDP.

176. The investigation completed a detailed review of nine impugned planning decisions, identified in pink and blue (Figure 3: Timeline of decisions considered by this investigation on page 22) as to their compliance with the requirement of the CDP. Expert planning advice to the investigation identified problems with the earlier six decisions where there was no evidence of officer assessment and key documents were missing.

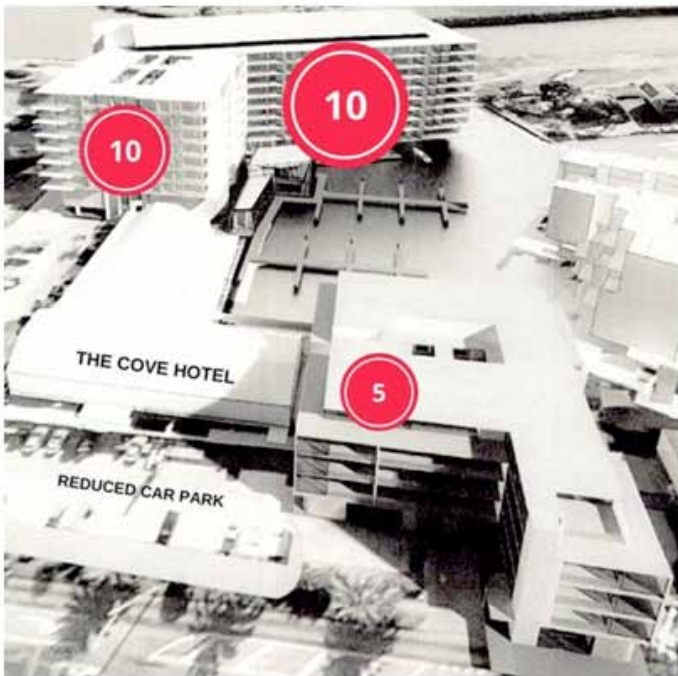
177. The investigation focussed, however, on the three most recent decisions made by the Senior Planner as Council delegate in the Marina Quay development, and the first and second iteration of the 'Pier One' development. These decisions are identified in blue in Figure 3: Timeline of decisions considered by this investigation on page 22.

178. These three decisions became the focus of public attention from 2018 onwards. They gave rise to suspicions by some community members of collusion between the Developer and Council officers, because decisions were viewed as not being made in strict accordance with the applicable Scheme. Neither were they explained or recorded with sufficient detail to satisfy Councillors or residents of the robustness, transparency and legitimacy of the planning assessment process.
179. Of note, although more junior planning officers conducted assessments and prepared reports, the investigation was satisfied that the Senior Planner was the delegated decision-maker pursuant to the Council's Instrument of Delegation.
180. The Senior Planner should have been cognisant of three forms of planning 'enablers' for the site.
181. Each of these 'enablers' are intended to achieve an orderly planned development outcome:
- the Planning Scheme and any amendments
 - the Planning Consents certifying that the proposed development satisfied the conditions of the relevant Planning Scheme
 - the Planning Permit Applications submitted, when required.
182. There were flaws in the use and application of each of these 'enablers' by the Senior Planner, that over time diluted their effectiveness in achieving an integrated, planned development outcome.
183. The Mayor advised, in response to the draft report, that Council was preparing a Planning Scheme amendment for the Endeavour Cove precinct to update the overall layouts on the site. He also explained that Council instigated a declaratory proceeding at VCAT to review the decision the Senior Planner made in 2018, set for trial in March 2022.
184. In their response to the draft report, the Developer's lawyers also advised that the question of whether the 2018 Development Plans endorsed by Council in March 2018 were compliant with the CDP is subject to VCAT review.
185. None of the observations made by the investigation about the conduct of the Senior Planner constitute any conclusions about the legality or otherwise of decisions being considered by VCAT or the Council. Instead, the investigation reviewed the extent to which, as a delegated decision-maker, the Senior Planner acted with the good judgement expected of a senior officer. This included having sound knowledge of the laws and regulations intended to guide his decisions.

KP2018/459: The Marina Quay development

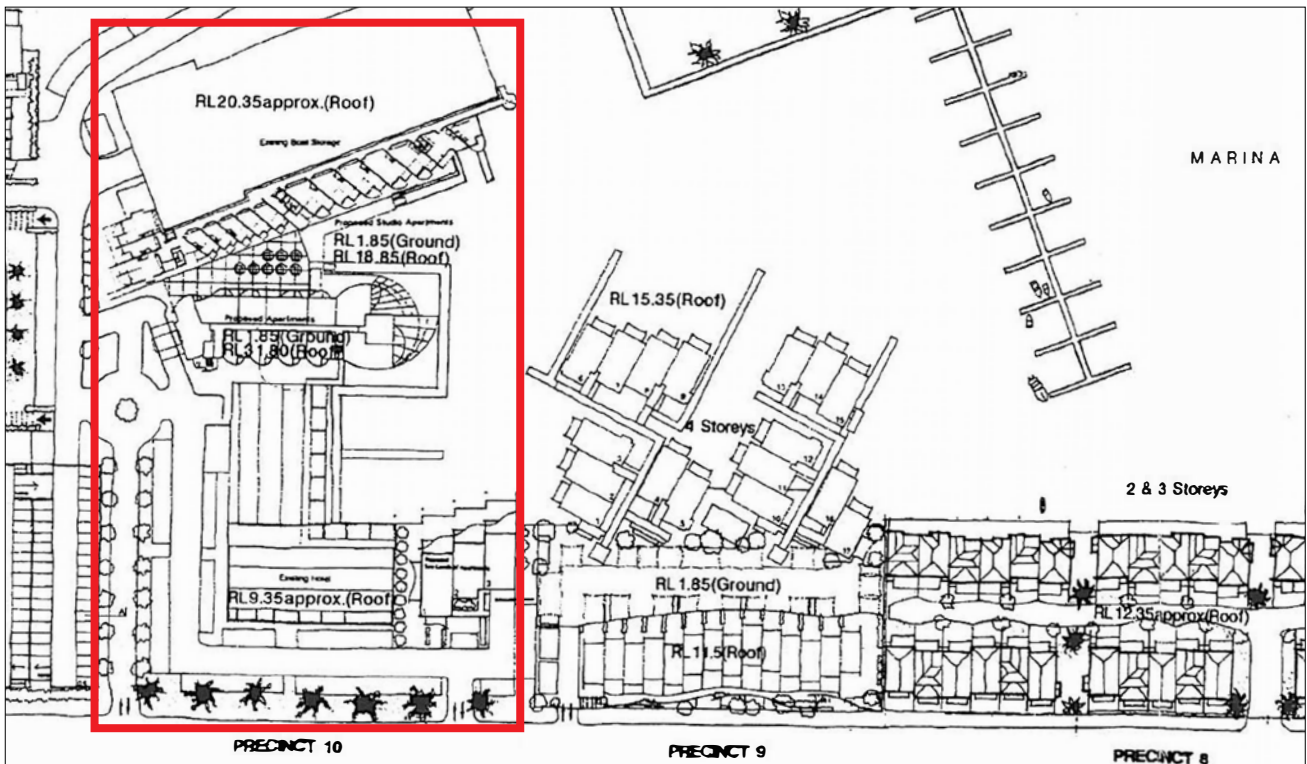
186. At interview, a Councillor said they first became aware of potential issues with the Senior Planner's decisions when residents began complaining to them and other Councillors about a decision to approve the construction of two ten-storey buildings and one five-storey building in the Marina precinct.
187. The three buildings of the Marina Quay development would comprise 236 new dwellings. The two ten-storey buildings would surround and adjoin the existing boat storage shed and the five-storey building would be next to the Cove Hotel, as illustrated in Figure 11.
188. In the Council meeting on 22 May 2019, another Councillor summarised the community's concerns:
- Loudly and clearly the community has rejected the proposal ... it is not what was planned many years ago when this Comprehensive Development Plan was put into place and [the developer] cannot have a double-dipping situation where [he] takes what's advantageous to [him] but all the other rules that restrict what [he] does should be forgotten about, that's not how it works ... the developer knew what he was getting into with this zone. Now is not the time to cherry pick through and remove what is very important to the community
189. A review of the planning file KP2018/459 shows that the decision to support (via the Planning Consent process) this Marina Quay development was made by the Senior Planner as delegate on 8 March 2018. He endorsed the development plans provided by the Developer 'pursuant to [the Schedule]', as being compliant with the CDP. He confirmed this in writing to the Director on 20 March 2018. This is called a Planning Consent as it required only that the Council, in this case the Senior Planner as the authorised delegate, endorse the plans as CDP compliant.
190. The investigation noted the 1999 CDP did not appear to provide for buildings of these heights in the locations identified on the endorsed plans. As shown in Figure 12, a magnified section of the CDP, the site for the ten-storey building that was planned to surround the boat storage, has an RL of 20.35, being the height of the existing boat storage. The endorsed plans for this building showed a proposed height of 31.60 AHD.
191. The ten-storey building in front of the boat storage was not depicted in the position proposed. But there were two different notations for proposed apartments on the 1999 CDP, one with an RL of 18.85 and one with an RL of 31.80 in different positions. The ten-storey building proposed for this site had a height of 33.60 AHD.
192. In response to the draft report, the Senior Planner said he did not agree that the 1999 CDP made no provision for these buildings in the locations identified. He said the proposed ten-storey building in front of the boat storage had an RL of 31.80 and was therefore consistent with the 1999 CDP - noting that it was difficult to see the height on the plan itself.
193. However, he agreed that the other ten-storey building, depicted where the existing boat storage shed was situated, was too high for the 1999 CDP. He said:
- the proposed building on this footprint should have been no higher than RL20.35. In hindsight, this was clearly an accidental oversight on my behalf.
194. The five-storey building that makes up the balance of the development was to be located in an area designated as self-contained apartments in the 1999 CDP, next to the Cove Hotel. An RL of 9.35 was nominated for the Cove Hotel and the site nominated for the five-storey building was being used as part of the Cove Hotel's parking requirements at the time the development received Council consent.

Figure 11: KP2018/459: The Marina Quay development



Source: Kingston City Council Planning File KP2018/459

Figure 12: A Section of the CDP showing heights for Marina Quay development



Source: Kingston Planning Scheme

195. The investigation could not locate documentary evidence of any critical assessment by the Senior Planner of the proposed development plans. Hall & Willcox similarly observed:

The Council file does not appear to contain any documents which explain the background or rationale for the decision to endorse the plans for this proposal.

196. Significantly, the investigation noted that similar prior decisions appear not to have been considered by the Senior Planner when approving these plans. As the same parking and height provisions had been applied in previous decisions, it would be expected that he would have referred to them, if only to explain why they didn't apply to this proposal.

197. In his interview with Hall & Willcox, the Senior Planner acknowledged he had initially assessed the Marina Quay proposal as being 'generally in accordance with the CDP'. But he now accepted he overlooked the 20.35RL nominated height for the boat storage site. Hall & Willcox noted that 'the only rational explanation he could offer was that he had assessed the 31.80RL nominated for the site immediately to the south as being the applicable height for that broader location.'

198. No permit was required to be issued for the building and dwelling use aspect of the Marina Quay development. Notably, if the Developer had not subsequently applied for a car parking reduction permit, this development would have been constructed on the basis of the Senior Planner's assessment alone.

199. The planning files show that the Marina Quay development was designed to include 236 new dwellings, requiring 708 new car parks to be compliant with the Schedule (three car parks per dwelling).

200. However, the Developer proposed providing 317 fewer car parks than was required by the planning controls. Effectively, most sites within the precinct had been developed by this time, and land contemplated as providing car parking in the original 1999 CDP had been built on - prompting the Developer to request a reduction.

201. As the development plans submitted did not provide the required number of car parks, the Developer was required to apply for a planning permit to reduce the number of car parks from 708 to the 391 car parks he wanted to provide.

202. After meeting with the Senior Planner on 16 May 2018, the Director applied for the car parking reduction permit on 17 May 2018. A report was then prepared by Planning Officer B in which the application was considered with respect to the requirements in the CDP and the Schedule ('report'). A recommendation was made to issue a Notice of Decision to Grant a Permit (reflecting the receipt of objections to the application) for the parking reduction.

203. The report, dated 22 May 2019, gave the following reasons for supporting the issuing of the permit:

- The CDZ parking requirements are considered to be onerous and unnecessary in this instance and it is considered that car parking provision in excess of the minimum requirements of Clause 52.06 - Car Parking (which operates outside of the CDZ in other Council zones) would be acceptable.
- The Traffic Report provided to Council supported a reduction in car parking, noting that a previous development had been approved which also fell below the CDP car parking requirements.
- The proposal would not result in a detrimental outcome on traffic movements within the surrounding areas nor is it likely to lead increased car parking demand.

204. The investigation identified several issues with the report prepared for KP2018/459.

Impact on traffic flow and amenity

205. The planning files showed that VicRoads provided a report to Council on 14 November 2018 in which VicRoads raised concerns about:

- the impact of the development on the arterial road network
- line of sight issues for increased traffic exiting Pier One Drive onto McLeod Road ('the intersection').

206. VicRoads ultimately recommended the intersection be restricted to provide for left in/left out movements only.

207. While the planning officer report recommended the left in/left out access arrangements be included as conditions on the permit, it provided no detail about how the impact on the arterial road would be addressed nor subsequent impacts on resident safety.

208. In his response to the draft report, the Senior Planner disagreed there was no detail provided about traffic concerns in the report. He says that normally traffic matters are referred to Council's Traffic and Transport Department; and for this proposal, the officer's report did reference VicRoads, the Developer's Traffic Assessment and comments of Council's traffic engineer.

209. However, the planning officer's report failed to provide a critical and reasoned assessment to detail how the references to other comments informed his conclusion and the subsequent conditions included in the recommendation.

The impact on visitor car parking for Cove Hotel patrons

210. In recommending that Council adopt the less onerous car parking requirements, the report stated that 'the (proposed) car parking is considered sufficient for the demand of future residents and their visitors'.

211. There is no information provided in the report to explain how the planning officer came to the conclusions about future demands in the precinct. No reference was made to visitor generation surveys, for example, which the investigation understands would normally form the basis of such an assessment.

212. Significantly, the report also failed to mention an objection that had been raised by the tenant of the Cove Hotel about where parking for the Hotel would be located on the newly developed site. In his response to the draft report, the Senior Planner said he could not comment on the objection which may have been raised, as he did not recall the specifics of the matter.

213. Figure 11 shows that the construction of the five-storey building to the east of the Cove Hotel would have reduced the availability of car parks in the vicinity of the Hotel. Melbourne Racing Club, the manager of the Cove Hotel, strongly objected to Council's decision to permit the car parking reduction for KP2018/459. The Club said it 'had fundamental concerns in relation to the proposed number of car parking spaces which will be lost' as a result of the Marina Quay developments.

214. The investigation understands that the Hotel is required, by an amended permit dated 31 May 2001, to have at least 152 parking spaces. In a recent County Court matter, the Director explained that he had since come to an agreement with the Melbourne Racing Club to use car parks in a riverside carpark to make up for the loss of proximate parking to the Hotel.
215. The Director said, 'under the new lease we've entered into with the Cove Hotel, we provide 125 car parks around the perimeter of the hotel and 27 on the riverbank for a total of 152 car parks'.
216. The practical implication of moving some of the Cove Hotel's required parking to the riverside car park is that these car parks are located outside the Marina's security gates, accessible only by a 'fob' pass outside of business hours and over 100 metres away from the Hotel itself.
217. In response to the draft report, lawyers for the Developer stated, 'it is materially wrong to conclude that the grant of permit KP2018/459 would have reduced the number of car parks allocated to the Cove Hotel'. They also said that the Cove Hotel has never commenced or threatened legal proceedings with the Developer about the provision of car parks and expressly withdrew their objection to KP2018/459 before the permit application was referred to VCAT for determination.

Figure 13: Riverside Car park- Patterson Lakes Marina



Source: Victorian Ombudsman

218. The investigation understands that the Director and the Melbourne Racing Club eventually came to an agreement on this matter in 2019. However, when the report recommending the car-park reduction was made to Council on 22 May 2019, the potential impact of this change on the amenity of residents and visitors and the nature of the objection by the Racing Club was not brought to the attention of the Councillor group. This was a significant deficiency in the report.

The ambiguity of height controls in the CDP

219. The investigation understands that by the time the Permit was being considered in 2018, extensive debate had occurred within the planning department about the operation of height provisions in the precinct.

220. As noted, the CDP contains a mandatory height control that provides that buildings and works must not exceed the height above the Australian Height Datum for any particular area where a Relative Level is identified on the CDP. However, there was a debate in the planning department about whether height controls are only mandatory where a proposal otherwise triggers a planning permit, and if not, some discretion can be applied to height.

221. In the report for the Marina Quay development, the officer did not reference this debate or explain the basis on which the Senior Planner had endorsed two ten-storey and one five-storey building in the identified precincts as being compliant with the CDP. While it could be argued that the report was only concerned with the application for the car parking reduction, it provided commentary on the building and works:

The final built form outcome would positively contribute to a unique, contemporary design of the highest urban design quality on one of the key gateway sites within the Patterson Lakes Marina. This results in a building that positively contributes to the skyline when viewed from both the Patterson River and McLeod Road.

222. By providing this commentary on the final form of the buildings without reference to height assessments, the report provided one-sided and arguably incomplete information to Council.

223. Finally, the report misdescribed the five-storey building as a three-storey building. In his interview with Hall & Willcox, the Senior Planner said 'this was a mistake that no one had picked up' and that 'planning officers had relied on the report of the traffic consultant who called it a three-storey building without having proper regard or referencing back to the plans'. The investigation noted this as a further example of poor or incomplete record keeping by the Council's planning department.

224. In response to the draft report, the Senior Planner submitted there were alternative interpretations in considering and assessing the proposals within the CDZ. He said, 'although the Schedule states that building or heights must not exceed the height above Australian Height Datum, the only levels shown on the CDP are Relative Levels (RL)'.

225. After receiving what one Councillor described as 'hundreds' of written objections from residents, Councillors unanimously rejected the proposal to allow for the car parking reduction at Marina Quay in a Council Meeting on 23 May 2019.

226. When the Developer sought a review of this decision by VCAT, the tribunal affirmed the Council's decision. The VCAT members noted the following:

- They agreed with the Developer that clause 52.06 (applicable car parking rates outside of the CDZ) is widely accepted as appropriately representing the car parking demand of the residential land use.
- However, it was the scheme itself which treated this Marina area differently to other parts of Melbourne via the unique planning controls applying to it. Therefore, compliance with clause 52.06 was not sufficient to ensure compliance with the unique controls of the CDZ.
- Clause 52.06 and the CDZ are two distinct planning controls, each with their own permit triggers. Had it been enough that compliance with clause 52.06 would be sufficient to justify a reduction in car parking under the CDZ, the CDZ would have said so.
- It may be that this different rate was simply outdated and that the car parking demand of residents of the Marina and their visitors was not substantively different to residents of other areas.

227. As previously noted, the investigation understands that a further VCAT hearing about the Marina Quay development plans and applications is scheduled for hearing in March 2022.

Community concerns about Council planning decisions

228. The VCAT outcome was received as a victory for resident objectors. But it also brought into the public domain concerns that the Council's planning department had been complicit in the 'overdevelopment' of the precinct over a number of years - triggering a number of reviews of previous decisions, including this investigation.

229. The two previous decisions of relevance to the allegations referred to the investigation were KP645/2013 and KP547/2011, both versions of the Pier One development.

KP645/2013: The as-built version of the Pier One development

230. A Marina resident gave evidence to the investigation about the impact of continual residential development on the traffic and parking issues in the area. He submitted that the Pier One development (KP645/13) should not have been given a permit to be built. This was because, at six storeys in height, it was not 'generally in accordance' with the 1999 CDP, which clearly shows a car park on the site.

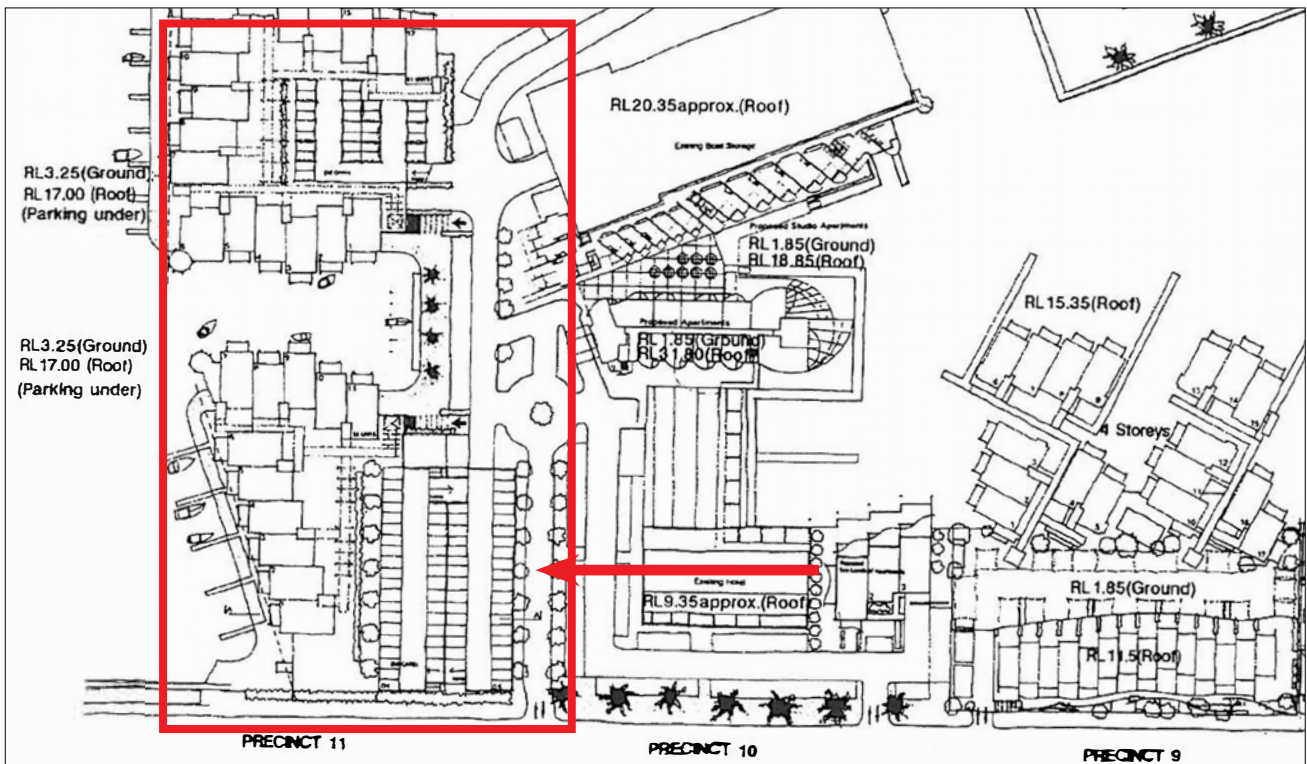
231. Figure 15 is the magnified precinct of the 1999 CDP, the site on which Pier One was later built, confirming a car park was intended for that area of the Marina.

Figure 14: KP645/2013: The as-built version of the Pier One development



Source: Kingston City Council Planning File KP2013/645

Figure 15: A section of the CDP showing a car park



Source: Kingston Planning Scheme

232. The investigation reviewed this file and noted that a submission was received on behalf of the Developer justifying why the plans should be endorsed, even though they exceeded the height mandated by the CDP. The investigation found:

- The Developer's representatives openly acknowledged and accepted that the proposed building height would be above the height levels stipulated.
- Legal advice was provided to Council on 8 May 2014 expressing concern about Council's capacity to vary the height provisions and possible non-compliance of any approval with the CDP.
- Lawyers representing the Developer argued on 29 April 2014 a common-sense approach should be adopted based on the purpose of the provisions.
- The principal debate centred on whether consideration could be given to a building height above those stipulated on the CDP at all; or whether it could still be approved but would need to go through a standard statutory approval process, including the giving of public notice.
- Ultimately officers relied on legal advice and negotiations with representatives of the Developer to take a view that a height above the CDP level could be supported.

233. In his response to the draft report, the Senior Planner's lawyer said:

The Senior Planner agrees the 1999 CDP shows a car park where the Pier One building was later constructed, however, around the same time Council Officers had commissioned and received legal advice ... that a planning permit can be granted ... for a proposal which is not generally in accordance with the CDP

234. Whilst acknowledging the reliance on legal advice, the investigation notes that the height controls expressed in the CDP provided no discretion for exceeding the height referenced. The Schedule clearly stated that 'building or works **must not exceed** (emphasis added) the height above the Australian Height Datum for any particular area as shown on the Endeavour Cove Comprehensive Development Plan (December 1999).

235. There is no evidence to explain the Senior Planner's decision-making recorded on the planning files reviewed for KP645/2013. Hall & Willcox reported that the Senior Planner told them:

in approving this proposal as being generally in accordance with the CDP, he had relied, to a degree, on his previous assessment and approval for the [previous iteration of Pier One].

236. He acknowledged he had made that statement to Hall & Willcox when responding to the draft report. He went on to explain that the land identified on the CDP as a car park does not have an RL nominated, and therefore it was considered that a height control did not apply. However, as the Developer sought a six-storey building (only one storey higher than the previous iteration), he considered it more in keeping with the height levels in the nearby area - therefore reducing the possibility of an even taller building in this location.

237. The investigation notes that the Senior Planner said he relied on the prior decision when approving these plans; however, the investigation found no evidence of this recorded on the file for KP645/2013.

238. Council minutes show that the officer report on the application for a car parking reduction for KP645/2013 went to Council for decision on 25 May 2015. The Senior Planner told the investigation he recalled that the application for KP645/2013 was put to Council at his direction at a Council Meeting in accordance with the Council Delegation Policy.
239. The report for Council, written by Planning Officer C, recommended a Notice of Decision to Grant a Permit be approved to allow the Developer to develop and use the land for a six-storey building with a reduction of the car parking requirement required by the Schedule.
240. The motion to approve the planning officer's recommendation was moved by Councillor Bearsley and seconded by Councillor Ronke with the car parking reduction permit being issued shortly thereafter, on 29 July 2015.
241. The investigation identified some concerning aspects of the planning officer's report.
242. Notably, the report did not reference any of the issues of the height interpretation, the subsequent debate and referral to Russell Kennedy lawyers for legal advice. Instead, the report states that 'the proposal is not considered to generally be in accordance with the development plan' and 'the plan identifies this parcel of land to be for the use of car parking'. The report further concludes that 'there are no height control limits applicable to this portion of land' despite there being significant ambiguity about this interpretation within the planning department.
243. It is likely that such matters would have been of relevance to the Councillor group when voting on the matter. In fact, in the later Council meeting in May 2019 in which the application for car parking was rejected for KP2018/459, Councillor Bearsley stated:
- In the past we have listened to our planners when they have provided us with reports in relation to this development and unfortunately, we did give a reduction on a previous development in this area and we now know how this has ended.
244. The investigation notes that this comment suggests a breakdown in trust between the Councillor group and the planning officers.

KP547/2011: The first iteration of the Pier One development

245. Before it was approved as a single six storey building, Pier One had previously received Planning Consent by the Senior Planner as two five-storey buildings in planning file KP547/2011 as represented in Figure 16.
246. Consistent with KP645/2013, the first iteration of the Pier One development was proposed for a parcel of land identified on the CDP as a car park.
247. The Planning Consent for this development was issued by the Senior Planner on 8 March 2011.

248. With respect to parking requirements, the planning files show:

- The original Consent relied on the Developer constructing a five-level basement car stacker robotic parking system; however, no supporting officer assessment relating to this Consent was identified in the records Council provided to the investigation
- Subsequent updated planning applications submitted by the Developer continued to rely on a car stacker system but with a reduced number of spaces
- It appears the Developer relied on Site A, where Pier One sits now, to provide part of the parking to serve the Cove Hotel on an earlier planning file KP90143 - so it may not have been reasonably open to the planning officer to rely on it again
- The planning officer's assessment made no reference to possible impacts of this development on the availability of car parks or that the original CDP plans show this area being designated for car parking.

249. With respect to height control, the planning files show:

- the height of the buildings was 225 mm above the 1999 CDP nominated height
- the Developer's consultant asserted it was 'generally within the heights' and 'meeting the intent of this provision'
- the Senior Planner accepted the height variation based on compliance with the CDP's intent.

250. When asked by Hall & Willcox how he could support the proposal as being 'generally in accordance' with the CDP when the CDP appeared to show a car park on this site, the Senior Planner reportedly responded, 'upon review and in hindsight, he probably would not have gone down the line of supporting it'.

251. He reportedly said he had 'relied on the assessment of the Developer's planner'. He also said he had used RL17.00 for the purpose of assessing an allowable building height on the site.

Figure 16: The first plans for Pier One



Source: Kingston City Council Planning File KP2011/547

252. When asked how, in forming the view that maximum height applied, he had exercised his discretion to allow the Developer to exceed the height, the Senior Planner reportedly noted that the amount over the height limit was not significant. He had applied a 'purposive approach', encouraged by the applicant's report, and considered it was 'generally in accordance' with the height control. He reportedly told Hall & Willcox that 'he now accepts that the control works as a strict maximum, and that, in hindsight, he overstepped the mark'.

253. It is unclear from the planning files why the first iteration of the Pier One development was not built. However, the Senior Planner relied on his initial approval when giving subsequent approval to KP645/2013, which he confirmed when interviewed by Hall & Willcox.

254. This is another example of a previously unclear or ambiguous planning decision being relied upon in subsequent decisions made by Senior Planner and other planning officers.

Other concerns about decisions made by the Senior Planner

255. In addition to allegations that the Senior Planner deliberately made decisions that appeared to be non-compliant with the CDP, a number of other concerns were raised by witnesses.

Failure to advertise

256. Residents and Councillors expressed concerns about lack of public notification and the opportunity for residents to object to development in the precinct.

257. At interview, a local businessperson said:

If you see a building development, you always expect to see the little yellow signs showing details of how to comment, etc. In all my years there I never saw one, [the Developer] appeared to do pretty much whatever they wanted

258. The investigation is satisfied that the CDP is structured in a manner that it allows for Planning Consent (confirming compliance with zone provisions), which enables development to occur without the need for a planning permit. The exercise of assessing and giving Planning Consent is therefore exempt from public notice provisions.

259. The CDZ was given consent as a specific purpose zone with prescribed site uses from the onset. This negated the requirement for the Developer to apply for each development and for them to be advertised - provided Council consented to the plans as being 'generally in accordance' with the Scheme.

260. The investigation concluded that where planning applications were submitted by the Developer, the test of material detriment (as required by the Planning and Environment Act 1987) was applied and public notice was given appropriately. The investigation observed that advertising was provided when required, as evidenced by the advertising of the car park reduction application for KP2018/459 which was publicly advertised and received 'hundreds' of objections.

261. Residents understandably observed the notice provisions were not consistent with standard planning applications, as the Schedule did not require notice be given for the vast majority of activities undertaken by the Developer. But the investigation found no evidence of incorrect exercise of public notice provisions by the Council.

Public open space

262. One of the reasons Marina residents objected to KP2018/459 was their view that the Director had been allowed over time to build on land they believed was reserved as public open space.

263. A Marina resident submitted:

The original plan was very different in terms of community amenity. It provided 25% of the CDZ land area around the marina as public open space excluding roads and parking. The landscaping of the 3ha Public Open Space outside and to the north of the zone (at the riverbank) was supposed to be a community contribution by the developers with a playground and barbeques. It is now an open grassed plain with a gated private carpark which is only beneficial to the leaseholder.

264. The photograph in Figure 17 shows the common space with barbeque area that residents believed should be open to public and other residents of the Marina but is accessible only by residents with the gated access to Northshore Drive.

265. At interview, a local businessman also said:

if you look at photos of the Marina in 1994 and look at it now, it's an absolute joke, it's the slum of the future, it was intended to be a marina and every square bit of dirt has a building on it

Figure 17: Open space in the Marina



Source: Victorian Ombudsman



Source: Victorian Ombudsman

266. In response to the draft report, lawyers for the Developer said it is absurd to suggest that the Marina is a 'slum'. They said 'Patterson Lakes Marina is regarded by the local community as a very desirable place to live' and 'property prices have continually increased at Patterson Lakes Marina year on year, the most recent sale of a property located in North Shore Drive, was a record of \$2,600,000'.
267. The original CDZ provisions required the owner of the land to enter a legal agreement with the City of Chelsea providing for 'a recreation contribution which has been calculated on the basis of 1/20th of the site value ... the contribution will be considered to satisfy any contribution for land or money required for "resort and recreation" under the Local Government Act, Planning and Environment Act and Subdivision Act'.
268. The investigation confirmed that the signed and sealed legal agreements with the City of Chelsea are on Council's files. These agreements required the landowner to pay the sum of 1/20th of the land value in satisfaction of the recreation contribution.
269. The above provisions essentially 'front end' the open space contribution (in this case via a monetary contribution). Once satisfied, it is not possible to seek further open space contributions (either monetary or in land). The investigation understands that, whereas in undeveloped areas, it is more common to see an open space contribution take the form of a land contribution by a developer, in developed areas this will often take the form of a financial payment. The money is then consolidated with other contributions by Council to purchase or upgrade existing open space assets in the area.
270. The investigation is satisfied that land in the CDZ seen as public open space could be either common property or land available to the public but is not formally zoned as reserved public open space in a statutory sense.
271. Subject to satisfying the zoning and application processes, it is therefore possible for alternative uses or changes to the status of the land to be considered and approved.
272. While it appeared to some that the Developer was being given dispensation by Council to build on public open space, this was not the case as a monetary contribution had satisfied the open space requirement.

Deceleration lane and other permit conditions

273. A Councillor told the investigation they had come to understand that a deceleration lane 'required to be built under the permit' for the Pier One building had not been constructed. They said the planning officers didn't enforce this requirement despite another Councillor putting in a 'councillor request' for it to be done.
274. The Councillor said that after six months of being told by the planning department that they would look into it, a motorcyclist died in a fatal accident. They wondered if the absence of the deceleration lane may have been a contributing factor in the accident.
275. A local resident and a Marina resident also raised the issue of a deceleration lane not being constructed as required. Both suggested the failure by the Council to enforce what they understood to be a permit requirement implied that the Developer had been given favourable treatment.

Figure 18: Photo of site of proposed deceleration lane near Pier One



Source: Google Maps 15 July 2021

276. The Senior Planner said it was not his responsibility to enforce permit planning requirements. He said this responsibility sat with Council's Compliance and Amenity Department. He said that if the Councillor had spoken to him, he would have advised them that this issue didn't fall within his department.

277. The investigation reviewed the documents in the planning files about the deceleration lane. The Ombudsman's planning consultant advised the investigation:

This matter was raised and assessed as part of Planning Permit KP547/11. Two factors make it highly unlikely Council would be able to enforce compliance with this expectation.

The most critical impediment is that this permit has not been acted on and was superseded by Permit KP 645/13 that enabled and sanctioned the as built Pier One development.

Furthermore, it is considered that the structure and actual obligation requirement of the condition is poorly framed and would not have achieved delivery of the slip lane.

The condition only required a Functional Layout Plan to show the capacity to provide the slip lane. It did not actually require construction of a slip lane and provided no time frame for when such action must be undertaken.

278. Effectively, the permit issued to the Developer about the deceleration lane only required the Developer to show a functional layout plan of the deceleration lane and not construct the lane itself. Emails sighted by the investigation support this conclusion.

279. The VicRoads report prepared for KP2018/459 requires a 'left in/left out' lane to be constructed at the intersection by Developer as a permit condition. But the investigation understands that this work is only required to be completed once all development has been finalised at the Marina site.

280. In response to the draft report, lawyers for the Developer said VicRoads advised the Council that it did not require the construction of the deceleration lane and that the Developer was willing to build the lane in any event. They also said the deceleration 'was not connected to the cause of, or a contributing factor, in the fatal accident' and that there was therefore no factual basis for the Councillor's suggestion that it may have been.

Amendments made to applications that had already received Consent

281. In a comprehensive file review, this investigation observed a pattern of Planning Consents being sought and approved. The pattern also showed subsequent planning applications being sought for similar or related developments, but with further design variations. Some of these have included seeking car parking dispensations beyond the levels anticipated by the CDP.

282. The investigation found two notable instances of expanding evolutionary changes to development proposals for essentially the same site. These are:

283. The Pier One development site on which:

- Planning Consent was issued on 12 August 2006 for an 1800m² office space and 114 car parks in a five-storey building
- a Planning Consent was issued on 8 March 2011 for a building with associated five level basement car stacker with robotic parking system
- Planning Permit KP 547/11 was issued on 21 December 2012 for car parking reduction associated with a five-storey residential building
- Planning Permit KP 645/13 was issued on 29 July 2015 for car parking reduction associated with a multi-level residential building, including building height exceeding CDP height stipulation.

284. The Marina Quay development site on which:

- Planning Consent was issued on 1 December 2008 for a 1250m² showroom and 176 apartments over eight storeys with 600 car parking spaces
- Planning Permit KP 1119/08 was then issued on 6 March 2009 for car parking reduction for a multi-level development
- Planning Application KP 2018/459 was issued in 2018, part of which included two ten-storey and one five-storey residential buildings.

285. In response to the draft report, the Senior Planner said:

A number of proposals for larger developments have gone through the consent process and provided car parking in accordance with the CDZ. A number of these have later come back to Council with their main focus being to reduce the number of car parking spaces required.

286. He said an application to reduce the number of car parking spaces under the Planning Scheme is a legitimate form of Application for Planning Permit.
287. Advice to the investigation suggests that the exercise of seeking approval for various and changed development proposals is not inappropriate or problematic in itself.
288. However, the file records showed there was potential for an earlier decision to be relied on for subsequent decisions. This was demonstrated in the Pier One development site, when an earlier decision to support a height increase above the CDP mandatory level was relied on and repeated for the latter iteration. Both are considered to be contrary to the planning provisions.
289. Further, many of the applications lodged were seeking a car parking rate dispensation. The investigation suggests that variations from the established parking expectations require greater oversight and assessment of the development proposal. This is because there were only a limited number of parking options available in the Marina precinct. A weakness in the oversight of these applications over time potentially allowed for a gradual, uncoordinated erosion of the outcome originally expected.
290. The Senior Planner, in his response to the draft report, said he did not believe variations from the established parking expectations directly translated to a lesser number of car parking options. This was because he considered a reduction to car parking requirements only impacted the site being developed. The investigation suggests that this fails to consider the aggregate impact of car parking reductions on traffic flow and amenity in the Marina.
291. The investigation located an email where the Senior Planner appeared to have made concessions of this nature in relation to the Pier One development. In an email to the Director and architect dated 4 October 2017, he wrote, 'I can confirm with you that the minor modifications sought to the approved development are satisfactory and do not generate the need to submit amended plans for endorsement'.
292. In response to the draft report, lawyers for the Developer said this email refers to the provision of fencing around the perimeter of a tennis court, a minor modification that did not generate a need for amended plans.
293. Regardless, this practice had the potential to create the perception that developers can seek approval for a development in principle and then make numerous applications that have the effect of materially altering the substance of previously endorsed plans.
- Failure by the Senior Planner to effectively document approvals**
294. The investigation noted that the Senior Planner's decision-making lacked supporting assessment material to explain the basis for his decisions.
295. For a majority of planning files reviewed, there was no documentary evidence of a Planning Consent request being made, justification for the Planning Consent request, and material detailing how officers concluded that the submitted material satisfied the Planning Scheme requirements.
296. In the cases where there was some evidence of assessment, it was simple and superficial, such as ticks or simple notes in the margins of photocopied sections of the CDZ provisions. There were no explanations of the planning officers' considerations and reasons.

297. This raised doubts about the rigour of these approvals. It also raised questions about the degree to which oversight of the accumulating approvals was complying with the CDP objectives, and how coordinated the decisions and outcomes were.

298. This lack of assessment material may account for the apparent 'obfuscation' by the Senior Planner, described by local residents in their interviews with the investigation. What they came to view as 'suspicious' and even 'cunning' avoidance by the Senior Planner may well have been the product of poor administrative record-keeping. In any event, it appears to have added to their concerns about his decision-making and possible motives.

The findings of the Hall & Willcox Report

299. Hall & Willcox reviewed 'tens of thousands' of pages of file records, conducted a site visit, reviewed resident submissions, conducted interviews and prepared three reports.

300. The second report, provided to the CEO on 10 January 2020, summarised information Hall & Willcox obtained in interviews with key planning officers, including the Senior Planner. It concluded that:

- his responses to questions indicated a confused understanding of how the site controls were intended to operate, and his approach had at times been inconsistent
- he had, at times, also applied a significant degree of discretion in assessing 'general accordancy' with the CDP and, on one view, the discretion he applied was not reasonably open, having regard to the CDP.

301. Hall & Willcox's final report was tabled at the Council's Ordinary Meeting on 23 March 2020. The final report concluded there were no deliberate contraventions, and attributed mistakes and errors to the particular circumstances and the complexity of the relevant instruments. It said, 'In the overall context of CDZ1 and the CDP, it is entirely understandable that some mistakes might have been made.'

302. The investigation agrees with Hall & Willcox's findings that ambiguous and outdated planning controls may have influenced the poor decisions made by Senior Planner.

303. Council advised the investigation it accepted Hall & Willcox's recommendation to complete a Planning Scheme Amendment Review to update the CDP and Schedule 1, and commission a comprehensive parking review. It further advised in May 2021 that 'background strategic and urban design analysis is currently being progressed ... including detailed site surveying of the precinct which is nearing completion'.

The Senior Planner's tenure

304. After twenty-five years at the Council, the Senior Planner's contract was not renewed when it ended in May 2020.

305. In his response to the draft report, the Senior Planner's lawyer said, 'the investigation by Hall & Willcox did not play a part in the decision not to offer [the Senior Planner] a new contract'.

306. He said the Senior Planner was advised by senior officers at the Council on 6 March 2020 that his employment contract would not be renewed because:

- he could not take his team 'towards exceptional'
- he would not be able to keep up with the frenetic pace of the organisation.

307. The Senior Planner's lawyer said there were multiple opinions and views on the interpretation and application of the decision-making process of the CDZ, but:

At no time did [the Senior Planner] ever deliberately grant any planning consent for development that was not strictly compliant with the CDP.

308. The Senior Planner denied ever intentionally giving allowances or concessions to the Developer relating to car parking and height restrictions. His lawyer also said the Senior Planner does not believe the granting of approvals over time led to a gradual erosion of the plan for the Marina.

309. The interim CEO of the Council advised, in response to the draft report, that the decision not to consider a new extended employment contract (for the Senior Planner) was 'to the best of my knowledge not based on any other concerns held regarding allegations of corrupt conduct'.

310. However, he noted that 'it was very disappointing' the Ombudsman's investigation uncovered additional occasions of the Senior Planner meeting with the Director socially 'beyond those which were disclosed to my predecessor by the then Council Officer'. Considering this, the interim CEO noted:

The decision by the Officer not to decline or even disclose such interactions would reinforce the decision taken by my predecessor not to renew his employment contract.

Findings – the Senior Planner's decision-making

311. The investigation identified that diluted and confusing planning controls in the CDZ allowed the Developer to obtain Planning Consents for developments that appeared to be, in some instances, not strictly compliant with the CDP and Schedule 1.

312. Further, it appeared the Developer was given allowances and concessions on a number of permit conditions by the Council, including those related to height and car-parking conditions. This meant, over time, a gradual erosion of the original plan for the Marina.

313. Allegations made about the Senior Planner to the investigation may have been influenced by his tenure and longevity in his role, as there was no evidence of an improper relationship existing between him and the Director.

314. Witnesses provided their opinions and detailed rumours they had heard to the investigation. But the investigation found no evidence to support the suspicions raised in the extensive searches conducted.

315. Nor did the evidence identify possible corrupt or improper conduct by the Director or Developer or any deliberate contravention of planning laws in the matters reviewed by the investigation.

316. The allegations made about the Senior Planner were not substantiated. Taking all available information into account, the evidence did not meet the threshold for 'improper conduct' in the Protected Disclosure Act (as in effect at the time of the impugned conduct).

317. However, the Senior Planner:

- failed over time in managing CDZ applications by the Developer
- showed poor strategic decision-making as a planning manager
- showed poor record keeping
- failed to follow Council policy in respect of conflicts of interest.

This eroded public confidence in the Council and led to the Patterson Lakes Marina being developed in a manner that was inconsistent with the CDZ planning instruments.

318. As an experienced planning manager, the Senior Planner's incremental errors of judgement showed a dereliction in his responsibilities which justified the termination of his employment at Council - which is ultimately what happened.

Allegations of collusion by former Councillors and the Senior Planner with developers

The allegations

319. The complaints referred to this office on 23 December 2019 alleged:

- Councillors Gledhill and Ronke colluded with other Councillors and property developers for personal gain.
- The Senior Planner colluded with developers and Councillors to improperly issue planning permits and pressured planning officers to do the same.

320. The allegations concerning Councillors Ronke and Gledhill were that they colluded with the Senior Planner and with developers, including entities being investigated by IBAC's Operation Sandon, to the advantage of each of the parties involved.

321. These allegations referred to developments including the 'Waterways Estate' and the 'First Avenue' rezoning in Chelsea Heights.

322. The investigation understands that the 'Waterways Estate' involved an application in 1998 for a Planning Scheme amendment to rezone land that was zoned as Farming Floodway, Extractive Industry and Garden Industrial land to Residential Zone to allow for a subdivision of the land into 770 lots in stages. The adoption by Council of the amendment raised concerns because a Ministerial planning panel had recommended it not be advanced and that it was inconsistent with state government planning policy to protect the Green Wedge.

323. The First Avenue rezoning in Chelsea Heights, identified by the complainant in the allegations, also involved entities that were being investigated by IBAC as part of its Operation Sandon. It involved the rezoning of land adjoining wetlands to allow for a 25-lot subdivision.

324. The allegations did not include any specific information about:

- how the collusion between the Councillors and developers was alleged to have occurred
- how the Councillors or planning officer allegedly subverted the planning laws and processes to influence an outcome in favour of the identified developers.

The Probity review

325. Around the time the Ombudsman received the allegations regarding Councillors Ronke and Gledhill, the Council commissioned an internal probity investigation into links between its planning decisions and entities examined by the IBAC in its Operation Sandon ('Probity review').
326. In his response to the draft report, the Mayor stated:
- In 2019, Operation Sandon raised significant concerns for the Local Government sector, Councillors worked to create confidence that the corruption of planning uncovered at Casey did not occur at Kingston. The concern was also compounded by the fact the key persons of interest were involved with planning matters at Kingston.
327. Council initiated the Probity review in December 2019 and included a review of planning applications made within the boundaries of Kingston City Council by named property developers.
328. During the months following, Council added additional planning applications to the scope of the Probity review, including an application for a multi-unit development which Councillor Gledhill had been involved in as director of Cascando Pty Ltd, the developer of the land at 9 Woods Avenue Mordialloc (KP/2013/792/A).
329. On 25 May 2020, Council engaged Holding Redlich. The methodology of the Probity review involved a review of documentary evidence provided by Council and interviews conducted with a number of current and former Councillors and officers.

330. The developers and developments contemplated in the Probity review included those referred to in the anonymous allegations received by the Ombudsman about Councillors Ronke and Gledhill.
331. The Ombudsman summoned a copy of the Probity review from Council on 11 August 2020 and Council undertook to provide it to the investigation once it had been completed. In the interim, the investigation continued with other lines of enquiry. Adopting this approach meant the Ombudsman's investigation could consider the Probity review report's findings to identify whether further investigative steps were warranted.

The findings of the Probity review

332. In January 2021, Holding Redlich provided Council with the Probity review report. On 28 January 2021, Council provided a privileged copy to the Ombudsman. On 10 May 2021, Council publicised a summary of the Probity review report ('Summary') which was not subject to legal professional privilege or confidentiality requirements. All references to the Probity review report are taken from the publicised Summary.
333. The Probity report provided a comprehensive desktop investigation of what it referred to as 'red flag' planning decisions. It concluded that 'the kinds of occurrences reportedly occurring at Casey [in Operation Sandon] do not appear to have occurred or be occurring at Kingston'.
334. Significantly, the Summary stated:
- Whilst some Council interviewees have had dealings with the Operation Sandon identified persons ... Holding Redlich did not find conclusive evidence of wide scale improper conduct, corrupt conduct, or misconduct. All interviewees denied ever having received financial incentives or undisclosed political donations.

Further investigation of the Councillors Ronke and Gledhill allegations

335. Based on the investigation's independent planning advice and the findings of the Probity review, the investigation considered that a further review of planning decisions would not be reasonably probative of the allegations referred to this office.
336. Given the financial nature of the allegations made against Councillors Gledhill and Ronke, the investigation made additional enquiries about their respective financial circumstances to determine if there were indications of collusion with developers, such as interdependencies in their business dealings or evidence of unexplained wealth.
337. The investigation also requested and obtained from the Council the following records:
- a list of planning applications made by the Councillors in their personal capacities
 - all Ordinary Returns lodged by them as required by section 81(5) of the Local Government Act
 - all conflicts of interest declared by the Councillors in Council meetings as recorded in minutes.
338. Records obtained by the investigation from Council of Councillors' personal property interests that had been subject of planning or development approvals showed the Councillors had submitted one development application each:
- For Councillor Ronke – development of land at his private residence (KP 2018/111)
 - For Councillor Gledhill – development of land as an investment (KP/2013/792/A)
339. The investigation confirmed that their respective property holdings were declared in their Ordinary Returns. Minutes from several meetings where these developments were discussed show they declared and appeared to manage any conflicts of interest.
340. The investigation was not alerted to any wrongdoing by Councillors Gledhill and Ronke.

Councillor Gledhill

341. The anonymous disclosure alleged 'on an unknown date Councillor Geoff Gledhill, for Kingston City Council, colluded with other Councillors and property developers for personal gain'. The complaint refers in non-specific terms to the Councillor's business interests. The Probity review report also linked former Councillor Gledhill to Operation Sandon-named parties through his political associations.
342. Company searches showed that Councillor Gledhill was the director of two active building companies and several others that have been deregistered. His Council Ordinary Returns demonstrated he had active business interests over time as well as property holdings and other assets.
343. Other searches also confirmed he had multiple business interests over his eight years as a Councillor and a substantial involvement with the local business community.
344. From the available evidence, the investigation is satisfied that his personal property holdings appear to be consistent with his professional and business interests, in retail consultancy and in property development.

345. Councillor Gledhill declared several conflicts of interest in relation to matters being decided by Council throughout his tenure, as recorded in the Council Minutes. These included his associations with Parkdale Secondary College, the proximity of his residence to the controversial Bay Trail and his Presidency of the Rotary Club.
346. Councillor Gledhill was Lorraine Wreford's campaign manager at the 2010 state election and he was also the chair of Business First. Lorraine Wreford was the Member for Mordialloc from 2010 to 2014 and a former Mayor of Casey Council. The investigation noted that his Liberal party associations had been long running, and his relationship with Lorraine Wreford pre-dated the period of time she was 'lobbying' for entities being investigated by IBAC as part of Operation Sandon.
347. Councillor Gledhill disclosed his association with the Liberal Party in all Ordinary Returns sighted by the investigation.

Councillor Ronke

348. The anonymous disclosure alleged 'on an unknown date former Councillor John Ronke, for the Kingston City Council, colluded with property developers for personal gains'.
349. He was alleged to have 'snagged with' the developer of the Waterways estate in exchange for 'homes in the US and Western Australia'.
350. The investigation confirmed that Councillor Ronke was a Councillor from 1997 until 2016. Searches of his property holdings and shares did not reveal concerns.
351. The disclosure alleged John Ronke was gifted property in Western Australia in exchange for collusion with property developers. This allegation was not substantiated.
352. The investigation also undertook targeted searches of email records provided by the Council. These records consisted of 10,868 items with those of relevance dated between February 2004 and December 2014.
353. These searches did not return any emails showing improper conduct. The investigation noted the Probity review report also found no evidence of improper conduct by former Councillor Ronke with respect to Waterways.
354. There were no emails identified that showed travel or gifts being provided to former Councillor Ronke as alleged.
355. The investigation also examined interactions between Councillors Ronke and Gledhill and the Senior Planner in email files and noted there were very few. All were professional in nature and tone.
356. Council advised the investigation that it no longer held any Ordinary Returns for Councillor Ronke, as the Local Government Act 1989 did not require the Council to hold these for the relevant period.
357. However, Council minutes showed that Councillor Ronke disclosed and managed several conflicts of interest over the years he was a Councillor, including what could be considered remote perceptions of a conflict, such as a family member's part-time employment.
358. In response to the draft report, John Ronke said he did 'establish a good working relationship with ... the landowner and developer of the Waterways'. He described the relationship in these terms:
- We often met for a coffee to discuss ideas he had, however, never at any time did any of those discussions touch on anything remotely considered a personal gain.

359. However, he said he never met with nor had any discussions with the developer 'that were not also attended by council officers'.
360. The evidence reviewed by the investigation did not conclude that Councillor Ronke engaged in the alleged conduct.

Collusion between the Councillors and the Senior Planner

361. Without detail being provided in the complaint about how the former Councillors colluded with the Senior Planner to influence development decisions, the investigation was necessarily limited.
362. In response to the draft report, John Ronke said that 'all Councillors are made acutely aware that it is an offence under the Local Government Act to lobby or pressure an officer in the preparation of their report'.
363. While the investigation noted that the Senior Planner worked on the Waterways Estate matter, it also noted that the Planning Scheme Amendment for this development was ultimately decided by the Council following recommendations from a planning panel and public exhibition.
364. Further, the investigation noted the First Avenue rezoning did not identify any key involvement by the Senior Planner. As with the Waterways Estate, this development also required a Planning Scheme Amendment, and was the subject of a planning panel hearing before being adopted by the Council. Councillor Gledhill was not a councillor in June 2012 when Council resolved to request the Minister to authorise this Planning Scheme amendment.

365. Given the oversight and public scrutiny of these development applications, the capacity for the former Councillors and the Senior Planner to subvert the planning process unnoticed would seem to be minimal. Further, there would appear to be little value in Councillors influencing initial officer reports, as alleged, when the matter was to be ultimately decided by the Councillor group, subject to the recommendations of an external panel.

366. In his response to the draft report, John Ronke said:

Whilst I always had a very good working relationship with [the Senior Planner], he was Team Leader and later Manager of Statutory Planning. The rezoning and any conditions applicable to that rezoning fell to recommendations made by Strategic Planning. To my recollection [he] was never in a position to influence either The Waterways development or First Avenue.

Areas of concern identified in the Probity review report

367. The Probity review report found no evidence of any dealings that amounted to improper or corrupt conduct or another form of misconduct. However, it identified a number of 'themes' in the planning files that 'demonstrate some aspects of Council's decision-making and planning processes that could be improved'.

Voting blocs

368. The Probity review report identified that Councillors voted in identifiable blocs based on strong philosophical and political differences of opinion. It was apparent to the Ombudsman's investigation that the division between the two voting blocs on the issue of development in the Green Wedge was and is highly contentious, and substantial discord existed within Council on this issue.

369. In response to the draft report, John Ronke offered the following observations on the divisiveness of the Councillor group:

Whilst there were always periods of strong debate and tension amongst councillors in relation to issues from time to time, there was almost always an effort to find solutions to differences of opinion. Compromises were very common. However, the last 3 years of my time as a councillor was absolutely toxic. Discussions were increasingly centred around opinions based on political alignments outside of council. The focus of attention shifted from working to achieve the best outcomes for the community to what was the policy or expected outcome based on political alignment outside of council. Reasoning, constructive debate and compromise were almost non-existent.

370. Geoff Gledhill said in his response to the draft report, the allegations brought to this office to investigate 'were made continually during the last Council Elections to smear my reputation'.

371. Outside of the philosophical support Councillors Ronke and Gledhill had for development in the Green Wedge, Council records and other evidence obtained by the investigation did not identify evidence of collusion between the former Councillors to benefit developers.

Concerns regarding record keeping

372. The investigation noted that in circumstances where Councillors were so clearly divided about property development in the Green Wedge, it would have been prudent to keep fulsome records relating to meetings and decisions.

373. Both this investigation and the Probity review report identified deficiencies in record keeping of reasons for planning decisions and of keeping contemporaneous meeting and other file notes. This extended to decisions to 'call in' planning applications.

374. In addition, there was no Council guidance directing what was appropriate conduct for Councillors when meeting with Council officers. A lack of clear protocol on how these meetings should be conducted, coupled with deficiencies in record keeping, meant persuasive evidence of interactions between former Councillors, planning officers and developers, was not available to be interrogated.

375. It was, however, apparent from Council records that Councillor Gledhill made timely disclosures of relationships and business interests that could have conflicted with his decision-making obligations as a Councillor. These records suggest he was alert to the need to declare these where he identified them.

376. Review of Council's records and other evidence obtained by the investigation did not show the Councillors sought to improperly influence planning application outcomes. The investigation did not identify instances of decision-making when development applications that deviated from usual processes were 'called in'. However, the reasons for 'calling in' particular development applications were not always recorded.

Use of 'call in' powers

377. A further theme relevant to the investigation, was the exercise of Councillor 'call in' powers. As noted earlier, until 2014, the reasons a planning matter could be called in were ambiguous; and there is still no requirement in Council policies that this change in decision-making be recorded.

378. The Probity review report identified a lack of clarity in the 'call in' process, given it was a means by which Councillors could directly influence a statutory planning outcome.

379. In his response to the draft report, John Ronke said while there were no clear written guidelines about calling in planning decisions, there was an accepted protocol. That was 'if any Councillor does not agree with the officers' recommendation in relation to a planning report, it would be listed at an Ordinary Council Meeting for discussion and decision'. He said he believed it was a 'reasonable practice' for officer recommendations to be 'either accepted or an alternate recommendation adopted in the Council chamber'.

380. The Probity review report recommended Council develop an appropriate framework regulating the 'call in' process, including a clear explanation by the Council officer or Councillor as to why the matter was called in.

Other concerns subject to recommendations by the Probity review report

381. Other themes explored in the Probity report included:

- The failure by Councillors to give sufficient weight to independent planning panel recommendations. While the Probity review report accepted that Council is not bound to follow panel recommendations, clear reasons should be provided when they don't. This would ensure confidence in the independence of the planning process.
- A lack of recording and transparency of meetings between Council officers, Councillors and lobbyists about the purpose of the meetings and what was discussed.

- A breakdown of trust between Council officers and Councillors. The investigation noted that this can result in officer reports not being followed by Councillors. It can also result in the opposite outcome of officers not providing complete information in reports to Council, both of which weaken the robustness of the process.

382. The Probity review report made a number of recommendations to Council to strengthen its integrity policies and procedures. The Council advised the investigation it is committed to implementing the recommendations.

Findings - conduct of the former Councillors

383. The investigation was referred allegations that were also the subject of Council's Probity review report. The report concluded that its review did not uncover evidence of dealings between Councillors and officers that were improper or amounted to corrupt conduct or even misconduct.

384. Noting the limited information provided in the complaint, further investigative steps taken by the investigation did not suggest evidence of collusion between Councillors Ronke and Gledhill with the Senior Planner or with developers, or any 'red flags' of improper interactions between identified entities.

385. The evidence did not substantiate the allegations about Councillor Ronke and Gledhill.

Observations

Poor records of decision-making by Council officers

386. The investigation identified several examples of planning officer reports where incomplete and incorrect information was included. This left open the potential for decisions made by senior officers and Councillors to be based on less than fulsome and accurate advice.
387. The investigation also observed a consistent lack of supporting material recording the reasons for planning decisions made in the file reviews conducted. In many instances it was difficult to ascertain the basis on which decisions were made, particularly for a large majority of the decisions related to granting Planning Consents in the Marina precinct. This resulted in important reports, documents and legal advices from previous decisions not being considered when making subsequent decisions when they were relevant.
388. In the Council meeting to discuss KP2018/459, Councillor Bearsley noted that the Councillor group had previously 'trusted the planning officers' to provide correct advice in reports on matters of community importance, and that this had not occurred in the Patterson Lakes precinct for the past few developments. These comments highlight how deficient recording of decision-making by Council officers can contribute to the breakdown in a productive relationship between these two groups of decision-makers.
389. It also raises questions about the rigour with which these approvals were granted and how coordinated the decisions and resulting outcomes were.

390. The investigation also observed that the deficiency in key decision-making documents made it difficult for both Hall & Willcox and this investigation to form a view on whether Senior Planner's decisions were improper, non-compliant or simply deficient.

Poor strategic decision-making by Council planning officers

391. Council's Code of Conduct required the Senior Planner to act with good judgement which, in practice, required knowledge of the laws and regulations affecting the Council's activities.
392. The Senior Planner appeared to lack an adequate understanding of how the height controls worked in the CDZ.
393. He acknowledged to Hall & Willcox that 'he now accepts that the control works as a strict maximum, and that, in hindsight, he overstepped the mark'. It is concerning that the Senior Planner laboured under a significant misapprehension about this issue for a number of years. Further, while his initial decision to allow development plans to exceed the height controls by only 225mm, he later relied on this decision to exceed the height provision by an entire storey in a subsequent proposal.
394. The investigation also noted that given the integrated nature of the CDZ site, the need for coordinated oversight was more pronounced than for approvals given in a standard planning zone, where a new application is required at each instance.
395. This is because the 'approval decision' in developments in a CDZ was effectively made by the Council when the CDP was first incorporated in the Planning Scheme. Thus, the checks and balances applicable to planning applications under the Planning Scheme did not apply.

396. Therefore, in order to successfully achieve the desired outcome of an integrated, coordinated and staged development for a large site over a considerable period, deliberate and coordinated oversight and assessment processes are required.

397. As previously noted, this required the Senior Planner to make effective use of the three planning 'enablers' each time a development proposal was made. He needed to consider the purpose and requirements of the Planning Scheme, whether the giving of consent accorded with the CDP, and the appropriateness of any permits or applications issued in light of the overall precinct.

398. By failing to evidence critical analysis of his decisions and recognise the connection with earlier decisions, the Senior Planner failed to strategically oversee the CDZ, effectively allowing it to develop in line with the Developer's expanded objectives rather than the original plan.

399. This deficiency, coupled with a pattern of planning consents being approved with incrementally permissive design variations, created for some the perception that the Developer was allowed to 'double-dip'. This meant seeking consent in principle, and then making further applications which resulted in the original planning permission being favourably altered in aspects such as structure height or car parking spaces.

400. This had the effect of minimising the residents' ability to object to matters such as traffic conditions and amenities; and it effectively undermined the community's trust in local government decision-making.

401. In response to the draft report, the interim CEO of the Council said:

it is apparent that errors of judgement were made associated with the interpretation of the relevant planning provisions. The way judgement has been exercised is not at a standard that is acceptable, nor was the quality of advice to the Council on some planning applications.

402. In their response to the draft report, lawyers for the Developer said they disagree that the Marina has been developed in a manner inconsistent with the CDZ. They said, 'there are no detailed directions in the CDP. The very nature of the CDP provides flexibility subject to the development being generally in accordance with the CDP.'

Deficiency of oversight by Council

403. A lack of clear Council protocols on how meetings should be conducted between developers and Council officers means conclusive evidence of interactions between former Councillors, planning officers and developers, was not available to be interrogated.

404. Witnesses said they had attempted to convey their concerns to Council about development decisions in the CDZ for at least a year before Councillors voted against the Marina Quays car parking reduction application in 2019. They reported unanswered calls and emails from Council's planning and other senior officers.

405. The interim CEO acknowledged that 'Officers were ... not initially sufficiently responsive to the concerns expressed by local residents and this has contributed to the feedback provided to your investigation'.

406. It is unclear why, in the face of such concerns, senior officers at the Council continued to allow the Senior Planner to remain as the delegated decision-maker on all development applications in the Marina. This apparent failure by the Council to respond in a timely and proactive manner contributed to the perception that corrupt or improper conduct was occurring, resulting in a very costly internal Probity report as well as this investigation.

407. In his response to the draft report, the interim CEO said that following the Council meeting in May 2019, the involvement of the Senior Planner in CDZ developments was 'reduced' and 'subject to oversight and decision-making by alternate Council officers'.

Ambiguity of 'call in' powers and Councillor decision-making

408. The investigation observed further that until 2018, Council's Planning Delegation Policy provided deficient guidance as to when a matter could be decided internally by the planning department and when it should be 'called-in' for Councillors to decide.

409. While clarification has been provided in the most recent Policy, there is still no requirement for a planning officer or a Councillor to record a reason for calling a matter in.

410. Recording this information would show transparency and would increase community confidence that the process is being followed appropriately.

Lack of transparency and recording of meetings with developers

411. Witnesses reported being uneasy about the relationships they observed between Council officers and developers. Similar concerns were raised in the Council's Probity review report.

412. This unease, coupled with planning decisions that may not appear to be in the community's interest, can easily create an impression of improper or corrupt conduct.

413. The investigation understands that Councillors meet with their constituents regularly and that planning officers conduct pre-application meetings with developers as a matter of course. There can be sound reasons for these meetings.

414. The investigation appreciates that planning matters are complex and costly, and that it is practical for developers to understand Council's expectations before submitting plans or applications for approval.

415. However, to ensure that any potential perceptions of conflicted interests or vulnerabilities to corruption are minimised, it would be prudent for both Council staff and Councillors to record such meetings and for Council to keep a register of these.

416. Further, any social interactions, such as the Christmas lunches shared by Senior Planner and the Director, need to be clearly declared as a conflict of interest. This is regardless of whether a Council officer considers it to be an interaction indicative of a cordial working relationship.

417. Council advised that neither the Local Government Act 1989 nor the Local Government Act 2020 'speaks to a requirement for senior officers or Councillors to record or declare social meetings, dinners or lunches with developers'.

418. However, the receipt of an ‘applicable gift’ was defined as an indirect conflict of interest under section 77A(3)(d) of the Local Government Act 1989 and the Council’s Employee Gift and Hospitality Policy (in effect from 2 September 2009 until 30 July 2013) provided the following guidance as to what an officer was expected to do if they received a gift.
419. This included hospitality from a party with a direct interest in the outcome of one of the officer’s decisions:
- The Local Government Act provisions for Conflict of Interest preclude an officer from making a decision or exercising a duty, function or power in relation to a matter if they have received one or more Applicable Gifts (including hospitality) with a total value of \$200 (in the previous 5 years) from a party with a direct interest in the matter.
420. The same Gift and Hospitality Policy gave specific guidance on when meals could be considered an ‘applicable gift’ and should be declared and managed:
- Breakfast, lunch or dinner invitations which are “educational”, “working” or “networking” events are a gift or hospitality and the legislation applies. In these circumstances acceptance and recording would be required. If the amount means that you are over the \$200- or 5-year threshold then the implication is, you cannot undertake your decision-making duties in relation to the campaign.
421. Subsequent versions of the Council’s Gift and Hospitality policies after 2013 adopted the same approach as the 2013 policy. Additionally, all iterations of the Code of Conduct in operation during the period of the Local Government Act 1989 warned Council staff to exercise caution in personal relationships with community members, including an awareness of perceived and potential conflicts of interest.
422. The Local Government Act 1989 and these Council policies made it clear that, if the Senior Planner received hospitality in the form of paid lunches totalling more than \$200 from the Director over a five-year period, he should have been precluded from making a decision in relation to any matter involving the Developer. Even if he paid for the lunches himself, he should have identified and managed the perception that could well have arisen that he and his private interests could improperly influence his decisions as a public officer.
423. The investigation noted that the Local Government Act 2020 now refers to hospitality including paid lunches as a ‘disclosable gift’ in section 128(4)(a), being ‘one or more gifts with a total value of, or more than, \$500 ... received from a person in the 5 years preceding the decision on the matter if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received’.
424. The Council’s current Councillor Gift and Hospitality Policy further states:
- Hospitality which is likely to create the impression that an attempt is being made to compromise the impartiality of the Councillor or an impartial, fair-minded person would determine a conflict of interest would arise should be declined.
425. While the Local Government Act 2020 seeks to delineate the actions Councillors and Council staff are expected to take when offered hospitality, the obligation to declare and manage such conflicts of interest remains as it was under the 1989 Act. The investigation observed that despite guidance being in Council policies, the Senior Planner did not make any such declarations. This may have further contributed to the perceptions that his decision-making was improperly motivated.

Limitations arising from the CDZ

426. Evidence showed that residents of Patterson Lakes have been troubled by what appeared to be inappropriate concessions being given by the Council to the Developer in relation to height controls, open space and car parking in the CDZ.
427. It may be surprising for residents that many decisions made by the Council - including the monetary contribution paid to satisfy open space requirements and the Developer's requirement to show a deceleration lane layout plan but not immediately build it - were not contraventions of the CDZ requirements.
428. This points to a potential problem with Comprehensive Development Zoning as a planning tool. This was first identified by submissions to the Planning Panel in 1989 when the Endeavour Cove CDP was first considered. As residents expressed then, public input in developments made according to a CDP is severely limited. The usual requirements to advertise plans and respond to objections are removed. This also removes the opportunity for members of the public to express concerns.
429. While the Ministerial Panel in 1989 was optimistic that the 'detailed nature of the plan' would mean 'the actual development would be unlikely to differ materially from the proposals put to the Panel', it can be argued that this did not happen.
430. For the reasons discussed, it is arguable that residents of the Patterson Lakes Marina have ended up with the worst of both worlds in terms of planning controls. They have a development plan that was not closely followed by the Authority responsible and have had no opportunity to engage in planning decisions that affected them.

The CEO's response to the draft report

431. The CEO of the Council responded to the draft report on 27 July 2021. In response to the observations made by the investigation, he said:

Protocols for the recording of meetings and social interactions between developers, Councillors and planning officers

Your report identifies the significant interactions between participants in planning process as part of the formulation of, and assessment of planning applications. The report makes sound recommendations regarding the need to suitably capture these meetings.

Enhancements have been made to Council's processes including the nomination on application forms of any pre-application meetings held prior to the lodgement of applications. The report does though identify the need to further strengthen the capturing of interactions between permit applicants and Councils Planning Officers with a particular focus on key outcomes discussed between the two parties.

We are presently looking to further enhance our capability to ensure a consistent approach is maintained in capturing such discussions. With specific respect to 'social interactions', the training and development provided to our Planning Officers reinforces the expected standards relating to the offer of gifts or hospitality consistent with our 'decline and declare' principle. As part of the findings in your preliminary report, I intend to arrange a further session with our planning team reinforcing the inappropriateness of social interactions of the nature identified in your report.

The use and recording of 'call in' powers and planning delegations

As identified, Council is presently reviewing its Planning Delegation Policy. Over more recent time enhancements have been made whereby applications which are called in by the Council identify the Councillor(s) who have requested the matter be considered by the Council.

Where the Councillor(s) nominate a reason for the 'call in' the reasons are also outlined.

Based on the work completed by Hall & Willcox, any significant decisions relating to the land covered by the CDZ will be deemed of 'Major Significance' and the applications will be presented to the Council for consideration. The only exception to this approach would likely be the determination by the Planning Officer that the application not be supported. As identified above, Officers will further rely on the assistance of Hall & Willcox in reviewing the Officers assessment of the application.

The declaration and management of conflicts of interest by Councillors and planning officers

Your report has reinforced that 'Christmas lunches' shared by the former Council Officer and developer needed to be listed on Councils gift register and declared as a conflict of interest.

The participation in 'Christmas lunches' or similar significant 'social interactions' with developers or parties seeking some form of favourable outcome from Council, has for several years been viewed as inappropriate.

Concerns raised by local residents about decisions made in the CDZ

Local residents have a right to feel let down by the decisions which have been made in the CDZ by the former Council Officer. Officers were also not initially sufficiently responsive to the concerns expressed by local residents and this has contributed to the feedback provided to your investigation.

As identified in your report, background work on a Planning Scheme Amendment has commenced and it will be important that this work involves all parties who have an interest in the planning of the area covered by the CDZ. Council will also be looking to engage directly with local residents regarding any areas where it has commenced work, to review other aspects of the development which has occurred in the CDZ.

Council's response to the draft report

432. The Mayor of the Council responded to the draft report on 16 August 2021. Like the CEO, the Mayor stated that Council are committed to fully addressing the findings of the Hall & Willcox and Probity Reports as well as advancing a Governance review commenced in March 2020.

433. His response is included in its entirety at Appendix 1.

Conclusions

434. On the basis of the evidence:

- The investigation did not substantiate that the Senior Planner, John Ronke or Geoff Gledhill engaged in corrupt or improper conduct as alleged.
- However, the Senior Planner made successive errors of judgement that fell short of the expectations of his role. Errors of judgement accumulated to represent a dereliction of his responsibilities as an experienced planning manager.
- Further, as identified, the Council provided deficient oversight of:
 - o protocols for the recording of meetings and social interactions between developers, Councillors and planning officers
 - o the use and recording of 'call in' powers and planning delegations
 - o concerns raised by local residents about decisions made in the CDZ.

Appendix 1 – Council’s response



16 August 2021

Ms Deborah Glass
Victorian Ombudsman
Level 2
570 Bourke Street
MELBOURNE VIC 3000

Dear Ms Glass

Re: Investigation into Improper Conduct

Thank you for providing me with the opportunity to comment on the draft report: *Investigation into allegations of collusion with property developers at Kingston City Council* (August 2021).

Councillors take our Planning and Governance responsibilities very seriously, as set out in the Local Government Act and the Planning and Environment Act.

Council has developed a new code of conduct that integrates key values to guide decision making:

- Integrity
- Compassion
- Accountability
- Responsiveness
- Empathetic and Informed

These values aim to uphold best practice behaviour, responsible interaction and decision-making that complement the Standards of Conduct prescribed in the Act.

Through the course of 2019 and 2020, Council grappled with significant Planning and Governance issues. The spirit of collaboration and trust between Councillors and officers was strained, where Councillors found the flow of information from some officers was not clear, comprehensive and definitive.

In seeking to fully ventilate the issues of concern, a series of resolutions were considered and carried by the Council in addition to formally raising concerns directly with the CEO. The three matters of significant concern amongst Councillors included the investigation into the Endeavour Cove planning approvals, the Probity Review into several other planning matters and the Governance Review.

Below I will outline what actions Council has taken in an effort to address the matters.

The Endeavour Cove, Patterson Lakes

Through 2019, Councillors were being approached with a number of allegations regarding Council's compliance with its legal obligations under applicable planning laws in relation to planning approvals at Endeavour Cove, Patterson Lakes.

The allegations are summarised (in the Hall & Wilcox report) as follows:

- *the failure by Council to enforce compliance with advertising and notice requirements for proposed developments and otherwise provide necessary information in the course of development approval processes;*
- *the grant of development approvals by Council in breach of relevant planning controls;*

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- *the failure by Council to enforce requirements under applicable planning controls or approvals and otherwise follow proper procedures in relation to enforcement and compliance; and*
- *the conduct of a Council officer amounting to an improper use of their position or failure to properly discharge their duties on behalf of Council, or otherwise resulting in the interference with the proper process for development approval required under law.*

Following considerable concern and public pressure from the Patterson Lakes community, by October 2019, Council's then CEO, Ms Julie Reid engaged Hall & Wilcox Lawyers to undertake a comprehensive review of relevant developments, development proposals and permit applications that had been considered or approved for land at Endeavour Cove under the Comprehensive Development Zone - Schedule 1 (CDZ1), Endeavour Cove Comprehensive Development Plan, December 1999 (CDP).

The Council held a Special Council Meeting on 21 October 2019 and passed the following resolution:

- 1) *In light of the fact that the CEO has since commenced an investigation into the "Cove Development", Council note that initial findings are to come back within 60 days;*
- 2) *Council make public all information relating to the development applications in the CDZ and Endeavour Cove precinct that is possible noting many residents already have some of the information through disclosure in the VCAT proceedings.*
- 3) *Officers have a scoping session at a Councillor Information Session to draft a review and enhancement of process relating to the management of such planning applications, and accountability within the organisation and that the lawyer handling the investigation be invited to be involved.*

Hall & Wilcox Lawyers reported back to Council in their report dated 19 January 2020. It identified nine approvals and/or developments that either do not, or appear not to, comply with the height provisions or intended design layout reflected in the Comprehensive Development Plan (and as a tenth matter, they considered the files relating to the provision, allocation and subsequent reduction of car parking for the Cove Hotel).

The Hall & Wilcox review did not identify any clear or obvious evidence of corruption, fraud, undue influence, or deliberate contravention of Council requirements by any Councillors or Council staff or by any employees or agents of applicants and developers.

As a response to the investigation, Councillors resolved to accept officer advice in an attempt to mitigate and respond to the identified areas of non-compliance.

At its Ordinary Council Meeting of 23 March 2020, Council resolved the following:

1. *Council receive the findings of the work completed regarding an investigation into the land contained within Schedule 1 to the Comprehensive Development Zone contained at Clause 37.02 of the Kingston Planning Scheme.*
2. *Council commence the background work (including a comprehensive parking review) to review the Planning controls covered by Schedule 1 to the Comprehensive Development Zone contained at Clause 37.02 of the Kingston Planning Scheme and that direction from Council then be sought on commencing a Planning Scheme Amendment.*
3. *The Chief Executive Officer write to all parties involved in providing feedback into the investigation and that a meeting be arranged to outline the outcomes of the investigation.*
4. *Note that the Chief Executive Officer and General Manager Planning and Development will convene a workshop of relevant staff in the City Development and Compliance and Amenity Department to discuss the findings of the investigation and advance the implementation of the internal process improvements outlined in Section 3.3.3 of this report.*

Section 3.3.3 covered a range of internal process enhancements following a review of the submissions received from the community, these have all been acted on.

Current Council Action

Council officers are presently working on background and preliminary reports with a view to preparing a planning scheme amendment for the Endeavour Cove precinct.

This work involves developing a new Comprehensive Development Plan which updates the overall layouts on the site to reflect the existing conditions, as built development on the site and which clearly identifies precinct boundaries and the preferred and/or mandatory height expectations within each precinct. It is also recommended that changes be made to the form of Schedule 1 to the Comprehensive Development Zone with consideration given to:

- Reconsidering as-of right and permit required uses;
- Applicability of conditions opposite uses particularly as they relate to parking;
- Introducing buildings and works triggers for medium and high-density residential proposals and other, non-residential projects; and
- A set of objectives and guidelines for development within each precinct within the Comprehensive Development Plan.

This includes the preparation of a draft car parking report, draft update of the Comprehensive Development Plan Schedule and the Comprehensive Development Plan, and the completion of a site survey.

In addition to the work on the Comprehensive Development Plan and Schedule 1 to the Comprehensive Development Zone, the investigation also recommended a car parking survey be undertaken, with a particular focus on Precincts 1, 10 and 11, to determine how car parking is currently allocated to the range of uses across the site and to optimally devise a new car parking plan for the site.

Council is seeking to enforce the original carparking requirements of the planning scheme at the Patterson Lakes Swim School, Marina and the Cove Hotel. This includes consideration of the role performed by the riverbank carpark put forward by the applicant as an appropriate location for the provision of the requirement. The land ownership is a complex issue, and further consideration is required.

In March 2018, the delegated officer approved a significant and controversial development at 54 and 64 Pier One Drive, which I understand did not comply with the Comprehensive Development Plan. The endorsed plans appear to exceed nominated height maximums in the relevant locations. Council instigated a declaratory proceeding at VCAT to review the decision of the delegated officer. I understand this matter has now been deferred to March 2022 for formal consideration by the Tribunal.

Council will also be pursuing a matter that the Environment Protection Authority (EPA) has previously investigated regarding the remediation of hydrocarbon contamination at the site after the discovery of disused fuel tanks.

The Probity Review

In 2019, Operation Sandon raised significant concerns for the Local Government sector, Councillors worked to create confidence that the corruption of planning uncovered at Casey did not occur at Kingston. The concern was also compounded by the fact the key persons of interest were involved with planning matters at Kingston. As a response, Council commenced a Probity Review through a series of resolutions at several Council Meetings held on 9 December 2019, 24 February 2020, 27 April 2020, 25 May 2020, and 27 July 2020.

The aim of the Probity Review was for an independent party to examine Council records and databases, interview relevant Councillors and officers to identify if any evidence of improper influence by the parties identified in the various resolutions, or of any developer, landholder, Councillor, former Councillor or Council officers on decisions in relation to 23 planning matters.

Holding Redlich was appointed to undertake the review which was finalised in February 2021. No evidence of improper conduct was found. Council provided a copy of the full report to IBAC and the Victorian Ombudsman's Office.

Importantly the report stated: *'[b]ased upon the interviews and the review of the available documentation, Holding Redlich concluded that the conduct reportedly occurring at the City of Casey does not appear to have occurred, nor is occurring, at the City of Kingston'.*

Current Council Action

Holding Redlich provided 13 recommendations for Council to strengthen planning processes and to provide additional protection. Council has committed to fully implement all recommendations, further, I understand officers are currently working on policies that will effectively operationalise the following:

- *Maintaining a register of any Councillor meetings with lobbyists,*
- *Developing/reviewing political donation disclosure policy,*
- *Randomly reviewing planning applications for auditing purposes,*
- *Providing ongoing ethics training for Councillors and officers,*
- *Providing training for Councillors on the Victorian Planning system,*
- *Defining which senior officers should attend meetings with applicants,*
- *Documenting all meetings with external parties and lobbyists,*
- *Ensuring adequate process to report suspected misconduct,*
- *Developing a framework to guide Councillor 'call ins' of planning applications,*
- *Adopting policy on election campaign return forms,*
- *Considering planning panel recommendations and providing a transparent approach if a recommendation is not followed, and*
- *Considering ways to enhance relationships between Councillors and officers.*

A draft report on the implementation of the recommendations will be presented to Council in August 2021, with a view for the matter to be considered for adoption at the August 2021 Ordinary Council Meeting.

Governance Review

Councillors' pre-existing concerns in relation to the standards of organisational governance were exacerbated by the Endeavour Cove matter.

Ms Julie Reid produced and presented a plan titled 'Towards Exceptional' at the conclusion of her first 90 days in the position of Council's CEO. The report was based on her findings after a period of consultation with Councillors and officers. In the report Ms Reid recommended an independent review of governance across the organisation.

The aspiration, which was supported by Council, was that the organisation would strive to achieve best practice in governance. The review was intended to form a key element in the implementation of Towards Exceptional, which included the pillar of 'best practice governance that builds mutual trust, respect and confidence'.

At its Ordinary Council Meeting of 23 March 2020, Council was presented with the Draft – Kingston Good Governance Outline and adopted the following resolution:

- 1) *That Council adopt the attached scope and seek tenders from suitably qualified respondents to conduct the Independent Governance Review; and*
- 2) *That Council receive a report on the outcome of the tender process prior to the award of the contract.*

The scope of the work was for an independent organisation to undertake an assessment of Council's governance policies, procedures, systems, guidelines and frameworks against the "Good Governance Outline" that has been established by the Victorian Government to analyse and understand whether the current status of all aspects of governance are achieving best practise for a local government.

At its Ordinary Council Meeting of 22 July 2020, Council awarded the contract for the Provision of Independent Governance Review to Moore Stephens (Vic) Pty Ltd.

An updated draft report was presented to officers on 13 January 2021, one day after Council formally announced that Ms Reid had resigned her position as CEO to take up another employment opportunity.

The report found that "Kingston is operating a predominately functional governance model with a large number of strategic objectives for focus. The maturity assessment concludes a current state of developing with target future state of mature."

The report also made the following key recommendations for Council to improve governance:

- *Provide further clarity of the governance accountabilities across the City of Kingston through initiatives including governance maps, awareness sessions, accountability matrix and ongoing engagement including training and workshops.*
- *Increased transparency in welcoming and responding to all stakeholder feedback including engagement and frameworks incentivising the reporting of bad news and negative feedback.*
- *Improve the policy framework to deliver best practice protect and guidance documents that are accessible, current and easily maintained.*
- *Conduct a post COVID review to identify learning and opportunities to leverage into future governance policies and procedures.*
- *Benchmark safety, risk, compliance and integrity frameworks to identify specific improvement actions to continuously improve and facilitate monitoring of these actions.*
- *Develop and agree engagement framework with Councillors including code of conduct, principles of engagement and working protocols.*

Current Council Action

In late March 2021, Mr Tim Tamlin was appointed as the Interim CEO. Council adopted specific KPIs for Mr Tamlin, including the consideration and implementation of the Governance Review.

The Governance Review was presented to the Audit and Risk Committee meeting held on 16 June 2021. Following guidance from the Committee, an implementation plan of matters arising from the Governance Review is currently being developed. This will be presented to Council in August 2021.

A further report will be presented to the Audit Committee in September 2021 providing an overview of the outcomes of the Governance review.

Council is committed to:

- fully addressing all concerns raised in the report provided by Hall & Wilcox;
- implementing all of the recommendations of the Probity Review;
- prioritising the continual improvement in the standards of governance across the organisation,
- using the Governance Review; and
- the advice of the Audit and Risk Committee to strive for best practise.

Yours sincerely



Cr Steve Staikos
MAYOR

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2020

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of five children living in Child Protection
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October 2020

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October 2020

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September 2020

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2019

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May 2019

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April 2019

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February 2019

2018

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October 2018

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